

<u>APPLICATION NO:</u> P2014/0843	<u>DATE:</u> 04/09/2014
PROPOSAL: Certificate of Lawful Development (proposed) for the incidental use of an existing single-storey rear extension as a dog day crèche for up to 5 dogs between the hours of 08:30 hrs and 16:30hrs Mondays to Fridays.	
LOCATION:	70 Neath Road, Tonna, Neath SA11 3DJ
APPLICANT:	Mrs Ann Patricia Slattery-John
TYPE:	LawfulDev.Cert-Prop.
WARD:	Tonna

BACKGROUND INFORMATION

Members should note that Cllr C Morgans requested on 29 October 2014 that this application be determined via Planning Committee, due to the potential significant impact the proposal would have on the residential area.

Planning History:

97/0371	Construction of Detached Dwelling	Approved	28/07/97
97/1093	Approval of details (Condition 3) of P97/0371 re. external materials	Approved	22/09/97
02/0296	Construction of an extension incorporating a swimming pool	Approved	02/05/02

Publicity and Responses (if applicable):

While no notifications were required to be undertaken for this Certificate of Lawful Use application, nevertheless 10 letters of objection have been received, which are summarised as follows:

- (1) The applicant has distributed leaflets stating they are licensed and that overnight boarding is also available.
- (2) There was an open day and in excess of 5 dogs were present on the site.
- (3) The applicant's facebook page shows 2 dogs that had a lovely 2 week holiday at "Woofys".
- (4) Licensing have confirmed that the licensing application has been delayed pending the planning situation, but there are concerns that if the license is granted, there would be the inability for any enforcement to be made in the future.

- (5) There has been disruption already with clients visiting and blocking driveway accesses and dogs running over front gardens. Clients are also parking in the turning head.
- (6) There are major concerns regarding the noise and disruption such a business would cause the immediate neighbours, including barking. It is a residential area with no other businesses around, and the possible noise from 7 dogs on a daily basis is unacceptable, especially if there are outside.
- (7) There are concerns regarding the disposal of dog excrement.
- (8) The access road to the application site is actually a private road and not adopted, which has been confirmed by land registry searches and with solicitors. There are no pavements and it is very narrow.
- (9) The licensing application seems to be different from this application as it was for 12 dogs, but the vet limited it to 5 dogs. It also appears that they are currently operating outside of the licensing agreement as dogs have already been observed at the premises which are not the owners.
- (10) The licensing committee do not take consideration of any potential noise and disruption to or traffic implications to neighbouring properties, only the welfare of the dogs.
- (11) It is documented that boarding kennels in particular give rise to noise problems because of the number of dogs, the range of different breeds and stress under unfamiliar conditions.
- (12) The plans indicate that there are 10 pens established within the building and as the owners dogs normally reside in the family home, what are the plans for the other 5 pens?
- (13) What reassurances and guarantees can the Authority give to the surrounding residents if the proposer fails to comply with the license, as previous attempts by Council Enforcement Officer has failed to gain access to the property.
- (14) There are concerns that this is not the only business that would be operating from the premises, as two rooms are being advertised on the internet as being available to rent. Additional cars have been observed at the property. This increases the percentage of house used for business purposes and added to traffic along the private road.

Head of Licensing: Has confirmed that an animal boarding license was received 16th June 2014, and a vet and licensing officer has inspected the property. The applicant has confirmed that she wishes to board a maximum of 5 small dogs each weighing under 20kgs. The determination of the licensing application has been deferred, pending the outcome of this certificate application.

Description of Site and its Surroundings:

The application site is located at 70 Neath Road, Tonna.

The site is an irregular parcel of land measuring 0.159 hectares in area. It is relatively flat in profile and is occupied by a large detached dwelling with associated garden areas.

The property has a frontage of 30m onto Henfaes Road (B4434), but pedestrian and vehicle access to the site is off the unclassified section of Neath Road, which terminates at the property in a turning head. The site is bounded by residential properties to the east, south and west with Henfaes Road to the north.

The application property is designed with a gable-ended pitched roof with a mock-Tudor design. There is a gravel driveway to the north of the property accessed via electric gates.

