DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H23-0725-23**	**Applicant:**	**S Larratt**
Proposal:	Change of use of land to keep 11 dogs		
Location:	Irby Villa Millgate Whaplode		
Terminal Date:	14th October 2024		

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
28	The Natural Environment
30	Pollution
36	Vehicle and Cycle Parking
APPENDIX 6	Parking Standards

National Guidance

National Planning Policy Framework 2023

The Development Plan

South East Lincolnshire Local Plan, March 2019

If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, 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.

National Planning Policy Framework (NPPF), 2023

Section 8: Promoting healthy and safe communities
Section 11: Making effective use of land
Section 12: Achieving well designed and beautiful places
Section 14: Meeting the challenge of climate change, flooding and coastal change
Section 15: Conserving and enhancing the natural environment.

National Guidance

Planning Practice Guidance (PPG)

Representations:

	Object	Support	No Obj.	Comments

PARISH COUNCIL	0	0	1	0
WARD MEMBER	0	0	0	0
HISTORIC ENVIRONMENT OFFICER	0	0	1	1
RUBEN LOPEZ, HISTORIC ENVIRONMENT OFFICER	0	0	1	1
SOUTH HOLLAND INTERNAL DRAINAGE BOARD	0	0	0	1
SHDC INTERNAL	1	0	0	2
RESIDENTS	3	0	0	0

CASE OFFICER ASSESSMENT

Proposal

Change of use of land to keep 11 dogs.

The proposal is part retrospective in the sense that the dogs are already living at the premises. The proposal also involves the installation of acoustic fencing, which has not yet been implemented.

Site Description

The property is on the east of Millgate, in the countryside, to the south of Whaplode. Millgate has sporadic ribbon development along it outside of the settlements. The site used to operate as nurseries and has been in the family for several generations. To the immediate south is Irby Hall, a large residential property on a large site, with a cluster of buildings that includes a residential element closer to the boundary of the curtilage called The Granary. Irby cottage is situated further along Crowdyke Gate to the east. Millgate nurseries has a main house, other buildings and a kennels, and a paddock.

History

H23-0568-21 - Two storey extension & alternations - Approved 14 July 2021.

H23-0371-23 - Extensions and alterations - Approved 07 June 2023.

Consultation Responses

SHDC Licencing Team

If they wish to apply for any Animal Welfare licence please contact the Licensing Team.

LCC Historic Places Team

Response Dated 3 June 2024

No archaeological input required. No objections.

Response Dated 10.10.24

Having reviewed the application documents and the updated available Historic Environment information for this application, the proposal is unlikely to have an impact on significant archaeological remains. Consequently, no further archaeological input is necessary for this application. It is not necessary to consult us on this application again, unless there are material changes to the proposals. However, if you would like advice from us, please contact us to explain your request.
No objection to amendment 3.

SHDC Environmental Protection

Response dated 3.10.23

Whilst the plans submitted indicate an acoustic fence, insufficient detail is available at the stage to show that this would be effective. Given the potential for noise impact to residential receptors, I therefore request that the applicant provides an assessment by a professional acoustician to support the application, prior to determination. This is to mitigate and reduce potential adverse impacts resulting from noise pollution on the health and quality of life to neighbouring residents

Response dated 20.05.24

We would recommend that the findings of the noise impact assessment SEM/j3782/18593 are adopted in full, together with the proposed reduction of maximum dog numbers of 11. this is in order to protect the amenity of the nearby residential properties. this should be implemented prior to commencement and any variations reported to the local planning authority.

Response dated 04.09.24

The proposed acoustic fencing should achieve the required reduction in noise levels needed to protect the amenity of the nearby residential properties.

Internal Drainage Board

Consent required under Byelaw 10, fencing is proposed within 9 metres of a watercourse, therefore the IDB object to the scheme.

Whaplode Parish Council

No comments.

Public

This application has been advertised in accordance with the Development Procedure Order and the Council's Statement of Community Involvement. In this instance, five objections have been received from the same household, including two professionally submitted responses.

These can be summarised as follows:

Response dated 12.06.24

- Video of dogs previously resident at property provided

Response dated 28.05.24

- Keeping of 11 dogs still a problem, site has a history of multiple dogs barking uncontrollably for long periods.
- Existing southern building at Irby Villa alond with the 2m high wall at Irby Hall does little to attenuate the noise of dogs barking from Irby Villa.
- A further barrier to the east and south east would still leave the sound of dogs barking.

