

APPLICATION NO PA/2012/0581

APPLICANT Mrs J Smith, Cotontastick Cotons

DEVELOPMENT Planning permission to retain a change of use for the keeping of thirty dogs

LOCATION The Willows, 9 Nethergate, Westwoodside, Haxey

PARISH HAXEY

WARD Axholme South

CASE OFFICER Mark Simmonds

SUMMARY RECOMMENDATION **Refuse permission**

REASONS FOR REFERENCE TO COMMITTEE Applicant request to address the committee

POLICIES

National Planning Policy Framework: No specific policies apply.

Regional Spatial Strategy for Yorkshire and the Humber: No specific policies apply.

North Lincolnshire Local Plan: Policy DS1 (General Requirements) provides general guidance in relation to all new development.

Policies RD2 (Development in the Open Countryside), DS11 (Polluting Activities) and DS4 (Changes of Use in Residential Areas) all apply.

North Lincolnshire Core Strategy: Policy CS1 (Spatial Strategy for North Lincolnshire)

Policy CS2 (Delivering More Sustainable Development)

Policy CS3 (Development Limits)

Policy CS5 (Delivering Quality Design in North Lincolnshire)

CONSULTATIONS

Highways: Do not wish to restrict the grant of planning permission.

Environmental Protection: Recommend refusal of the application.

Environment Agency: Do not wish to make any comments.

PARISH COUNCIL

The parish council objects to this application based on the previous set up and location of the proposed business and the amount of objections. If planning permission is refused then the parish council asks that the welfare of the animals is taken into account. The parish council also raises concerns regarding the lack of enforcement when planning permission was refused in 2006.

PUBLICITY

The application has been advertised by site notice and letters have been sent to immediate neighbours. Letters of support and objection have been received:

Support

- A close neighbour writes in support and states that the dogs do not cause them any disturbance at all.
- very small dogs that very rarely bark and cause no distress at all
- letter simply stating support

Objections

- Object on the grounds that planning permission was refused and the subsequent appeal was dismissed several years ago.
- As the premises are very close to many private houses and a school, it seems inappropriate to allow permission for any business having 30 dogs for the purposes of breeding.
- How would numbers be limited when bitches have puppies?
- potential noise nuisance and an inappropriate location in a residential area
- The yapping/yelping from morning to evening detracts greatly from the pleasure of the small community and would devalue property. During the objector's time in Nethergate the noise has continued to increase further. The dog pen is adjacent to a public path and as people walk past the dogs get distressed and bark.
- Would like to record a strong objection to the increase in dog numbers at this address. The current level of yapping and yelping makes sitting in the garden a harrowing experience, this is made worse when people traverse the bridle path.
- This property already causes a noise issue with dogs barking at all times of day and night. Allowing 30 dogs would be ridiculous; too many dogs are already kept for the amount of land owned.
- There have been issues in the past with a lack of secure fencing leading to dogs straying onto the school.

ASSESSMENT

This application seeks planning permission for the retention of a change of use of the site for the keeping of 30 dogs.

The main issue to consider in the determination of this application is the amenity of neighbours and specifically the potential for loss of amenity through noise disturbance.

The applicant keeps a large number of dogs and breeds them for sale. The site had a temporary permission to breed dogs in 2005 (PA/2004/0576) which was granted for a period of one year. However, when the permission came up for renewal (PA/2006/0969) it was refused as it became apparent that the dogs were creating a noise nuisance. The decision was appealed and the council were successful in having the appeal dismissed. A copy of the appeal decision is attached. An Enforcement Notice was issued. This was also appealed and this appeal was also dismissed.

The site is close to a number of residential properties. Several of these object stating that there is a noise problem currently with the keeping of dogs on the site.

Environmental Protection have assessed the application and note that the site is located within a residential neighbourhood. They are concerned that local residents will be disturbed by noise from the dogs at these premises. Indeed, that department has previously received a number of complaints from local residents and from the local school about dogs barking at these premises. The matter was investigated and an abatement notice was served, which remains in force.

