

**Planning Committee 17 August 2021
Report of the Planning Manager**

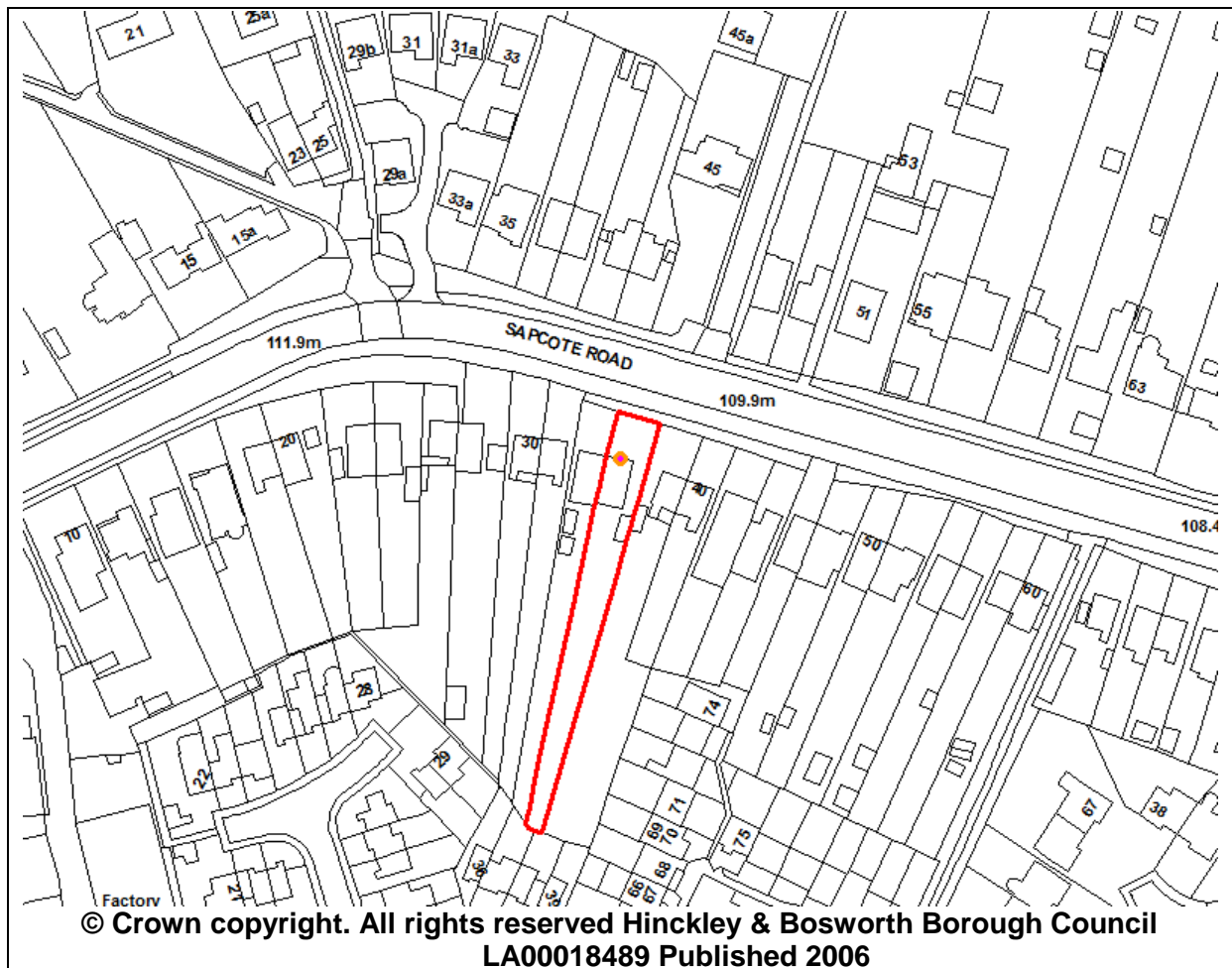
**Planning Ref: 21/00236/FUL
Applicant: Mrs Gail Pickford
Ward: Burbage St Catherines & Lash Hill**



**Hinckley & Bosworth
Borough Council**

Site: 36 Sapcote Road Burbage Hinckley LE10 2AU

Proposal: Change of use from C3 dwellinghouse to mixed use C3 dwellinghouse and sui generis dog breeders (retrospective)



1. Recommendations

- 1.1. **Grant planning permission** subject to:
- 1.2. That the Planning Manager be given powers to determine the final detail of planning conditions.

