



Appeal Decision

Hearing (Virtual) held on 13 April 2022

Site visit made on 14 April 2022

by Martin Small BA(Hons) BPI DipCM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 June 2022

Appeal Ref: APP/Z1510/W/21/3278776

Land at Bardfield Road, Shalford, Braintree, CM7 5HX

- 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 Mr Daniel Power against the decision of Braintree District Council.
 - The application Ref 21/00152/FUL, dated 14 January 2021, was refused by notice dated 28 April 2021.
 - The development proposed is change of use of land for the siting of a temporary dwelling, together with stables, agricultural building & associated hardstanding & turn out/exercise area to support a new equestrian business.
-

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Braintree District Council against Mr Daniel Power. This application is the subject of a separate decision.

Procedural Matters

3. The address in the banner heading above is taken from the application form. However, at the Hearing it was agreed that the site is also known as 'Land South of Hulls Lane, Shalford, Essex'.
4. For the purposes of this appeal the development plan comprises the Braintree District Local Plan Review (2005) (the Local Plan), the Braintree District Council Local Development Framework Core Strategy (2011) (the Core Strategy) and the Shared Strategic Section 1 Local Plan (2021) (SSS1). The Core Strategy and Local Plan will be replaced, in full, on the formal adoption of the Braintree District Section 2 Local Plan (BDS2) in due course.
5. At the Hearing the Council confirmed that the BDS2 was still at Examination, with the Inspectors' Report awaited. At the time of writing my decision I had not been advised of any change in the situation. The BDS2 is therefore at an advanced stage. The Council also confirmed that there were no unresolved objections to Policies LPP 40 and LPP 54 of the emerging Plan, referenced in the Planning Officer's Report, and that no main modifications were proposed to either of these policies nor to Policy LPP 46, raised at the Hearing. It was common ground at the Hearing that these policies should be given moderate weight in accordance with paragraph 48 of the National Planning Policy Framework (the Framework) and I have therefore done so in my decision.

6. The reasons for refusal did not include the effect on designated heritage assets. However, during the course of the appeal the Council submitted comments from Essex County Council's Historic Buildings Consultant expressing reservation and concern about the proposals. The appellant was given the opportunity to respond to these comments and I have therefore taken them into account in my decision. I return to this matter below.

Main Issues

7. The main issues are:

- i) whether the site is an appropriate location for housing including, having regard to national planning policy, whether the site is in an isolated location;
- ii) whether there is a need for a rural worker to live permanently on the site, with regard to the nature of the proposed facility;
- iii) the effect of the proposed development on the character and appearance of the area; and
- iv) the effect of the proposed development on the appearance and use of Halls Lane, including safety.

Reasons

Location

8. The appeal site is located in an area of sporadic development, approximately 1.1km from the nearest village, Shalford. Shalford has very limited facilities and services to meet day to day needs. It would therefore be necessary to travel to Braintree, over 6km away, to access these. No evidence has been provided to me of any public transport services from Shalford to Braintree and, in any event, Halls Lane is narrow, with no footway or street lighting. Whilst it may provide a pleasant walking route on a fine day, it would be unlikely to be used on a regular basis, in inclement weather or in the dark. Practically, therefore, the proposed development would increase the need to travel and necessitate the use of the private car to access facilities and services.
9. Paragraph 80 of the National Planning Policy Framework (the Framework) sets out that isolated dwellings in the countryside should be avoided unless one or more of five specific circumstances apply. The Council contends that the site is not isolated in terms of paragraph 80 due to other dwellings and buildings in the general vicinity.
10. The judgement in *Braintree District Council v SSCLG & Ors* [2017] EWHC 2743 (Admin) stated that 'isolated' should be given its ordinary objective meaning of "far away from other places, buildings or people; remote". However, when read as whole and in conjunction with the judgements in the subsequent Court of Appeal case, *City and Country Bramshill Ltd v SSHCLG, Hart DC and Historic England* [2019] EWHC 3237 (Admin) and its subsequent Court of Appeal case, it is clear that isolated in this context should be considered as 'outside a settlement'.

