

**E/07/0609/A - The unauthorised use of the land for dog keeping/breeding and the erection of unauthorised outbuildings "A" and "B" in connection with that use at 7 Sunny Hill, Buntingford, SG9 9HP**

---

**Parish: BUNTINGFORD**

**Ward: BUNTINGFORD**

**RECOMMENDATION**

That the Director of Neighbourhood Services, in consultation with the Director of Internal Services, be authorised to take enforcement action under Section 172 of the Town and Country Planning Act 1990 and any such further steps as may be required to secure the cessation of the unauthorised use and the removal of the unauthorised outbuildings.

Period for compliance: 1 month

Reasons why it is expedient to issue an enforcement notice:

The use of the site for mixed residential and dog breeding purposes and the erection of associated outbuildings is detrimental to the amenity of occupiers of neighbouring residential properties by reason of noise and disturbance. Accordingly the development is contrary to Policies ENV1 and EDE6 of the East Hertfordshire Local Plan Second Review April 2007.

\_\_\_\_\_ (060907A.CA)

**1.0 Background**

- 1.1 The site is shown on the attached Ordnance Survey extract. It is located on the west side of Sunny Hill, Buntingford about 50 metres north of the junction with Hare Street Road. Photographs will be available at the meeting.
- 1.2 In December 2007 concern was expressed to the Authority by a number of local residents that a large blockwork structure was being erected in the rear garden of the property without the benefit of planning permission.
- 1.3 On 18<sup>th</sup> December 2007 the enforcement officer visited the site and viewed the blockwork structure being constructed in the rear garden. It comprised 15 partially built kennels in a block extending across the complete width of the bottom of the garden adjacent to properties in Bridgefoot. The individual kennels had dividing walls separating a sleeping area from a living area and were not suited to another purpose. The property and site were not occupied at the time.

## E/07/0609/A

- 1.4 Following enquiries to trace the new owner of the property, the enforcement officer spoke to him on 11<sup>th</sup> January 2008 regarding the development and also spoke to him with regard to the commencement of works to build a front wall and porch to the property. A letter was subsequently sent pointing out the restrictions imposed on developments built without the benefit of express planning permission and the owner was advised that development continued at his own risk.
- 1.5 On 23<sup>rd</sup> January 2008 officers again visited the site, met the owner and measured the developments. The physical dimensions of the kennel block were within the tolerances permitted under the terms of Class E of Part 1 of Schedule 2 to The Town and Country Planning (General Permitted Development) Order 1995. However officers considered that their use for housing 15 dogs would represent a material change of use of the land and could not be approved under the terms of the above permitted development class. A confirmation letter sent to the owner reminded him that permission was required and that works continued at his own risk.
- 1.6 Members may recall that a petition containing the signatures of 77 local residents expressing their concern regarding developments and activities at this site was presented to the full Council meeting on 20<sup>th</sup> February 2008 by a neighbour.
- 1.7 Following further discussions with the enforcement officer the owner demolished 9 of the kennel units in the rear garden, leaving a much smaller structure that was considered by Officers to be “permitted development” under the Town and Country Planning (General Permitted Development) Order 1995. The owner stated to officers that he was not breeding dogs and that all dogs on the site, a maximum of 6, were family pets.
- 1.8 By this stage there was a paved and secure front garden area, the rear garden had been sub-divided into two separate and distinct areas by a 1.8 metre close boarded fence. The area closest to the house was ‘garden’ and the furthestmost area a paved dog run. Unannounced visits were not possible as there were Rottweiler dogs loose on the front and centre sections of the garden and there was no means of communication between the gates and the house. On all visits to the property there were a maximum of 6 dogs present. Accordingly no further action was considered necessary in respect of the kennel development at the site.
- 1.9 Members may recall that the unauthorised front walls, gates and porch were the subject of a report to their meeting of 9<sup>th</sup> April 2008. I am pleased to report that following the service of a planning enforcement notice, and a dismissed appeal, the porch has now been demolished and the walls and gates reduced to accord to the approved plans.

