

DECISION DELEGATED TO HEAD OF PLANNING

Application No:	H13-0734-22	Applicant:	Miss E Tamutyte
Proposal:	Use of site to keep more than 6 dogs, including the sale of puppies and retired dogs and erection of kennels and grooming area- retrospective		
Location:	West View Hall Gate Moulton		
Terminal Date:	3rd October 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	1	0	0	0
HIGHWAYS & SUDS SUPPORT	0	0	0	1
SHDC INTERNAL	1	0	0	0
RESIDENTS	2	0	0	0

CASE OFFICER ASSESSMENT

Proposal

This is a full planning application that seeks retrospective permission to keep up to 15no dogs on the site.

The previous scheme (H13-1275-21) was refused due to noise impacts on neighbouring amenity.

This application proposes to relocate the kennels to the end of the garden and also install equipment to discourage dogs from barking. The applicant has advised that the kennels are purpose built and therefore reduce noise levels.

Site Description

The site is situated in the countryside according to the South East Lincolnshire Local Plan, 2019. The detached bungalow is on the eastern side of Hall Gate, approx. 2km south of the settlement of Moulton. To the west of the property on the opposite side of the road there is an agricultural farm and to the north are two dwellings situated on similar sized plots. There are open fields to the east.

History

H13-0298-22 - Erection of boundary fence over 2m high - retrospective (part re-submission of H13-1275-21) - Approved

H13-1275-21 - Erection of boundary fence over 2m and the keeping of more than 6 dogs - retrospective - Refusal

H13-0327-21 - New front boundary wall and metal infill panels and sliding gate. New domestic waste treatment plant to rear garden - Approved

Consultation Responses

Local Highway and Lead Local Flood Authority

Does not wish to restrict the grant of permission.

SHDC Environmental Protection

Objects to the application given the proximity to neighbouring properties and concerned about the potential impact of noise from dog barking. A complaint of noise from excessive dog barking has previously been received.

Cllr A R Woolf

Objection as the application seems near identical to the previously refused scheme other than the increase in dogs.

Moulton Parish Council

Objections on grounds that's the site is being changed from residential to commercial and trade waste would be generated from the dogs with no means of disposing it.

Local residents

2no letters of objection have been received citing the following concerns:

- The kennels are located less than 200mm from the boundary
- There are 9 kennels on the site
- The kennels have already been completed
- The kennels are higher than the boundary fence
- Where will the puppies be housed if there are only 9 kennels
- The applicants has not mentioned that they hire out 4 or 5 dogs for stud
- Trees have been removed in the front garden to make more room for parking
- There's no mention of trade effluent disposal
- Unpleasant odours from the kennels

- Noise from dogs and owners shouting as well as loud music and pressure washing
- Animal breeding on the site and black bags being left outside on refuse collection days has resulted in an increase in vermin activity
- Parking of cars outside the applicants' property has made it difficult to see when pulling out of my 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 keeping dogs on the site is acceptable. However, material planning considerations will contribute to ascertain whether or not the keeping of more than 6 adult dogs is 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

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.

A local neighbour has raised concerns that the kennels are higher than the boundary fence. The concerns raised are noted, however, the kennels are only slightly higher than the boundary fence therefore they do not appear overly prominent. In addition, they are sited on the rear garden so there are only glimpsed views from the open countryside to the rear. As such no significant unacceptable impact is considered to result on the character of the area.

With regards to keeping more than 6 dogs on the site, although there is screening in the rear garden the proposal is still considered to result in noise impacts and unacceptably changes the character of the site/area. The applicant previously stated that the dogs are for domestic purposes only but it appears they are running this on a commercial basis. Impact on neighbouring amenity is further discussed below.

As such the kennels are considered acceptable, however, 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).

2no letters of objection have been from nearby neighbours siting concerns that the proposal will result in the loss of the existing quiet rural setting, unacceptable noise levels, an increase in vermin activity on the site and the close proximity of the kennels to the adjoining neighbour. 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 neighbour to the north (Idunno) and some 18 metres from the neighbour at (Redcar). At such separation distances, the number of dogs is sufficiently high to create severe disturbance to the residents of the nearest dwellings. The applicant has stated that the dogs would be kept in the kennels to minimise noise, however, this is not considered sufficient in this instance given the extreme close proximity to neighbouring dwellings.

Turning to the second criterion, the application property sits on a fairly modest sized plot. The kennels are in the rear garden, close to the shared boundary with the adjoining neighbour (approximately 400mm although this distance has been debated by a neighbour). In any case the kennels are extremely close to this neighbour's rear garden which is also a modest size.

Turning to the third criterion, the applicant has advised that there would be up to 15 dogs 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. Further complaints were also received to this department raising this issue.

Turning to the last criterion, the applicant is plainly devoted to their dogs, however, there appears to be a commercial business rather than purely domestic. Proactivity has been shown in light of the resident objections and SHDC Environment Health concerns. 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).

Other matters

One neighbour has raised concerns that trees have been removed in the front garden to make more room for parking - This is noted, however, the applicant can remove trees and create/increase the parking within the site without planning permission provided they use a porous material if the area covered is over 5 square metres.

Two neighbours have raised concerns of how dog waste is being disposed of. No details have been provided with regards to this and given the application is refused it is not deemed necessary to request this information.

One neighbour has raised concerns that cars are often parked outside the applicants' property which makes it difficult to see when pulling out of the neighbouring property. The concerns are noted, however, there are no yellow lines outside the applicants house therefore anyone can legally park there. In addition, the Local Highway Authority has not raised any concerns with regards to highway safety.

Planning Balance

The keeping of up to 15no dogs at such location easily undermine 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 (NPPF), 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.