11. Whilst there are 2 dwellings to the east of the site and farm buildings some way to the south-west, the appeal site is otherwise surrounded by open countryside. It is significantly physically, perceptually and functionally separated from Shalford. Although 'settlement' is not defined in the Framework in my view these existing dwellings are insufficient to constitute either a settlement or a cluster. I therefore find that the appeal site is not within a settlement and is therefore an isolated location in terms of paragraph 80 of the Framework.
12. I therefore conclude that the appeal site would not be an appropriate location for new housing in terms of Policy CS7 of the Core Strategy which sets out that development will be provided in accessible locations to reduce the need to travel. However, it was confirmed at the Hearing that this conflict may be outweighed where a sufficiently strong need for a dwelling in the countryside has been demonstrated. This approach is consistent with paragraph 80 of the Framework where an essential need for a rural worker to live permanently at or near their place of work in the countryside is the first of the special circumstances. I turn to this matter below.

Need

13. The proposed development is an equine establishment for the treatment of laminitis, a debilitating condition affecting horses' hoofs that may result in the horse being euthanised if not treated in time. Horses with the condition require specialist care. It was clarified at the Hearing that the facility would provide intermediate care for those horses that needed more than could be provided by the owners but were not so critical as to require a specialist equine hospital with veterinary care. The appellant also proposes to breed and keep Falabella horses, a rare and pure mini horse breed, and 10-20 rare breed sheep to maintain the grass short as required for the strictly controlled diet of laminitic horses.
14. The proposals include a mobile home to provide accommodation for the appellant and his wife who intend to run the facility. The appellant contends that it would be necessary to have a 24 hour presence on the site to provide care for the laminitic and Falabella horses when foaling and security. Permission is sought for the siting of this mobile home for 3 years to allow the proposed business to become established.
15. Planning Practice Guidance (PPG) provides advice on assessing the need for isolated homes in the countryside. It advises that, in the case of new enterprises, it may be appropriate to consider granting planning permission for a temporary period as a trial. However, whilst the Framework does not refer to a financial test, PPG also advises that the degree to which there is confidence that the enterprise will remain viable for the foreseeable future may be another consideration.
16. Policy RLP 85 of the Local Plan allows new equestrian facilities subject to the satisfaction of 4 criteria. These include that no additional residential accommodation is consequently required to supervise the facilities. At the Hearing, the Council clarified that this applied where an application for accommodation followed the establishment of an enterprise and was therefore not applicable to the appeal proposals.

17. Nevertheless, Policy RLP 85 sets out that proposals for new residential accommodation will only be permitted if a submitted business plan demonstrates that there is a convincing case for the accommodation. Policies LPP 54 and Policy LPP 40 of the BDS2 also refers to convincing need and allows temporary dwellings for rural workers where there is clear evidence of a firm intention to develop the enterprise and that it has been planned on a sound financial basis respectively.
18. The statement submitted with the application included brief equestrian and agricultural business models. However, these models did not set out any information on the costs of setting up and running the proposed facility, which the statement notes would require significant investment. They could not therefore be considered to be a business plan.
19. The appellant submitted a profit / loss account with the appeal which indicates a loss in year 1, but a net profit in years 2 and 3. However, the account is simplistic with no detailed breakdown of how the figures are derived or any evidence to confirm the figures given. There is no indication of the costs of constructing the buildings and hardstanding nor any allowance for the repayment of any loans that may be necessary or depreciation.
20. I therefore conclude that it has not been persuasively demonstrated that the proposed enterprise would be based on a sufficiently robust business plan to represent an essential need for a worker to live permanently on the site. Accordingly, in this respect, the proposed development would not accord with Policy RLP 85 and paragraph 80 of the Framework. Although not cited in the reason for refusal, the proposed development would also conflict with Policies LPP 40 and LPP 54 of the BDS2.

