

DECISION DELEGATED TO HEAD OF PLANNING

Application No:	H23-0166-26	Applicant:	Mundicao Boarding Kennels
Proposal:	Extension to building 1 to provide four additional kennels and new building to provide ten kennels. Cessation of dog training - approved under H23-0401-25. Modification of Condition 7 to allow for off site Biodiversity Net Gain Mitigation		
Location:	The Melrose Dowsdale Bank Shepeau Stow		
Terminal Date:	1st May 2026		

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
07	Improving South East Lincolnshire's Employment Land Portfolio
30	Pollution
36	Vehicle and Cycle Parking
APPENDIX 6	Parking Standards

National Guidance

National Planning Policy Framework December 2024

Section 2 - Achieving sustainable development
 Section 4 - Decision-making
 Section 6 - Building a strong, competitive economy
 Section 9 - Promoting sustainable transport
 Section 12 - Achieving well-designed places

Representations:

	Object	Support	No Obj.	Comments
PARISH COUNCIL	0	1	0	0
WARD MEMBER	0	0	0	0
OTHER STATUTORY BODIES	0	0	0	1
RESIDENTS	1	0	0	0

CASE OFFICER ASSESSMENT

Proposal

This is a Section 73 application seeking to modify Condition 7 of H23-0401-25 to allow for off site biodiversity net gain mitigation, as opposed to on site provision.

Site Description

The site lies outside of the settlement boundary for Shepeau Stow and the surrounding area is predominantly rural. There are no immediate neighbours to this particular dwelling or application site, 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

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

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

H23-1272-16 - 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

H23-1253-18 - 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

H23-0313-20 - 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

H23-0755-21 - 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

H23-0036-23 - 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 - Approved

H23-1090-23 - Seven additional kennels for business use and use of store as domestic residential garage in association with The Melrose - Approved

H23-0401-25 - Extension to building 1 to provide four additional kennels and new building to provide ten kennels. Cessation of dog training - Approved

Consultation Responses

Whaplode Parish Council

No comment.

Ecology

Overall, the biodiversity assessment and metric calculations appear rigorous, and we can have confidence in their conclusions. In this case the metric indicates that 10% mandatory net gain cannot be achieved onsite, and therefore the proposals require 0.12 area-habitat units and 0.01 hedgerow units off-site.

These will need to be secured pre-commencement and can be achieved via 2 routes:

1. Bespoke habitat creation/enhancement could be undertaken by the applicants on land they own elsewhere or in agreement with another landowner. To discharge the biodiversity gain condition the applicants would have to secure the appropriate habitat creation/enhancement by either entering a section 106 agreement with the local authority or through undertaking a conservation covenant with a responsible body pre-commencement.

2. The applicants could purchase the appropriate number of units from an off-site habitat bank and evidence this to the authority pre-commencement. This can be achieved through the applicants contacting an off-site unit provider, aka a habitat bank, (which has biodiversity units registered on the national gain-site registry) to arrange a contract for the applicant to purchase the necessary units from the habitat bank. The habitat bank then notifies the national gain-site register to allocate the specifically referenced units to the applicant. the authority requires 3 pieces of information to confirm the off-site unit allocation prior to discharging the biodiversity gain condition.

- a certificate/receipt/bill of sale that includes the unit allocation reference number(s) from the registered gain site to confirm the off-site unit purchase from the habitat bank.
- a finalized statutory metric that contains the off-site habitat information and habitat parcel references from the gain site. The applicant can obtain this information from the habitat bank by providing them with a copy of the statutory metric for them to complete. The finalized metric should then be submitted to the authority and posted on the public portal for transparency.
- the unit allocation must appear on the national gain site register prior to discharging the gain condition such that the authority can independently confirm that the unit allocation is valid.

Public Representation

This application has been advertised in accordance with the Development Procedure Order and the Council's Statement of Community Involvement. In this instance, one letter of representation has been received, these have been summarised below:

- Another 14 dogs is an alarming increase in the number of dogs already housed at the business, all within earshot of neighbours. What do the council plan to put in place to ensure that the peace and quiet of the hamlet is not ruined again (as has happened on numerous occasions in the past)?

Key Planning Considerations

Evaluation - Section 73

The proposal relates to the variation of Condition 7 of H23-0401-25, 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 relevant 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 effect of the change will be significant".

Biodiversity Net Gain

Schedule 7A of the Town and Country Planning Act 1990 (inserted by the Environment Act 2021) requires developers to deliver a minimum of 10% Biodiversity Net Gain using standardized biodiversity units measured by statutory biodiversity metrics. This is often referred to as the mandatory requirements for Biodiversity Net Gain.

"Under the statutory framework for biodiversity net gain, subject to some exceptions, every grant of planning permission is deemed to have been granted subject to the condition that the biodiversity gain objective is met ("the biodiversity gain condition"). This objective is for development to deliver at least a 10% increase in biodiversity value relative to the pre-development biodiversity value of the onsite habitat. This increase can be achieved through onsite biodiversity gains, registered offsite biodiversity gains or statutory biodiversity credits".

The biodiversity gain condition is a pre-commencement condition. This relates to a condition that seeks, once planning permission has been granted, a Biodiversity Gain Plan that must be submitted and approved by the planning authority before commencement of the development, alongside the need to submit a Habitat Management and Monitoring Plan.

