



Appeal Decisions

Hearing held on 24 January 2023

Site visit made on 25 January 2023

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th February 2023

Appeal A Ref: APP/U1430/W/22/3295647

Bantham Farm, London Road, Hurst Green TN19 7QY

Grid Ref Easting: 572428, Grid Ref Northing: 129655

- 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 Nigel Watts against the decision of Rother District Council.
- The application Ref RR/2020/646/P, dated 16 April 2020, was refused by notice dated 17 March 2022.
- The development proposed is the change of use of art studio to live/work unit.

Appeal B Ref: APP/U1430/W/22/3295188

Bantham Farm, London Road, Hurst Green TN19 7QY

Grid Ref Easting: 572428, Grid Ref Northing: 129655

- 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 N Watts against the decision of Rother District Council.
- The application Ref RR/2021/2600/P, dated 19 October 2021, was refused by notice dated 24 January 2022.
- The development proposed is the change of use of existing redundant and disused barn to residential use.

Decision

1. Appeal A and Appeal B are dismissed.

Preliminary Matters

2. Following the submission of the appeals, an enforcement notice was served by the Council in respect of the building and land the subject of Appeal A. I am aware of the enforcement notice and an ongoing appeal against it, but they have not influenced my reasoning in these appeals.
3. References have been made to the appellant's submission of a complaint to the Parliamentary and Health Service Ombudsman regarding The Planning Inspectorate's refusal to accept another appeal¹ at Bantham Farm. Although I am aware of that complaint, it has no relevance to the matters under consideration in these appeals and has not affected my reasoning.
4. In advance of the hearing, the appellant was incorrectly advised by The Planning Inspectorate that he would be able to present new evidence as 'final comments' at the hearing. This was corrected prior to the hearing when the appellant was informed that late submissions would only be accepted if exceptional circumstances applied.

¹ APP/U1430/W/22/3302950

5. After seeking the views of all parties present, I refused to accept late submissions presented by the appellant at the hearing as I was not satisfied that they were directly relevant to the proposals and there was no good reason why they could not have been submitted in accordance with the rules². All parties addressed these matters in comprehensive detail orally. Before I closed the hearing, the appellant agreed that all matters he wished to raise in late evidence had been discussed. I therefore have a full understanding of the points the appellant sought to make in those regards and have taken the relevant aspects of those arguments into account in reaching my decisions.

Background

6. Bantham Farm has a long planning history. Planning permission was granted in 2008 for the erection of a building comprising stables, tack room, hay store and shower room, with new gates and access³. That building comprises what the appellant refers to as 'the Stables' and 'the Stable Barn'. Planning permission was granted in 2013 to remove another building from the land and erect an art studio with parking spaces ('the Art Studio')⁴. The Art Studio forms the subject of Appeal A; the Stable Barn forms the subject of Appeal B.
7. The planning history shows how Bantham Farm and the appellant's needs have evolved over time. I have been provided with copies of appeal decisions⁵ which provide a helpful background to Bantham Farm and its buildings; however, circumstances have changed since the Art Studio was erected and changes have since been made to the development plan and the National Planning Policy Framework (the Framework). Although I have taken those previous decisions into account, their outcomes and any previous breaches of planning control at Bantham Farm do not influence my reasoning in these appeals.
8. The appellant is an artist and paints mainly at night in the Art Studio. He currently lives in that building without the benefit of planning permission. The planning application under consideration in Appeal A therefore seeks retrospective planning permission for what is described as a live/work unit. As an alternative option, planning permission is sought in Appeal B for the material change of use of the Stable Barn to a dwelling. In both appeals, it is the appellant's intention that he and his wife would reside at Bantham Farm and paint/sculpt in the Art Studio. The appellant has made it clear that it would be his intention to implement only one of the proposals, with his preference being for that set out in Appeal B.

Main Issues

9. The main issues are:
- Whether the appeal site in each appeal is a suitable location for each proposal, having regard to relevant local and national policies;
 - The effect of each proposal on the character and appearance of the High Weald Area of Outstanding Natural Beauty (AONB); and

² The Town and Country Planning (Hearings Procedure) (England) Rules 2000 (as amended)

³ The Council's ref: RR/2007/3367/P

⁴ The Council's ref: RR/2013/2533/P

⁵ APP/U1430/X/10/2127091, APP/U1430/A/11/2164676, APP/U1430/A/12/2182037, APP/U1430/A/14/2218744, APP/U1430/W/14/2227696, APP/U1430/W/16/3160183 and APP/U1430/C/18/3200586, 3200591, 3200608, 3200610

- The personal circumstances of the appellant.

