Appeal Decisions

Inquiry held on 17 December 2019

Site visit made on 16 December 2019

by Thomas Shields MA DipURP MRTPI

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

Decision date: 07 April 2020

Appeal A: APP/U1430/C/18/3200586, 3200591
Land at Bantham Farm, London Road, Hurst Green, East Sussex

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the Act").
- The appeal is made by Mr Nigel Watts and Mr Nicholas Watts against an enforcement notice (hereafter "EN1") issued by the Rother District Council.
- The enforcement notice was issued on 28 February 2018.
- The breaches of planning control alleged in the notice are, without planning permission:
  - erection of a timber building on the Land, shown marked A on the attached plan;
  - (i) the change of use of the Stable Building, shown marked B on the attached plan, from the stabling of horses/ponies and ancillary uses at ground and first floor level to a mixed use comprising residential, stables and ancillary uses, art studio;
  - (ii) the change of use of the Land from private recreational equestrian/agricultural to a mixed use comprising private recreational equestrian/agricultural and storage of miscellaneous equipment and items including drink containers movable structures and platforms and recreational garden furniture.
- The requirements of the enforcement notice are:
  - (i) Dismantle demolish and remove from the Land the unauthorised building shown in the approximate position marked A on the plan.
  - (ii) Cease the use of the Stable Building in the approximate position marked B for residential, art studio and for general storage purposes.
  - (iii) Remove from the Stable Building and the Land all domestic furniture fittings and paraphernalia, al[art materials and equipment and all other items unrelated to the authorised use of the building and Land for private recreational equestrian/agricultural use.
  - (iv) Cease the use of the Land for the open and general storage of miscellaneous items including drink containers, movable platforms and trailers, garden furniture and any other unauthorised structures and chattels being stored in connection with the unauthorised uses and buildings.
  - (v) Remove from the land all items in (iv) above being stored on the Land.
  - (vi) Remove from the Land all equipment, materials, debris, rubble, rubbish and tools arising from complying with steps (i) - (v) above.
- The period for compliance with the requirements is 4 months.
- The appeal is proceeding on grounds set out in section 174(2)(c) and (d) of the Act.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Appeal B: APP/U1430/C/18/3200608, 3200610
Land at Bantham Farm, London Road, Hurst Green, East Sussex

- The appeal is made under section 174 of the Act.
- The appeal is made by Mr Nigel Watts and Mr Nicholas Watts against an enforcement notice (hereafter "EN2") issued by the Rother District Council.
- The enforcement notice was issued on 28 February 2018.

- The breaches of planning control as alleged in the notice are, without planning permission:-
  - (i) Under Application ref RR/2013/2533/P dated 10 April 2014 planning permission was granted to remove current building and rebuild larger Bl (A) use (art studio) including parking spaces, subject to conditions one of which was:-
    No.4: "Before any development commences the existing building on the site shall be demolished and the site cleared of all resultant materials, unless otherwise agreed in writing by the local planning authority".
    It appears that the above condition has not been complied with because the building has been retained and moved to another part of the site, shown in the approximate position marked C on the attached plan, in breach of condition No.4 attached to planning permission RR/2013/1533/P.
  - (ii) Under Application ref RR/2011/895/P dated 28 July 2011 planning permission was granted for minor external changes to the Stable Building, shown in the approximate position marked B on the attached Plan, with the addition of shuttered windows, subject to conditions one of which was:-
    No.3: "The building to which the permission relates shall be used for the stabling of horses/ponies, horse/pony trap storage, water butt storage, equestrian related workshop, hay storage area and shower/toilet room facility at ground floor level and a tack room and rest area at first floor level only. At no time shall the building be used for any other purpose, including human habitation/occupation or other purpose including any other purpose in Class C3 of the Schedule to the Town and Country Planning (Use Classes) Order 2005 (as amended) or in any provision equivalent to that Class in any statutory instrument revoking or re-enacting that Order".
    It appears that the above condition has not been complied with because the Stable Building is being used for human habitation/occupation and other uses in breach of condition 3 attached to planning permission RR/2011/895/P.
- The requirements of the enforcement notice are:
  - (i) Cease the use of the Stable Building shown in the appropriate position marked B on the Plan, for human habitation/occupation, general storage and as an art studio in breach of condition 3 attached to planning permission ref RR/201 1/895/P granted on 28 July 2011.
  - (ii) Remove all domestic goods, furniture and other domestic paraphernalia and all art studio furniture tools materials and equipment from the Stable Building arising from compliance with step (i) above.
  - (iii) Remove the building in the approximate position marked C on the plan, retained and re-sited on land in breach of condition 4 attached to planning permission ref: RR/2013/2533/P granted on 10 April 2014.
  - (iv) Remove from the Land all equipment, materials, debris, rubble, rubbish and tools complying with step (iii) above.
- The period for compliance with the requirements is 4 months.
- The appeal is proceeding on the grounds set out in section 174(2)(d) of the Act.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction and a variation in the terms set out below in the Formal Decision.