The site is located within the settlement limits as defined by Policy H3 of the adopted Neath Port Talbot Unitary Development Plan (UDP).

Brief Description of Proposal:

This application is for a Certificate of Lawful Use or Development (proposed) for the incidental use of an existing single-storey rear extension as a dog day crèche for up to 5 dogs between the hours of 08:30 hrs and 16:30hrs Mondays to Fridays only.

The applicant intends to use the existing single-storey rear extension (granted planning permission in 2002) as a dog day crèche. The building measures 17m long by 6.82m wide and was formerly used as a swimming pool, but this has now been drained and covered over to be used for the dog day crèche. 10 dog pens have been erected measuring 1.2m wide by 2m in depth with 0.8m high fencing. The applicant has stated that the extension would also be used by the occupiers of Number 70 to access the exercise equipment, sauna and plant storage room. They have indicated that the extension would be used to provide sleeping and feeding facilities for up to 5 dogs, plus the applicants 2 pet dogs. They have also indicated that the dogs would have access to other parts of the property if necessary. They have confirmed that there would be no external alterations to the property. They have stated that the primary use of the property would remain as residential and in view of its scale and degree, the additional use would be ancillary and not constitute a material change of use that requires a new planning consent.

Policy Context:

Planning Policies are not relevant to applications under S192 of the Town and Country Planning Act 1990 (as amended)

Material Considerations:

The application seeks a Lawful Development Certificate under Section 192 of the Town and Country Planning Act 1990 which seeks to certify the lawfulness of proposed operations on, or use of land. The determination of the application is on legal grounds only; any views on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant.

Accordingly, this report concentrates solely on whether, based on the facts of the case and relevant Planning Law, the specified matter is or would be lawful.

Having regard to the above, the main issues for consideration with this application relate to whether the proposal development would be incidental to the main residential use of the existing dwelling, or whether the proposed development would constitute a material change of use of the property from residential into a mixed residential (Class C3) and commercial use (Sui Generis).

Assessment

As stated above, the key issue with this application is whether the proposal would be considered incidental to the main residential use of Number 70, or whether the proposal would constitute a material change of use of the property from residential to a mixed use of residential and commercial. As there are no clear cut planning rules on this type of activity, it would be a matter of 'fact and degree' based on the information provided as part of the application.

Research undertaken of the Development Control Practice database has revealed a number of appeal decisions where 6-7 dogs could be kept on a property as an incidental use for the purposes of breeding or boarding. It states on the database that the "point at which a use departs from being termed 'incidental' is difficult to determine" and the 6 dog figure cited in the *Wallington* Court Case cannot be used as a 'rule of thumb'. It also states that "whether an activity is for hobby/humanitarian purposes or commercial gain is not a determining criterion on its own". Furthermore, "if the extent of animal keeping is such that the domestic character of a particular house, having regard to its size and relationship to neighbouring property, is significantly changed from what could be expected at such a house, then there is a strong case that such a use is not incidental. Factors which may assist such a judgement are the

erection of an unusual amount of special structures for housing of animals in a garden, increased comings and goings at the property due to the use, the employment of others, the generation of substantial amounts of noise, and the size and breed kept". These will be considered in further detail below.

Size and relationship to neighbouring properties, and potential external alterations to facilitate proposed operation.

As previously stated the application site measures 0.159 hectares in area and is occupied by a large detached dwelling with associated garden and parking areas. The ground-floor of the existing property measures approximately 214m² (excluding the swimming pool) and 329.9m² in total. The first-floor area measures approximately 146m². The total floor space of the dwelling (ground and first-floor) measures approximately 475.9m².

The former swimming pool area proposed to be used for the dog crèche measures 17m in length by 6.82m wide, which totals 115.9m². This area would equate to approximately 35% of the ground-floor area of the property, but 24.5% of the overall floor space of the property.

The applicant has indicated that there would be no external alterations to the property to facilitate the proposed operations, and the dog crèche would occupy an existing single-storey rear extension.