Character and appearance

21. The appeal site is located on the west side of Hulls Lane within a pleasant area of open countryside comprising predominantly medium - large fields and a gently undulating topography. With the exception of two dwellings to the east of the site, the absence of built development along Hulls Lane is particularly notable.
22. The site is within the B11 Lindsell and Bardfield Farmland Plateau Landscape Area in the Braintree Landscape Character Assessment (2006) (LCA). The Area is characterised by, amongst other things, the open appearance of the landscape, a network of narrow lanes and a sense of isolation. Sensitivities to change and key issues include the erection of buildings on higher ground which may be visually intrusive and / or interrupt the open skyline.
23. The main site itself comprises part of a larger field and is bounded by open post and wire fences to the southern and northern boundaries, with sporadic young trees along the latter. Alongside Hulls Lane is an established hedgerow with a recently planted hedge adjacent to the field access. The western boundary of the site was not defined at the time of my site visit.
24. A line of mature trees along the south-eastern boundary of the adjacent land to the east and south-east screen the site in views from the east, but it is visible from Hulls Lane, particularly when approaching from the north. It rises gently to the west so has an open skyline when viewed from Hulls Lane and

- contributes positively to the character and appearance of the area with its openness and skyline being important landscape interests.
25. The proposed development comprises a stable and an agricultural building set at 90 degrees to each other, a turn out area to the west, a mobile home to the front of the site and a parking / hardstanding area accessed from Hulls Lane across the adjacent field. The main buildings would be of a form and appearance that are not uncommon in the countryside generally. Appropriate materials and finishes could be secured by condition.
 26. However, the proposed stable building would be approximately 18m x 8m and the agricultural building approximately 23m x 8m, with both approximately 4.4m high. The size of the buildings, coupled with the length of the access road and extent of hardstanding proposed, would represent significant built development in this open rural landscape, at odds with the predominant absence of such development on Hulls Lane.
 27. The proposed buildings would sit at a higher level than the lane. The rising land behind the buildings would mitigate their visual impact only to a limited extent as the buildings would still be seen against the skyline. They would be particularly prominent from a lower section of Hulls Lane to the north of the site when approaching and looking up to the site, thus resulting in harmful visual intrusion.
 28. Whilst the finishes of the mobile home could be secured by condition, its general form and appearance would not be characteristic of development in the area. Although it would be partially screened by vegetation, it would be seen from Hulls Lane proud of the main buildings in the principal views of the site and thus appear incongruous, albeit for a potentially limited period.
 29. Planting of the site boundaries could be secured by condition but would take several years to mature and even then would be unlikely to fully screen the development. Moreover, planting should be a means of integrating development into the landscape rather than screening an otherwise visually unacceptable development. Additionally, paragraph 197 c) of the Framework sets out that account should be taken of the desirability of new development making a positive contribution to local character and distinctiveness. In this case, given the limited extent of the site, enclosing it with planting would detract from the characteristic openness of the area.
 30. I therefore conclude that the proposed development would be harmful to the character and appearance of the area. Accordingly, in this respect, the proposals would conflict with Policies RLP 80, RLP 85 and RLP 90 of the Local Plan, Policy CS8 of the Core Strategy and Policy SP7 of the SSS1. In combination and amongst other things, these policies protect landscape features and character and appearance. The proposals would thus not represent sustainable development as promoted by Policy SP1 of the SSS1.

Hulls Lane

31. Hulls Lane is narrow and enclosed by vegetation or roadside banks, being sunken in parts, with a lack of formal passing places. It is insufficiently wide for 2 vehicles to pass each other without one or both encroaching onto the verge. Although disputed by the appellant the copy of the Braintree District Local Plan Review Proposals Map 67 submitted at the Hearing shows that Hulls

Lane is designated as a 'Protected Lane' in the Local Plan. The designation reflects the historic nature of these lanes and their contribution to the landscape of Essex. The original designation was reviewed and confirmed in 2013, with Hulls Lane scoring highly in the review methodology on historic integrity, reflecting its limited or discrete erosion/damage.