Appeal Site, Background and Procedural Matters

1. The appeal site, Bantham Farm, is located to the north of an access track off the A21 London Road between Hurst Green and Flimwell, and lies within the High Weald Area of Outstanding Natural Beauty. It comprises predominantly open grassed areas within which there are three buildings. These are as shown on the plans attached to the enforcement notices and Document 6 as Buildings A, B and D. For the sake of clarity I hereafter refer to them using the same notation.

2. A fourth building, shown as Building C on the enforcement notice plans, has been removed from the land in compliance with the requirement at Section 5(iii) of EN2. As such, in response to my PIN[1], the appellant confirmed his withdrawal of the ground (b) appeal against EN2 in respect of Building C. It was also confirmed at the start of the Inquiry that the appellants no longer wished to purse an argument that the enforcement notices were nullities.

3. The planning application reference in the third paragraph of Section 3(i) of EN2 is incorrect. It should end in "2533/P". This is a minor typo that the appellants had recognised at the outset of the appeal procedure and did not prejudice their case. I will therefore correct EN2 accordingly using powers available to me under s176(a) of the Act.

4. Since the two enforcement notices relate to a single appeal site and to the same buildings therein, there is considerable overlap of the parties' evidence in respect of relevant factors and the history of the site. I therefore deal with Appeals A and B together rather than separately.

5. I have taken into account all of the appellants' submitted written evidence. All oral evidence to the Inquiry was given under oath or solemn affirmation.

The grounds of appeal

6. An appeal on ground (c) is a claim that the matters alleged in an enforcement notice, if they occurred, do not constitute a breach of planning control.

7. An appeal on ground (d) is a claim that at the date an enforcement notice was issued the alleged breach of planning control was immune from enforcement action due to the passage of time; either 4 or 10 years as the case may be.

8. The relevant date for determining the appeals on these grounds is the date that the enforcement notices were issued, hence 28 February 2018.

9. It should be noted that grounds (c) and (d) are legal grounds of appeal and are distinct from any planning merits of development. The burden of proof in legal grounds of appeal rests with the appellant, and the test of the evidence is on the balance of probability. The Courts have established that if the Council has no evidence of its own, or from others, to contradict or otherwise make an appellant's version of events less than probable, there is no good reason to dismiss an appeal on legal grounds of appeal, provided that the appellant's evidence alone is sufficiently precise and unambiguous.

Appeals on ground (c)

10. This ground of appeal was made with regard to the matters alleged at Section 4(ii) of EN1. It is argued that the presence on the land of drink containers (8 x 1000 litre water storage tanks), two steel platforms, and recreational garden furniture, was not a storage use and hence not part of the alleged mixed use.

11. 'Storage' has a dictionary definition of being *a process of keeping something in a particular place until it is needed, or a space where things can be kept.* Storage is certainly capable of being a planning land use in its own right and amounting to 'development' as defined by section 55 of the Act. As such, it

[1] Pre-Inquiry Note to the parties

follows that storage can also be one element of a mixed use of land, where other uses are also present.

12. The appellants' case is that the water tanks were present on the land in readiness for their use in a new art studio building (Building D). However, they had been present on the land for a considerable time before the enforcement notice was issued and for 7 months afterwards, prior to the grant of planning permission to accommodate them (RR/2018/1777/P) in September 2018. Having regard to the definition of 'storage' above, I conclude as a matter of fact and degree that they were, self-evidently, being stored on the land at the date the notice was issued. (However, it should be noted that the effect of section 180 of the Act is that the 2018 planning permission overrides the requirement in the enforcement notice to remove them).

13. With regard to the two steel platforms it was argued that the larger of the two was initially intended to be the framework for Building D, but was never utilised, and that the smaller one was a support platform for the building's construction. However, accepting the appellants' stated intent for them, it is clear from the evidence that at the date when the notice was issued the art studio was at an advanced stage of construction towards its completion. In such circumstances therefore, their redundancy left the platforms simply being stored on the land, that being the situation when the notice was issued. I have not read or heard any convincing evidence which leads me to any other finding.

