



Appeal Decision

Site visit made on 12 December 2022

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 December 2022

Appeal Ref: APP/Z1510/W/21/3284131

Kofali Farms, Purls Hill, Great Maplestead, Halstead CO9 2QX

- 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 Kofali of Kofali Farms against the decision of Braintree District Council.
 - The application Ref 21/01009/FUL, dated 27 March 2021, was refused by notice dated 12 August 2021.
 - The development proposed is described as please see supporting documents.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description in the banner heading is from the planning application form. The Council's decision notice describes it as being for the erection of two polytunnels, retention of CCTV and temporary consent for a storage container. This reflects what is shown on the plans. Some of the CCTV, a container and one of the polytunnels have been erected. I have considered the appeal based on the description in the decision notice and that it is part retrospective.
3. The appellant's appeal statement suggest they would be willing to accept a temporary consent. While the Council considers a temporary consent is not justified, there is no objection expressed to me considering the proposal on this basis. Having regard to paragraph 21a-014-20140306 of the Planning Practice Guidance (PPG), I see no reason I could not grant a temporary planning permission if I felt it was justified. I return to this below.
4. Since the Council's decision was issued, the Braintree District Local Plan (2022) (the BDLP) has been adopted. It supersedes the Braintree District Local Plan Review (2005) and the Braintree District Local Development Framework Core Strategy (2011), and integrates the policies of the Braintree District Shared Strategic Section 1 Local Plan (2021). I have sought and taken into account the Council's and the appellant's views upon the implications of this for their respective cases. These are reflected in my findings below.

Main Issues

5. The main issues are:

- the effect of the development upon the character and appearance of the area; and,
- if there is harm to the character and appearance of the area, whether or not there are other considerations to outweigh the harm.

Reasons

Character and appearance

6. The area of land to which the proposal relates comprises approximately 42 acres of primarily undulating pasture land enclosed and divided by fencing, hedgerows, a hardstanding area and a vehicular access. As well as some of the structures subject of this appeal, I noted limited amounts of paraphernalia mostly associated with an agricultural use. Notwithstanding this, the land holding overall has a rural and largely undeveloped character and appearance.
7. The plans show the polytunnel structures measure approximately 22m in length, by 9m in width, by 3.9m high. While they might be considered agricultural in appearance, of a colour sympathetic to their backdrop, moveable and of temporary construction, their size and the metal and sheeted elevations, means they would appear as substantial new buildings. Given their size and appearance they would harmfully affect the character and appearance of what would otherwise be an undeveloped part of a field.
8. This part of the land is enclosed in part by hedgerows with a number of mature trees which limits visibility from the north, south and west. However, the polytunnels are in a somewhat elevated position when viewed from the east and their position would be notably visible from the largely open landscape to the east and southeast including some longer distance views from properties to the north and east of Church Street.
9. The dark green container is located against an established mature hedge line. It is proposed to be retained temporarily until a nearby appeal is determined¹. However, given its size and corrugated metal elevations, the storage container is a sizeable building of an industrial appearance that is incongruent and significantly at odds with the character and appearance of the area. Its position is prominently visible from around the site entrance on Purls Hill. Therefore, it has a marked adverse urbanising effect upon the character and appearance of the area.
10. Allowing the buildings for a temporary period might mitigate against the Council's concerns of the suitability of the materials for long-term retention to some degree. However, there would still be a harmful effect until they are removed or replaced. This would only mitigate the longer-term concerns, and there would still be shorter to medium term harmful effects. This and other conditions, such as in respect of materials or colours would not adequately mitigate the harm.
11. The Council does not object to the installation of the CCTV cameras. However, there are no details of the structures they are proposed to be maintained upon detailed on the plans. At my visit I could see that two were erected on sizeable posts, greater than their mounting height and one was under a sizeable gazebo type structure. Therefore, what was on site is not what is shown on the plans.

¹ Page 7 of the Planning Statement by Whirledge & Knott (March 2021).

In-light of this and the absence of details on the plans, there are not enough details to make an informed judgement upon them.

12. For the reasons set out above, the polytunnels and container building are and would be harmful to the character and appearance of the area. They conflict with Policies LPP1 and LPP52 of the BDLP. Amongst other things these require development is of a design that reflects or enhances the area's local distinctiveness, that protects and is in harmony with the character and appearance of the area. It would also conflict with paragraphs 130 and 174 of the National Planning Policy Framework (2021) (the Framework) which have similar objectives.