In respect of neighbouring properties, it is noted that there are residential dwellings to the east, south and west. Tyn Yr Heol House is located approximately 31m to the east of the side elevation of Number 70, Number 2A The Paddocks is located approximately 12m to the south of the rear extension of Number 70 at a higher level, and Number 68 is located approximately 7.5m to the side elevation of Number 70.

Given the separation distance to neighbouring dwellings, and the percentage of floor space that would be utilised for the dog crèche versus that which would be retained for residential use, it is considered that the proposed use would not significantly alter the character or appearance of the surrounding area or dwelling, and it can be said that in this regard the use would be incidental to the main residential use of the property.

Potential increase in comings and goings to the property.

The applicant has stated that they intend to operate a dog day crèche for up to 5 dogs between the hours of 08:30 hrs and 16:30hrs Mondays to Fridays only. They have also indicated that there is sufficient parking within the large gravel

driveway to the front of the property for 6 vehicles, plus the occupiers own vehicles.

Whilst not an identical use, it should be noted that case law has established that child minding can operate from a dwelling for up to 6 children without the need for planning permission for the change of use. Whilst it is acknowledged that a dog crèche has the potential to create different issues from child minding in respect of noise and disturbance (which will be discussed in further detail below), in terms of traffic generation and comings and goings, it is considered that a dog crèche for up to 5 dogs would generate similar traffic levels to that of a child minding activity. The applicant has also indicated that 6 car parking spaces could be accommodated within the existing gravel drive of the property, which would potentially lessen the impact upon neighbouring properties.

Although some concerns has been raised regarding the access to the property, and whether it is a private driveway or not, the Footpaths Section have confirmed that the current records show the road is adopted. However, it should be noted that this specific issue would be a civil matter between the relevant landowners, and would not be a determining factor in this application. Nevertheless, it is considered that the potential comings and goings would be considered incidental to the main residential use of the site and would not alter the character of the property to such a degree to constitute a material change of use.

The employment of others.

The applicant (Mrs Slattery-John) has indicated that the business would be owned by her son (Jason Slattery), and she would be employed to operate the dog crèche service on behalf of him. She has indicated that the business would not employ any other people. Based on the information submitted, it is considered that as the applicant (Mrs Slattery-John) currently resides at Number 70 and would operate the business, and is the applicant on the license, the scale of the operation would remain incidental to the main residential use of the property, and would not alter the overall character of the property to such a degree to constitute a material change of use.

Potential noise generation.

Whilst it is acknowledged that dogs can generate potential issues in terms of noise from dogs barking, it is noted that the former swimming pool has a solid construction (i.e. double skin walls and tiled roof). Furthermore, the information provided as part of this application indicates that up to 5 small dogs (plus the applicants existing 2 dogs) would be looked after for a limited number of hours

per day (8.30am to 16.30am) on weekdays only (when general background noise levels are generally higher) and not overnight.

Based on the information submitted, it is therefore considered that the scale of the operation would remain incidental to the main residential use of the property, and would not alter the overall character of the property to such a degree to constitute a material change of use.

Size and breed kept.

The applicant has confirmed as part of the license that she wishes to board a maximum of 5 small dogs each weighing under 20kgs. The applicant also has two standard poodle dogs, which would total 7 dogs at the site. Whilst no specific details have been provided in respect of the breeds in the dog crèche, as this is unknown at this stage, it is considered that the scale of the operation would not be out of keeping with that expected at a residential use (e.g. if a person had 5-7 pet dogs), and would not alter the overall character of the property to such a degree to constitute a material change of use.

Other Matters

Correspondence received by the Council has alleged that the proposed dog crèche would not be the only business operating from the property, and states that rooms are being let out.

While it is possible that the use of the property for any additional use such as that alleged by the correspondent could affect the lawfulness of the proposed use, it is for the Planning Authority only to consider the application on the basis of the information submitted. Nevertheless, clarification was sought from the applicant, who has since provided written correspondence to state that no other businesses would be operating from the property, and that no rooms are being let out at present. She also states that there is no intention to do so in the future, and that the advertisements referred to (which have been viewed by Officers) were old adverts, and they no longer wish to do so.

Accordingly, this application is determined on this basis, namely that the dog crèche will be in addition to the existing use of the property as a single dwelling.

