DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H12-0581-24**	**Applicant:**	**G H Hoyles Ltd.**
Proposal:	Proposed Change of Use of agricultural land to dog exercise area and landscaping - approved under H12-0577-22. Modification of Conditions 2, 3, 4 and 5 relating to time limit, fencing and dog waste bins, number of dogs and hours of operation		
Location:	Monmouth Lane Lutton Spalding		
Terminal Date:	20th December 2024		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

01	Spatial Strategy
02	Development Management
03	Design of New Development
04	Approach to Flood Risk
28	The Natural Environment
30	Pollution
31	Climate Change and Renewable and Low Carbon Energy
32	Community, Health and Well-being
36	Vehicle and Cycle Parking
APPENDIX 6	Parking Standards

National Guidance

National Planning Policy Framework 2023

Section 6 - Building a strong, competitive economy
Section 8 - Promoting healthy and safe communities
Section 9 - Promoting sustainable transport
Section 11 - Making effective use of land
Section 12 - Achieving well-designed and beautiful places
Section 14 - Meeting the challenge of climate change, flooding and coastal change
Section 15 - Conserving and enhancing the historic environment

Planning Practice Guidance (PPG)

Representations:

	Object	Support	No Obj.	Comments
PARISH COUNCIL	0	0	0	0
WARD MEMBER	0	0	0	0

ENVIRONMENT AGENCY	0	0	0	1
HIGHWAYS & SUDS SUPPORT	0	0	0	1
HISTORIC ENVIRONMENT OFFICER	0	0	0	1
SOUTH HOLLAND INTERNAL DRAINAGE BOARD	0	0	0	1
SHDC INTERNAL	0	0	0	3
OTHER STATUTORY BODIES	0	0	0	1
RESIDENTS	2	0	0	0

CASE OFFICER ASSESSMENT

Proposal

This is a Section 73 application, relating to a Change of Use of agricultural land to dog exercise area and landscaping - approved under H12-0577-22. Modification of Conditions 2, 3, 4 and 5 relating to temporary time limit, fencing and dog waste bins, number of dogs and hours of operation.

The proposal seeks to vary Condition 2 of the original condition which limited the permission to one year. It seeks to vary Condition 3 to retain the details approved as part of H12-0188-23. It seeks to increase the number of dogs to 6 rather than 4 as in Condition 4 of the original approval. It also seeks to change the start time from 7.00am rather than 8.00am, to allow customers to walk their dogs before work, and end one hour later in the evenings at 8.00pm.

Site Description

This is a 2.37 hectare site currently in agricultural use south of Monmouth Lane, north of The Peele School in Lutton Marsh. This is an irregular shaped plot situated behind residential properties along Lutton Gowts. The site boundary adjoins the rear of residential gardens.

The site is on Grade 1 agricultural land which is the best and most versatile agricultural land.

The proposal is outside the settlement boundary of Long Sutton which is a Main Service Centre. The proposal is therefore within the countryside.

History

H12-0577-22 - Proposed Change of use of agricultural land to dog exercise area and landscaping. Approved 9th February 2023.

H12-0188-23 - Details of fencing (Condition 3 of H12-0577-22). Approved 10th July 2023.

Consultation Responses

The responses received from consultees during the initial consultation exercises, which can be viewed in their entirety through the South Holland website, can be summarised as follows:

Internal Drainage Board

Whilst the site in question lies within the Internal Drainage District of the South Holland Internal Drainage Board the proposed application does not meet our threshold for commenting as per our Planning and Byelaw Strategy. Therefore the Board has no comments to make.

Environment Agency

No comments.

Conservation Officer

No objections.

LCC Historic Environment

Proposal is unlikely to have an impact on significant archaeological remains. No further archaeological input is necessary for this application.

SHDC Environmental Protection

Asked for conditions to be applied:

1. No lighting (either temporary or permanent) shall be erected or utilised on site without prior consent in writing of the planning authority. Reason: In the interests of amenity. This condition is imposed in accordance with policies 2 and 3 of the South East Lincolnshire Local Plan, 2019.

2. The site shall only operate between the hours of 7am and 8pm Monday- Sunday. Reason: In the interests of amenity. This condition is imposed in accordance with policies 2, 3 and 30 of the South East Lincolnshire Local Plan, 2019.

3. No more than 6 dogs and 2 vehicles shall be present on the site at any one time. Reason: In the interests of amenity particularly in relation to noise. This condition is imposed in accordance with policies 2 and 3 of the South East Lincolnshire Local Plan, 2019.

