

Report

Report subject : Land at 96 Netherhampton Road, Harnham, Salisbury
Report of : Head of Development Services
Date : Thursday 25 May 2006
Author : Stephen Hawkins, Principal Planning Officer (Enforcement)

Report Summary:

To consider the expediency of enforcement proceedings in relation to:

1. The material change of use of land from a dwelling house and residential curtilage to a mixed use for the purposes of dwelling house, residential curtilage and use for the keeping and breeding of dogs not incidental to the enjoyment of the dwelling; and
2. The erection of outbuildings and structures and construction of a hardstanding, all used as an integral part of the use for the keeping and breeding of dogs alleged at 1 above.

Introduction:

The above breach of planning control was drawn to the attention of the Enforcement Team in September 2005, as a result of continued enquiries received by the former in relation to an alleged nuisance caused by barking dogs.

At a site visit in 20th September 2005, the owner a Mrs. Burke stated that she bred 3 types of Dachshund and also showed the dogs.

A Planning Contravention Notice (PCN) was served on the owner in October 2005. In response, she indicated amongst other things that 13 dogs were kept at the site with more if puppies were born (5 of the dogs kept were breeding bitches). The dogs were mainly kept and bred for the purposes of showing, the owner's hobby of showing dogs and did not provide her with an income. The kennel structures had been completed in or around 1994 and were used either for external storage or housing dogs when needed.

However, the PCN was not completed in full and details of the dogs bred at the site and their subsequent owners were not disclosed. After prosecution proceedings were initiated against the owner in respect of the failure to complete the PCN, further information was supplied by her which indicated in summary that 11 dogs were kept at the site (after two had recently be re-homed) and seven litters of puppies had been born at the site in the two years prior to May 2005. The owner further indicated she had bred champion dogs in the past. She stated that she did not charge a fee for puppies and usually held on to their registration papers, thus reducing the animal's value and preventing further pedigree breeding.



Awarded in:
Housing Services
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Further information obtained however indicates that the availability of puppies and stud services is advertised on the internet and that the owner is also an Accredited Breeder with the Kennel Club. In order to satisfy Accredited Breeder criteria, the pedigree registration certificate should be handed to the purchaser of the puppy.

Kennel Club records show that 40 puppies in 10 litters have been bred from 5 bitches at the site between February 2004 and October 2005.

Officers have sought to negotiate with the owner to substantially reduce the number of animals kept at the site as alternative to formal enforcement action. Whilst the owner has reduced the number of animals by two and has suggested that she intends to move in the near future, to date negotiations have failed to remedy the breach of planning control.

Environmental Health are still investigating allegations of nuisance arising from the use.

Site & Surroundings:

The site consists of a mid 20th century detached dwelling with a long back garden, situated on the northern side of Netherhampton Road. It lies in a residential area comprising other detached and semi-detached dwellings set in similar size plots having a spacious, suburban character. Public paths run to the side and rear of the property.

A series of 4 block and tile and timber kennel type structures have been erected in the rear garden of the property along, the surface of which had been concreted over, as well as a timber shed also apparently used as a kennel and a touring caravan. A high timber fence shields the rear garden from the public realm.

Planning history:

It appears that in October 1997 the Enforcement Team were informed by Environmental Health about 2 brick - built kennel buildings with chain link pounds erected in the garden. However it appears to have (incorrectly) been concluded that any structures present at that time were permitted by the GPDO. No other structures are mentioned.

Aerial Photograph dated 24th June 2001 appears to show a partly hardsurfaced rear garden with at least some outbuildings within the rear garden area. However their use is unclear.

Planning permission S/02/0090 for a conservatory dated 18th February 2002. However it appears that the Case Officer did not inspect the rear garden so there is no evidence on the file in relation to the use of the site for the keeping and breeding of dogs and/or outbuildings present.

Environmental Health:

There is a history of complaints regarding barking dogs and negotiations with the owner of the property to try and address the issues, dating from August 1995 up to March 2006, with an abatement notice served in October 1999 and further notice served in May 2001. A further notice has been served in anticipation of nuisances during the summer months (summary).

Planning Policies:

The site is within the Housing Policy Boundary and is in an Area of Archaeological Significance in the SDLP.

However, the only relevant policies are G2 (general development criteria) and D3 (extensions).