Compliance with any Certificate issued

In response to concerns over the future use of the property, which may fail to accord with any certificate issued, it is emphasised that a Certificate under s192

for a future use or operation will protect future development *only if that future development is as described in the certificate and undertaken before there is any material change in relevant circumstances.*

Accordingly, if the limitations specified in a certificate are exceeded – for example in this case if the number of dogs increased, hours of boarding changed, or additional activities were undertaken at the property - the landowner or occupier may be liable to enforcement action by the planning authority for any resulting breach of control.

Others (including objections):

In response to the 10 letters of objection received, the following comments are made:

- In response to the concerns that the business has been operating already, as demonstrated by the leaflet and facebook page, the applicant has confirmed, in writing, that the business has not be operating yet as they are awaiting the relevant permission from the Local Planning Authority and Licensing Authority. They have also confirmed that they have been looking after a friend’s dog on an ad hoc basis. In terms of overnight boarding, the submitted details do not indicate any overnight boarding and this application will be determined on the submitted information. If, in the future, the use exceeds the parameters stated in this application, it would be a matter for the Planning Enforcement Section to investigate and take action if necessary.
- With regards to the concerns that there would be the inability for any enforcement to be made in the future if the license is granted, it should be noted that the planning and licensing are separate entities covered by separate legislation, and one does not prejudice the other.
- In respect of potential noise and disturbance from the proposed operation, including highway safety issues, this has been addressed previously in the report. Given the scale of the proposed operation, it is considered that it would not significantly alter the residential character of the property or constitute a material change of use on this basis.
- In respect of potential noise and disturbance, including barking, this has been addressed in the report above. However, it should be noted that if any potential noise issues arise in the future, the Environmental Health Section has the power to investigate any issues separately and take action if necessary.
- In respect of the concerns regarding the disposal of dog excrement, this would not be a matter for the Local Planning and would be for the Environmental Health Section and/or Licensing Section.

- In respect of the concern relating to the fact that the access to the site is via a private road, it should be noted that the Footpaths Officer has confirmed that the records shown that the access road to Number 70 is adopted highway. However, as stated above, this would be a civil matter between the relevant landowners.
- Turning to the comments that the licensing committee do not take consideration of any potential noise and disruption to or traffic implications to neighbouring properties, only the welfare of the dogs, it should be noted that these have been addressed previously in the report.
- In respect of the comments that the plans indicate that there are 10 pens established within the building, and as the owners dogs normally reside in the family home, what are the plans for the other 5 pens. It should be noted that the applicant has no provided any specific information on this matter. However, whilst there are more than 5 pens, this certificate application only relates to a maximum of 5 dogs as part of the crèche (plus the applicants 2 dogs).
- Turning to the comments asking what reassurances and guarantees the Authority can give to the surrounding residents if the applicant fails to comply with the license, as previous attempts by Council Enforcement Officer has failed to gain access to the property. It should be noted that the enforcement of the license would be undertaken by the Licensing Section, and any planning enforcement would be undertaken separately by the Planning Enforcement Officer. The Planning Enforcement Officer has the right to enter property, if necessary, in line with correct procedures. It should also be noted that the issuing of this certificate would not prejudice any potential planning enforcement action if, following an investigation, it was deemed necessary on the basis that matters had materially changed since the issue of any Certificate.

Conclusion:

It is considered that the proposed development, by virtue of the limited number of dogs and hours of operation proposed, the overall size of the existing dwelling versus the percentage of floor space to be used for the dog crèche and potential traffic generation, would be incidental to the main residential use of the property. As such, it is considered that the proposed use would not constitute a material change of use of the property and would be incidental to the existing residential use (Class C3) of Number 70 and is therefore lawful. It is therefore recommended to issue the Lawful Development Certificate for the proposed use.

RECOMMENDATION:

Issue the Lawful Development Certificate for the Proposed Use on the following grounds:

- (1) There would be a maximum of 5 small dogs each weighing under 20kgs (excluding the applicant's two dogs).
- (2) The use would operate between the hours of 08:30 hrs and 16:30hrs Mondays to Fridays only.
- (3) There would be no employment undertaken at the property, other than the applicant, or other business use operating from the property.