In conclusion, the premises are not suitable for the use and permission should be refused.

RECOMMENDATION Refuse permission for the following reasons:

The site is in a residential area and the commercial keeping and breeding of dogs has led to a noise nuisance to neighbouring properties with an unacceptable adverse impact upon the living conditions of the occupiers of those properties. The proposals are therefore contrary to policies DS1, DS4, DS11 and RD2 of the North Lincolnshire Local Plan and CS5 of the North Lincolnshire Core Strategy.



Appeal Decision

Site visit made on 19 March 2007

by **Jean Jones** MA DipTP MRTPI

an Inspector appointed by the Secretary of State for
Communities and Local Government

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Date: 20 April 2007

Appeal Ref: APP/Y2003/A/07/2034233

The Willows, 9 Nethergate, Westwoodside, Haxey, DN9 2DR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Miss J Smith against the decision of North Lincolnshire Council.
- The application Ref 2006/0969, dated 15 June 2006, was refused by notice dated 19 July 2006.
- The development proposed is the continuation of use of land for dog breeding (renewal of permission 2004/0576) and retention of detached building forming additional 3 kennels and garage.

Summary of Decision: I dismiss the appeal.

Background

1. This decision takes into account the further information provided from the Council in its letter of 22 March 2007 and that in the response of 5 April 2007 from the appellant's agent.
2. Planning permission was granted on 14 July 2004 for the continued use of land for purposes in connection with the breeding of dogs and erection of two kennel blocks (Ref 2004/0576). A condition limited the use to no more than 30 dogs with no commercial boarding permitted. The use for dog breeding purposes was to be exercised only by Miss J South (a misspelling of the appellant's name). Condition 4 required the use to cease on 14 July 2006 and the property to be used solely for residential purposes thereafter. The permission did not require physical removal of the two kennel blocks at the end of the two years.
3. On 16 February 2007 the Council served an enforcement notice on the appellant requiring that within 2 months of the notice taking effect she cease the use of the land for the commercial breeding of dogs and reduce the number of dogs kept on the site to five or less.
4. The description of the application before me now includes the retention of a detached building forming additional 3 kennels and garage. The Council agrees that the building itself is not considered to be unacceptable and indeed, if used for domestic purposes, it would not require planning permission. The appellant suggests altering the description to provide for the retention of the use of the kennels for breeding purposes and I shall deal with the appeal on this basis.

Main Issue

5. Objectors have raised a number of concerns including odour and the disposal of bedding but I have seen no evidence relating to these matters. I consider that the main issue is the impact of the dog breeding use on the living conditions of nearby occupiers with particular reference to noise and disturbance.
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Planning Policy

6. The most relevant development plan policies are from the North Lincolnshire Local Plan, adopted in 2003. Policy DS1 seeks to prevent unacceptable loss of amenity to neighbouring land uses while DS4 limits changes of use in residential areas to those that do not affect appearance, character or amenity by virtue of various adverse environmental conditions including noise. Polluting activities are similarly limited by policy DS11. The appellant has referred to policy E7 of the Lincolnshire Structure Plan, adopted in 2006, which supports diversification of the rural economy. The Council has also referred to government advice in Planning Policy Guidance 24 (PPG24) – *Planning and noise* although I find that does not have detailed advice on the situation in this appeal.