Considerations:

Whether a breach of planning control has occurred

The keeping of a small number of animals at a residential property for the personal enjoyment of the occupier as pets, would not normally constitute a material change of use of that property.

The owner has denied that any change of use to a mixed residential/use for the keeping and breeding of dogs has occurred. However, she has admitted that at least 11 dogs are now kept at the site (recently reduced from 13), with more dogs kept at the property when puppy litters are born.

It is considered that the above considerably exceeds the number of such dogs that one might normally expect to be found at a residential property for the personal enjoyment of the occupier particularly where, as in this case, the occupier is also understood to have health and family difficulties.

Whilst the evidence of a business use at the site is currently inconclusive, it is nevertheless considered that the breeding of several litters of puppies and the advertising on the internet of puppies and stud services together with members of an accreditation scheme, and also having regard to the high value commanded by pedigree puppies (especially, as in this case, those bred from champion stock), are all considered to lend weight to the suggestion that the use of the site goes well beyond that which would ordinarily be considered as incidental to the enjoyment of the dwellinghouse.

Furthermore, the fact that a large number of outbuildings are needed to house the dogs and that there have previously been complaints to Environmental Health Officers over a number of years on the grounds of noise nuisance caused by the dogs barking, supports the view that this level of activity goes above and beyond what might be accepted as an everyday residential use.

It is therefore considered that, as a matter of fact and degree, a material change of use of the property has occurred in this case from use as a dwellinghouse to a mixed use including use for the keeping and breeding of dogs not solely incidental to the enjoyment of the dwelling.

The construction of the kennels, shed and hardstanding are all considered to constitute operational development.

The owner has suggested that these structures are used for storage and kennels, which would be in conjunction with the mixed use.

Erection of the structures would not, in any event, have been permitted by Part 1, Class E of the Schedule to the GPDO. Whilst that Class allows for the erection of buildings within the curtilage of a dwelling incidental to the enjoyment of the dwelling (which could include the keeping of pet animals for the domestic needs or personal enjoyment of the occupants of the dwelling), the structures are closer to a highway than any other part of the dwelling and thus breach one of the limitations of the GPDO.

Permitted development rights exist under class F to construct a hardstanding incidental to the enjoyment of the dwellinghouse as such.

However, as is also the case with the above buildings, the hardstanding appears to have been erected in conjunction with a use which is considered to go beyond the domestic and personal enjoyment of the occupiers and is part and parcel of a mixed use, it is considered that its construction would also not have been permitted by the GPDO and would have been in breach of planning control.

Whether the breach is immune from enforcement action, by virtue of the passage of time

The owner has denied that the mixed use alleged above is occurring, consequently there is little evidence in relation to the duration of the use and whether its nature and scale has been continuous for more than ten years.

The owner acquired the property in 1993 and suggests that breeding and showing began after February 1994, however it is unclear as to the nature and scale of the use and whether it has been continuous since that time.

It is also significant that whilst the first complaint to Environmental Health dates from 1995, the more frequent complaints regarding dogs barking at the site appear have started in late 1997 and then continued at intervals up to the present time.

It is of note that only two kennel structures appear to have been at the site in October 1997, suggesting a smaller scale use of the site at that time, with 'new' kennels being put up in 2001.

The first indication of a large number of dogs being kept at the site is in November 1999, when 10 dogs were recorded as being present. Formal action was taken by the Council's Environmental Health Service by serving notices in October 1999 and May 2001.

The above all suggests that the use has grown to at or near its current scale, triggering a material change of use, within the relevant period.

The owner has therefore not discharged the burden of proof on her to demonstrate that such use began more than ten years ago.

The owner's husband originally stated that the outbuildings were erected around 7 years ago. However in response to the PCN, the owner stated that the structures had been erected and completed in 1994 and some of them were on the site prior to 1993 when she moved in to the property.

As noted above, the first reference to kennels appears to have been in late 1997 when only two kennels appear to have been present at the site. The Council's Environmental Health Services also records 'new' kennels at the site in June and August 2001, built away from the neighbouring property.

This can be contrasted with the current structures, which amount to five buildings in total and provide several kennels and dog runs.

The above suggests that the kennel structures have been erected within the last ten years –the latter being the relevant period for the structures in this case, because it is considered that they are part and parcel of the use for the keeping the dogs.

It is therefore considered that the owner has also not discharged the burden of proof on her to demonstrate that the structures were erected /hardstanding constructed more than ten years ago.