32. The appellant has not provided any estimate of vehicle movements associated with the proposed development. A Transport Statement submitted in support of the objections raised to the proposed development by the occupiers of 12 properties in the vicinity expresses concerns about highway safety and potential damage to verges. However, although the lane is derestricted, vehicles using Hulls Lane are likely to be travelling at relatively slow speeds given its narrowness. No evidence has been provided in the Statement of accidents on the lane. I am not persuaded therefore that the proposals would have an unacceptable effect on highway safety and I note that no objections were raised to the proposals by the highway authority.
33. At the Hearing the appellant explained that the intention would be for horses to be collected and returned by the appellant rather than by their owners. However, whilst this would limit the number of vehicles with horseboxes accessing the site at any one time, it would not reduce the overall number of trips to and from the site. Moreover, I have no mechanism before me to ensure that horse owners would not deliver and collect their horses from the site. The proposed development would also result in other additional vehicle movements associated with the proposed facility, such as feed deliveries and veterinary visits, and from the residential occupation of the site.
34. I acknowledge that Hulls Lane is used by large agricultural vehicles and that the agricultural use of the site could generate movements. However, in the absence of evidence to the contrary I find that the proposed development would result in an increase in vehicle movements on Hulls Lane with potential consequential damage to the verges and overall character of the lane. These are identified as key issues for the Landscape Character Area in the LCA.
35. I therefore conclude that the proposed development would lead to harm to the character and appearance of Hulls Lane. Accordingly, in this respect, the proposals would conflict with Policy RLP 87 of the Local Plan and Policy LPP 46 of the BDS2 which seek to protect the traditional landscape and nature conservation character of Protected Lanes, and with Policy RLP 90 of the Local Plan.

Other Matters

Listed building

36. 'Kushti Kenner' is a Grade II listed cottage approximately 75m to the east of the appeal site. Setting is defined in the Framework as the surroundings in which a heritage asset is experienced. The effect on the significance of this designated heritage asset was not a reason for the refusal of the application but in determining this appeal I have a duty to have special regard to the desirability of preserving the setting of the listed building. Furthermore, the Framework recognises that development within the setting of a heritage asset can affect its significance.

37. Kushti Kenner dates from the 18th Century and has both historic and architectural interest. Its setting has historically been and currently is of largely open agricultural land of which the appeal site forms part. However, I observed during my site visit that Kushti Kenner sits in a secluded plot with intervisibility between the site of the proposed development and Kushti Kenner very limited due to intervening vegetation.
38. Whilst there may be views of the upper parts of the proposed buildings from the cottage, these views would also be limited. The proposed mobile home, although not reflecting locally distinctive architecture, would be very largely, if not entirely, screened in views from the cottage. I have no reason to expect this vegetation to be removed in the future.
39. The site therefore contributes little to the setting of Kushti Kenner. Whilst the proposed development would result in the loss of openness, it would not detract from the experience of the listed building or from the appreciation of its significance. I have no evidence that the development would otherwise affect the significance of Kushti Kenner. Therefore, I find that the proposed development would preserve the setting of this designated heritage asset.
40. Two listed buildings at Hunts Farm, approximately 300m away, are not experienced from the site which is thus not within their setting. The property adjacent to Kushti Kenner, 'Ringers', is not listed, but the County Council suggests that it could be considered a non-designated heritage asset. In any event, Ringers is separated from the appeal site by outbuildings, Kushti Kenner and vegetation such that the appeal site is not within its setting either.
41. The appellant has drawn my attention to the approval of details for a prior approval for the erection of an agricultural building at Wethersfield (21/01371/AGR). However, this is not directly comparable to the proposals before me and thus has not been determinative in my decision.