14. I turn now to the recreational garden furniture. The use of the land, gained through the grant of planning permission, was for a mixed use of agriculture and equestrian use. Planning permission was granted for Building B (RR/2007/3367/P)[2], and subsequently Building D in 2014 (RR/2013/2533/P)[3] as an art studio (although not completed until after the notice was issued). There is no dispute that when the notice was issued the garden furniture comprised benches and picnic tables. It is argued that they performed an ancillary function in connection with the authorised use of the land for equestrian and agricultural use, and/or to the residential use of Building B (on the basis that residential use had become lawful over time) and/or to the use of Building D, the art studio.

15. For reasons set out later in the appeals on ground (d) I have found that the residential use of Building B is not a lawful use. It follows, therefore, that the placing of recreational garden furniture on the land could not have been a legitimate ancillary use since if it in part facilitated and was integral to the unlawful residential use. Furthermore, given that the art studio, Building D, was not yet completed at the date the enforcement notice was issued, I am not persuaded on the balance of the evidence that the garden furniture served an ancillary function to that building.

16. Drawing all of these factors together, and on the balance of probability, I conclude that the keeping on the land of the two steel platforms, garden furniture and water tanks amounted to their storage. As such the land was in a mixed use of private equestrian, agricultural and storage use. That use resulted in a significant change in the character of the use of the land and constituted a *material change of use* amounting to 'development' within the meaning of

[2] *'Erection of stables, tack room, hay store and shower room with new gates and formation of new access'*
[3] *'Remove current building and rebuild larger B1(a) use (art studio)'*

section 55 of the Act. Consequently, since no planning permission has been granted for the development, it constitutes a breach of planning control.

17. For these reasons the appeals on ground (c) fail.

Appeals on ground (d)

Building A

18. This ground of appeal relates to the matters alleged at Section 3 of EN1; the erection of Building A. The appellants must demonstrate, on the balance of probability, that the building was substantially completed more than 4 years prior to the issue date of the enforcement notice, hence before 28 February 2014 (hereafter referred to as the "relevant date").

19. Building A is constructed in timber boarding with metal roof, supported by a central metal 'A' frame with outriggers to each side along its length. The subframe sits on supporting blocks which raise the building above ground level while it also has wheels attached so that they can be lowered and used for re-positioning. The appellants state that the building has been in this position on the land since July 2014, and later modified in 2015.

20. Notwithstanding that it has wheels, and thus the potential ability to be moved, it has not moved for a number of years. Having regard to its considerable size and weight, and degree of attachment and permanence on the land upon which it sits, I consider it to be a 'building'. No contrary argument was pursued.

21. It is argued that the building was substantially completed in January 2014 to Mr Nigel Watts' intended *"original design"*, comprising a metal framework on wheels, scaffold boards for the floor and tarpaulin roof covering. His case on that basis is that the four year period runs from January 2014 and that it was immune from enforcement action by January 2018. A submitted photograph (Exhibit 2, Nigel Watts) said to date from December 2013 showed the form of the structure as it existed then in a different location on the land. It can be seen in that image that only a framework on wheels existed. It is also clear from the appellants' own evidence that the building's current side outriggers, external timber cladding and metal pitched roof were not added until at least May/June 2015. Referring to *Sage*[4] the appellants argue these modifications were new development to the pre-existing original design, and not finishing works to the original design as part of a single continuous development. However, I come to a different conclusion overall for the following reasons.

22. The appellants concede that the original structure was located in several different positions prior to July 2014. It is thus a simple matter of fact that no building (of any description) existed in the current location until July 2014, hence after the relevant date. The appeals fail for this reason alone. That notwithstanding, the operations carried out in 2015 considerably enlarged the tarpaulin-covered original by the addition of outriggers along its length on both sides and the addition of a structured roof to encompass the whole of the enlarged building. Thus, while I accept that the resulting current building incorporates the original framework, the operations undertaken resulted in a substantially larger building and with a wholly different external form and appearance in finishing materials. Taking all of these factors together I find, as a matter of fact and degree, that the development carried out in 2015

[4] *Sage v SSETR & Maidstone BC* [2003] UKHL 22

constituted the construction of a new building, rather than alterations to an existing one.

23. For these reasons I find that the appellants have failed to demonstrate on the balance of probability that Building A is immune from enforcement action through the passage of time.

24. The appeals on ground (d) therefore fail.

Building B

25. As set out earlier, the burden of proof on the balance of probability falls to the appellants. Provided that an appellant's evidence is precise and unambiguous the Courts have established it does not need to be independently corroborated to be accepted, even if there is no evidence to contradict it.