-Irby Villa is a domestic house with horticultural use in an area of very low background noise. Permission to keep 11 dogs would seriously alter that.
- Existing dogs are Alsatians, historically have been Pyrenean Mountain dogs.

Response dated 22.05.24

- Number of points previously made not addressed.
- Noise monitoring was carried out at a quiet time, data is not reliable.
- Residential uses nearby have been repeatedly woken by dogs barking, including The Granary.
- Mitigation is based on a series of operational and management conditions. It is not considered that these will be effectively enforced and as such the mitigation won't be effective.
- There is ongoing and general lack of control of the dogs as they have been left to bark uncontrollably for long periods which is causing significant loss of amenity, affects use of garden.
- Lack of confidence that acoustic screening proposed will be effective at maintaining a reasonable level of residential amenity. It is noted that there are 2 buildings and a 6 ft fence, but noise impacts affect amenity.
- Background noise is very low in this area, barking dogs harm the quite rural location.

Response dated 02.10.23

- We are subjected to uncontrolled multiple dogs, frequent intermittent barking over lengthy periods from morning until night.

Response dated 12.09.23

- Keeping of 16 dogs for breeding purposes is a material change of use, could be more dogs if bred
- Unauthorised dog breeding occurred over a number of years.
- Use causes unacceptable harm to residential amenity, incessant dogs barking.
- Insufficient information to consider impacts
- Believe use to be commercial operation
- New kennels erected without planning permission.
- Application does not contain sufficient information to identify where kennels and other operational activity is proposed to the site.
- Planning statement needed
- Fencing may not be effective.
- Site is open countryside
- Planning Practice Guidance Noise from 2019 relevant.

Planning Considerations

Evaluation

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.

In this case, the adopted South East Lincolnshire Local Plan 2011-2036, adopted March 2019, forms the development plan for the District, and is the basis for decision making in South Holland. The relevant development plan policies are detailed within the report above.

The policies and provisions set out in the National Planning Policy Framework (updated 2023) are also a material consideration in the determination of planning applications, alongside adopted Supplementary Planning Documents.
Furthermore, where a Neighbourhood Plan has been adopted, this alongside the adopted Local Plan, forms part of the Development Plan for the District, and must be considered when assessing development proposals. In this instance, no relevant neighbourhood plans have been adopted.

The Authority is able to demonstrate a supply of deliverable sites equivalent to in excess of 5 years through the latest Housing Land Supply Assessment.

Principle of Development and Sustainability

The South East Lincolnshire Local Plan (2019) sets out the settlement hierarchy in respect of delivering sustainable development that meets the social and economic needs of the area whilst

protecting and enhancing the environment; in order to provide enough choice of land for housing to satisfy local housing need, whilst making more sustainable use of land and to minimise the loss of high-quality agricultural land by developing in sustainable locations and at appropriate densities.

Policy 1 of the South East Lincolnshire Local Plan (2019) sets out a spatial strategy for delivering sustainable development across South East Lincolnshire to 2036. Policy 1 (Spatial Strategy) expresses this sustainable framework of settlements, ranking the settlements deemed to be most sustainable in descending order.

The most sustainable locations for development are situated within the 'Sub-Regional Centres', followed by 'Main Service Centres'. Lower down the hierarchy in respect of sustainable development are areas of limited development opportunity including 'Minor Service Centres', with areas of development constraint comprising 'Other Service Centres and Settlements'. The countryside is at the bottom of the settlement hierarchy and represents the least sustainable location.

Policy 1 (Spatial Strategy) of the South East Lincolnshire Local Plan (2019) indicates that within 'Minor Service Centres,' development will be permitted that supports their role as a service centre for the settlement itself, helps sustain existing facilities or helps meet the service needs of other local communities. This policy goes on to detail that development within 'Minor Service Centres' will normally be limited to Allocated and Committed sites and infill.

The application site is within the countryside so is at the bottom of the settlement hierarchy in an unsustainable location, albeit planning history has established that the house, whilst being a former nursery, has a residential element to it. It has also been expanded in recent years with a large extension being approved. Given the nature of the proposed use, the relative isolation may well be an advantage compared with if it was located in a more populated area, as there would be greater potential for noise impacts in a settlement. As such, the location of the application premises does not, in itself, preclude the use of the land for the keeping of dogs, subject to the detailed consideration of noise impacts upon nearby residential properties.

