DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H23-0036-23**	**Applicant:**	**Mundicao Kennels**
Proposal:	Change of use from agricultural, business and residential use to kennels and dog training including new kennels, conversion of container into reception and conversion of garage into food preparation and storage. Previously approved under H23-0755-21. Modification of Condition 1 to allow permanent planning permission.		
Location:	The Melrose Dowsdale Bank Shepeau Stow		
Terminal Date:	14th April 2023		

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 2 - Achieving sustainable development
Section 4 - Decision-making
Section 6 - Building a strong, competitive economy
Section 9 - Promoting sustainable transport

Representations:

	Object	Support	No Obj.	Comments
PARISH COUNCIL	0	1	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				

	1	0	0	1

CASE OFFICER ASSESSMENT

PROPOSAL

Planning permission was granted under H23-1253-18 for change of use from agricultural, business and residential to kennels and dog training including new kennels, conversion of container into reception and conversion of garage into food preparation and storage (part retrospective) at The Melrose, Dowsdale Bank, Shepeau Stow.

A Section 73A application was made under reference H23-0313-20 to modify condition 1 to allow an extension of time of the planning permission. A further temporary permission was granted until 31 August 2021.

A further Section 73A application was made under reference H23-0755-21 to modify condition 1 to allow a further extension of time. A further temporary permission was granted until 11 March 2023.

This application seeks permission under section 73A of the Town and Country Planning Act 1990 to remove Condition 1 of H23-1253-18 to make the use permanent.

SITE DESCRIPTION

The site is outside of the settlement boundary for Shepeau Stow and the surrounding area is predominantly rural. There are no immediate neighbours to this particular dwelling as the built form is well spaced out in this rural locality, however the landscape is very open and dwellings can be seen along Dowsdale Bank. The site benefits from a mature and high hedgerow to the side on which the nearest neighbour resides which provides a good level of screening from the dwelling and its extensive rear garden/land. The remainder of the boundary is a mixture of hedgerow and newly installed close boarded fencing. The site can be described, on balance, as being very well screened.

HISTORY

H23-0755-21 - Change of use from agricultural, business and residential to kennels and dog training including new kennels, conversion of container into reception and conversion of garage into food preparation & storage - approved under H23-0313-20. Variation of Condition 1 to allow a further extension of time - Approved

H23-0313-20 - Change of use from agricultural, business and residential to kennels and dog training including new kennels, conversion of container into reception and conversion of garage into food preparation and storage (part retrospective) - approved under H23-1253-18. Modification of Condition 1 to allow an extension of time of the planning permission - Approved

H23-1253-18 - Change of use from agricultural, business and residential to kennels and dog training including new kennels, conversion of container into reception and conversion of garage into food preparation and storage, part retrospective - Approved

H23-1272-16 - Change of use of land and creation of hardstanding for the open space storage of vehicles associated with family catering business (retrospective) (renewal of previously approved application reference H23-0801-12) - Approved

H23-0801-12 - Change of use of land and creation of hard standing for the open storage of vehicles associated with family catering business (retrospective) (re-submission of H23-0757-11) - Approved

H23-0757-11 - Change of use of land and creation of hardstanding for the open storage of vehicles associated with family catering business (retrospective) - Refused

REPRESENTATIONS

Whaplode Parish Council

Supports the application.

SHDC Environmental Protection

Following site monitoring the volume and frequency of dog barking is not considered to constitute a statutory noise nuisance.

LCC Highways/SuDS

No objection as the purpose of the time limit placed upon the original Consent was to allow further assessment to be made of the environmental impact of the operation of the kennels upon the amenity of neighbours, rather than to allow further assessment of any highway safety or capacity impact.

South Holland IDB

Requests ground investigation and infiltration testing to be carried out in order to ensure the proposed drainage strategy is suitable. If (following testing) a strategy wholly reliant on infiltration is not viable and a surface water discharge is proposed to a watercourse, then the proposed development will require land drainage consent in line with the Board's byelaws (specifically byelaw 3). Any alterations to a watercourse will require consent from the Board Byelaw 4).

Public

3 letters of objection (2 from the same neighbour) have been received siting the following concerns:

Noise and disturbance from dogs and people shouting;
The kennels were built and the business established without planning permission;
The business is being operated outside permitted days/hours;
Additional traffic on an already failed and poor road system;
Noise pollution from the animals throughout the night;
Welfare of the animals;
Concerns of how noise has been monitored.

PLANNING CONSIDERATIONS

Principle of development

The principle of using the site for dog training, kennels and food preparation was approved and established by virtue of the previous approval, ref. H23-1253-18 and subsequent Section 73A applications under ref H23-0313-20 and H23-0755-21.