The need for laminitis care provision

42. Over 60 letters of support for the proposed development were submitted citing, amongst other matters, the benefits of a laminitis facility offering 24/7 care and the lack of a such a facility within the wider area. I have no doubt that having a facility such as that proposed to provide the necessary care would be convenient for owners of horses with laminitis and help to relieve the inevitable stress of such a circumstance. However, this support is for the principle of the facility rather than support for a facility in this location.
43. A number of representations were made by equine care professionals both in support of and objecting to the proposed development highlighting the need for specialist care but also that transporting laminitic horses should be kept to a minimum. Care is currently provided by visiting farriers, such as the appellant, and veterinarians. I have no firm evidence that this arrangement fails to provide adequate care for laminitic horses or that it will fail to do so in the future.
44. I therefore find that the support for the proposed facility is based more on convenience than actual need and is not sufficient a consideration to outweigh the conflict with the development plan I have identified above.

Rural economy

45. Paragraph 84 of the Framework supports the establishment of rural businesses. The development would provide employment for the appellant and his wife, although the appellant accepted at the Hearing that care could be provided by just one person. The appellant is currently in employment as a farrier. I have no evidence that the proposed facility would offer other significant employment opportunities given its limited scale.
46. The small scale of the proposed sheep and Falabella breeding would add little to the rural economy above that already contributed by the owners of the horses that would be treated at the proposed facility. Consequently, the contribution of the proposed development to the local economy would be limited and not sufficient a consideration to outweigh the conflict with the development plan that I have identified above.

Other considerations

47. The manner in which the Council determined the application is not for me to consider in the context of this appeal which is confined to assessing the proposals on its individual planning merits.

Planning Balance

48. At the Hearing the appellant accepted that the Council could demonstrate a 5 year housing land supply. The policies of the Local Plan and Core Strategy are dated but paragraph 219 of the Framework sets out that existing policies should not be considered out-of-date simply because they were adopted prior to the publication of the Framework. Rather, due weight should be given to policies according to their degree of consistency with the Framework.
49. The Framework recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. However, it also sets out policies for limiting the need to travel, prioritising pedestrian and cycle movements and promoting walking, cycling and the use of public transport. Consequently, Policy CS7 is broadly consistent with the Framework.
50. The Framework also promotes the rural economy whilst restricting isolated dwellings in the countryside to specific circumstances. Policy RLP 85 is therefore broadly consistent with the Framework. The Framework sets out that development proposals should have regard and be sympathetic to the character of an area and add to its overall quality. Accordingly, Policies RLP 80, RLP 85, RLP 87 and RLP 90 of the Local Plan and Policy CS8 of the Core Strategy are also all broadly consistent with the Framework.
51. I therefore find that the most important policies for the determination of this appeal are not out-of-date. Consequently, the presumption in favour of sustainable development as set out in paragraph 11 of the Framework does not apply in this case. Given this consistency the conflict with these policies I have identified above attracts significant weight in my decision.

Conclusion

52. I have found that the proposed development conflicts with the development plan. There are no material considerations, including the support for the

facility, that indicate that a decision should be made other than in accordance with the development plan.

53. For this reason, and having had regard to all the other matters raised, the appeal is dismissed.

Martin Small

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Henry Doble	Associate, Acorus Property Services
Daniel Power	Appellant
Eva Power	Appellant's wife

FOR THE LOCAL PLANNING AUTHORITY

Carol Wallis	Senior Planning Officer, Braintree District Council
--------------	---

INTERESTED PARTIES

Rebecca Bates	Local resident
---------------	----------------

DOCUMENTS SUBMITTED AT AND FOLLOWING THE HEARING

Braintree District Local Plan Review Proposals Map 67 submitted by the Council.

Braintree Protected Lanes Assessment July 2013 submitted by the Council.

Landscape Character Assessment B11 Lindsell & Bardfield Farmland (including front cover & executive summary) submitted by the Council.

Copy of decision notice for 21/01371/AGR Erection of agricultural building:
Submission of details following Prior Approval Required at Summers Hall, Gosfield Road, Wethersfield, Essex CM7 4DR submitted by the appellant.