



**Southern Area Committee  
24<sup>th</sup> March 2005**

# REPORT

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## **LAND AT THE PLOT, OLD BLANDFORD ROAD, SALISBURY**

### **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 of dogs not incidental to the enjoyment of the dwelling.

2- The construction of buildings and structures used for the keeping of dogs as an integral part of the material change of use alleged at 1 above.

(A portacabin erected on the site is the subject of a separate enforcement report).

### **Introduction:**

In November 2003, the Enforcement Team received representations concerning the keeping and breeding of dogs in kennel structures at The Plot, Old Blandford Road, Salisbury, without the benefit of planning permission.

At a subsequent site visit it was established that as well as the kennel structures, a shed and a frame for a proposed building as well as a portacabin were also sited on the property. The owner of the property was asked in writing to contact the office in order to discuss the question of the dog breeding, but no response was received to that letter.

A PCN was subsequently served on the owner of the land. In responding to the PCN the owner provided the following information:

#### The construction of buildings and structures

- The kennels were constructed approximately 10 years ago or more.
- The kennels are used for the breeding and keeping of dogs.

#### The breeding of dogs

- Ten springer spaniels are kept at the property for the owner's own personal use (as guard dogs, shooting dogs and for showing).
- Dogs have been kept at the property for these purposes since 1959.

Volumes of the various structures at the property were also provided as follows:

Kennels: 215.6 cubic metres  
Shed: 4.75 cubic metres  
Framework: 127.2 cubic metres

An aerial photograph of the site shows structures in the position of the kennels on the site in June 2001. However, this period of time would not provide immunity from enforcement action and the owner has not provided any evidence as to precisely how long the kennels have been in place or to support her contention that the relevant period of use is approximately 10 years. An aerial photograph from 1991 shows no other structures on the land apart from the principal dwelling. Furthermore the owner has not provided any evidence as to precisely how many dogs have been kept on the site previously.

Environmental Health records the first complaint to them regarding noise from dogs barking was in 2001 from an adjoining property; this was followed by further complaints and a later complaint from a nearby property in 2004.

Information obtained from third parties suggests that considerably more dogs are kept at the site than the owner suggests (there is no evidence of this, however) and that such activities began less than 10 years ago at their current scale, the buildings in question being erected more recently within the last six years. Third parties have also alleged that breeding for sale takes place at the site; however during investigations Officers of the Enforcement Team and Environmental Health have not been able to establish any clear evidence of breeding for sale at the site.

The owner was advised of the need to obtain planning permission for the various structures and the use of the property for the present level of dog keeping, and of her right to submit a retrospective planning application with a view to regularising matters. However, to date such application has been submitted notwithstanding a more recent reminder.

### **Site and surroundings:**

The site is a residential property located between Old Shaftesbury Drove and Old Blandford Road on the extreme-south western edge of Salisbury and indeed is the last property within the built up area at this point. To the east of the site are residential properties and to the west open agricultural land, although there is an overhead electricity line and pylon within this land close to the western boundary of the property. This agricultural land is in the countryside and forms part of the Landscape Setting of Salisbury.

There are accesses to the site from both Old Shaftesbury Drove and Old Blandford Road. There is established hedging to the side and southern boundaries of the property and panel fencing to the northern boundary.

### **Planning history:**

Nil

### **Planning policies:**

In the Replacement Salisbury District Local Plan the site lies within a Housing Restraint Area, where policy H19 (housing restraint areas) applies.

Policy D3 (Design-extensions) is also relevant.

Policy G2 (general development criteria) is also considered relevant.

Policy C7 –Landscape Setting of Salisbury and Wilton.

### **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 would not normally constitute a material change of use of that property. However, in this case there are ten dogs kept at the property and it is considered that this exceeds the number of such animals 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 elderly.

Furthermore, the fact that such substantial buildings are needed to house the dogs and that there have previously been complaints to Environmental Health Officers 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 a material change of use of the property has occurred in this case.

The construction of the kennels and shed and framework are all considered to constitute operational development. Notwithstanding the considerable volume of the structures, they are in any case sited or partially sited between public highways and the foremost part of the principal dwelling house that faces Old Blandford Road. For this reason such structures would not in any event been permitted under the GPDO and planning permission should have been obtained for their construction and siting.

#### Principle of development and effect on adjacent residential occupiers

The keeping of ten dogs is considered to be above and beyond what might normally be an incidental use to a residential property. 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). A reduction in the number of dogs kept at the property to a reasonable number however would be likely to alleviate this disturbance.

The kennels and framework are constructed of a mixture of wood, metal and plastic sheeting and, although functional, are of a poor standard of design having no regard for the design and materials of local residential buildings or their setting adjacent to open countryside and the Landscape Setting of Salisbury. Consequently it is considered that the kennels and framework appear as an unduly alien and incongruous features out of keeping with the character of neighbouring properties in conflict with policies H19, D3 and G2 (iv).

The modest shed erected is of not an incongruous nature and its size, siting and design are not considered to be causing demonstrable harm in planning terms.

#### Human Rights

Enforcement action will interfere with the owner's property rights under Article 1 of the 1<sup>st</sup> 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, such interference is considered justified and proportionate, having regard to the harm to the environment and 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 the environment in such sensitive areas are upheld.

Furthermore it is considered that the steps required to remedy the breaches are proportionate to their seriousness; under –enforcement is recommended where the effect of enforcing cessation of all dog keeping would otherwise be disproportionate; lesser steps than those recommended 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. A longer compliance period would simply lengthen the period that the use continues without any justification.

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 November 2003 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 and significant harm to the character of the locality. 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 removal of the unauthorised development in question.

**Recommendation: That no further action be taken in respect of the shed at the property, but 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) and serve it on the appropriate person.**

**(NB - The plan attached to the Enforcement Notice to identify specifically the kennels and framework).**

**Alleging the following breaches of planning control: -**

**Without planning permission: -**

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

**Requiring the following steps to be taken: -**

- 1. The reduction in 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 removal of the unauthorised kennels.**
  - (b) The removal of the unauthorised framework.**
  - (c) The removal of all materials and debris arising from steps 2(a) & 2(b) above.**

**Reasons for serving the Notice: -**

- 1. 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**

the incidental operational development consisting of the construction of kennels and framework as an integral part of the material change of use, have all occurred within the last then years; and

2. The use of the property for the keeping 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.
3. The kennels and framework are of a poor standard of design having no regard for the design and materials of local residential buildings or their setting adjacent to open countryside and the Landscape Setting of Salisbury. The kennels and framework therefore appear as unduly alien and incongruous features, out of keeping with the character of neighbouring properties and in conflict with policy H19 of the adopted Replacement Salisbury District Local Plan concerning development in Housing Restraint Areas and policies D3 and G2 (iv).

**Time For Compliance: -**

1. Three months.
2. (a), (b) &(c) 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 implications:** Detailed in the report.
- **Council's Core Values:** Protecting the environment; fairness and quality.
- **Wards Affected:** Ebble.