No variation of the current use is being proposed with this application. The key issue of this application is to ascertain whether the use may be made permanent given its operation during the period of the temporary permission.

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 detailed below.

Residential amenity

Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019 (SELLP) indicate that proposals requiring planning permission for development will be permitted provided that sustainable development considerations are met in relation to, inter alia, residential amenity and impact upon neighbouring land uses by reason of noise, odour and disturbance. Likewise, Policy 30 states that development proposals will not be permitted where, taking account of any proposed mitigation measures, they would lead to unacceptable adverse impacts, inter alia, upon the amenities of the area by way of noise.

3 letters of objection have been received (2 from the same neighbour) siting concerns of noise and disturbance relating to the dog training and kennels, kennels were built and the business established without planning permission, the business is being operated outside permitted days/hours, additional traffic on an already failed and poor road system, noise pollution from the animals throughout the night, welfare of the animals and concerns of how noise has been monitored by Environmental Protection. The concerns are noted, however, retrospective permission was sought and granted for the kennels and the business, albeit temporary. With regards to concerns the business has been operating outside permitted days/hours, no complaints have been received in this respect therefore there isn't sufficient evidence to take enforcement action for breach of conditions. Concerns have also been raised in respect of additional traffic on an already failed and poor road system. The concerns are noted, however, the Local Highways Authority did not raise any objections at the time of the original planning permission or to any subsequent applications.

With regards to concerns of noise and disturbance, these are noted and the site has been monitored by Environmental Protection to establish whether there is an ongoing issue with excessive dog barking from the premises. One of the local residents also raised concerns with how the site has been monitored. Following monitoring of the site Environmental Protection has advised that whilst there have been periods of dog barking captured on the recording equipment the volume and frequency would not constitute a statutory noise nuisance. Attended noise monitoring has also been undertaken at various times of the day and on a number of different days of the week. To date the Environmental Protection Officer has advised that he has not witnessed excessive noise from dog barking from the kennels. It is appreciated that the situation may change depending on the dogs that are being kennelled or trained at any given time but currently there is insufficient evidence of excessive barking or barking that would constitute an actionable nuisance.

The business has been operating for 4 years and whilst it is accepted that during the first year of business the noise impact of the dog barking and disturbance associated to the dog training and kennels could not be accurately assessed due to the pandemic, the business has since been operating after Covid restrictions were lifted and no evidence has been received of significant noise impacts as advised by the Environmental Protection Officer. In addition, the limited number of classes/operating hours ensures that any noise generated from the site is within acceptable tolerances.

The other conditions attached to the original planning permission which restrict the number of dogs on the site and training hours will be carried over to ensure that no exacerbation of noise and disturbance will occur which otherwise would significantly harm the amenity standards of the residents nearby.

Taking the above factors into account and the scale of the development, it is considered that on balance the proposal will not materially harm the amenity of nearby residents in terms of noise and general disturbance. In this respect, the proposal satisfactorily accords with Policies 2, 3 and 30 of the SELLP (2019).

Highway safety

Paragraph 111 of the National Planning Policy Framework (NPPF), 2021 sets out 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.

Concern has been raised by a local resident that the business creates additional traffic on an already failed and poor road system.

The concerns are noted, however, highway safety was not deemed to be an issue at the time of the original application. The Highways Authority have been consulted on the current application and no objection has been made in relation to highway safety.

In summary, it is not considered that the proposal will have an unacceptable impact on highway safety or that the residual cumulative impacts on the road network would be severe. There is therefore no conflict with Paragraph 111 of the NPPF (2021).

Planning Balance

This application seeks removal of the time condition to allow permanent use of the site for dog

training, kennels and food production.

The principle of the use was approved in the previous application, thereby no further assessment has been made in this respect.

In regard to residential amenity, a number of objections have been received stating that noise and disturbance has been ongoing since the previous permission was granted. SHDC Environmental Protection has not raised any objections to the proposal to remove the time condition for the existing number of dogs on the site. Given the business has been operating since 2018 and Environmental Protection has advised that although they have received complaints they have not had sufficient evidence to warrant formal action. As such it is considered acceptable to allow the removal of the time condition.

In terms of highway safety, the Highways Authority have been consulted on this application and have raised no objections.

Conclusion

The proposal is therefore considered to be in accordance with Policies 2, 3 and 30 of the South East Lincolnshire Local Plan (2019), as well as Section 12 of the National Planning Policy Framework (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 can be approved under delegated powers.

The application was considered by Chairman's Panel on 31/03/23 who accepted the decision could be delegated .