## E/07/0609/A

- 1.10 Further concerns were expressed to the Authority with regard to the erection of three large wooden outbuildings within the dog run area of the garden, one of which had four thin external doors equally spaced along its length.
- 1.11 The enforcement officer made a pre arranged visit to the site on 16<sup>th</sup> December 2008 and spoke to the owner. The multi-doored building (building "A" on the attached OS extract) was internally divided into four sections which, at the time of the visit, contained residential paraphernalia (such as fishing rods) which the owner claimed he separated to prevent damage. Building "B" was locked and building "C" contained more residential paraphernalia. At that time the buildings appeared to be being used for purposes incidental to that of the dwellinghouse.
- 1.12 Officers are now aware that on 15<sup>th</sup> January 2009 officers of the Hertfordshire Constabulary had occasion to make an unannounced visit to the site with officers from both the RSPCA and Environmental Health. On their arrival officers found between 34 to 37 dogs at the site including 4/5 litters of puppies. Building "A" contained dogs in all its compartments; building "B" had been internally sub-divided into four pens which contained litters of puppies, some under specialised infra-red heat lamps. Building "C" contained a mixture of residential and dog breeding paraphernalia; items such as sawdust, dog cages and a supply of infra-red heat lamps.
- 1.13 On 3<sup>rd</sup> February 2009 the owner submitted an application to the Council for a licence under the Breeding of Dogs Act 1973 and the Breeding and Sale of Dogs (Welfare) Act 1999 at the site.
- 1.14 Whilst the keeping of animals as pets is something that may well be considered to be incidental to the enjoyment of a dwellinghouse, there must be a connotation of reasonableness included within that. The point at which a use departs from being termed incidental is difficult to determine, but there is planning case law that assists with this process.
- 1.15 The Court of Appeal, in the case of *Wallington v S.O.S. for Wales & Montgomeryshire D.C.* [1990], decided that the keeping of more than 6 dogs at a cottage in Wales as a hobby was not reasonable and, therefore, not incidental to the enjoyment of the dwellinghouse. Whilst this decision does not establish a 'rule of thumb' for dog numbers, officers consider that, given the built up area surrounding this site and the proximity of neighbouring dwellinghouses, the keeping of more than 6 dogs on the site is not incidental to the enjoyment of the dwellinghouse. Accordingly the use for dog keeping/breeding and the buildings associated with that use are unauthorised.

## **E/07/0609/A**

1.16 Photographs of the site will be available at the Committee meeting.

### **2.0 Planning and Enforcement History**

2.1 The recent planning and enforcement history is as follows: -

#### **Planning History**

3/87/0130/FP Two storey rear extension and internal alterations -  
Granted

3/07/2691/FP Two storey side extension - Refused

3/08/0214/FP Front garden wall plus gates - Refused

#### **Enforcement History**

E/08/0115/A Unauthorised garden wall, gates and porch  
- Complied

### **3.0 Policy**

3.1 The relevant Local Plan policies in this matter are:-

ENV1 – Design and environmental quality

EDE6 - Home Working

### **4.0 Considerations.**

4.1 In this matter, the main issue to be considered is the impact of the unauthorised developments on the amenity of occupiers of neighbouring buildings and those of future occupants and to ensure that their environments are not harmed by noise and disturbance.

4.2 Officers consider that the siting of this establishment within an urban residential estate has materially changed the characteristics of the site and is inappropriate given the constraints of the site. Since this use commenced, neighbours of the site have, for example, made a number of complaints to the Council regarding noise, smell and the run off of dog excrement and urine into their properties. Additionally further concerns have been raised regarding the security of the site and the perceived aggressive nature of some of the dogs allowed to roam in the garden.

## **E/07/0609/A**

4.3 Officers also consider that outbuildings “A” and “B” were constructed and used for the unauthorised use; accordingly they cannot be considered to have deemed permission under the terms of The Town and Country Planning (General Permitted Development) Order 1995. The buildings themselves would appear to be constructed specifically for that unauthorised use, and form part of it. Accordingly there is no justification for their retention.

### **5.0 Recommendation**

5.1 It is therefore recommended that authorisation be given to issue and serve a Planning Enforcement Notice requiring the cessation of the unauthorised use and the removal of the unauthorised developments.