Effect of the use on neighbouring amenities

As noted above, the keeping of at least 11 dogs is considered to be above and beyond what might normally be an incidental use to a residential property.

The record of complaints to Environmental Health indicates that such use has resulted in disturbance being caused to occupiers of the properties through the emission of excessive noise, adversely affecting their standard of amenities, which they could reasonably expect to enjoy, in conflict with policy G2 (vi).

Environmental Health's comments also suggests that the continuation of the use at its current scale has the potential to result in a statutory nuisance in future.

A substantial reduction in the number of dogs kept at the property to a reasonable number however would as well as remedying the breach, be likely to alleviate the harm to amenity in planning terms (but would not necessarily resolve Environmental Health objections to the keeping of dogs at the site).

Outbuildings & hardstanding -effect on character of the area

The kennel buildings are constructed of a mixture of wood and blockwork and although functional, are of a poor standard of design having little regard for the design and materials of local residential buildings. Overall the yard together with the hardstanding has a very harsh and utilitarian appearance.

Nevertheless the rear garden of the site is shielded from public view by high boundary fencing, and the outbuildings are not visible features in their surroundings.

Therefore it is considered that retention of the structures would not conflict with policy D3.

However, the structures in question are also considered to be an integral part of the breach, providing, amongst other things, kennel accommodation for the dogs, their removal is still considered necessary in order that the breach be remedied.

Options For Enforcement

Option 1- to issue an Enforcement Notice:

This would secure remedying of the breach by requiring the keeping and breeding of dogs at the site to cease and removal of the structures and hardstanding.

Cessation of the breach would entail reduction of the number of dogs to a number which could reasonably be considered, in normal circumstances, as incidental to the enjoyment of the dwelling. In similar circumstances elsewhere in the District, the Council have suggested that, as a matter of fact and degree, the keeping no more than 4 dogs would not involve a material change of use.

Additionally removal of the kennel structures which are part and parcel of the use can also be specified. A reasonable time period could be allowed to allow the owner to find alternative homes for the animals and remove the structures, whilst ensuring that the harm to neighbouring amenities is not unduly perpetuated.

This option is favoured by Officers.

Option 2 –to take no further action at this time. The owner has suggested that 4 of the dogs are elderly, additionally that she is intending to move in the near future. Therefore, there is the prospect that the number of animals will be reduced as the older animals die and the use may cease altogether.

However, neither of the above are certain as they largely depend on factors outside of the owner's control and there is therefore a strong prospect of the use and attendant harm to neighbouring amenities continuing indefinitely.

In addition to the above, Environmental Health have indicated that they may be able to take further action in response to complaints in relation to a statutory nuisance (which in turn, could have the effect of remedying all or part of the breach).

However, it is considered that the Council as Local Planning Authority should be wary of failing to take enforcement action where there is evidence that there is a breach, which is causing continuing harm to neighbouring amenities, which deserve protection in the public interest. Such an approach would be inconsistent with government guidance on enforcement set out in PPG 18 and the reasoning behind not taking any action would need very carefully considered.

Therefore, this option is not favoured by Officers.

Option 3 –to take no formal action at this time, but to negotiate a Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990 with the owner to progressively reduce the number of dogs kept at the site: This approach would avoid formal enforcement action whilst securing remedying of the breach. An Undertaking would allow more flexibility than an Enforcement Notice and could, for example, allow the owner the opportunity to achieve a reduction of dogs over a longer period than would be considered reasonable in an Enforcement Notice.

The advantage of the above is it could allow reduction of dogs through 'natural wastage' as animals die off and are not replaced.

This approach was initially favoured by Officers and recommended to the owner. However, to date the owner has declined to cooperate with Officers in this regard.

Option 4-to invite the submission of a planning application to retain the use. For reasons identified above, it is considered that planning permission would not be forthcoming, should an application be submitted for the use, as reasonable planning conditions could not be attached to any permission to deal with the objections identified above.

Human Rights

Enforcement action will interfere with the owner's property rights under Article 1 of the 1st protocol of the Human Rights Act as well as the occupier's right to a home under Article 8.

Enforcement action would be considered lawful if the public interest outweighed that of the individual concerned and would be justified only if any interference in the Human Rights of the individual was considered proportionate to the breach. In this case, based on the information available it is considered that there will be interference in the owner's Article 1 rights, as enforcement action will affect her right to enjoyment of her property.