2. Planning application description

- 2.1. This application seeks planning permission to change the use of an existing C3 residential dwelling into a mixed use C3 residential dwelling and sui generis dog breeding business premises.

- 2.2. Permission is sought retrospectively; the applicant owns and is licensed for 15 dogs for breeding purposes (13 bitches and 2 studs). Due to the number of dogs on site used for business purposes, it is considered that a material change of use on site has occurred and thus a change of use from solely C3 to C3/sui generis is sought.

3. Description of the site and surrounding area

- 3.1. The application site comprises a two storey semi-detached dwelling in the settlement boundary of Burbage. The property is set back from the highway and is served by an area of off-street parking to the front and a long garden to the rear. The rear garden is bound by high boundary fencing to all sides. The garden contains multiple small outbuildings. During a site visit from the Local Planning Authority (LPA), it was clear that these outbuildings were used for domestic purposes only. Immediately beyond the rear elevation of the host dwelling is a low level brick built play pen used by the dogs on site when let outside.
- 3.2. Sapcote Road is primarily characterised by residential properties on the north east edge of the Burbage settlement boundary

4. Relevant planning history

- 4.1. None relevant.

5. Publicity

- 5.1. The application has been publicised by sending out letters to local residents.
- 5.2. 13 letter of objections have been received from 12 separate addresses with the following comments:
- The noise from the dogs on site is only just bearable but any more would have adverse impacts upon the mental wellbeing of neighbours
 - The smell of disinfectant when the dog pen is cleaned is unpleasant
 - If approved the new use would likely have negative implications upon neighbouring house prices
 - The dog breeding element of the proposed change of uses results in excessive noise from dog barking and is a statutory noise nuisance under The Environmental Protection Act
 - The smell from the dogs has negative implications upon neighbouring properties
 - The dwelling on site is not big enough for the number of dogs proposed and it is unfair on their welfare if the proposal is centred around making profit
 - The dog breeding element of the proposed change of use is an inappropriate and uncharacteristic use for a domestic property in a domestic area
 - The noise ruins the quietness of a domestic street and has negative implications upon the mental health and wellbeing of neighbours
 - The noise generated from the dog breeding element is horrendous and with the number of dogs involved the noise can only escalate to a problem level
 - The dog breeding use should be in a rural rather an domestic location

- Combined with litters, there could be around 50 dogs at one time on site
- There is a concern for how the disposal of dog waste will be dealt with
- Neighbours are not able to enjoy their private outdoor amenity space and their gardens are un-useable
- The odours trigger the allergies of neighbouring occupants and will escalate their already ill health
- There is a concern for overbreeding
- There is a concern for the welfare of cats owned by neighbouring occupants
- The site should be well enclosed to ensure none of the dogs escape or other animals can get in
- The dog breeding element of the proposed change of use is intolerable when working from home. The barking is distracting and disruptive when on a phone call or in zoom meetings
- In the summer months, if neighbours open windows and doors to help with the heat the barking is too loud, but if they close windows to help with the noise this causes headaches and poor amenity
- There is a concern that the dog breeding business will expand on site including introducing a grooming facility
- Notwithstanding the off-street parking provision for up to four vehicles at the front of the dwelling on site, appointments to visit the litters from the general public could be continuous adding an unnecessary increase in traffic. This would be of particular concern if the business expands on site or if car ownership of the occupants on site increases
- On street parking for visits from the general public often results in cars parked outside the front of neighbouring properties
- LCC Highways have objected to parking arrangements on other applications for a change of use of domestic premises yet they raise no concern for the current application
- Sapcote Road is an accident hotspot for vehicles
- The dwelling on site is too small to keep all the dogs inside, but if kept outside they would be a nuisance to neighbours
- The site is a glorified puppy farm
- There is a risk that puppies will be stolen
- Dog barking is unpredictable and cannot be controlled
- The dog breeding element of the proposed use results in a worst-case scenario of 500 visits per year, typically at evenings and weekends, producing further nuisance to the locality
- The dogs will attract flies and rodents and deter wildlife in the locality

6. Consultation

- 6.1. No objections have been received from LCC Highways or HBBC Waste.

