

SECTION '2' – Applications meriting special consideration

Application No : 11/00208/FULL1

Ward:
Hayes And Coney Hall

Address : 214 Pickhurst Lane West Wickham BR4
0HL

OS Grid Ref: E: 539478 N: 167023

Applicant : Mr And Mrs F Daikhi

Objections : YES

Description of Development:

Change of use from residential (Class C3) to residential and cattery (sui generis), retention of cat pens and store and lean-to extension. RETROSPECTIVE APPLICATION

Key designations:

Sites of Interest for Nat. Conservation

Proposal

The application site is located on the eastern side of Pickhurst Lane. The plot is uniform in width (approximately 12m) and is approximately 76m in depth. The immediate surrounding area is predominately residential, with a mixture of semi-detached and detached dwellings. The application property is a semi-detached dwelling, which backs onto the playing fields and woodlands surrounding Pickhurst Junior School. A cattery has operated at the property since approximately 1992 (according to the accompanying Design and Access Statement) which currently has a total of 13 pens, 2 holding pens, office, store and kitchen area, the applicants state that no more than 24 cats are accommodated on site at one time. The use of the site to include a cattery was first started by the previous owners Mr. and Mrs. Hackett who were granted a retrospective permission in 1995, which was subject to conditions include a personal permission for the use of the site solely to Mr. and Mrs. Hackett. In approximately 2009 the property was sold to the new owners Mr. and Mrs. Daikhi who were granted a temporary personal permission for use of the site as residential and cattery for a period of 1 year. This personal permission expired on 17/12/2010 and a new application was submitted on 19/01/11 (validated on 24/02/11) and as such the current application ref: 11/00208 shall be dealt with as a new retrospective application for the change of use from residential (Class C3a) to residential and cattery (sui generis) and the retention of cat pens, store and lean-to extension.

Comments from Local Residents

There is a substantial history in terms of representations by the occupiers of neighbouring properties relating to applications at this site. Nearby owners/occupiers were notified of the current application and representations were received which can be summarised as follows:

- The current retrospective application to obtain permanent planning permission to run a cattery at 214 Pickhurst Lane has been open illegally since 17th December 2010 at which time it should have been discontinued and the land reinstated to its former condition as per the Council's previous decision 09/02863.
- The previous application 09/02862 was refused in December 2009 on the grounds that the cattery is located in close proximity to adjacent residential property and would be likely to prejudice the amenities of the area, contrary to Policy EMP8 of the Unitary Development Plan.
- The photograph provided demonstrates that the building housing the pens are not "very small inconspicuous and incidental to the enjoyment of the house" as described by the applicant's agents and are situated close to No. 212 and as such result in noise and overlooking which is a recurrent nuisance, contrary to Policy BE1.
- Regular monitoring of the cattery does not appear to have taken place during the 'probationary' one year period.
- During the 2009 application to grant temporary permission for Mr. and Mrs. Daikhi the applicant's agent stated that opening hours were to continue to be 10am to 12 noon and 4pm to 6pm in addition no customer would be admitted to the property on any Sunday or Bank Holiday in conformity with 07/01261. There have been numerous occasions this commitment has not been respected by the owners of the cattery during the 'trial' period of 1 year.
- At least 1 cat has escaped whilst in the care of the cattery owners.
- Contrary to Health and Safety regulations concerns that cats waste has been disposed of within ordinary household waste through the usual Council waste collectors.
- Previous planning permission did not receive unanimous support of the Council Members but the application for temporary planning permission was granted only by majority.
- The property is located on the eastern side of Pickhurst Lane not the west and does not have a boundary with the playing fields serving the Pickhurst school but is directly backing onto the school grounds as per the applicants agent's statement.
- The drawing submitted at 1:1250 scale is not a true representation of the site as the buildings situated in the back garden are not shown.
- During the temporary one year planning permission granted regulations concerning the running of the business were breached on a regular basis and proper care was not taken to ensure the safe keeping of cats within the pens.
- Pickhurst cattery was started as a hobby by the previous owners in two small sheds to the side of the property and behind their garage, though

undesirable was unobtrusive. However, over the years the cattery business has been allowed to develop into a commercial enterprise that has more than doubled in size with additional pens housed in an extended sizeable building erected in the rear garden of the building in full view of both No. 212 and 210.