The effect of Paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 is that planning permission is deemed to have been granted subject to the "biodiversity gain condition". The effect of this "biodiversity gain condition" is that development granted by this notice must not begin unless:

- (a) a Biodiversity Gain Plan has been submitted to the planning authority, and
- (b) the planning authority has approved the plan, or
- (c) the development is exempt from the biodiversity gain condition.

For applications that are submitted prior to the introduction of this requirement, the development would exempt from the mandatory 10% requirement and as such, the Biodiversity Gain Condition would not apply. However, this application seeks to modify how Biodiversity Net Gain will be achieved as a result of the development. Providing the new approach is adequate, new conditions will be attached to the decision notice, as mandatorily set.

As outlined above, this application seeks to modify Condition 7 of H23-0401-25 to allow for off site Biodiversity Net Gain Mitigation. The previous application outlined that the development was not exempt from the statutory 10% Biodiversity Net Gain Requirements with a BNG Metric being submitted to the LPA. The report, in line with the Ecologist's comments concluded that *"they are confident that the application has provided enough ecological documentation to determine this application, they will require some more clarification regarding onsite/offsite BNG gains to ensure that 10% net gain will be achieved, however, these details only require finalising pre-commencement"*.

Whilst it was initially determined that on-site mitigation would be used, this has been applied to be

altered with the applicant seeking to provide off-site BNG through purchasing credits from the Environment Bank with the appropriate documentation and number of credits being assessed. Prior to the formal purchasing of credits however, it must be determined as to whether this is an appropriate method and that it would be able to meet the mandatory 10% net gain requirements.

As such, the LPAs Ecology Team have been consulted within this application with their detailed comments outlining as follows. Overall, the BNG Assessment and Metric Calculations appear rigorous and they are able to have confidence in the conclusions with the metric indicating that 10% mandatory net gain cannot be achieved on site and therefore the proposal requires 0.12 area-habitat units and 0.01 hedgerow units off-site. They outline that this must be secured pre-commencement by way of conditions and can be achieved via two routes.

The first route includes bespoke habitat creation/enhancement via the applicants on land they own elsewhere in agreement with another landowner. To achieve this and discharge the BNG condition, the applicant would need to secure the appropriate habitat creation/enhancement through a Section 106 Agreement or through undertaking a Conservation Covenant with a responsible body pre-commencement. However, as the applicant's have stated they wish to purchase credits, option two is considered to be more appropriate in this regard. The Ecologist's comments discuss this in turn.

They discuss that the applicant can purchase the appropriate number of units from an off-site habitat bank and evidence this to the LPA pre-commencement, this can be done through contacting an off-site provider. The habitat bank then notifies the national gain-site register to allocate the units to the applicant. In order to satisfy the LPA and the condition that would need discharging, the following three pieces of information to confirm this are required:

- *A certificate/receipt/bill of sale that includes the unit allocation reference number(s) from the registered gain site to confirm the off-site unit purchase from the habitat bank.*
- *A finalized statutory metric that contains the off-site habitat information and habitat parcel references from the gain site. The applicant can obtain this information from the habitat bank by providing them with a copy of the statutory metric for them to complete. The finalized metric should then be submitted to the authority and posted on the public portal for transparency.*
- *The unit allocation must appear on the national gain site register prior to discharging the gain condition such that the authority can independently confirm that the unit allocation is valid.*

As the information has outlined that this is what the applicant wishes to do and are working to purchase credits from the Environment Bank it is considered that option two is appropriate and should be adequate in meeting the 10% BNG requirements. A subsequent condition will be attached to the decision notice in this regard which will need discharging at a later date and prior to the commencement of works on site. The applicant is advised to at a minimum supply the aforementioned three pieces of information to avoid delays later down the line.

Other Matters

It is noted that a public representation has been submitted within this application outlining the following "*Another 14 dogs is an alarming increase in the number of dogs already housed at the business, all within earshot of neighbours. What do the council plan to put in place to ensure that the peace and quiet of the hamlet is not ruined again (as has happened on numerous occasions in the past)?*".

The LPA believe that the resident who have made this comment have misread and misunderstood what the proposal entails due to the description needing to include the description of the previous proposal. The application in this regard is solely relating to the modification of Condition 7 to allow for off site BNG mitigation and does not seek to increase the number of dogs on site; with the increase specified having been permitted through the earlier grant of permission.

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 outside the defined settlement boundary. The modification to the wording of the condition is considered to be appropriate so that 10% BNG can still be achieved and meet the statutory requirements. The proposal does not seek to alter or modify

any other aspects of the previously approved schemes.

The development conforms with the South East Lincolnshire Local Plan (2019) and the provisions of the National Planning Policy Framework (December 2024) 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

Taking the above considerations into account, the proposal is considered to be in accordance with Policies 28 of the South East Lincolnshire Local Plan (2019), along with the identified sections contained within the National Planning Policy Framework (NPPF) (December 2024). There are no significant factors in this case that indicate against the proposal and outweigh the consideration in favour of the proposal and the policies referred to above.

Recommendation

Based on the assessment detailed above, it is recommended that the proposal should be approved under Delegated Authority.