6.2. No objections subject to conditions have been received from HBBC Environmental Health – Pollution

6.3. Burbage Parish Council have objected to the proposal on the following grounds:

- Noise and odour nuisance
- A totally inappropriate use in a residential setting
- Additional traffic
- Conflict with Policy 3 of the Burbage Neighbourhood Plan

7. Policy

7.1. Burbage Neighbourhood Plan 2015-2026

- Policy 1: Settlement Boundary
- Policy 2: Design and Layout
- Policy 4: Parking

7.2. Core Strategy (2009)

- None relevant

7.3. Site Allocations and Development Management Policies DPD (2016)

- Policy DM1: Presumption in Favour of Sustainable Development
- Policy DM7: Preventing Pollution and Flooding
- Policy DM10: Development and Design
- Policy DM17: Highways and Transportation
- Policy DM18: Vehicle Parking Standards

7.4. National Planning Policies and Guidance

- National Planning Policy Framework (NPPF) (2021)
- Planning Practice Guidance (PPG)

7.5. Other relevant guidance

- Good Design Guide (2020)
- National Design Guide (2019)

8. Appraisal

8.1. Key Issues

- Assessment against strategic planning policies
- Design and impact upon the character of the area
- Impact upon neighbouring residential amenity
- Impact upon highway safety and parking standards
- Other matters

Assessment against strategic planning policies

8.2. The proposed development is for a property located within the settlement boundary of Burbage. As such, there is a presumption in favour of sustainable development under Policy DM1 of the SADMP as long as the proposal is in accordance with the relevant policies of the SADMP.

Design and impact upon the character of the area

- 8.3. Policy DM10 of the SADMP requires new development to complement or enhance the character of the surrounding area with regard to scale, layout, density, mass, design, materials and architectural features.
- 8.4. Policy 2 of the BNP advocates residential development which respects its surroundings in terms of design and layout.
- 8.5. No external changes are proposed to the application site as a result of the proposed change of use.
- 8.6. The applicant seeks planning permission to change the existing C3 use of 36 Sapcote Road and its residential curtilage into a mixed use c3/sui generis dwelling/dog breeding premises.
- 8.7. The applicant has a licence for and currently owns 15 dogs for breeding purposes; 13 bitches and 2 studs. The applicant owns 2 neutered bitches as domestic pets which are not associated with the applicant's breeding business.
- 8.8. A visit was paid by the LPA to the application site during the course of the application's assessment. According to the applicant, on average 7 litters of Snoodles and Miniature Schnauzers are produced on site per year. The dogs live in the dwelling on site and are not kept outside. The dogs are let out into the garden usually around 4 times a day, 6 dogs at a time. The stud dogs are let into the garden separately. There are no outbuildings in the applicant site that are used solely for the dog breeding business. There is an outdoor cage used for quarantine purposes however this is a temporary and easily removed structure. There is a large dog pen in the garden that is bound by a low brick wall. This brick wall does not require planning permission as per Schedule 2, Part 2, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- 8.9. Due to the number of dogs on site used for business purposes, it is considered that a material change of use on site has occurred. However, the dwelling on site and its curtilage would remain for domestic enjoyment also. The application site would therefore remain domestic in part. Bearing this in mind, along with no external changes or outbuildings proposed, it is still considered that the proposal would maintain the application site's domestic character and would not be out of keeping with the nature of the street scene. Notwithstanding the considerable number of dogs kept on site, the application site itself would still have the appearance of a residential site and the proposal would not alter the appearance of the street scene.
- 8.10. The proposed development would therefore satisfy Policy DM10 of the SADMP and Policy 2 of the SADMP in this regard.

Impact upon neighbouring residential amenity

- 8.11. Policy DM7 of the SADMP states that adverse impacts from pollution will be prevented by ensuring that development proposals demonstrate that it would not cause noise on a level that would disturb amenity areas that are valued for their tranquility and would not contribute to poor air quality.
- 8.12. Policy DM10 of the SADMP seeks to ensure that development proposals shall not harm the amenity of neighbouring residential properties.
- 8.13. Comments were sought by the LPA from Environmental Health regarding the noise and odour impacts of the breeding business. Concerns have been raised by third

parties and Burbage Parish Council in relation to the mental health and wellbeing implications upon neighbouring properties as a result on the proposed development, along with a concern for the usability and enjoyment of outdoor neighbouring private amenity space.