- The largest of these buildings in the rear gardens is not as suggested in the accompanying planning statement “very small in nature” and is far from aesthetically complementary to the house of the surrounding residential area.
- Unwanted noise of the cats occurs when they are settling in which at times can be heard in the garden of No. 210, the windows of which are not shown in the side elevation of the drawing provided (No. JH/95/7).
- Pickhurst Lane which borders a major highway has seen a considerable increase in traffic with all the associated congestion.
- Pickhurst School has expanded over the years with an enlarged pupil intake and is offering a comprehensive syllabus and more facilities including breakfast club, day nursery, after school clubs and weekend activities all of which entails longer hours necessitating an increase in teaching staff and helpers requiring all day extra parking facilities usually along Pickhurst Lane and its service road.
- Pickhurst Lane service road is extensively used as a dropping off point for parents and an extended all day parking facility for teachers and school helpers. It is accepted parking for the school is inevitable but it is considered that the service road should not be burdened with unnecessary additional traffic required to operate a commercial business such as Pickhurst Cattery such as large lorries delivering cat litter and food, random parking by customers during and outside allotted cattery opening times.
- Pickhurst Cattery does not have an off-road parking facility for customers due to the applicant parking his own vehicles, one on the driveway of the application site and one on the service road.
- Bromley Council have refused catteries in the West Wickham area in order to protect residential amenities in these areas, which should equally apply to Pickhurst Lane.
- The continued use of the Pickhurst Cattery being located in such close proximity to adjacent residential properties continues to be prejudicial to the character of the area and is detrimental to the visual and residential amenities of the neighbouring properties by reason of loss of prospect as well as noise.
- Concern that the continued promotion of the cattery could be misconstrued and used by others as a catalyst to endorse further development of the same or other commercial business in the area.

Comments from Consultees

The Council’s Environmental Health Officer and Waste Advisors were consulted and raised no objections to the proposal.

The Council’s Highways Division were consulted who stated that Pickhurst Lane is a classified road, a London Distribution Route, and part of the B251. The property is on a slip road set back from the main carriageway. There do not appear to have

been any highways comments on the previous applications but the cattery has been in place for a number of years, currently with a temporary permission. The Highways Division were not aware of any highway issues being raised with the use and as such no objections were raised in relation to the proposal.

Planning Considerations

The main policy relevant to this case is Policy EMP8 of the Unitary Development Plan, which is concerned with the use of part of a dwelling for business purposes, which states:

“In case where planning permission is required, the Council will normally permit the use, by the householder, of part of a dwelling for business purposes only where;

- (i) the business use is secondary to the primary residential use of the property;
- (ii) the business does not generate an unacceptable level of additional vehicular or pedestrian traffic so as to be detrimental to residential amenity; and
- (iii) the residential character of the area is not unduly affected by noise or other inconvenience”.

Policy BE1 (Design of New Development) is also a key consideration when determining such an application in particular sub-section (v) which states:

- (v) “the development should respect the amenity of occupiers of neighbouring buildings and those of future occupants and ensure their environments are not harm by noise and disturbance or by inadequate daylight, sunlight or privacy or by overshadowing”.

Planning History

Retrospective planning permission was granted by Members for the use of the property as both residential and as a cattery, with the retention of cat pens and a store under ref. 95/00364. Under this reference, planning permission was also granted for the erection of six additional pens and a lean-to. This was a personal permission (for Mr & Mrs Hackett) (Condition 2), for a duration of 5 years (expired 31/03/2000) (Condition 1) which restricted the number of cats boarding to 24 at any one time (Condition 4), and stated that customers must not be admitted to the property before 8am or after 7pm between Mondays to Saturdays inclusively and no customers shall be admitted to the property on any Sunday or Bank Holidays (Condition 3).

