DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H13-1275-21**	**Applicant:**	**Mr & Mrs M Legavicius**
Proposal:	Erection of boundary fence over 2m and the keeping of more than 6 dogs - retrospective		
Location:	West View Hall Gate Moulton		
Terminal Date:	7th March 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	0	0	0	1
WARD MEMBER	0	0	0	1
HIGHWAYS & SUDS SUPPORT	0	0	0	1
SHDC INTERNAL	0	0	0	1
RESIDENTS	2	0	0	0

CASE OFFICER ASSESSMENT

Proposal

This is a full planning application that seeks retrospective permission for the erection of a 2.02 metres high fence along the north, east and western boundaries. The scheme also proposes to keep 8no dogs on the site.

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.

The property currently has a low level wall and pillars to the front boundary. Beyond this is a large front grassed and gravelled area which is used for parking. Access to the rear is down the southern side of the property and the rear garden is large.

History

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.

Cllr A R Woolf

Comments have been received from residents raising concerns regarding this application therefore it is requested that this application is debated at Planning Committee.

Moulton Parish Council

Objects on grounds that the fence will set precedence and concerns that keeping more than 6 dogs at the property will be for breeding kennels for commercial means.

Local residents

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

The proposal will result in the loss of the existing quiet rural setting
The proposals will expand the applicants dog breeding business
Increasing the number of dogs will increase noise levels
Animal breeding on the site has resulted in an increase in vermin activity
The fence results in overbearing impact
There is an intolerable level of noise disturbance from the existing number of dogs on the site

SHDC Environmental Protection

Objects to the application as given the proximity to neighbouring properties and the fact a noise complaint has been received.

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 as an incidental use to the enjoyment of a dwelling house 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 with the proposed fence, specifically in relation to their own boundary fence and the fact the applicants fence is higher. The concerns raised are noted, however, the proposed fence is only marginally higher than what the applicant could erect under permitted development. As such the scheme could not reasonably be resisted. In any case, the fence is not considered to result in any significant unacceptable impact 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. Impact on neighbouring amenity is further discussed below.

As such the fence is 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, it will expand the applicants dog breeding business with noise levels also increasing, breeding animals has resulted in an increase in vermin activity on the site, the fence results in overbearing impact and there is intolerable level of noise disturbance from the existing number of dogs on the site. 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.

Turning to the second criterion, the application property sits on a fairly modest sized plot. The exact location of the kennels has not been specified but it is assumed they are in the rear garden. The applicants garden is approximately 16 metres in width and is attached to the neighbours garden.

Turning to the third criterion, there are currently 8 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. 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).

Planning Balance

Albeit non-commercial, the keeping of 8 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 (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.