

SOUTH HOLLAND DISTRICT COUNCIL

Report of: Development Manager

To: Planning Committee - 09 March 2022

(Author: Sundas Shaban - Planning Officer)

Purpose: To consider Planning Application H23-0755-21

Application Number: H23-0755-21

Date Received: 12 July 2021

Application Type: S73A CONTINUATION

Description: 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. Removal of Condition 1 to remove time limit

Location: Mundicao Kennels The Melrose Dowsdale Bank

Applicant: Mundicao Kennels

Agent: Brand Associates

Ward: Whaplode and Holbeach St Johns

Ward Councillors: Cllr A C Beal
Cllr P A Redgate

You can view this application on the Council's web site at

<http://planning.sholland.gov.uk/OcellaWeb/planningDetails?reference=H23-0755-21>

1.0 REASON FOR COMMITTEE CONSIDERATION

1.1 Planning history and objections received.

2.0 PROPOSAL

2.1 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.

2.2 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.

2.3 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.

2.4 The application initially sought to remove condition 1 as well as modification of Conditions 2, 5 & 6 to allow amendments to previously approved plans and additions to the number of boarding dogs and the total number of dogs on site. The scheme has been amended and now seeks to remove condition 1 only.

3.0 SITE DESCRIPTION

- 3.1 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.

4.0 RELEVANT PLANNING POLICIES

4.1 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) to the Town and Country Planning Act as amended by the 2004 Act states that the determination must be made in accordance with the plan unless material considerations indicate otherwise.

1 Spatial Strategy
2 Development Management
30 Pollution

National Guidance

National Planning Policy Framework (NPPF), 2021

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

Planning Practice Guidance (PPG)

5.0 RELEVANT PLANNING HISTORY

- 5.1 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
- 5.2 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
- 5.3 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
- 5.4 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
- 5.5 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

6.0 REPRESENTATIONS

6.1 Whaplode Parish Council

No comment.

6.2 SHDC Environmental Protection

Comments received 01/10/2021 to the scheme as originally submitted:

Objection to removal of condition 6 as when this application was originally considered it was felt that a maximum of 20 dogs on site at any one time was the acceptable upper limit to avoid noise that could potentially constitute a nuisance. Concerned that any increase in the total number of dogs on site has the potential to increase noise and therefore the likelihood of complaints. Complaints have previously been raised about excessive noise from dog barking from the application site but to date there has been insufficient evidence to warrant formal action.

Comments received 17/01/2022:

The site has been monitored and although some barking has been heard it has not been at a level that is considered unreasonable.

6.3 LCC Highways/SuDS

No objection.

6.4 North Level 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).

6.5 Public

7 representations have been received from 4 properties, objecting to the proposals on the following grounds:

Noise and disturbance from dogs and people shouting;
Concerns over how dog waste will be collected/disposed of;
Concerns of increase in traffic in the area;
The noise levels are likely to increase after the pandemic;
The business is being operated outside permitted days;
The roads in this area are rural roads, not designed for two-way traffic, the condition of the roads is poor anyway and increased traffic would only escalate the wear and tear;
The current power grid seems to already struggle with supplying the domestic properties in the area and an extension to the business would put additional strain on the already struggling network

7.0 **CONSIDERATIONS**

7.1 **Planning Considerations**

7.2 Principle of development

7.3 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 application ref H23-0313-20.

7.4 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 can be removed to allow permanent use and whether the approved use might perpetuate or not detrimental material impacts that might have occurred during the last 2 years.

7.5 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.

7.6 Residential amenity

7.7 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.

7.8 A number of objections have been received siting concerns of noise and disturbance relating to the dog training and kennels. SHDC Environmental Health have confirmed that complaints have been received regarding dog barking which were subsequently investigated but there was insufficient evidence at that time to warrant further action. No further complaints were received and therefore SHDC Environmental Health have raised no objection to this application on the basis that the site has been monitored and although some barking has been heard it has not been at a level that is considered unreasonable.

