Enforcement Report
40 Silverknowes View
Edinburgh
EH4 5PT

Development Quality Sub-Committee
Of the Planning Committee

Owner/s Miss Jane Pearson, 40 Silverknowes View, Edinburgh
Occupier Miss Jane Pearson
Reference No: 04/00546/E22

1. Purpose of Report.

To consider the unauthorised change of use of a residential property to an area for the keeping/breeding of animals (specifically guinea pigs and rabbits), a material change of use in terms of the Town & Country Planning (Scotland) Act 1997.

It is recommended that enforcement action is taken to secure the cessation of this use and the removal of the animals, sheds, cages, runs and ancillary items from the property and the restoration of the garden to a condition appropriate to its location.

2. The site and the development.

The property is one of a pair of two-storey semi-detached houses on the north side of Silverknowes View close to the corner where Silverknowes View turns south to meet Ferry Road. It has a front garden and run in leading to a garage at the right hand side (when viewed from Silverknowes View). The garage is connected to the house by a wall through which an opening and wrought iron gate lead to the rear garden. The rear garden is approximately 0.03 hectares in size and backs on to Muirhouse Park. It contains a number of trees and bushes, including a number of leylandii. Some form the boundaries to adjoining properties to the west and east and others line the metal-railed fence to the Park. A group of leylandii and a rowan tree form a roughly semi-circular enclosure within the garden.
Site History

A complaint was received in August 2004 from a neighbour concerned at the scale of activities being carried out at this property, and the consequent detrimental effect on residential amenity in the area.

There is no other planning history on file but the Department of Environmental & Consumer Services advise that it was initially involved in June 2001. Various recurrent complaints over the following years culminated in a Statutory Notice being served in June 2003 with regard to the husbandry and general condition of the back garden, mainly relating to the mess and smell caused by the animals kept by Miss Pearson. Work was carried out to comply with the notice but, as a long-term solution, Planning Enforcement were consulted as to whether the number of animals being kept could be construed as running a business from a residential property.

03.09.2004 An Enforcement Officer visited the site and viewed the activities taking place.

23.09.2004 Miss Pearson was advised, by letter, that on the scale being undertaken, the activities at 40 Silverknowes View constituted a material change of use and that it was highly unlikely that planning permission would be granted for a change of use. The matter would therefore be referred to Planning Committee seeking authorisation for formal enforcement action.

13.10.2004 Miss Pearson was advised, by letter, that she should contact the Scottish Society for the Prevention of Cruelty to Animals, who may be able to re-house some of the animals in her keep.

Description of the Development.

In September 2004, around 62 hutches were noted within the back garden and garage. The hutches in the garage house a mixture of guinea pigs and rabbits. The semicircular area of leylandii partially screens an area of hard standing with a wooden shed containing guinea pigs and a number of hutches, mainly housing rabbits. These hutches, in stacks, are sometimes three deep. This area also contains a wooden "hopper" where hay/bedding is stored. A second small wooden shed to the left of this area contains sacks of animal feed. Refuse and other containers are also present as are a number of moveable runs.

Whilst some of the hutches were empty, the majority were occupied, in some cases with 2 to 3 animals in each. A number of young animals were observed as were a number of breeds of rabbit.

Miss Pearson admitted to keeping some 70 rabbits and 16 cages of guinea pigs (though the actual number was not specified). She stated that a number of the animals were kept for the specific purpose of re-housing.

The garden is in an untidy state with organic household refuse littering various parts. The keeping of animals makes any of the activities normally carried out within a domestic garden subordinate. A distinct smell was detected plus the presence of a large number of flies.
A later visit was carried out in November to assess the effect on the adjoining public park. The wooden hut and hutches to the rear of the garden were clearly visible and, despite very cold conditions, a distinct smell was detected.

3. Officer's Assessment and Recommendations

DETERMINING ISSUES

The determining issues are the effect that the keeping of animals on this scale has on surrounding residential amenity in this suburban location.

ASSESSMENT

It is clear from inspection of the site that the numbers of animals kept is well in excess of what would normally be expected at a domestic property.