As such, the proposal is considered to be in accordance with the requirements of Policy 1 of the South East Lincolnshire Local Plan (2019) when viewed in principle. This is subject to the assessment against site specific criteria; including (but are not limited to) the impact of the proposal on the character or appearance of the area, impact on the residential amenities of neighbouring occupiers, impact on highway safety and flood risk, which are discussed in turn as follows.

Layout, Design and Consideration of the Character and Appearance of the Area

Section 12 of the National Planning Policy Framework (December 2023) specifically relates to 'Achieving well-designed and beautiful places' and details that "The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve" and as such, it is generally accepted that good design plays a key role towards sustainable development.

Paragraph 135, contained within Section 12 of the National Planning Policy Framework (December 2023), states that new development should function well and add to the overall quality of the area (including beyond the short term) and should be visually attractive as a result of good architecture and appropriate landscaping. This goes on to establish that it is important that new development should be of the highest quality to enhance and reinforce good design characteristics, and that decisions must have regard towards the impact that the proposed development would have on local character and history, including the surrounding built environment and landscape setting such as topography, street patterns, building lines, boundary treatment and through scale and massing.

Development proposals should also ensure that developments 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 South East Lincolnshire Local Plan (2019) outlines sustainable development considerations for development proposals, providing a framework for an operational policy to be used in assessing the sustainable development attributes of all development proposals. Furthermore, Policy 3 accords with the provisions of Section 12 of the National Planning Policy Framework (December 2023), in that it requires development to comprise good design; identifying issues that should be considered when preparing schemes so that development sits comfortably

with, and adds positively to, its historically-designated or undesignated townscape or landscape surroundings.

These policies accord with the provisions of the National Planning Policy Framework (December 2023) and require 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.

Proposals for new development would therefore require the aforementioned considerations to be adequately assessed and designed, including the siting, design and scale to be respectful of surrounding development and ensure that the character of the area is not compromised.

In design and layout terms the property is on a large plot, with a residential dwelling towards the northern section of the plot. Various outbuildings exist, some of which have been specifically created to house dogs. Further structures to the south are in a poor state of repair and are unused. These are open kennel enclosures with concrete bases, with walls on one side and metal gated elements on the other allowing the dogs to be observed, with covered roofs. These are at various locations across the site.

The number of dogs has been decreased in recent months as retired dogs have died. The original application was for 16 dogs, but the current number of dogs residing at the premises is 11. The applicants are seeking permission to retain 11 dogs permanently. The dogs are show dogs and are not used for breeding purposes and are kept as a hobby. The application does not seek consent for any element of boarding, grooming, or breeding puppies for sale. No visitors are envisaged to enter the site with a view to purchase dogs or puppies as a result. For six months of the year, the applicant's partner travels with some of the dogs to show them, sometimes travelling abroad to do this. As a result, for certain periods of the year, the number of dogs on site are reduced. Some of the dogs also reside inside the family home at night. Other dogs stay inside an outbuilding. During the day, the paddock has dogs running around it for exercise.

In layout terms, in order to control noise as a result of the keeping of 11 dogs at the premises, three types of acoustic fence are proposed, based on a noise assessment that was carried out at the property. The first section of acoustic fence is to run from east to west along the northern third of the site, in a staggered formation binding the existing paddock. This then allows the dogs to exercise in the open air whilst controlling noise which may occur whilst they are being exercised. A second section of acoustic fence is to be situated on the western boundary. The third section of acoustic fencing is proposed adjoining the building identified as 'The Ruin'. The heights and specification of the acoustic fencing is detailed in the noise assessment but this ranges from 1.8m to 2.4m.

The effectiveness of the acoustic fencing is discussed in the pollution section of this report. In design terms, the position of the acoustic fences would not adversely affect the premises or the street scene, and would not be detrimental to the character of the area. Details of the exact colour and position and species of the proposed hedging can be controlled by condition to ensure that the design of the fencing is satisfactory when viewed externally.

Taking account of the design, scale and nature of the development, as detailed above, the proposal is considered to be acceptable. The proposal would not cause an adverse impact to the character or appearance of the area and would therefore be in accordance with policies 2 and 3 of the South East Lincolnshire Local Plan and Section 12 of the National Planning Policy Framework (December 2023).