Lead Local Flood and Highway Authority

No Objections

Having given due regard to the appropriate local and national planning policy guidance (in particular the National Planning Policy Framework), Lincolnshire County Council (as Highway Authority and Lead Local Flood Authority) has concluded that the proposed development would not be expected to have an unacceptable impact upon highway safety or a severe residual cumulative impact upon the local highway network or increase surface water flood risk and therefore does not wish to object to this planning application.

Public

This application has been advertised in accordance with the Development Procedure Order and the Council's Statement of Community Involvement. In this instance, two letters of objection have been received which raise some or all of the following points:

- Noise pollution,
- 7am & Max of 6 dogs not in keeping with consideration to nearby residents. Amendment will not promote good health or a good quality of life with the incessant noise of consistent barking dogs.
- Drawings indicate gates to be installed on entrance from Monmouth Lane. No details provided.
- Fencing to be installed from dog training car park fencing along eastern boundary to Monmouth Lane next to field and along boundary to Lutton Bank, no detail provided. Fencing used for secure area inappropriate in this area affecting local amenity in the open countryside location.
- Increased traffic and noise pollution, disturb local residents.

- Regular to have people arrive early or late, vehicles wait on road outside area to Monmouth Lane.

Planning Considerations

Evaluation - Section 73

The proposal relates to the variation of Conditions attached to permission H12-0577-22, through seeking permission under Section 73 of the Act. The purpose of an application made under Section 73 of the Town and Country Planning Act 1990 is to vary or remove conditions associated with an existing planning permission. These applications are used to allow for amendments to an approved scheme and can be made both retrospectively and prior to a permission being implemented, as long as the permission is extant.

The Act is very clear that: "On such an application the Local Planning Authority shall consider only the question of the conditions subject to which planning permission should be granted." As such, the Local Planning Authority are not able to revisit the principle of development and only matters relevant to the specific conditions can be considered. The effect of granting permission would be to issue a new permission with the conditions amended, together with any other relevant conditions from the original permission, or subsequent relevant revisions since this permission.

Planning practice guidance highlights that where less substantial changes are proposed, amending a proposal can occur through 'Amending the conditions attached to the planning permission, including seeking to make minor material amendments'.

The PPG clarifies that "Permission granted under Section 73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions. The new permission sits alongside the original permission, which remains intact and unamended. It is open to the applicant to decide whether to implement the new permission or the one originally granted". There is no statutory definition of a 'minor material amendment'; but this is likely to include any amendments where its scale and/or nature results "in a development which is not substantially different from the one which has been approved".

In this instance, the subsequent amendments, submitted under this Section 73 application, have not varied the description of development.

In the case of R (Vue Entertainment Limited) v City of York Council, it was concluded that the decision gives clear support for use of s.73 in respect of changes to condition which go beyond 'minor' amendments. It places a clear emphasis on preserving the precise terms of the grant. If an amendment to a condition can be made which keeps the description of the development intact it may well be appropriate to make such an application under a s.73, even if the affect of the change will be significant".

Evaluation

Section 38 (6) of the Planning and Compulsory Purchase Act 2004, as amended, requires that the Local Planning Authority makes decisions in accordance with the adopted Development Plan, unless material considerations indicate otherwise.

In this case, the adopted South East Lincolnshire Local Plan 2011-2036, adopted March 2019, forms the development plan for the District, and is the basis for decision making in South Holland. The relevant development plan policies are detailed within the report above.

The policies and provisions set out in the National Planning Policy Framework (December 2023) are also a material consideration in the determination of planning applications, alongside adopted Supplementary Planning Documents.

Furthermore, where a Neighbourhood Plan has been adopted, this alongside the adopted Local Plan, forms part of the Development Plan for the District, and must be considered when assessing development proposals. In this instance, no relevant neighbourhood plans have been adopted.

Principle of Development and Sustainability

The South East Lincolnshire Local Plan sets out the settlement hierarchy in respect of delivering sustainable development that meets the social and economic needs of the area whilst protecting

and enhancing the environment; in order to provide enough choice of land for housing to satisfy local housing need, whilst making more sustainable use of land and to minimise the loss of high-quality agricultural land by developing in sustainable locations and at appropriate densities.

Policy 1 of the South East Lincolnshire Local Plan sets out a spatial strategy for delivering sustainable development across South East Lincolnshire to 2036. Policy 1 (Spatial Strategy) expresses this sustainable framework of settlements, ranking the settlements deemed to be most sustainable in descending order.