26. Building B was granted planning permission as a single 'L' shaped building for equestrian purposes. It included four stable boxes, a hay store, tack room, shower room/toilet, and kitchen/rest room. It remained a single building for equestrian purposes notwithstanding later non-material minor amendments to the layout.

27. The alleged breach at Section 4(i) of EN1 alleges a material change of use to a mixed use comprising residential, stables and ancillary uses, art studio. In addition, Section 3(ii) of EN2 alleges that the use of the building is in breach of condition No. 3 of planning permission RR/2011/895/P which restricts the use of Building B to specific activities. In particular it prohibits human habitation.

28. The relevant period of time for immunity to be gained from enforcement action in respect of a material change of use (including use of a building for mixed residential and other uses), or a breach of condition, is 10 years. The only exception is where the change of use, or breach of condition, relates to the use of a building as a single dwellinghouse. In such cases the immunity period is 4 years. This is the case that the appellants seek to demonstrate. They argue that one part of the building was occupied and used as a single dwellinghouse in 2012, and then the whole of the building occupied as a single dwellinghouse from October 2013.

29. There is no definition of 'dwellinghouse' in the Act, but in *Gravesham*[5], it was accepted that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-to-day private domestic existence. It is clear from all the parties' evidence that at the date the notice was issued the building contained such sleeping, cooking, washing and toilet facilities, and I confirmed their presence during my inspection. However, while it has such facilities, and thus potentially capable of comprising a single dwellinghouse consistent with *Gravesham*, the key issue in this appeal is whether it actually has been occupied and used in such a way so that it formed a single dwellinghouse, as a separate planning unit, for at least 4 years duration without any material interruption.

30. In support of their case the appellants rely on all of the submitted written evidence and appended exhibits of Nigel Watts, Nicholas Watts and Susan Watts, and the oral testimony given at the Inquiry by Nigel and Susan Watts.

[5] *Gravesham BC v SSE and O'Brien,* [1983] JPL 306.

The evidence of Nicholas and Susan Watts generally supports that of Nigel Watts but does not add anything materially different.

31. Mr Nigel Watts is an accomplished artist, this being also his main profession up until 1999/2000. His written evidence and oral testimony to the Inquiry was that he had previously travelled from his home in Hastings to a remote log cabin in Sweden to paint for 3 days per week, but in later years this became onerous. This led to the purchase of the appeal site in 2007. He states that the intention was to continue with the permitted agricultural and equestrian use, and also to use the building for his painting *"in an ancillary capacity"*. He described how he paints at night, generally between 7pm and 2am but often working through to 4am. By 2012, he found that travelling between the appeal site and Hastings had become difficult due to his age and lack of confidence in driving in darkness late at night or in the early hours of the morning. He stated that his primary use of the building was to paint, and that sleeping overnight facilitated better that activity. It is at this point that he states he *"occupied residentially the stables barn*[6] *from 6 April 2012 on a continuous basis for three but mostly four days a week".* He states that he has paid residential occupancy Council Tax for the building since 6 April 2012.

32. When he slept overnight he did so by using a dual purpose wooden chest with benchtop. It contained within it a mat and duvet which he would place on top for sleeping. In direct response to questions he clarified that although his staying overnight provided a human presence for the horses, the main care for horses throughout the week was provided by other people. He went on to state that *"In October 2013 I occupied residentially the entirety of the stables barn using a small part as an art studio in an ancillary capacity permitted within the context of that residential use".* He continued with this pattern of occupation for up to 4 nights per week until 2016 when he occupied the building on a fully permanent basis.

33. In cross-examination he accepted that although he had paid Council Tax from April 2012, payments were backdated and only commenced in 2017[7]. The payments do not therefore provide supporting contemporaneous evidence that the building was being used as a single dwellinghouse. He also acknowledged that his current evidence relating to residential use of the building was at odds with the information he had previously provided over the years in several planning applications, in which no existing residential use had been disclosed. In closing comments he accepted that the information in the application forms[8] contradicted the reality of what was actually happening on site, and in that regard he had previously been *"less than candid"*. Given this conflict between his past and present accounts of how the building was used, I inevitably come to the finding that his evidence in support of this appeal is somewhat ambiguous, and this reduces the weight I can attach to it in reaching my decision.

