DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H06-0334-22**	**Applicant:**	**Ms S Smith**
Proposal:	Use of site for the keeping of more than 6 dogs - retrospective		
Location:	Montana House 2 Churchgate Mews Gedney		
Terminal Date:	25th May 2022		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

01	Spatial Strategy
02	Development Management
03	Design of New Development
30	Pollution

National Guidance

National Planning Policy Framework 2021

Section 12. Achieving well-designed places

Representations:

	Object	Support	No Obj.	Comments
PARISH COUNCIL	1	0	0	0
WARD MEMBER	0	0	0	0
HIGHWAYS & SUDS SUPPORT	0	0	0	1
SOUTH HOLLAND INTERNAL DRAINAGE BOARD	0	0	0	1
SHDC INTERNAL	0	0	0	1
RESIDENTS	5	0	0	0

CASE OFFICER ASSESSMENT

Proposal

This is a full planning application that seeks retrospective permission for use of site for the keeping of more than 6 dogs to operate a dog breeding business from the site. The proposal is to keep up to 10 breeding dogs at the premises and up to 15 puppies for sale.

Site Description

The site is situated on Churchgate Mews in Gedney. The site is within the Gedney settlement boundary. It comprises a two storey detached dwelling which is accessed off a private drive off Churchgate. The site benefits from a large gravelled driveway to the front. There are residential dwellings to the north and west and open countryside to the south.

History

No relevant planning history.

Consultation Responses

Local Highway and Lead Local Flood Authority

Does not wish to restrict the grant of permission.

Gedney Parish Council

Council object to this application on grounds that the number of canines requested is too many for the positioning of this property within a residential area.

South Holland Internal Drainage Board

No comments as the proposed application does not meet our threshold for commenting as per our Planning and Byelaw Strategy.

Environmental Protection

We are currently investigating 2 noise complaints regarding the property. There are concerns that any increase in the number of dogs could increase the potential for complaints.

Local residents

6no letters of objection have been received siting the following concerns:

Noise disturbance
Increased traffic on the private road
The garden is not secure
The applicant does not appear to be on the electoral register therefore it is doubtful the applicant owns the site
The proposal will result in the loss of the existing quiet rural setting
Increasing the number of dogs will increase noise levels
Animal breeding on the site has resulted in an increase in vermin activity

Planning Considerations

Principle of development

The site is within the Gedney settlement boundary as set out in the South East Lincolnshire Local Plan (SELLP), 2019. As such the principle of development is acceptable unless planning material considerations indicated otherwise in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990. The key material considerations are addressed below.

Design and layout

Paragraph 130 of the National Planning Policy Framework (NPPF), 2021 establishes that planning policies and decisions should ensure that developments will function well and add to the overall quality of the area; are visually attractive as a result of good architecture and sympathetic to local character and history, including the surrounding built environment and landscape setting; and create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users, among other considerations. Likewise, Policy 2 of the SELLP states that design which is inappropriate to the local area, or which fails to maximise opportunities for improving the character and quality of an area, will not be acceptable.

The scheme does not proposed any physical alterations to the site. However, the proposal is still considered to result in noise impacts and unacceptably changes the character of the site/area. Impact on neighbouring amenity is further discussed below.

As such the keeping of more than 6 dogs is considered to unacceptably impact the character of the area by way of noise and disturbance.

Residential amenity

Residential amenity is one of the key principles of design and development management as set out in Policies 2 and 3 of the South East Lincolnshire Local Plan (2019) (SELLP). Likewise, Paragraph 130 of National Planning Policy Framework (NPPF), 2021 establishes that developments should ensure a high standard of amenity for existing and future users, among other considerations. Additionally, Policy 30 of the SELLP states that development proposals will not be permitted where, taking account of any proposed mitigation measures, they would lead to unacceptable adverse impacts upon the amenities of the area by way of noise pollution (amongst other matters).

6no letters of objection have been received from nearby neighbours siting concerns that the proposal will result in the loss of the existing quiet rural setting, noise disturbance from dog barking and concerns vermin activity on the site due to animal breeding. The concerns are noted and discussed below.