- 8.14. The dogs on site are let out into the garden on site at regular intervals throughout the day. On site is was confirmed that the applicant cleans the dog pen on site twice a day with disinfectant.
- 8.15. The role of Environmental Health is to consider technical/noise impact assessment submissions and advise the Planning Department/Council as to whether the proposed development may be acceptable at the location and help ensure that adverse impacts are addressed via adequate mitigation.
- 8.16. However, there is no specific guidance defining a methodology to assess the impact of the noise from dog breeding, boarding or kennelling establishments. This makes full consideration of potential noise impact difficult. Commonly used standards for noise assessment either specifically preclude domestic animals (BS4142) or are unsuitable due to the use of a time-integrated measure (WHO Guidelines for Community Noise, BS 8233), which is of limited benefit in predicting the annoyance impact. Barking is designed to attract attention and is distinguishable against background noise. Barking can be unpredictable and intermittent, consisting of short bursts which last seconds but can recur repeatedly.
- 8.17. Notwithstanding, the Council's Environmental Health team has expressed concern for the noise and odour implications that dog breeding in the residential location proposed would give rise to. A small number of complaints have been received previously by this team with regards to noise. Bearing in mind the comments made in the above paragraph, it is recommended by the Environmental Health team that if permission is to be granted, it be done so on a temporary 1 year basis. This would allow for any further complaints to be investigated and monitored, to ascertain whether noise has been controlled by the applicant or whether the timing of complaints are based on seasonal habits. Should the applicant re-apply, the use temporarily permitted will have been monitored for a prolonged period and an assessment of noise and odour impacts can be made on the basis of these findings.
- 8.18. In the interests of keeping disturbance and nuisance levels upon neighbouring properties to a minimum, a condition ensuring no dogs are housed outside shall be imposed should planning permission be granted, along with a condition requiring the submission of a noise and odour management plan. The change of use would be carried out in accordance with the approved plan that would need to be submitted within 1 month of the date of permission being granted. The applicant seeks permission retrospectively and has owned the same number of breeding dogs for many years. As such, it is considered appropriate to not impose a pre-commencement condition in relation to the management plan required.
- 8.19. Subject to conditions, the proposed development would not significantly conflict with Policy DM10 of the SADMP based on the information currently received by the LPA.

Impact upon highway safety

- 8.20. Policies DM17 and DM18 of the SADMP require development to accord with adopted highway design and vehicle parking standards to ensure that there is adequate highway visibility for road users and adequate provision of off-street

parking and manoeuvring facilities. Paragraph 109 of the NPPF states that development should only be refused on highway grounds where the residual cumulative impacts of development are severe.

- 8.21. Leicestershire County Council have been consulted on the proposal. Based on the submitted documents it appears 4 off-street parking spaces would be available within the application site and visitors would be by appointment only. On this basis it is considered unlikely that more than 1 visitor would be visiting the site at a time. 4 parking spaces would therefore be suitable for a dwelling with 3 or more bedrooms, plus visitors.
- 8.22. On the basis of Leicestershire County Council standing advice, the cumulative impacts of the proposed development would not be severe.
- 8.23. The proposal would therefore satisfy Policy DM17 and DM18 of the SADMP.

Other matters

- 8.24. Third party concern has been raised for the negative implications that the proposed change of use will have upon house prices in the vicinity. Whilst noise impacts are a material planning consideration when making an assessment of harm to private residential amenity, the implications of development upon house prices is not and therefore cannot be taken into account in the assessment of the current application.
- 8.25. Third party concern has been raised as to the welfare of the dogs on site, a lack of space on site for the two uses to co-exist, overbreeding and the applicant running a puppy farm. The welfare of the dogs on site is not a material planning consideration but instead assessed as part of licensing regulations. The applicant has been licensed for the number of dogs on site.
- 8.26. Third party concern has been raised for how dog waste will be disposed of on site. HBBC Waste Services has been consulted on the proposed development and no objections have been received. The proposed change of use would still remain domestic in part. As such, it is not considered that the commercial waste generated would be so significant as to warrant alternative waste provisions.
- 8.27. Third party concern has been raised for the security of the application site. The need to secure the site and the means of doing so is the applicant's responsibility and not that of the planning department, unless boundary treatments that would exceed the conditions of Schedule 2, Part 2, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) are erected.
- 8.28. Third party concern that the commercial business proposed on site will expand is speculative only. Nothing more than a dog breeding business is proposed in the current application and the LPA can only make an assessment based on the information submitted to them.
- 8.29. Third Party concern has been raised for rodents that the dogs on site would attract and the harm to wildlife. It is not considered that dog breeding is the sole precursor to vermin and poor biodiversity in a residential built up area and as such this consideration does not carry significant weight in the assessment of the current application.
- 8.30. Burbage Parish Council has raised concern that the proposed development would conflict with Policy 3 of the BNP. However, this policy relates to where B1a-c, B2 and B8 uses would be encouraged and is therefore not relevant to the current proposal.