Reasons

Location

10. Bantham Farm is located in the open countryside. Its buildings are in a fairly secluded location, some distance from the shared access drive off the A21. However, they are clearly visible from that access drive which appears to serve a small number of residential properties, agricultural land, and a cattery.
11. Policy RA3 of the Rother Local Plan Core Strategy (2014) (CS) states that proposals for development in the countryside will be determined on the basis of 5 criteria. The third criterion explains that the creation of new dwellings in the countryside will be allowed in extremely limited circumstances, including where they support farming and other land-based industries. There is no agricultural use ongoing or proposed at Bantham Farm and the proposals would not support farming.
12. The appellant has explained that the proposals would support various re-wilding, ecological enhancements and the management/maintenance of land and buildings, including the provision of swift and bat boxes, beehives, and turning fields into wildflower meadows. These would be small-scale in nature, and it has not been demonstrated that the extent of those activities would be sufficient to be considered land-based industries supported by either proposal.
13. Paragraph 80 of the Framework explains that planning decisions should avoid the development of isolated homes in the countryside unless certain circumstances apply. All parties agreed that the proposals would result in the development of an isolated home in the countryside. I see no reason to take a different view. The first and third criteria of paragraph 80 of the Framework refer to development for which there would be an essential need for a rural worker to live permanently at or near their place of work, and to development which would re-use redundant or disused buildings and enhance its immediate setting.
14. The appellant is an artist who has chosen to carry out his art in the countryside. He has previously painted elsewhere, and I am unconvinced that his painting needs to be carried out in an isolated countryside location. He is not a rural worker in the context of paragraph 80 of the Framework.
15. The Stable Barn is a substantial space set over 2 levels on sloping land. It was explained that the sloping land levels mean that the building is unsuitable for accommodating any large agricultural machinery, such as tractors. I saw that the building is not completely empty of domestic items/furniture and appeared to have operational, albeit rudimentary, kitchen, shower and toilet facilities. Although those facilities may be authorised, the building is evidently not in a disused state, even if the appellant is not living in it and no longer intends to use it for equestrian purposes.
16. Significant alterations would be required to make the Stable Barn capable of accommodating large agricultural machinery, and it would remain surrounded by soft ground on 3 sides. However, this does not mean that it is entirely impractical to be, or incapable of being, used for any agricultural or equestrian purposes. The Stables are in use for the storage of various tools and machinery, including vintage tractor parts, which would appear capable of

being stored within the Stable Barn with similar ease, especially if the double doors on the north-east elevation of the 'store' between the Stable Barn and Stables were openable.

17. The evidence indicates that the Stable Barn has never been used for agricultural purposes and ceased being used for equestrian purposes some time ago. This was due to the appellant choosing to live in the Stable Barn in breach of planning control. The appellant claims the authorised erection of the Art Studio necessitated changes to how the Stable Barn is used, but it has not been demonstrated that the lawful use of the Art Studio would prohibit the use of the stable building for agricultural or equestrian purposes.
18. The Stable Barn has not been marketed as part of the stable building for any other persons to buy or rent it for agricultural or equestrian purposes. It has not therefore been demonstrated that the Stable Barn is redundant for such purposes. I appreciate that the appellant may not want to allow other people to buy or rent part of Bantham Farm, but it may be the case that demand exists for other people to use the Stable Barn for lawful purposes.
19. It has not been demonstrated that any of the criteria referred to by paragraph 80 of the Framework would be satisfied in either appeal. For the reasons set out above, the proposals in both appeals would conflict with Policy RA3 of the CS and the advice of the Framework with regard to the development of isolated homes in the countryside.

Character and Appearance

20. The appeal sites are located within the AONB, and are surrounded by trees to the north, west and south. This part of the AONB is characterised by open, undeveloped rolling fields and woodland. It is interspersed with a few remote buildings, typical for its rural location. A large dwelling is undergoing works on the opposite side of the shared access track leading to the appeal site. That neighbouring dwelling is a conspicuous feature in the landscape, but its presence does not indicate that residential buildings or uses are typical or expected features in this part of the AONB.
21. Views of the appeal buildings and the appeal sites are available from the shared access drive running across the south-eastern boundary of a field forming part of Bantham Farm. Longer views would also be available from open countryside further away to the south-east. The appeal sites and their locality form part of a tranquil setting separated from settlements and the A21 by woodland and open fields.
22. It is claimed that the proposals offer the opportunity for planning conditions to be used to control development and activity at Bantham Farm, unlike the planning permissions relating to the stable building and the Art Studio. This, it is claimed, could ensure the landscape and scenic beauty of the AONB would be conserved and enhanced.
23. When used for their authorised purposes, the appeal buildings would ordinarily attract minimal activity and visitors to this rural location. An Art Studio would not ordinarily attract regular external activities other than the few necessary visits from associated vehicles. Any agricultural or equestrian external items and activity potentially associated with the stable building would be typical, and therefore sympathetic to, the rural location.