Reasons

7. The two year temporary permission has allowed the impact of the dog breeding use to be assessed and the application before me now seeks to continue the use permanently. Objections were made by Haxey Parish Council, several nearby residents, the headteacher of the nearby school and the Chair of the village hall. The Council's Environmental Protection Officer's consultation response dated 27 June 2006 stated that a statutory nuisance was witnessed in terms of noise from barking dogs and an abatement notice was served. However, some letters of support were received and the previous owner of the appeal property stated that the noise came from barking dogs at 11 Nethergate, the adjoining house.
8. The appellant has invested a considerable sum in trying to reduce the noise problem, in particular, she has erected a solid wall and gates to prevent the dogs being disturbed and has rehomed some guard dogs. She also states that the occupier of number 11 has moved, taking away the neighbouring dogs that were causing the problem. A letter dated 13 July 2006 from the Council's Environmental Protection Team states that the boundary wall and closer supervision may reduce the problem.
9. The appellant's appeal statement contains a number of undated proforma letters from residents and users of the village hall stating that they have no objections and the school has also experienced less nuisance since the wall was built. However, letters received in response to the appeal notification in January/February 2007 include objections from the Parish Council and five near neighbours. They state that, although the situation has improved over the winter, the coming spring and summer would again be times of unacceptable disturbance when windows were open and gardens in use. One of the letters states that several monitoring forms have been sent to Environmental Health since July 2006 and mentions a specific incident in January 2007 involving noise from a puppy. On the other hand, a letter from the new occupier of number 11 states that he has no cause for concern and the occupier of number 16, on the other side of Nethergate, has similar views.
10. Circular 11/95 advises that, once a temporary permission has run its course, it is not appropriate to grant a further temporary permission – it should either be made permanent or refused. In this case, there is evidence of continuing noise problems and, given the situation of the property in a village with people living quite close by, that is not surprising. While the newborn and younger puppies are housed in an enclosed building, there are numbers of dogs in the kennels and pens around the rear part of the garden which would be a likely source of noise. While some people may be more susceptible to noise than others, I

consider that permitting the permanent use of the property for dog breeding with up to 30 dogs is highly likely to result in harm to the living conditions of neighbours. I acknowledge that the appeal site is a large plot but the kennels are mostly towards the rear of it where there is open land allowing sounds to carry. The appellant herself, in a letter enclosed with the appeal documents, states that she appreciates that most people would not want a dog breeding establishment here, however a change in her circumstances left her with little option.

11. The Environmental Protection Team has tried to address the problems through other legislation and their letter of 13 July 2006 acknowledges the cooperation of Miss Smith but does not give an assurance that problems will not recur. Miss Smith and her agent state that they have recently spoken to Environmental Health officers who consider the problems have been overcome but the letters from individuals received in connection with this appeal do not support that view. Neither do they support her contention that any incidents have been caused by her domestic dogs or those previously living next door. I find that it is not satisfactory to rely on other legislation to respond to individual incidents of nuisance when the location is in itself unsuitable and there may be little further that could reasonably be done to reduce any noise.
12. It is my conclusion that the use conflicts with the local plan policies referred to above. I note the appellant's reference to structure plan policy E7 which encourages diversification of the rural economy but there is nothing to suggest that this should be at the expense of the living environment. Neither does the dog breeding use help to maintain viable and sustainable local communities which the policy states to be its overall aim. It is my conclusion that the use fails to accord with the development plan.
13. I have given sympathetic consideration to the situation in which Miss Smith finds herself and have taken into account the considerable investment that she has made in her efforts to reduce noise problems. I have also had regard to the advice of PPG4 – *Industrial and commercial development and small firms*. However, there are specific and significant objections in this case rather than merely the generalised objection that the use differs from its generally residential context. The support from customers and those involved in the dog breeding world is noted but does not in itself make the use acceptable. I have examined the possibility of granting a personal permission but do not believe that would be justified by the circumstances as the local planning authority would have no basis for distinguishing between a dog breeding business operated by Miss Smith and that operated by any other occupier of the property. I have concluded that there are no material considerations, including the personal and business needs of the appellant, that outweigh the conflict with the development plan.

