DECISION DELEGATED TO DEVELOPMENT MANAGER

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| **Application No:** | **H23-0313-20** | **Applicant:** | **Mr V Braga & Mrs C Monteiro** |

**Proposal:** 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.

**Location:** The Melrose Dowsdale Bank Shepeau Stow

**Terminal Date:** 13th August 2020

## 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 2019**

Section 12. Achieving well-designed places
Paragraph 109

## 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 |
| NORTH LEVEL INTERNAL DRAINAGE BOARD | 0 | 0 | 1 | 0 |
| SHDC INTERNAL | 0 | 0 | 0 | 1 |
| RESIDENTS | 1 | 0 | 0 | 0 |

## 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.

This application seeks permission under section 73a of the Town and Country Planning Act 1990 to vary Condition 1 of H23-1253-18 to allow an extension of time of the planning permission.

No details have been provided about the length of the permission sought with this application. It is worth noting that the previous planning permission was for up to 12 months as of the date of the Decision Notice (4 June 2019).

Given the impact of the Covid19 pandemic on the economy, the effects of the kennels have not been tested over full twelve months. It is therefore recommended to grant temporary permission for further 12 months should the application be approved.

### 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

H23-1253-18 - 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

### Consultation Responses

SHDC Environmental Health

No objection.

A complaint was received in October 2019 regarding dog barking in October last year, which was subsequently investigated, but there was insufficient evidence at that time to warrant further action.

The matter was discussed with the owners of the premises at the time. No further complaints were received afterwards.

Whaplode Parish Council

Supports the proposals.

LCC Highways/SuDS

No objection.

North Level IDB

No comment.

Public

One resident has made a representation, objecting to the proposals in the following terms:

- Noise and disturbance related to the dog training and kennels throughout the year, even outside of the approved hours of operation.
- Complaints have been raised to SHDC Environmental Health. No noise assessment has been made due to bad weather conditions and Covid-19 restrictions.
- Additional traffic (up to 16 vehicles) has led to undermine highway safety standards for road users and exacerbate further noise and disturbance
- Planning application for hardstanding for 4 vehicles connected to a catering business (H23-0757-11) was refused on the basis that "the number of vehicles would prove disproportionate to the size of any business deemed appropriate to operate in this location"

## 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.

No variation of the current use is being proposed with this application. The key issue of this application is to ascertain whether the proposed time limit extension of the approved use might perpetuate or not detrimental material impacts that might have occurred during the last twelve months.

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.

One resident representation has been made raising serious concerns about the noise and disturbance relating to the dog training and kennels. SHDC Environmental Health have confirmed that one complaint was received in October 2019 regarding dog barking which was subsequently investigated but there was insufficient evidence at that time to warrant further action. The matter was later discussed with the owners of the premises. No further complaints were received and therefore SHDC Environmental Health have raised no objection to this application.

Should permission be granted, it is recommended to condition the permission as in the previous

application ref. H23-1253-18. The restrictions refer to the 12 month temporary permission, ownership of the business, hours of operation and number of dogs in accordance with Conditions 1, 3, 4, 5 and 6 of H23-1253-18.

In doing so, the use will continue on the site and further time will be given to test comprehensively the noise impact of the dog barking and disturbance associated to the dog training and kennels. As mentioned above, such test has not been possible since the Covid19 pandemic has brought the economy, including this business, to a near standstill. In the meantime, the other conditions to the decision will 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 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 109 of National Planning Policy Framework (NPPF), 2019 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 that additional traffic generated through Dowsdale Bank by virtue of the approved use has undermined the highway safety of road users. In support of this view, reference has been made to the first reason for refusal of previous application H23-0757-11. In that application, retrospective permission was sought for the creation of hardstanding for the open storage of vehicles associated with a family catering business. However, that application was not refused on the grounds of highway safety. Rather, the area of hardstanding was considered to be "too large for the perceived needs of a small family catering business".

The site is within a countryside location and it was the view of the case officer that the "number of vehicles that would fit into the hardstanding area would prove disproportionate to the size of any business deemed appropriate to operate within this location rather than a designated industrial/commercial area". Highway safety was not deemed to be an issue.nIn regard to this present application, the Highways Authority have been consulted 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 the residual cumulative impacts on the road network would be severe. There is therefore no conflict with Paragraph 109 of NPPF (2019).

**Conclusion**

This application seeks an extension to the time limit of the previously approved application for the change of 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, one resident objection has been received stating that noise and disturbance has been ongoing since the previous permission was granted. SHDC Environmental Health have raised no objection. On balance, it is recommended that permission should be temporary for further twelve months since the Covid19 pandemic has brought the economy, including this business, to a near standstill and the noise impact has not been tested in a full year.

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

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 Paragraph 109 of the National Planning Policy Framework (2019).

## 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

Recommendation is for delegated approval.

This application was referred to Chairman's Panel on 31 July 2020, where it was agreed the decision could be delegated to officers.