This permission was not renewed, and an enforcement enquiry was opened in 2004 under ref. EN/04/00022 to investigate the apparent breach of Condition 1 of the above permission which restricted the duration of the use to 5 years. In response, a planning application was submitted under ref. 04/00532 for the continued use of part of the premises without complying with Condition 1 (restriction on duration of permission) and Condition 4 (restriction of number of cats to 24) of permission ref. 95/00364 to allow permanent permission to be granted and an increase in the number of cats accommodated at any one time from 24 to

30. The Council refused to grant planning permission for this application on the grounds that:

“The proposal to increase the number of cats to 30 would result in an over intensification of the use of the site, prejudicial to the residential character of the area and detrimental to the visual and residential amenities of neighbouring properties by reason of loss of prospect as well as noise and general disturbance likely to result from the use, thereby contrary to Appendix III5.2 and Policy H.10 of the adopted Unitary Development Plan and Policy EMP10 of the second deposit draft Unitary Development Plan (Sept 2002); and

The proposal would be lacking in adequate on-site car parking provision to accord with the Council's standards and as such is likely to result in an increased pressure for on-street parking in the area, detrimental to the free flow of traffic and conditions of highway safety, thereby contrary to Policy T.15 of the adopted Unitary Development Plan (March 1994) and Policies T3 and T22 of the second deposit draft Unitary Development Plan (Sept 2002)”

Following the Council’s refusal to grant planning permission, a further application was submitted under ref. 04/01907 seeking permission for the renewal of the original permission for the cattery granted for the retention of 6 pens with ancillary areas for use as a store and isolation area, with a lean-to between the existing garage and an outbuilding for a kitchen area. Conditions attached to the renewal of permission restricted the duration of the use to 5 years (expires 19/07/2009) (Condition 1), the number of cats boarding to 24 (Condition 3), and the hours of admittance for customers (Condition 2) and stated that customers must not be admitted to the property before 8am or after 7pm between Mondays to Saturdays inclusively and no customers shall be admitted to the property on any Sunday or Bank Holidays.

Under ref. 07/01261, a planning application was submitted for the removal of Condition 1 (restricting the duration to 5 years) of permission ref. 04/01907 for the continued use as a cattery and retention of 6 pens with ancillary areas as a store and isolation area with a lean-to between the existing garage and outbuilding for a kitchen area, to allow permanent use as a cattery. The removal of the condition was approved, with conditions restricting the hours of admittance for customers (Condition 1), and the number of cats boarding to 24 (Condition 2). A further condition was imposed by the Council restricting the permission to the applicant (Mrs. J Hackett) (Condition 3), in the interests of residential amenities. An appeal was made against the imposition of Condition 3 making the planning permission personal to Mrs. Hackett which was dismissed by Appeal Decision dated 24/01/2007 as it was stated:

“the appellant (Mrs. Hackett) has been sensitive to the local context and consciously sought to minimise the number of car-borne visitors to the site in order to protect the residential amenities of her neighbours. In my view, this has been instrumental in rendering the use acceptable. It would not be feasible to impose enforceable conditions to replicate the collection/delivery

service or the timed appointments system, so the imposition of a personal permission is a reasonable means of ensuring that the business use continues to operate in an acceptable way. The uncoordinated collection and delivery of up to 24 cats by their owners, even within the permitted hours, or the arrival of several customers at the same time, especially if it coincided with the heaviest demand for school-related parking would unacceptably harm residential amenity. I consider it probable that the removal of Condition No. 3 would lead to a conflict with UDP Policy EMP8”.

In 2007 under planning re. 07/03599, planning permission was refused for the removal of Condition 3 of permission ref: 07/01261 which restricts permanent use of cattery to the existing owners (Mr and Mrs. Hackett) on the following grounds:

“The cattery is located in close proximity to adjacent residential properties and the removal of the condition would be likely to prejudice the amenities of the area, contrary to Policy EMP8 of the Unitary Development Plan”.