The case Wallington v Secretary of State for Wales & Montgomeryshire D.C 20/2/89 and 7/11/90 was decided stating that the keeping of large number of dogs involved a material change of use of the premises for which planning permission was required and was not exempted as a use incidental to the enjoyment of the dwellinghouse as such notwithstanding that the dogs were kept as a hobby and no commercial considerations were involved. In that case, the keeping of 6 adult dogs (over a year old) at a residential property was considered to be incidental to the residential use.

Farquharson L.J. held in Wallington that the test was whether the use is subordinate in land use planning terms to the enjoyment of a dwelling house as a dwelling house. He said it was a matter of fact and degree and that a number of factors should be taken into account in any assessment, including:

i) The situation of the dwelling house, e.g. whether in town or country;
ii) The size of the dwelling house in the context of the user, including the size of its curtilage;
iii) The nature and scale of the activity: "The more dominant the activity the less likely it was to be described as incidental. The indulgence of a hobby was more likely to qualify than some commercial activity"; and,
iv) The disposition and character of the occupier.

With regard to the first criterion, the garden where the dogs are kept is attached to the neighbours to the north and west. At such separation distances, the number of dogs is sufficiently high to create severe disturbance to the residents of the nearest dwellings.

Turning to the second criterion, the application property sits on a fairly modest sized plot. The kennels are located in the rear garden, along the southern boundary. The applicants garden is approximately 38 metres in width and is attached immediately to the neighbours garden to the west specifically.

Turning to the third criterion, there are currently 10 breeding dogs and 15 puppies for sale on the site. The scale of the dog keeping is excessive in view of the residential character of the property.

The neighbouring properties are not sufficiently separated from the kennels to ensure dog barking will not cause any harm upon the amenity of their occupiers.

The objections received clearly demonstrated that the current dog activity is at odds with the residential standards. SHDC Environment Health Officer agrees in this regard and advises that the property does not appear to be in a suitable location for the breeding of dogs, particularly if it proposed that some of the dogs would be kept outside. Further complaints were also received to this department raising this issue.

Turning to the last criterion, the proposal is more commercial and not for private domestic purposes. SHDC Environment Health has persisted in objecting the keeping of dogs as it stands on the grounds of high number of animals and close proximity to other residential properties.

As such the proposal is contrary to Paragraph 130 of National Planning Policy Framework (2021) and Policies 2 and 3 of South East Lincolnshire Local Plan (2019).

Parking/highway implications

Residents have raised objections on grounds that the dog breeding business results in an increase in traffic movement in the street. The concerns are noted, however, it is not considered that there would be a significant increase in traffic on a daily basis. In addition, the site benefits from a large driveway so there is sufficient space for visitors to park. On this basis the Local Highway Authority has not raised any objections to the scheme.

Other matters

A number of residents have raised concerns with regards to increased the garden not being secure enough to keep dogs and the fact the applicant does not appear to be on the electoral register therefore it is doubtful the applicant owns the site. The concerns are noted, however the site is enclosed by a high level boundary fence which is considered sufficient. With regards to property ownership, the applicant has provided evidence that she does own the site.

Planning Balance

The keeping of up to 10no breeding adult dogs plus additional puppies for sale at such location easily undermines the residential amenity of the neighbouring residents. The separation distances with the nearest dwellinghouses are not sufficient to prevent unacceptable impact upon other residents by reason of noise.

Conclusion

Taking into account the considerations above, the current use for keeping such number of dogs is deemed to be contrary to Policies 2, 3 and 30 of the South East Lincolnshire Local Plan (SELLP), 2019; and also Sections 12 of the National Planning Policy Framework (NPFF), 2021.

Additional Considerations

Public Sector Equality Duty

In making this decision the Authority must have regard to the public sector equality duty (PSED) under s.149 of the Equalities Act. This means that the Council must have due regard to the need (in discharging its functions) to:
A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s).
C. Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in s.149. It is only one factor that needs to be considered, and may be balanced against other relevant factors.

It is not considered that the recommendation in this case will have a disproportionately adverse impact on a protected characteristic.

Human Rights

In making a decision, the Authority should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as South Holland District Council to act in a manner that is incompatible with the European Convention on Human Rights. The Authority is referred specifically to Article 8 (right to respect for private and family life) and Article 1 of the First Protocol (protection of property).

It is not considered that the recommendation in this case interferes with local residents' right to respect for their private and family life, home and correspondence, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general public interest and the recommendation is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

RECOMMENDATION

The application is refused under delegated powers.