Other considerations

13. Paragraph 84 of the Framework states that planning decisions should enable the sustainable growth and expansion of all types of business in rural areas through well-designed new buildings, and enable the development of agricultural and other land-based rural businesses. Paragraph 85 states that in the circumstances where development is needed to meet rural business needs it is important that development is sensitive to its surroundings. Policy LPP7 of the BDLP has similar objectives although this mainly relates to the conversion and re-use of existing buildings of permanent and substantial construction.
14. The enterprise was established in 2018. It is understood to have approximately 125no. Scottish Blackface sheep and 5no. Blackface Dalchirla, comprising a high value of livestock. It employs a part-time worker. The Business Plan (BP) states the enterprise has invested heavily in pedigree livestock to sell top quality pedigree lambs through the appellant's shops. The best surplus male lambs would be sold as tup lambs to other pedigree breeders, and others through the appellant's retail business. It is hoped more animals will be sold at premium prices, and numbers will increase with demand. It concludes the business is considered viable.
15. The Council's agricultural adviser concludes a performance target of lambs reared at 170% is unachievable for the Blackface breed which have a lambing percentage of approximately 105%. This has significant implications for the business figures. A 650 ewe flock also requires a greater amount of land, but the BP assumes that additional land will be secured at a very low cost. Budget projections show a profit in 2022 of £6,321 rising to £14,840 in 2024. However, they are based on an incorrect lambing percentage, and on the assumption of cheap land being available. Consequently, the Council's advice is that the business is not viable now or at the end of 2024. Having viewed the BP, and in-light of the appellant's case, there is no substantive evidence provided that would lead me to disagree with the Council's adviser. Based upon the evidence before me the business is not a viable or sustainable one.
16. Part of the justification for the proposals relates to preventing a number of instances of trespass, and monitoring livestock. The polytunnels would allow for high livestock welfare, shelter especially during and after lambing, and during extreme weather, protection from predators such as badgers, foxes and dogs, monitoring feed and general husbandry. I am informed it is common for animals to worry sheep or injure or kill lambs. The appellant has provided a recorded incidence of when a sheep died from its injuries. The buildings might provide some advantages in respect of animal welfare. However, I am not

- provided with substantive evidence demonstrating such events are frequent, or livestock is frequently lost to predation, that would justify the large buildings.
17. The PPG (ID Ref 13-113-20170728) recognises the role polytunnels can play in protecting livestock. However, the BP states Blackface sheep are renowned in Scotland for their hardiness, mothering ability and their ability to convert poor quality forage into high quality meat. Based upon the evidence before me I cannot conclude the polytunnels are necessary to breed, rear and feed the animals, or the harmful effects of the development are justified on welfare grounds. These matters attract only limited weight.
 18. Notwithstanding the survival of the business to date, there appears to be flaws in the assumptions underpinning the BP, and there is unlikely to be any profitability until at least after 2024. It is not clear anything would change in this regard in the next few years. It is not demonstrated with certainty the business would survive, so granting a temporary consent is not appropriate. Allowed appeal Ref APP/Z1510/W/21/3273737 was justified to meet the appellant's storage needs, obtain insurance and prevent thefts. The evidence suggests some equipment can be stored elsewhere temporarily and it is not clear if and when the permitted building would be completed. Allowing the container temporarily would permit a building to remain, for which there is not adequate justification to sufficiently outweigh its harmful effects.
 19. There might be some temporary economic benefits during construction, and once complete some sustained benefit to the rural economy including through increased employment opportunity. The proposals would result in benefits to the existing and future business in terms of animal welfare, husbandry, security and storage. However, the evidence suggests this would be limited, and given the concerns in respect of the current and future viability of the business I cannot be certain that many would be longer-term benefits. Therefore, these matters attract only limited weight.
 20. For the reasons set out, the need and benefits of the development as set out attract limited weight. They do not outweigh the harm to the character and appearance of the area. The development therefore conflicts with the aims of Policy LPP1 of the BDLP which aims to strictly control development outside development boundaries to protect the intrinsic character and beauty of the countryside. It would also conflict with the aims of paragraphs 84 and 85 of the Framework, which expect decisions to enable the sustainable growth of business in rural areas and for buildings to be well-designed and sensitive to their surrounds.

Other Matters

21. Reference is made to a building previously approved in 2016, which has subsequently lapsed. The full details and circumstances including the detailed justification for it are not before me. However, from the details provided it was for a different agricultural operation on a larger holding, and a different business justification involving a cattle herd and hay production. Therefore, it is not directly comparable to this appeal proposal, which I have considered on its own merits.
22. I have carefully considered the findings for Ref APP/Z1510/W/21/3273737. That Inspector agreed with the Council that the design, siting and external appearance of the development was acceptable. The Inspector also judged it

met the relevant criteria of the GPDO², because the financial evidence was judged to not be so unrealistic that the agricultural operation could not be reasonably described as a business or trade. Consequently, it was considered to meet the test of being reasonably necessary for the purposes of agriculture.

23. The test for the previous Inspector to consider is a different test to the one for this proposal, which is whether there is sufficient justification for buildings that are harmful to the character and appearance of the area. I note the appellant feels they have been discriminated against. However, for proposals for express planning permission where a development results in harmful effects, it is not uncommon or unreasonable to expect the harm be adequately and robustly justified. This includes where necessary in relation a business case. I see no reason to conclude the Council's decision is not adequately justified based upon its planning merits.

Planning Balance & Conclusion

24. Overall, the considerations, need and benefits of the development attract limited weight in its favour. Compliance with policies in respect of matters such as those in respect of the living conditions of neighbouring occupiers, noise, odour, highway and access requirements would be neutral matters in the balance. However, the development would be harmful to the character and appearance of the area. This is a matter that attracts moderate weight against the scheme. Therefore, the harm outweighs the need and benefits of the development. In consequence, the appeal should not succeed.
25. The development is contrary to the development plan and the National Planning Policy Framework taken as a whole, and there are no considerations advanced, including the policies of the Framework, which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

Dan Szymanski

INSPECTOR

² Schedule 2, Part 6, Class A of the Town & Country Planning (General Permitted Development) Order 2015 (as amended)