In 2009 under planning ref: 09/02862/RECON planning permission was refused for the removal of Condition 3 of permission ref. 07/01261 granted for permanent use as cattery (which restricts use to current owner) to be replaced with temporary consent to allow new user on the following grounds:

“The cattery is located in close proximity to adjacent residential properties and the removal of the condition would be likely to prejudice the amenities of the area, contrary to Policy EMP8 of the Unitary Development Plan”.

In 2009 under planning ref. 09/02863, approval was granted for the variation of Condition 3 of permission 07/01261 granted for permanent use as cattery (which restricts use to the current owner) to allow new user for temporary period of one year. Conditions were attached limiting the use solely to Mr. and Mrs. F Daikhi whilst in permanent residence at 214 Pickhurst Lane (Condition 1), and use shall be discontinued and the land reinstated to its former condition on or before 17/12/2010 (Condition 2). This personal permission expired on 17/12/2010 and a new application was submitted on 19/01/2011 (validated on 24/02/2011) and as such the current application ref. 11/00208 shall be dealt with as a new retrospective application for the change of use from residential (Class C3a) to residential and cattery (sui generis) and the retention of cat pens, store and lean-to extension.

Conclusions

The main issues relating to the application are the impact on the residential amenity of the occupants of neighbouring properties, potential over intensive use of the site, the increase in the level of activity at the site, the impact on the character of the area and the effects on traffic and congestion in the area.

The Planning Inspector’s Appeal Decision dated 24/01/2007 states “the boarding of cats grew from a hobby into boarding cats belonging to friends, and then into commercial enterprise. When applying for planning permission in 1995, the (then) applicant (Mrs. Hackett) indicated a willingness to have personal planning

permission, and the imposition of a personal condition was recommended by the Environmental Health Officer consulted at the time". Each subsequent permission granted (with the exception of ref. 04/01907) attached a condition limiting the use to Mr. and Mrs. Hackett, however, when the property was sold by Mr. and Mrs. Hackett the cattery was sold as a business in addition to the house, as the permission granted under ref. 04/01907 expired on 19/07/2009. In 2009 when under planning ref. 09/02863 permission was granted to allow a 1 year trial period for the use of the site as a cattery by the new owners Mr. and Mrs. Daikhi until 17/12/2010, which has subsequently expired. Members must consider whether the use as existing has resulted in an over intensive commercial use of the site in a primarily residential area and whether the proposal has resulted in a detrimental impact on the residential amenities of neighbouring properties.

Circular 11/95 provides that a temporary permission will normally only be appropriate either where the applicant proposes temporary development, or when a trial run is needed in order to assess the effect of the development on the area. In the case of a trial period the Circular provides a second trial period should not normally be granted and a trial period should be set that is sufficiently long for it to be clear at the end of the period whether planning permission or a refusal is the right answer. The Circular also provides that unless the permission provides otherwise, planning permission runs with the land and it is seldom desirable to provide otherwise. There are occasions, however, where it is proposed exceptionally to grant planning permission for the use of a building or land for some purpose which would not normally be allowed at the site, simply because there are strong compassionate or other personal grounds for doing so.

In 2009 personal permission was granted for a temporary period of 1 year for the use of the site as residential and cattery solely by Mr. and Mrs. Daikhi as a trial period to ascertain the impact on the residential amenity of neighbouring properties when the use is not carried out by the previous owners of 214 Pickhurst Lane (Mr. and Mrs. Hackett). While Circular 11/95 limits the use of personal permissions in Appeal Decision dated 24/01/2007 for planning permission ref. 07/01261 the Planning Inspector stated "I note that DOE Circular 11/95 militates against the use of personal permission other than in exceptional circumstances, but the close-knit nature of the residential development and the congested nature of the service road justify it in this case. The fact that the appellant (Mrs. Hackett) would retain a supervisory role in the future management of the cattery does not persuade me otherwise, as this rather nebulous and possibly temporary arrangement would not be sufficient to protect the residential amenity for the future". While information provided by the applicants' states "the Hackett's have remained in an advisory role to Mr. and Mrs. Daikhi in order to ensure their very high standards remain" this must be considered against the Planning Inspectors comments above.

