

LOCATION: High Corner, Arkley Drive, Barnet, Herts, EN5 3LN

REFERENCE: B/00278/12

Received: 24 January 2012

Accepted: 15 February 2012

WARD(S): High Barnet

Expiry: 11 April 2012

Final Revisions:

APPLICANT: Mr David Englander

PROPOSAL: Continued use of part of property as dog boarding business up to a maximum of six dogs on site (including dogs privately owned by the applicant)

RECOMMENDATION: Approve Subject to Conditions

- 1 The development hereby permitted shall be carried out in accordance with the following approved plans: Design & Access Statement, Floor Plan (date stamped 24th January 2012), Email from David Englander dated 24th April 2012, Site Location Plan (date received 24th April 2012)

Reason:

For the avoidance of doubt and in the interests of proper planning.

- 2 The use hereby permitted shall be carried on only by Mr David Englander and shall be for a limited period being the period of twelve months from the date of this decision, or the period during which the premises are occupied by Mr David Englander, whichever is the shorter.

Reason:

To enable the Local Planning Authority to monitor the impact of the use in order to protect the amenities of the area.

- 3 Not more than six dogs in total shall be present at the premises at any one time.

Reason:

To safeguard the amenities of occupiers of adjoining residential properties.

INFORMATIVE(S):

- 1 The reasons for this grant of planning permission or other planning related decision are as follows: -

i) The proposed development accords with strategic planning guidance and policies as set out in the NPPF (2012), The London Plan (2011) and the adopted London Borough of Barnet Unitary Development Plan (2006). In particular the following policies are relevant:

Adopted Barnet Unitary Development Plan (2006):
GEMP2, GBEnv1, GBEnv4, D2, HC5

- ii) The proposal is acceptable for the following reason(s): -
It is considered that, subject to compliance with the attached conditions, the proposal would not detract from the residential amenity of neighbouring occupiers, or the character of either the host property or surrounding area.

1. MATERIAL CONSIDERATIONS

Relevant Unitary Development Plan Policies:

GEMP2, GBEnv1, GBEnv4, D2, HC5

Relevant Planning History:

Applications:

Site Address: High Corner, Arkley Drive, Barnet, Hertfordshire, EN5 3LN

Application Number: N05841

Application Type: Full Application

Decision: Approve with conditions

Decision Date: 26/07/1978

Appeal Decision: No Appeal Decision Applies

Appeal Decision Date: No Appeal Decision Date exists

Proposal: **Single storey side extension incorporating garage.**

Site Address: High Corner, Arkley Drive, Barnet, Hertfordshire, EN5 3LN

Application Number: N05841A/04

Application Type: Full Application

Decision: Approve with conditions

Decision Date: 11/02/2005

Appeal Decision: No Appeal Decision Applies

Appeal Decision Date: No Appeal Decision Date exists

Proposal: **Conversion of garage into habitable room. Single storey side extension incorporating attached garage. Two-storey rear extension and single storey front extension. Repositioning of front entrance.**

Notices:

Site Address: High Corner, Arkley Drive, Barnet, Hertfordshire, EN5 3LN

Notice Reference: ENF/00878/11/B

Notice Type: Enforcement (Section 171A(1)(a))

Date Issued: 19/10/2011

Date Effective: 23/11/2011

Date for Compliance: 23/12/2011

Appeal Lodged: 22/11/2012

Appeal Started: 25/11/2011

Appeal Decision: Withdrawn

Appeal Decision Date: 05/01/2012

Compliance Date: Not Complied

Contravention: **Without planning permission, change of use of the property to a mixed single dwelling-house and commercial dog keeping use**

Consultations and Views Expressed:

Neighbours Consulted: 10

Replies: 6

Neighbours Wishing To 1

Speak

The objections raised may be summarised as follows:

- Increased traffic/noise and disturbance (including pollution) from attending clients and owners departing and returning from exercising dogs (also compromising safety of playing children)
- Risk of increased fouling on the footway
- Noise from kennelled animals
- Use already ongoing (incorrect application type – should be S73) and subject to Enforcement Notice
- Attending clients breaching speed restriction and causing damage to (privately maintained) road
- Breach of restrictive covenant
- Out of character with residential street
- Unenforceable to limit the number of dogs (monitoring)
- Sets a precedent for the road

Internal /Other Consultations:

- Traffic & Development – No objection

Date of Site Notice: 23 February 2012

2. PLANNING APPRAISAL

Site Description and Surroundings:

The property is a moderately large mid-twentieth century detached family house on the north-eastern side of Arkley Drive and set in an extensive plot. The property is two-storey with a rendered finish and featuring a round bay to the centre of the front elevation under a front end hip roof projection. The property benefits from a single storey garage extension to the side and porch extension to the front and is set back behind a carriage drive.

The rear elevation is dominated by a two storey rear wing extension, rising to form a crown roof on the side nearest to Dapple Oak. It also features a small dormer in the cat-slide roof on the other side closest to Ridge House. The rear elevation alights on to a patio area across the width of the rear of the property, from which the lawn extends north-eastward around a number of mature trees.

The property is set one from the end of Arkley Drive, a wide, roughly surfaced private cul-de-sac on the fringe of the Green Belt and which features further large, detached properties of a wide variety of architectural styles. Despite the depth of the plots, the extended properties are in relative proximity to each other, with barely 2m between High Corner and either of its neighbouring properties.