Conclusions

14. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

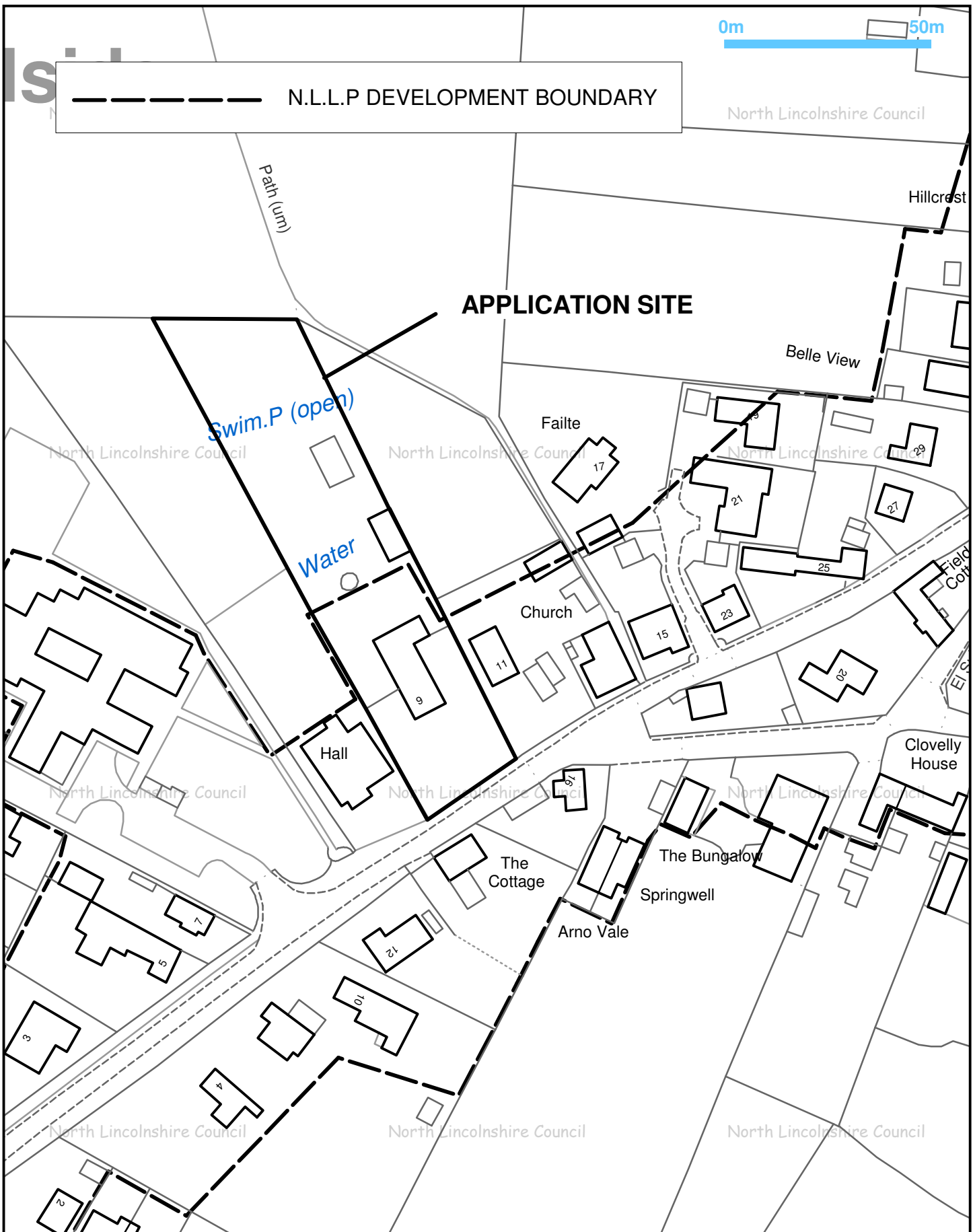
Jean Jones

INSPECTOR

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N.L.L.P DEVELOPMENT BOUNDARY

APPLICATION SITE



Title: PA/2012/0581

Drawn by: Sue Barden

Date: 02/10/2012

Scale: 1:1250



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Director of Places
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