Impact on Residential Amenity/Land Users

Paragraph 135 of the National Planning Policy Framework (December 2023) states that development should 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; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

Policies 2 and 3 of South East Lincolnshire Local Plan (2019) sets out that residential amenity and the relationship to existing development and land uses is a main consideration when making planning decisions.

The main issue to consider in residential amenity terms is the effect on noise in relation to nearby residential properties, particularly to the immediate south. Extensive and detailed objections were

submitted in relation to noise have been submitted.

Those objections cite that guests staying in the nearby 'Granary' accommodation, which is a residential annex to the immediate property to the south, state that guests staying at the accommodation are woken early in the mornings by barking dogs.

Extensive noise has been experienced with uncontrolled dogs barking at the premises. The original noise assessment that was submitted was amended to take into account the details of the objections and that noise were assessed in relation to the nearest residential receptor.

The mitigation proposes acoustic fencing to lessen the impacts of noise on the dogs. This has been scrutinised by the Environmental Protection Team who consider that the mitigation is sufficient to mitigate the impact of the proposals. Subject to conditions which ensure dogs are kept inside at night, that the acoustic fencing is installed within 3 months of the permission it is considered sufficient to control noise at the property.

As detailed above, the scale and design of the proposal is considered to be such that there would be no significant or unacceptable impact on the residential amenities of the occupiers of adjacent properties or land users, when also taking account of the conditions recommended. As such, the proposal is considered to accord with the provisions of the Section 12 of the National Planning Policy Framework (December 2023), and Policies 2 and 3 of the South East Lincolnshire Local Plan (2019).

Noise Impacts

Policy 30 of the South East Lincolnshire Local Plan (2019) relates to pollution including mitigating the impact of noise, which is a key consideration in this case. The Planning Practice Guidance notes, in paragraph 001 Reference ID: 30-001-20190722, states that when taking decisions "there may also be opportunities to make improvements to the acoustic environment. Good acoustic design needs to be considered early in the planning process to ensure that the most appropriate and cost-effective solutions are identified from the outset." Paragraph 003 Reference ID: 30-003-20190722 states that "decision making need to take account of the acoustic environment and in doing so consider:

·whether or not a significant adverse effect is occurring or likely to occur;
·whether or not an adverse effect is occurring or likely to occur; and
·whether or not a good standard of amenity can be achieved."

Paragraph 194 of the National Planning Policy Framework (December 2023) stresses that the focus of planning decisions should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions (where these are subject to pollution control regimes). Planning decisions should assume that these regimes will operate effectively. Equally, where a planning decision has been made on a particular development, the planning issues should not be revisited through the permitting regimes operated by pollution control authorities.

A noise impact was carried out on the property and subsequently amended to take account of guest accommodation on the adjoining residential property. The noise assessment assumed 16 dogs at the property which was the original proposal. Noise monitoring was undertaken between 30 March to 4 April 2024. The typical background noise level between 0700-1900 hours is estimated as an average of 35 dB(A). The recommendations were that any dogs on site should be exercised and fed during the daytime only (between 0700 and 1900). Outside of these periods the dogs should be kept inside the outbuilding they are currently housed in during the overnight period. Any doors/openings serving the outbuilding the dogs are housed in overnight should be kept closed during the night time period. Acoustic barriers of between 1.8m to 2.4m in height should be installed at strategic locations surrounding the dog exercise yard and also the outdoor runs on site. These should be to a minimum barrier specification.

A proposed 1.8m high barrier was suggested along the frontage of the site along Millgate. Two metre high barriers were suggested around the outdoor runs. a 2.4m high barrier was suggested adjacent to the 'Ruins'. The objective of the mitigation was to reduce the noise from the dogs to background noise levels, between 7.00 to 19.00 hours. Outside of these times the dogs would be kept in insulated kennels.

Given that a noise assessment was undertaken which specifies the average background noise

level, a condition can be imposed that controls any future noise breaches as the noise levels can then be measured. If breaches occur a further package of measures could be insisted upon to bring noise levels back down to a reasonable level, which in this case is suggested to be 5 dBA above background noise levels.

It is also suggested that a personal condition is appropriate to the applicant and that other conditions are suggested preventing commercial breeding of dogs and puppies.

Subject to the imposition of appropriate conditions it is thought that the proposal would not be contrary to policy 30 of the South East Lincolnshire Local Plan (2019).