7.9 The business has been operating for 2 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 Covid19, the business has since been operating after the Covid restrictions were lifted and no evidence has been received of significant noise impacts. In addition, the limited number of classes/operating hours ensures that any noise generated from the site is within acceptable tolerances.

7.10 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.

7.11 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).

7.12 Highway safety

7.13 Paragraph 111 of 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.

7.14 Concern has been raised that the scheme would increase traffic in the area and whether the existing roads in the area which are not designed for two-way traffic can accommodate this.

7.15 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.

7.16 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 111 of NPPF (2021).

7.17 Planning Balance

7.18 This application seeks removal of the time condition to allow permanent use of the site for dog training, kennels and food production.

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

- 7.20 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 raised objections to the initial scheme which proposed an increase in the number of dogs on the site. However, they have not raised any objections to removing 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 but to date they have not had sufficient evidence to warrant formal action. As such it is considered acceptable to allow the removal of the time condition.
- 7.21 In terms of highway safety, the Highways Authority have been consulted on this application and have raised no objections.
- 7.22 **Conclusion**
- 7.23 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).

7.24 **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.

8.0 RECOMMENDATIONS

- 8.1 **Grant Permission subject to those conditions listed at Section 9.0 of this report.**

9.0 CONDITIONS

1. The development hereby permitted shall be carried out in accordance with the following approved plans:

Under this application
Application Form

Under H23-1253-18

Site Location Plan Drw No MUN 18 L
Block Plan Drw No MUN 18 0
Reception Building Plan and Elevations Drw No MUN 18 1
Floor Plan Kennel 1 Drw No MUN 18 2
Elevations Kennel 1 Drw No MUN 18 2.1
Floor Plan Kennel 2 Drw No MUN 18 3
Elevations of Kennel 2 Drw No MUN 18 3.1
Proposed Floor Plans Drw No MUN 18 4
Proposed Elevations Drw No MUN 18 4.1

Reason: For the avoidance of doubt and in the interests of proper planning.

2. This permission shall operate for the benefit of Mr. V Braga and Ms. C Monteiro and the use hereby approved shall be terminated at such time as Mr. V Braga and Ms. C Monteiro cease to occupy the premises.

Reason: To enable consistent standards with regards to the facility and standards in care which have been demonstrated by the applicant in this matter.

Condition is imposed in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019.

3. The dog training lessons shall be restricted to the hours of 09:00 to 17:00 Monday to Saturday and no dog training shall take place on a Sunday or any public Bank Holiday.

Reason: To enable the Local Planning Authority to mitigate any harm the development may have on local residents and the amenities of the locality.

This Condition is imposed in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019.

4. The number of dogs staying on site in connection with the dog boarding kennels shall not exceed 16 dogs at any one time and an up-to date register should be kept at all times of the dogs boarding on site and such a register shall be made available to the Local Planning Authority upon request.

Reason: To enable the Local Planning Authority to mitigate any harm the development may have on local residents and the amenities of the locality.

This Condition is imposed in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019.

5. The number of dogs on site, including those permitted under the dog boarding business but excluding the dogs personally owned by the applicant, shall not exceed 20 at any one time unless otherwise agreed expressly in writing with the Local Planning Authority.

Reason: To enable the Local Planning Authority to mitigate any harm the development may have on local residents and the amenities of the locality.

This Condition is imposed in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019.

6. The Local Planning Authority has acted positively and proactively in determining this application by assessing it against all material considerations, including national guidance, planning policies and representations that have been received during the public consultation exercise, and by identifying matters of concern within the application and negotiating, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal.

This decision notice, the relevant accompanying report and the determined plans can be viewed online at <http://planning.sholland.gov.uk/OcellaWeb/planningSearch>

Background papers:- Planning Application Working File

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Appendices attached to this report:

Appendix A Plan A

MapThat Scale Print Title