9. Equality implications

9.1 Section 149 of the Equality Act 2010 created the public sector equality duty. Section 149 states:-

- (1) A public authority must, in the exercise of its functions, have due regard to the need to:
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

9.2 Officers have taken this into account and given due regard to this statutory duty in the consideration of this application. The Committee must also ensure the same when determining this planning application.

9.3 There are no known equality implications arising directly from this development.

9.4 The decision has been taken having regard to all relevant planning legislation, regulations, guidance, circulars and Council policies, including General Data Protection Regulations (2018) and The Human Rights Act (1998) (HRA 1998) which makes it unlawful for the Council to act incompatibly with Convention rights, specifically Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

10. Planning Balance and Conclusion

10.1. The proposed development is for a property located within the settlement boundary of Burbage. As such, there is a presumption in favour of sustainable development under Policy DM1 of the SADMP and Policy 1 of the BNP, as long as the proposal is in accordance with the relevant policies of the SADMP.

10.2. The proposal would not unacceptably harm the character or appearance of the area. In addition, the proposal would not have any significant adverse impacts upon vehicular or pedestrian safety. It is considered that the proposed development would be in accordance with Policies DM1, DM10, DM17 and DM18 of the SADMP.

10.3. The full extent of impact upon the enjoyment of private neighbouring residential amenity, in terms of noise and air pollution, disturbance and annoyance is unclear and there is no standardised methodology for the applicant to monitor this. Therefore, whilst harm in this regard is not currently identified as severe, if permission is granted it should be on the basis of a 1 year temporary permission whereby complaints received by Environmental Health can be monitored and the submission of a noise and odour management plan can be considered.

10.4. On this basis, the proposal would not significantly conflict with Policy DM7 and DM10 of the SADMP and this stage and subject to conditions the application is recommended for approval.

11. Recommendation

11.1 **Grant planning permission** subject to:

- 11.2 That the Planning Manager be given powers to determine the final detail of planning conditions.

11.3 **Conditions and Reasons**

1. The development hereby permitted shall not be carried out otherwise than in complete accordance with the submitted application details, as follows:

Floor Plan received 04 May 2021

Site Location Plan received 19 February 2021

Reason: To ensure a satisfactory form of development in accordance with Policies DM1 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

2. For the avoidance of doubt, there shall be no more than 15 dogs kept on site for breeding purposes (13 bitches and 2 studs) at any one time with no more than 7 litters produced per calendar year. An up to date register of the dogs kept and litters produced for each year shall be maintained, and this information should be made available for inspection within 7 days of any request in writing from the Local Planning Authority.

Reason: In the interests of protecting residential amenity in accordance with Policy DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

3. The use hereby permitted shall be to the benefit of the applicant and those residing at 36 Sapcote Road on the date of this decision and shall be for a limited period being the period of one year from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter.

Reason: To allow noise and odour impacts to be monitored in accordance with Policy DM7 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

4. No dogs related to the breeding business on site hereby permitted shall be kept outdoors.

Reason: To ensure that the proposed use does not become a source of annoyance to nearby residents in accordance with Policy DM7 and DM10 of the adopted Site Allocations and Development Management Policies Development Plan Document (2016).

5. Within 1 month of the date of this decision, a management plan for protecting existing dwellings from noise and odour from the development hereby approved shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in full accordance with the approved details.

Reason: To ensure that the proposed use does not become a source of annoyance to nearby residents in accordance with Policy DM7 and DM10 of

the adopted Site Allocations and Development Management Policies
Development Plan Document (2016).