Additionally, her right to a home will be affected as it would affect her enjoyment of her home.

However, the owner's rights also have to be weighed against the rights of neighbours in relation to the enjoyment of their homes.

Moreover, any interference is considered justified and proportionate, having regard to the harm to neighbouring amenities identified above which would occur if the development were allowed to continue, and the public expectation that Development Plan policies seeking to protect neighbouring amenities are upheld.

Furthermore it is considered that the steps required to remedy the breaches are proportionate to their seriousness; under –enforcement is recommended as the effect of enforcing cessation of all dog keeping would otherwise be disproportionate; lesser steps than those recommended however would not remedy the harm caused by the breaches.

The compliance period specified is also considered proportionate to the breach in Human Rights terms in that it allows sufficient time to remedy the breaches that has occurred.

Giving a longer compliance period would simply lengthen the period that the use continues without any justification.

Consideration can be given to extending the period for compliance if, at the end of the period, it appeared to Officers they may be good reasons for doing so, for example if there were animal welfare issues.

PPG 18

PPG 18 favours informal discussions to resolve matters without recourse to formal enforcement action. However, the failure of negotiations to resolve matters should not hamper or delay formal enforcement action in cases where unacceptable harm to local amenity is being caused.

It should be noted that since September 2005 informal negotiations have taken place with the owner in an attempt to regularise matters at this site without the necessity for formal enforcement action. However, the breaches of planning control still continue at the site causing the harm identified above and it is considered, having full regard to the above guidance, that formal enforcement action to remedy the harm to amenity caused should therefore not be further delayed.

Conclusions:

The development/use described above has caused conflict with adjoining residential uses. The owner's Human Rights have been considered, however on the balance of considerations it is considered expedient that enforcement action should be taken to secure cessation of the unauthorised mixed use.

Recommendation: That the Head of Legal & Property Services be authorised to issue an Enforcement Notice under Section 172 of the Town and Country Planning Act 1990 (as amended), in accordance with Option 1 above, and serve it on the appropriate person(s).

Alleging the following breaches of planning control: -

Without planning permission: -

The material change of use of the land from a dwellinghouse and residential curtilage to a mixed use for the purposes of dwelling house, residential curtilage and use for the keeping and breeding of dogs not incidental to the enjoyment of the dwelling, including incidental operational development consisting of the construction of outbuildings and structures, including kennels used for the keeping of dogs and a hardstanding, all as an integral part of the material change of use alleged above.

Requiring the following steps to be taken: -

1. To cease the use for the keeping and breeding of dogs by reducing the number of dogs kept at the property to a number not exceeding that which is normally incidental to the enjoyment of the dwellinghouse at the site (for the avoidance of doubt, there should be no more than four dogs kept at the site in any event).
2. The restoration of the land to its condition before development took place by:
 - (a) The total demolition of the 5 unauthorised outbuildings and structures identified on the plan attached to the Notice and removal of the unauthorised hardstanding;
 - (b) The removal of all materials and debris arising from steps 2(a) & 2(b) above.

Reasons for serving the Notice: -

It appears to the Council that the material change of use from a dwelling house and residential curtilage to a mixed use as a dwelling house, curtilage and use for the purposes of dog keeping and breeding and the incidental operational development consisting of the construction of outbuildings and structures used for storage and kennels and a hardstanding, as an integral part of the material change of use, have all occurred within the last ten years; and

The use of the property for the keeping and breeding of dogs not incidental to the enjoyment of the dwellinghouse has resulted in undue disturbance being caused to occupiers of neighbouring residential properties through the emission of excessive noise, seriously detracting from the standard of residential amenities which they could reasonably expect to enjoy. The use is therefore in conflict with policy G2 (vi) of the adopted Replacement Salisbury District Local Plan.

Time For Compliance: -

1. Three months.
2. (a) &(b)Three months.

Implications:

- **Financial:** None at this time. If the Council were held to have acted 'unreasonably' in relation to a subsequent appeal against the Notice, it could be required to pay the Appellant's costs.
- **Legal:** Detailed in the report.
- **Human Rights:** Detailed in the report.
- **Environmental:** Detailed in the report.
- **Council's Core Values:** Protecting the environment.
- **Wards Affected:** Harnham West.