The most sustainable locations for development are situated within the 'Sub-Regional Centres', followed by 'Main Service Centres'. Lower down the hierarchy in respect of sustainable development are areas of limited development opportunity including Minor Service Centres, with areas of development constraint comprising 'Other Service Centres and Settlements'. The countryside is at the bottom of the settlement hierarchy and represents the least sustainable location.

The application site in this instance is within the countryside at the bottom of the settlement hierarchy. Development in the countryside is only permitted subject to it being necessary in such a location and/or where it can be demonstrated that it meets the sustainable development needs of the area in terms of economic, community or environmental benefits. However, the principle of development has been established in the form of the original approval under reference H12-0577-22.

In addition, there are limitations as to where the proposed use could locate, given that there is a need to ensure there is enough physical space to allow for the exercising of dogs - i.e. it could not be located within an urban area very easily. There is no objection to Policy 1 of the South East Lincolnshire Local Plan (2019).

As such, the proposal is considered to be in accordance with the requirements of Policy 1 of the South East Lincolnshire Local Plan when viewed in principle. This is subject to the assessment against site specific criteria; including (but are not limited to) the impact of the proposal on the character or appearance of the area, impact on the residential amenities of neighbouring occupiers, impact on highway safety and flood risk, which are discussed in turn as follows.

Layout, Design and Consideration of the Character and Appearance of the Area

Section 12 of the National Planning Policy Framework (December 2023) specifically relates to 'Achieving well-designed and beautiful places' and details that "The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve" and as such, it is generally accepted that good design plays a key role towards sustainable development.

Paragraph 135, contained within Section 12 of the National Planning Policy Framework (December 2023), states that new development should function well and add to the overall quality of the area (including beyond the short term) and should be visually attractive as a result of good architecture and appropriate landscaping. This goes on to establish that it is important that new development should be of the highest quality to enhance and reinforce good design characteristics, and that decisions must have regard towards the impact that the proposed development would have on local character and history, including the surrounding built environment and landscape setting such as topography, street patterns, building lines, boundary treatment and through scale and massing.

Development proposals should also ensure that developments 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 South East Lincolnshire Local Plan outlines sustainable development considerations for development proposals, providing a framework for an operational policy to be used in assessing the sustainable development attributes of all development proposals. Furthermore, Policy 3 accords with the provisions of Section 12 of the National Planning Policy Framework, in that it requires development to comprise good design; identifying issues that should be considered when preparing schemes so that development sits comfortably with, and adds positively to, its historically-designated or undesignated townscape or landscape surroundings.

These policies accord with the provisions of the National Planning Policy Framework and require

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.

Proposals for new development would therefore require the aforementioned considerations to be adequately assessed and designed, including the siting, design and scale to be respectful of surrounding development and ensure that the character of the area is not compromised.

The dog exercise area was approved via a one year permission starting from when the details associated with Condition 3 were granted planning permission. The applicant wishes to make the use permanent, but with slightly different times - extended by 1 hour in the morning and 1 hour in the evening, providing a permitted use between 7am and 8pm. The existing permission is between 8am and 7pm Monday to Sunday.

The layout largely replicates that of the original permission, some play equipment is evident within the dog exercise area, but this is de mimimis. The surrounding fencing is of a type associated with rural animal enclosures. New post and rail fencing at a low level has been introduced along Monmouth Lane but is of a type that is rural in character and is of timber construction and is acceptable in design terms. The originally approved plans indicated planting of fruit trees and wildflower strips which contain the centralised dog exercise area. The present plans show less detail associated with fruit trees because many local residents objected to fruit trees being situated close to their back gardens. A management regime for the wildflower areas has been submitted which ensures that the wildflower strips are managed properly so that the site does not have vegetation that is excessive in height.

There is fencing around the dog exercise area as existing. At the time of the original approval, some local residents requested minimal fencing. This arrangement is proposed to continue. The location of the dog exercise area remains the same as originally approved. The metal gates that relate to the car parking area and dog exercise area are robust galvanised metal fencing similar to that fencing in animals. It is considered that the fencing will weather to appear as any other gate in a rural location and since it is set back from the road quite significantly, there would be no adverse impact on design terms. Conditions have been recommended in respect of the proposed boundary treatment.

The site has appropriate signage although at the time of the site visit other signage was evident not related to the use. An informative is suggested highlighting that signage should not clutter the site. This is not conditioned as control of advertisements is separate legislation.

The waste bin facilities comprise of a plastic bin which is in situ.