In terms of the Act and case law, it is clear that the keeping of animals on its current scale, whether this is a commercial activity or not, amounts to a material change of use and constitutes development. It is not incidental to the enjoyment of the dwelling house as such. Policy H5 of the adopted local plan precludes such development where it results in an unacceptable loss of amenity. The emerging local plan, through Policies ED2 and H12, would similarly preclude it. Policy ED2 gives qualified support for small-scale Class 4 uses. By definition the present activities cannot be considered to be a Class 4 use, which should be capable of being carried out without detriment to residential amenity.

It is concluded that this unauthorised use has a detrimental effect on adjoining residential amenity and on the amenity of users of the adjacent public park, by way of visual intrusion and smell.

RECOMMENDATION

It is recommended that Committee resolves to take statutory enforcement action to secure the cessation of the activities and the removal of all animals and associated structures from the property. It is necessary to specify "property" rather than merely "garden" as, until a few years ago, the animals were kept within the house.

NOTE

Miss Pearson claims she re-houses abandoned animals. If Committee are so minded, the terms of the enforcement notice could be such that a restricted number of animals could be kept (6 adult animals, either rabbits or guinea pigs or a mixture, housed in separate cages). It would also be appropriate to give Miss Pearson a length of time for the re-housing of such a significant number of animals; in this instance, six months is suggested.
Contact/tel.  Val Malone on 0131 529 3485
Ward affected  06- Davidsons Mains
Local Plan  North West Edinburgh Local Plan
Statutory Development Plan Provision  North West Edinburgh Local Plan
File  None
Date Complaint Received  26 August 2004

Advice to Committee Members and Ward Councillors

If you require further information about this report you should contact the following Principal Planner: Arthur Smith on (0131) 529 3526. Email: arthur.smith@edinburgh.gov.uk

If this report is not identified on the agenda for presentation, and you wish to request a presentation of this report at the Committee meeting, you must contact the Co-ordinator, Ken Scott, by 12 noon on the Monday preceding the meeting. Ken can be contacted on (0131) 529 4245. Email ken.scott@edinburgh.gov.uk
Appendix

Consultations, Representations and Planning Policy

Consultations
None undertaken

Representations
Letter of 26 August 2004 from neighbour

Planning Policy

ADOPTED NORTH WEST EDINBURGH LOCAL PLAN

Relevant Policies

The property is within a “mainly residential area”, where existing residential character and amenities are to be protected.
Policy H5 states that the establishment or extension of a non-residential use will not be permitted if likely to lead to an unacceptable loss of amenity through increased traffic, unsightliness or noise.

DRAFT WEST EDINBURGH LOCAL PLAN

Relevant Policies

The property is within the “urban area”.

Policy ED2 would allow small-scale business development (Use Class 4), subject to compliance with other local plan policies.

Policy H12 states that development for any purpose (including changes of use and intensification), which would result in an unacceptable reduction in amenity for residents in the locality, will not be permitted.

Other cases:

Wallington v. Secretary of State for Wales and Montgomeryshire District Council, related to the keeping of a large number of dogs at a dwelling house. Whilst the dogs were not kept for commercial purposes but as a hobby, it was determined that, at this scale, the level of activity was not automatically “incidental to the enjoyment of the dwelling house” and constituted a material change of use.

An Enforcement Notice Appeal at 262 Colinton Mains Road, Edinburgh, March 1987, related to a breach of control consisting of the unauthorised erection of dog kennels and pen, where 10 dogs were kept. In his determination, the Reporter concluded that the keeping of 2 or 3 dogs in association with a dwelling is not incompatible with a residential area, but that the keeping of more than 3, or breeding for commercial purposes, would result in a serious loss of amenity for nearby residents. In his decision to grant planning permission, he attached conditions restricting the number of animals to not more than 3 fully grown dogs and precluded the use of the premises for breeding for commercial purposes.
ENFORCEMENT

Address 40 Silverknowes View, Edinburgh, EH4 5PT

Breach

Application number: 04/00546/E22  WARD  06- Davidsons Mains

THE CITY OF EDINBURGH COUNCIL
THE CITY DEVELOPMENT DEPARTMENT- PLANNING & STRATEGY