Proposal:

Continued use of part of property as dog boarding business up to a maximum of six dogs on site (including dogs privately owned by the applicant).

Planning Considerations:

The proposal involves the continuation of a dog boarding operation alongside the existing residential use. It is proposed to home three dogs as part of that operation in the 'family room' to the rear of the property, with access to the adjoining kitchen. No external alterations or development are proposed.

The small scale of the proposed operation is not considered to result in an unacceptable level of additional vehicle movements associated with the attending clients (a maximum of six additional incidences per day). As such, no material impact on the character of the area (which will remain undeniably residential), or amenity of the residents is anticipated as a result. Any such attendances can also be accommodated in the driveway of the property.

The owners of the property currently keep three dogs themselves, meaning a likely total of six dogs present on the premises. In order to ensure that the numbers do not become excessive, a condition limiting the *total* number of dogs on the premises (including both those privately owned by the owner and those associated with the commercial boarding operation) is proposed.

It is considered however, that those commercially retained dogs are likely to be exercised alongside the owner's own, thereby meaning no additional trips generated for this purpose.

The dogs are proposed to be kept indoors. Although the rear doors and windows are not necessarily permanently closed, it is considered that this internalisation is likely to mitigate much of the additional noise. Again it should be noted that the owners already currently keep three dogs and might feasibly retain more. The additional noise generated by the boarding of 3 additional dogs on the premises is therefore not considered to have a material additional impact on the character of the area, or the residential amenity of neighbouring occupiers. The applicant has confirmed that no dogs will be kept in cages or otherwise at the front of the site and that the dogs are kept indoors for the majority of the day and are exercised off site however they are allowed to relieve themselves in the rear garden when necessary.

This application has been made in response to the service of an Enforcement Notice. At the time of the Notice the site was being used for the kennelling of up to twelve dogs in metal cages throughout the house and garden. The current application is seeking to regularise an operation with only half of that capacity and contained within rooms to the rear of the house. As such, the degree of additional noise and disturbance is considered to be more appropriate to what might reasonably be expected of a normal residential environment.

The keeping of dogs as a hobby (rather than as a commercial interest) has been considered against the definition of development at Section 55(2)(a) of the Town & Country Planning Act 1990. In *Wallington v SoS for Wales (1991)*, although expressly accepting that to impose any specific limiting number as to when such a use did become development would be arbitrary, it was asserted that the Local Planning Authority should have regard to when the intensity of the use had so changed the character of the property that it could not be regarded as incidental. In that case, Court of Appeal agreed to the number of dogs to be kept on the site being restricted to six.

The Council consider, in line with this example that in the circumstances of this current application six dogs would also represent the most which might comfortably be accommodated without being harmful to the amenities which occupiers of neighbouring houses might reasonably be expected to enjoy.

The circumstances which provide the context for this operation are considered to justify a recommendation for approval however, they convey no precedent for the introduction of this or any other commercial operation elsewhere in Arkley Drive. Each application is considered on its own merits and the ability to reconcile any such proposal with the policies of the Development Plan and any other material considerations.

3. COMMENTS ON GROUNDS OF OBJECTIONS

- Use already ongoing (incorrect application type – should be S63) and subject to Enforcement Notice: The current application is being considered under Section 63. Its consideration also has no impact on their existing obligations under the terms of the extant Notice, though as a subsequent grant of permission it may supersede it. Interim arrangements to hold prosecution of the Notice in abeyance are at the discretion of the Local Planning Authority and should be sought separately.
- Attending clients breaching speed restriction and causing damage to (privately maintained) road: Speeding is an offence under the Road Traffic Regulations 1984 and should be enforced through the mechanisms provided therein. In determining this application the Council cannot justify a refusal on the consideration that the owners might choose to neglect their obligations under those Regulations. The maintenance of roads is not a planning matter.
- Breach of restrictive covenant: Covenants of the deeds are a civil legal matter. A grant of planning permission does not exempt the owners from any other legal obligation and it remains open to a separate civil action.
- Risk of increased fouling on the footway: Fouling of the highway is an offence under the Clean Neighbourhoods and Environment Act 2005 and should be enforced through the mechanisms provided therein. In determining this application the Council cannot justify a refusal on the consideration that the owners might choose to neglect to responsibly control their dogs or discharge their obligations.
- Unenforceable to limit the number of dogs (monitoring): The Local Planning Authority will investigate any legitimate claim that terms of any condition are being breached and retain the power under Section 187A of the Town & Country Planning Act 1990 to prosecute an offence where one can be proven.

4. EQUALITIES AND DIVERSITY ISSUES

The proposals do not conflict with either Barnet Council's Equalities Policy or the commitments set in our Equality Scheme and supports the council in meeting its statutory equality responsibilities.

5. CONCLUSION

The proposal is considered to be in accordance with the policies of the Development Plan in that, subject to compliance with the attached conditions, the change of use would not detract from the residential amenity of neighbouring occupiers, or the character of either the host property or surrounding area. It is recommended the application be **APPROVED** accordingly.

SITE LOCATION PLAN: High Corner, Arkley Drive, Barnet, Herts, EN5 3LN

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