In terms of the wider layout of the scheme, it is similar to the approved application. Landscaping strips separate the use from these gardens providing some distance from neighbours.

Whilst a residential property towards the front of the site is immediately adjacent to the application site, the paddock to the south does not contain any residential properties. The general spacing of landscaping in relation to the dog exercise area is considered appropriate.

Amended plans have been submitted which clarify the extent of wildflower planting and number of trees. The revised landscaping is considered acceptable.

The layout varies in terms of proximity with neighbouring properties. Whilst one neighbour at the front of the site is immediately adjacent to the application site, the paddock to the south does not contain any residential properties. The properties Teaville, Bannockburn, Handsel, Sherland, Number 5 Lutton Gowts and Newhaven all have a further area of land which appears to be the garden area of Newhaven separating the site from these residential properties. Smaller gardens exist along the red line boundary between 90 to 104 Lutton Gowts. The areas of separation from neighbours is considered appropriate.

Taking account of the design, scale and nature of the development, as detailed above, the proposal is considered to be acceptable subject to conditions. The proposal would not cause an adverse impact to the character or appearance of the area and would therefore be in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan and Section 12 of the National Planning Policy Framework (December 2023).

Impact on Residential Amenity/Land Users

Paragraph 135 of the National Planning Policy Framework (December 2023) states that development should 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; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

Policies 2 and 3 of the South East Lincolnshire Local Plan (2019) sets out that residential amenity and the relationship to existing development and land uses is a main consideration when making planning decisions. Policy 30 relates to pollution including noise.

It is noted that there have been 2 objections associated with this current application, which cite noise and disturbance, and effects on amenity. Noise was observed at the time of the officer site visit, as was the number of dogs being brought onto the site exceeding 4. However, to what extent this is an isolated or regular incident remains uncertain.

The proposed increase in the number of dogs is to 6 in total, and is a concern to some objectors. These comments are noted and have been taken into account. Environmental Protection do not object to the proposals.

Further information has been submitted relating to the way the site is managed to ensure that a maximum of 6 dogs will be on site at any one time, including any waiting in cars. These management controls are to be undertaken at the point of booking. This involves the procedure that the clients booking the dog exercise area must list the number of dogs being exercised at any one time. Signage is also suggested which makes it clear only 6 dogs can be exercised at any one time with no additional dogs waiting in the car.

Measures have been put in place for neighbours to report noisy activities or also if the number of dogs are exceeded. A condition is suggested limiting the number of dogs on the site to 6, together with ensuring the improved management of the site is linked to any permission.

The maximum number of dogs needs to be balanced against the business need to operate a viable business, and up to 6 dogs is considered a reasonable level for these types of uses. The extension of opening hours is also for business reasons to allow customers to walk their dogs before they go to work, or to exercise them after work. These details are considered satisfactory.

In amenity terms, subject to the management of the facility, it is not considered that the addition of 2 extra dogs at any one time, the extended opening hours and the appropriate management of the site, would cause such noise and disturbance to local residents as to create a material impact, nor does the extension of opening times as proposed to be extended taking into account the amount of space the dog exercise area occupies. The objections are noted, but there has not been a large volume of objections from multiple households received since the use started operating. As a result, it is concluded that the increased number of dogs and increased opening times are considered to not significantly adversely affect nearby residential occupiers.

As detailed above, the scale and design of the proposal is considered to be such that there would not be significant or unacceptable impact on the residential amenities of the occupiers of adjacent properties or land users, when also taking account of the conditions recommended. As such, the proposal is considered to accord with the provisions of Section 12 of the National Planning Policy Framework (December 2023), and Policies 2, 3 and 30 of the Local Plan.

Highway Safety and Parking

Section 9 of the National Planning Policy Framework (December 2023) specifically relates to 'Promoting sustainable transport'. Paragraph 115 of the National Planning Policy Framework (December 2023) advises that "development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe".

In respect of highway matters, Policy 2 details that proposals requiring planning permission for development will be permitted provided that sustainable development considerations are met, specifically in relation to access and vehicle generation. Policy 3 details that development proposals will demonstrate how accessibility by a choice of travel modes including the provision of public transport, public rights of way and cycle ways will be secured, where they are relevant to the proposal.

Furthermore, Policy 36, to be read in conjunction with Appendix 6 of the South East Lincolnshire Local Plan, sets out minimum vehicle parking standards.

Access to the site is via Monmouth Lane down a track with parking just before the gated exercise area next to the gates towards the middle of the field. There is space for more than 2 cars. Environmental Protection state that there should be no more than 2 cars on site at any one time. The Local Highway Authority raise no objections to the proposals.