No objections have been made by the Council's Highways Division. While efforts have been made to limit the impact in terms of traffic generation by the previous owners and appear to be continued by the current owners Mr. and Mrs. Daikhi such as opening hours of between 10:00 – 12:00 and 16:00 – 18:00 Monday to Saturday, to avoid coinciding with the peak drop off and collection times of Pickhurst Junior School, and to be closed on Sundays and Bank Holidays or by appointment the Planning Inspector's Appeal Decision stated "it would not be

feasible to impose enforceable conditions to replicate the collection/delivery service of the timed appointments system, so the imposition of a personal permission is a reasonable means of ensuring that the business use continues to operate in an acceptable way". Members must therefore consider whether the continued use of the site by Mr. and Mrs. Daikhi as residential and cattery and retention of cat pens and store and lean-to extension is likely to generate an unacceptable level of additional traffic so as to be detrimental to residential amenity.

In summation, a one year trial period was granted for Mr. and Mrs. Daikhi to allow the current owners a period to demonstrate that their running of the cattery is satisfactory with the Council able to review the situation at the time of expiry having regard to any change in circumstance and any comments or concerns raised by local residents. Members must consider whether the continued use of the application site is acceptable in this instance; the impact on the residential amenity of neighbouring properties; and impact on the level of traffic and congestion generated as a result of the proposal.

Background papers referred to during production of this report comprise all correspondence on files refs. 04/00022, 04/01907, 07/01261, 07/03599, 09/02862, 09/02863 and 11/00208, excluding exempt information.

As amended by documents received on 13.04.11

RECOMMENDATION: MEMBERS' VIEWS ARE REQUESTED

- 0 D00002 If Members are minded to grant planning permission the following conditions are suggested:
- 1 The use hereby permitted shall be discontinued and the land reinstated to its former condition on or before 10.07.2016.
Reason: In order the situation can be reconsidered in the light of the circumstances at that time in the interest of the amenities of the area.
 - 2 The use hereby permitted shall be carried out only by Mr. and Mrs. Daikhi while they are the residential occupiers of 214 Pickhurst Lane.
Reason: To enable the Council to reconsider the situation in the event of a change of user in the interest of the amenities of the area.
 - 3 No more than 24 cats shall be boarded at the property at any one time.
Reason: In the interests of the residential amenities of the area.
 - 4 Customers shall not be admitted to the property before 08:00 and after 19:00 between Monday to Saturday inclusively, and no customers shall be admitted to the property on any Sunday or Public Holiday.
Reason: In the interests of the residential amenities of the area.

In granting permission the Local Planning Authority had regard to the following policies of the Unitary Development Plan:

EMP8 Use of Dwellings for Business Purposes
BE1 Design of New Development

The development is considered to be satisfactory in relation to the following:

- (a) the appearance of the development in the street scene;
- (b) the relationship of the development to adjacent properties;
- (c) the character of the development in the surrounding area;
- (d) the impact on the amenities of the occupiers of adjacent and nearby properties;

and having regard to all other matters raised.

