

DECISION DELEGATED TO DEVELOPMENT MANAGER

Application No: H09-0598-20 **Applicant:** Mrs Richardson
Proposal: Use of site to keep more than 6 dogs (retrospective)
Location: 121 Battlefields Lane North Holbeach Spalding
Terminal Date: 16th November 2020

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 2019

Paragraph 127 of Section 12. Achieving well-designed places

Representations:

	Object	Support	No Obj.	Comments
PARISH COUNCIL	0	0	0	0
WARD MEMBER	0	0	0	0
HIGHWAYS & SUDS SUPPORT	0	0	0	1
SHDC INTERNAL	1	0	0	0
RESIDENTS	6	0	0	0

CASE OFFICER ASSESSMENT

Proposal

This is a full planning application that seeks retrospective permission for the use of site to keep more than 6 dogs at 121 Battlefields Lane North, Holbeach, Spalding

Site Description

The area is predominantly residential within a wider geographical context characterised by open agricultural fields. The site forms part of ribbon development along Battlefields Lane North and the adjacent Washway Road departing from A17.

The application property is a two-storey semi-detached dwellinghouse. There are two further pairs to the north-east. Beyond that, detached bungalows shape the remainder of the frontage. Vast land laid in grass extends opposite the road. To the south-west, there is a large industrial site where an application to convert the buildings into 8 new dwellings was recently refused.(see application ref. H09-0209-20). To the north-west, a small field also adjoins the property which has a Public footpath which runs directly adjacent to the length of the property

The curtilage boundaries define a very long linear narrow site. A nearly 2 metres timber closeboarded fence encloses most of the rear garden. A few metres of the north-western boundary has wire mesh fencing of tantamount height. Approximately 52 metres from the rear elevation of the house, there is an enclosed area mostly for the keeping of the dogs. One large timber outbuilding contains most of the kennels. A smaller timber structure to the front is also used for the dogs. To the rear, there is a chicken run and a dog run. Further land within the curtilage extends to the rear of this enclosed area.

History

H09-1053-18 - Use of property to keep more than 6 dogs - Refused.

Consultation Responses

Members of the public

Six different residents have raised objection against the keeping of the dogs in the following terms:

- Persistent dog barking, including at unsociable hours
- Further nuisance occur at the time the applicant shout the dogs to keep them quiet.
- The animals are sometimes kept within the property when excessive barking occurs.

SHDC Environmental Health

Objects to the application.

"Given the proximity to neighbouring properties I feel this is an unsuitable location for a large number of dogs. I also confirm that we have received complaints of noise from excessive dog barking from the property"

Planning Considerations

Principle of development

The site is within the countryside as set out in the South East Lincolnshire Local Plan (SELLP), 2019. The principle of accommodating kennels as an incidental use to the enjoyment of a dwelling house is acceptable. However, material planning considerations will contribute to ascertain whether the keeping of more than 6 adult dogs is or not sympathetic with the predominant use at such a location.

Section 38 (6) of the Town and Country Planning Act, as amended by the 2004 Act, states that the determination must be made in accordance with the development plan unless material considerations indicate otherwise. The key material considerations are addressed below.

Design and layout

The rear garden of the property is spacious albeit restricted in width. The keeping of the dogs occurs approximately 52 metres to the rear of the house. The fence enclosing the area is reinforced with further panels in order to mitigate the impact of noise from dog barking. There is one large timber outbuilding at the centre of the dog area. Kennels are inside this unit. A smaller timber unit to the front is also used as a kennel. To the rear, there is a chicken run and a dog run.

All development was carried out after the refusal of application ref. H09-1053-18 which is deemed an improvement to the previous untreated land. Despite such upgrading works, there is still a severe concern about the noise impact of dog barking upon the amenity standards of house occupiers nearby.

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 127 of National Planning Policy Framework (NPPF), 2019 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).

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, 44 at one point, 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 kennel area is approximately 47 metres to the adjoining semi-detached property (No.123); 32 metres to No. 125; 37 metres to No. 127; 40 metres to No. 129 and 45 metres to No. 131. At such separation distances, the current 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 is a fairly modest semi-detached dwelling but is set on a deep plot, even if it is not especially wide. However the kennels back onto the garden of No. 123 and are concentrated in the southern half of the garden, closest to the neighbouring dwellings. The frontage development is positioned from south-west to north-east which means the kennels are even closer to the other pairs of semi-detached properties, from No. 125 to 131.

Turning to the third criterion, there are currently 10 dogs and breeding is undertaken on the site. The scale of the dog keeping is excessive in view of the residential character of the area. 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. Further complaints were also received to this department raising this issue.

Turning to the last criterion, the applicant is plainly devoted to their dogs. Proactivity has been shown in light of the resident objections and SHDC Environment Health concerns. A detailed management plan was submitted in addition to noise mitigation strategy. Notwithstanding this,

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.

Conclusion

Albeit non-commercial, the keeping of 10 dogs at such location easily undermine the residential amenity of the neighbouring residents. Despite the recent development to adequate the land for an appropriate breed of the dogs, the separation distances with the nearest dwellinghouses are not sufficient to prevent unacceptable impact upon other residents by reason of noise. Further noise mitigation measures have been provided but concerns persist on the conflict between noise pollution from dog barking and the living conditions of residents nearby.

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 (NPPF), 2019.

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.