Whilst it is accepted that some objectors cite increased traffic, it is not considered that the proposed changes would be so severe that would result in increased traffic that could be demonstrated that the impact on the highway network is severe, or would affect highway safety or parking. The key to the lack of an impact is the use of booking slots only, allowing only 6 dogs on site, that a booking system includes a 10 minute gap for changeover times. It is considered that the management of the site does not adversely affect the highway network.

The proposal would therefore be acceptable and would not have an unacceptable adverse impact on highway safety in accordance with Local Plan Policies 2, 3 and 36, and Section 9 of the National Planning Policy Framework (December 2023).

Flooding Considerations

Section 14 of the National Planning Policy Framework (December 2023) requires development plans to "apply a sequential, risk-based approach to the location of development - taking into account all sources of flood risk and the current and future impacts of climate change - so as to avoid, where possible, flood risk to people and property. They should do this, and manage any residual risk, by: a) applying the sequential test and then, if necessary, the exception test as set out below".

Paragraph 168 details "The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding", with the sequential approach being required in areas known to be at risk now or in the future from any form of flooding, with the flood risk assessment being the tool to demonstrate this.

If, following the application of the Sequential Test, it is not possible, consistent with wider sustainability objectives, for the development to be located in zones with a lower probability of flooding, the Exceptions Test can be applied if appropriate.

The site lies within Flood Zone 3 of the Environment Agency's Flood Maps. These have been created as a tool to raise awareness of flood risk with the public and partner organisations, such as Local Authorities, Emergency Services and Drainage Authorities. The Maps do not take into account any flood defences.

Annex 3 of the National Planning Policy Framework, December 2023 classifies land uses according to their vulnerability in relation to flooding. Less vulnerable uses include buildings used for shops, and water compatible development includes amenity open space, nature conservation and biodiversity.

It is considered that the dog exercise area is akin to a water compatible development, and will be left predominantly open apart from some fencing. Given this, it is not considered that the proposal significantly conflicts with Policy 4 of the South East Lincolnshire Local Plan (2019).

Overall, when considering the development on balance, it is considered that given the mitigation measures detailed and recommended by condition, it is considered that the proposal accords with Policies 2, 3 and 4 of the South East Lincolnshire Local Plan and the intentions of the National Planning Policy Framework in this regard.

Impacts of Climate Change

In respect of the climate emergency, Section 14 of the National Planning Policy Framework (December 2023) states that new development should be planned for in ways that: 'avoid increased vulnerability to the range of impacts arising from climate change' with care taken to manage and adapt where development is brought forward in areas which are vulnerable; and that 'can help to

reduce greenhouse gas emissions, such as through its location, orientation and design'.

There is no aspect of the proposal that worsens climate change. Keeping the land open is likely to either be neutral or positive for climate change aspects.

Taking the above into account it is considered that given the details submitted and those required by suitably worded condition, the proposal is acceptable in this regard. The proposal would therefore be in accordance with Policy 31 of the South East Lincolnshire Local Plan and Section 14 of the National Planning Policy Framework (December 2023).

Planning Balance

As detailed above, Section 38 (6) of the Planning and Compulsory Purchase Act 2004, as amended, requires that the Local Planning Authority makes decisions in accordance with the adopted Development Plan, unless material considerations indicate otherwise.

The proposal represents appropriate development for a countryside location and the principle has been established from the initial permission. The development hereby proposed does not materially harm the character or appearance of the locality, or amenity of nearby residents, and provides adequate parking, whilst conforming with the South East Lincolnshire Local Plan and the provisions of the National Planning Policy Framework, December 2023 when viewed as a whole.

In this instance, there are no material considerations that weigh against the proposal and as such, the planning balance is in favour of the development.

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.

Conclusion

Planning Policy Guidance states:
"it will rarely be justifiable to grant a second temporary permission (except in cases where changing circumstances provide a clear rationale.....Further permissions can normally be granted permanently or refused if there is clear justification for doing so."

The existing use has operated for a year and Environmental Protection do not object to the use subject to conditions.

The extension of the hours by one hour in the morning and one hour in the evening supports the continuation of the business.

The removal of Condition 2 relating to a permanent consent is considered reasonable.

Increasing the number of dogs to 6 is reasonable given the size of the field and that some distance has been introduced separating the use from the gardens of nearby residential properties. This is also becoming the standard under which 6 dogs are considered to be the norm.

Recommendation

It is recommended that planning permission be approved under delegated authority.