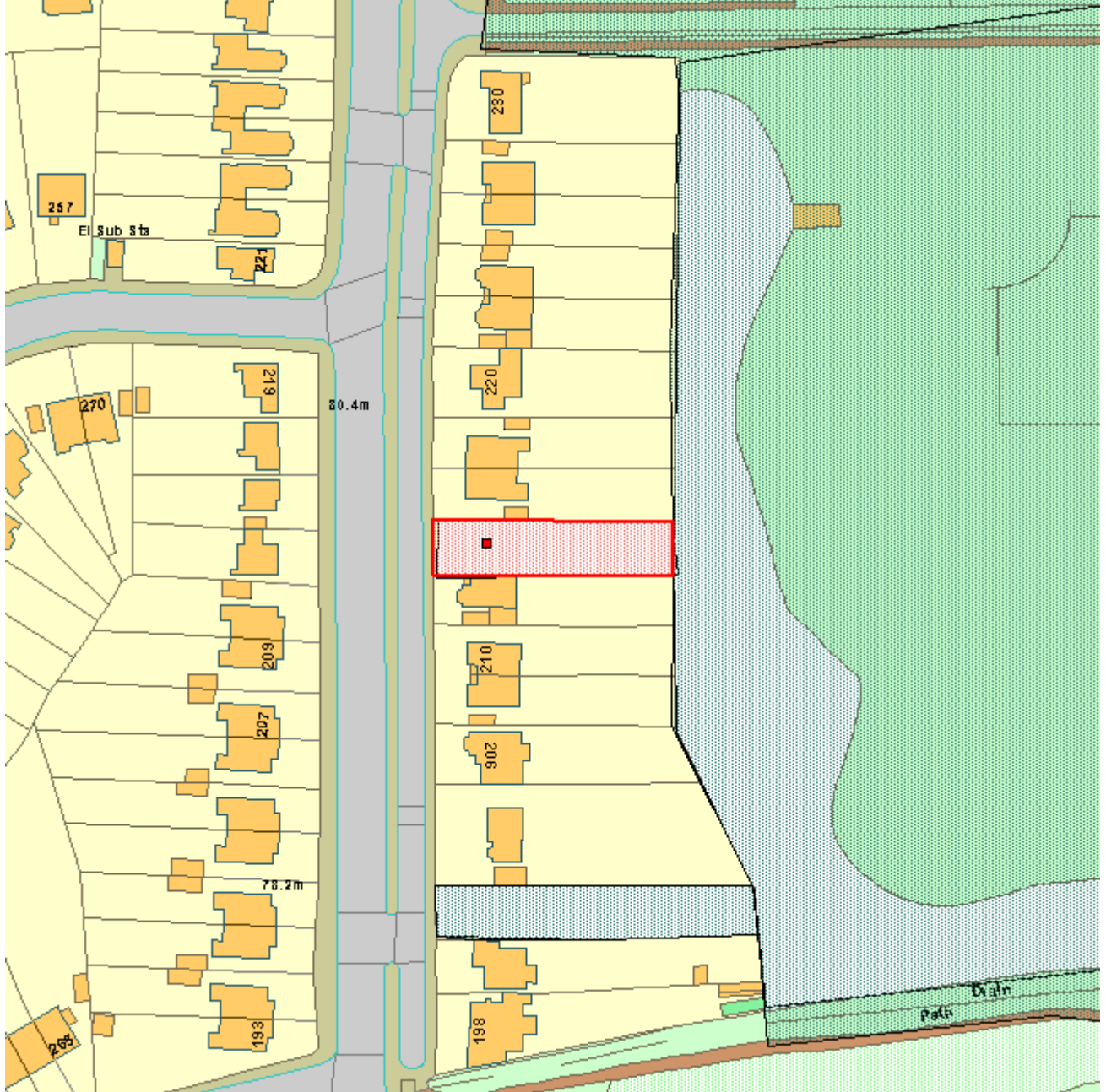
D00003 If Members are minded to refuse planning permission the following grounds are suggested:

- 1 The cattery is located in close proximity to the adjacent residential properties and the proposal would be likely to prejudice the amenities of the area, contrary to the saved Policies EMP8 and BE1 of the Unitary Development Plan.

Reference: 11/00208/FULL1

Address: 214 Pickhurst Lane West Wickham BR4 0HL

Proposal: Change of use from residential (Class C3) to residential and cattery (sui generis), retention of cat pens and store and lean-to extension.
RETROSPECTIVE APPLICATION



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