34. The plan attached to Nigel Watts' statutory declaration does not accurately show the approved or existing building layout, which includes an internal link door between the element of the building that comprises stables and the remainder of the building, which I saw during my inspection. It is clear to me that planning permission RR/2011/895/P, with approved non-material minor

[6] Referring to the area of ground floor shaded pink on plan attached to Nigel Watts statutory declaration
[7] See Exhibit 3, Nigel Watts Statement of Case, and Appendix I, Jo Edwards proof of Evidence
[8] Council's appendices

amendments, and together with its attached planning conditions, relates to the whole of Building B for private equestrian purposes with equestrian related workshop, and supporting ancillary rest room facilities.

35. On the balance of all the evidence before me from both parties, it seems to me more probable than not that from 2011 onwards, when the appellant started staying overnight in 2012 and 2013, the permitted equestrian use still existed and did so until at least 2016. The Council state that horses were present on the land when the notices were issued in 2018. In addition, given the stated days and hours he spent painting, including the time he spent sleeping there to facilitate his painting, the use of the building changed to a mixed use of equestrian, residential and art studio. Furthermore, while I accept that the living facilities are located in one part of the building, there has been no change in ownership or occupation and the building remains physically and functionally laid out as a single building, as was permitted. Taking account of all these factors I reject the argument that a single dwellinghouse as a separate planning unit has been created. Rather, the balance of the evidence strongly points to the whole building being in a mixed use of equestrian, residential and art studio as I have described. (Although no appeal was pursued on ground (b) in respect of Building B, it would have failed for these reasons). Moreover, the relevant period for gaining immunity from enforcement action in this case is therefore 10 years, and which cannot be demonstrated.

36. Since 2016 Mr Watts states that the building has been his permanent home and the equestrian use has been discontinued. That may be so, although there appears to me to be some retained mixed use of residential use and art studio. However, even if it were the case that use as a single dwellinghouse existed from 2016, it is clear that a period of 4 or more years use could not have accumulated given that the enforcement notices were issued in 2018.

37. I have taken into account the submissions from third parties both in support and against allowing the appeal. However, their evidence is understandably based on more remote and disconnected observations. They do not indicate to me a sufficiently detailed knowledge of the way in which Building B was used over the years on a day to day basis. Consequently, their evidence holds neutral weight in reaching my decision.

38. For all these reasons, I conclude that the appellants have failed to demonstrate on the balance of probability that the residential element of the mixed use of the building is immune from enforcement action. The appeals on ground (d) therefore fail.

Other matters

39. No appeal on ground (g) was made in respect of the 4 months period of time for compliance with the enforcement notices, and in my view 4 months is a reasonable period of time.

40. However, since the Inquiry was held it is of course now clear that the current Coronavirus pandemic has placed severe restrictions on the ability of people, services and businesses to move about freely and to function normally. Consequently, 4 months may not now give sufficient time for the appellants to carry out remedial works and/or for scheduling contractors to undertake them. I will therefore extend the period of compliance to 7 months. I am also mindful that the Council could exercise its own powers under section 173A(1)(b) of the

Act to further extend the period of compliance beyond 7 months, should they be satisfied that it becomes reasonably necessary to do so.

Formal Decisions

Appeal A

41. It is directed that the enforcement notice is varied in Section 7 by deleting the words "Four months" and substituting instead the words "7 months". Subject to this variation the appeal is dismissed and the enforcement notice is upheld.

Appeal B

42. It is directed that the enforcement notice is corrected and varied by:

in the last paragraph of Section 3(i) deleting the reference "RR/2013/1533/P" and substituting instead "RR/2013/2533/P"; and

in Section 7 by deleting the words "Four months" and substituting instead the words "7 months". Subject to the correction and variation the appeal is dismissed and the enforcement notice is upheld.

Thomas Shields

INSPECTOR

APPEARANCES

FOR THE APPELLANTS

Nigel Watts	Appellant
He called:	
Susan Watts	Appellant's wife

FOR THE LOCAL PLANNING AUTHORITY

Tom Morris of Counsel	Landmark Chambers
He called:	
Jo Edwards MRTPI	Former Major Applications and Appeals Manager

DOCUMENTS SUBMITTED AT THE INQUIRY:

1. Opening statement for the Appellants
2. *Robert Reginal Howes v SoSE and Devon County Council*, 1983 [commentary]
3. Opening submissions for the Local Planning Authority
4. *Burdle v Secretary of State for the Environment,* 1972, 1 WLR 1207
5. *Sage v SSETR & Maidstone BC*, 2003, UKHL 22
6. Arial photograph of appeal site buildings
7. External photograph of building B dated 23.02.2018
8. External photograph of partially constructed building D dated 23.02.2018
9. Closing submissions for the Local Planning Authority