Highway Safety and Parking

Section 9 of the National Planning Policy Framework (December 2023) specifically relates to 'Promoting sustainable transport'. Paragraph 115 of the National Planning Policy Framework (December 2023) advises 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".

In respect of highway matters, Policy 2 details that proposals requiring planning permission for development will be permitted provided that sustainable development considerations are met, specifically in relation to access and vehicle generation. Policy 3 details that development proposals will demonstrate how accessibility by a choice of travel modes including the provision of public transport, public rights of way and cycle ways will be secured, where they are relevant to the proposal.

Furthermore, Policy 36, to be read in conjunction with Appendix 6 of the South East Lincolnshire Local Plan (2019), sets out minimum vehicle parking standards and requires at least two spaces for dwellings of up to three bedrooms and three spaces for dwellings with four or more bedrooms.

The proposal does not involve visiting members of the public, and the site is large, using an existing access and therefore vehicles transporting dogs which are present already do not have difficulties entering or exiting the site.

The proposal would therefore be acceptable and would not have an unacceptable adverse impact on highway safety in accordance with Local Plan Policies 2, 3 and 36, and Section 9 of the National Planning Policy Framework (December 2023).

Flooding Considerations

Section 14 of the National Planning policy Framework (December 2023) requires development plans to "apply a sequential, risk-based approach to the location of development - taking into account all sources of flood risk and the current and future impacts of climate change - so as to avoid, where possible, flood risk to people and property. They should do this, and manage any residual risk, by: a) applying the sequential test and then, if necessary, the exception test as set out below".

Paragraph 168 details "The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding", with the sequential approach being required in areas known to be at risk now or in the future from any form of flooding, with the flood risk assessment being the tool to demonstrate this.

If, following the application of the Sequential Test, it is not possible, consistent with wider sustainability objectives, for the development to be located in zones with a lower probability of flooding, the Exceptions Test can be applied if appropriate.

The Environment Agency's Flood Maps have been created as a tool to raise awareness of flood risk with the public and partner organisations, such as Local Authorities, Emergency Services and Drainage Authorities. The Maps do not take into account any flood defences.

The South East Lincolnshire Strategic Flood Risk Assessment (SFRA) provides an overview of how flood risk has been considered in shaping the proposals of the Local Plan; including the spatial strategy and the assessment of housing and employment sites. Policy 4 of the South East

Lincolnshire Local Plan is clear in that "Development proposed within an area at risk of flooding (Flood Zones 2 and 3 of the Environment Agency's flood map or at risk during a breach or overtopping scenario as shown on the flood hazard and depths maps in the Strategic Flood Risk Assessment) will be permitted" in instances where specific criteria is met.

It is worth noting that large parts of the district of South Holland lie within Flood Zone 3. It is therefore necessary to use the refined flood risk information (Hazard and Depth maps) within the South East Lincolnshire Strategic Flood Risk Assessment (2017) as a basis to apply the sequential test.

Overall, when considering the development on balance, it is considered that given the mitigation measures detailed and recommended by condition, it is considered that the proposal accords with Policies 2, 3 and 4 of the South East Lincolnshire Local Plan (2019) and the intentions of the National Planning Policy Framework (December 2023) in this regard.

Impacts of Climate Change

In respect of the climate emergency, section 14 of the National Planning Policy Framework (December 2023) states that new development should be planned for in ways that: 'avoid increased vulnerability to the range of impacts arising from climate change' with care taken to manage and adapt where development is brought forward in areas which are vulnerable; and that 'can help to reduce greenhouse gas emissions, such as through its location, orientation and design'.

There are no particular aspects which affect the climate emergency and therefore it is considered that the proposal is neutral in this regard.

Taking the above into account it is considered that given the details submitted and those required by suitably worded condition, the proposal is acceptable in this regard. The proposal would therefore be in accordance with Policy 31 of the South East Lincolnshire Local Plan (2019) and Section 14 of the National Planning Policy Framework (December 2023).

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 development hereby proposed, subject to conditions, does not materially harm the character or appearance of the locality, or amenity of nearby residents, and provides adequate parking, whilst conforming with the South East Lincolnshire Local Plan (2019) and the provisions of the National Planning Policy Framework (December 2023) 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

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. It is concluded that the development, when viewed as a whole, is considered to be acceptable.

Recommendation

It is recommended that the decision can be issued under delegated authority.