24. In comparison, the residential use proposed in each appeal would attract more conspicuous and intense forms of external activity, such as the comings and goings of residents and visitors, the use of outside space for associated storage, living and recreation, and domestic deliveries. Although a limited level of such activity may result from the appellant and his wife being the only residents in each proposal, it is likely that any future residents would use either appeal site to a more intensive degree. For example, not all future residents would comprise 2 people working in the Art Studio 18 hours a day. It is not unlikely that potential future residents could comprise a family with children and rely on private motor vehicle use to commute to places of work, education and services, considering the secluded nature of the site.
25. The red lines identifying the land which forms each appeal site on the Site Location and Block Plans⁶ encompass very small parts of Bantham Farm. It would be unreasonable to expect all future residents of either proposal to restrict their residential use to those small areas without introducing some form of physical boundary treatment, which would have an unsympathetic suburbanising effect on the open rural surroundings. Furthermore, it would be unrealistic to expect any future residential use to always be confined to the land within those red lines, when surrounded by such spacious grounds currently under the same ownership.
26. No suggested wording for any conditions which could control external activities associated with the proposals have been put forward by the appellant. In the absence of any suggested wording which convinces me otherwise, I do not consider conditions controlling those activities would be reasonable or enforceable. As paragraph 56 of the Framework advises that all conditions should meet these tests, amongst others, I do not accept the appellant's arguments that conditions could be used to effectively control external activity associated with each proposal.
27. It has been suggested that a legal agreement could be used to control the occupancy, associated activities, and implementation of any planning permission granted. However, no legal agreements have been put forward for me to consider.
28. The windows of the Art Studio allow light to escape the building during dark periods. Notwithstanding the apparent unlawfulness of the 4 east elevation roof lights, the authorised Art Studio use causes harm to the dark night sky of its remote surroundings, as referred to by the development plan. This could be addressed through the installation of blackout blinds and/or 'smart glass', details of which could be required by condition. This would be a benefit in favour of the proposal in Appeal A, but it would not be possible in Appeal B as the Art Studio does not form part of the same appeal site identified by the red lines of the Site Location and Block Plans. Such a condition could be used to control light escaping from the Stable Barn windows in Appeal B, but that would be a mitigation measure to neutralise likely harm to the dark night sky, rather than a benefit of that proposal.
29. In Appeal B, it has been suggested that external alterations to the roof and window finishes of the Stable Barn could be required by condition, to enhance its appearance. In contrast to the proposed use, such alterations would be insignificant to how the building, in its secluded location, is experienced within

⁶ Drawing Nos. 693-01 and 831-SK10

the AONB. In the absence of specific details showing how such works would enhance the appearance of the building, I do not consider they would offer any meaningful benefit to the landscape and scenic beauty of the AONB.

30. Each proposal would therefore deviate from the general settlement pattern of this part of the AONB and erode the rural landscape character and tranquillity of the area. As such, they would harm the character and appearance of the AONB and fail to conserve and enhance its landscape and scenic beauty. This would conflict with Policies OSS4 and EN1 of the CS and Policy DEN2 of the Rother District Council Development and Site Allocations Local Plan (2019) (LP). These require, amongst other things, development to respect the character and appearance of the locality, and to conserve and enhance the scenic beauty, landscape character and settlement pattern of the AONB and the tranquillity of remote areas.
31. Policy DEN7 of the LP requires development to avoid creating significant adverse impacts on environmental character as a result of lighting. Conditions could be used to require details of blinds and/or alternative glazing to be fitted to the windows of the appeal buildings and to control external lighting installations. Although each proposal would likely increase vehicle movements with lights at the appeal sites during dark periods, this would not lead to significant adverse impacts on environmental character in the context of Policy DEN7. I therefore find no conflict with Policy DEN7 in either appeal.

Personal Circumstances

32. The appellant has provided representations referring to the age and health of him and his wife. My decision therefore has the potential to affect people with protected characteristics under the Equality Act 2010 on account of their age and disabilities. The appellant has made clear that he does not want to rely on these characteristics in support of the appeals. However, I must have due regard to the Public Sector Equality Duty (PSED) and Article 8 and Article 1 of the First Protocol of the Human Rights Act 1998 (HRA) in this case.
33. The appellant has made a passionate case for each appeal, having explained that his art is the focus of his life. The Art Studio provides a space where he carries out that activity 18 hours a day. Due to his reduced mobility and impaired vision, he is unable to live in other properties he has access to, or regularly drive, especially in dark conditions. He therefore made the decision in 2012 to live at Bantham Farm without the benefit of planning permission. His wife refuses to live at Bantham Farm in the absence of planning permission. The appellant's wife is also unable to drive to the Art Studio regularly due to her impaired vision.
34. The appellant explained during the hearing that the flat where his wife lives is an unsuitable place for him to live on account of its stairs and the distance he would have to drive between there and the Art Studio. He also explained that he owns property in London, but this is not fitted out to provide disabled access and is unsuitable for carrying out his art.
35. The appellant purchased Bantham Farm in 2007, without planning permission for an art studio. He was living at a property in Hastings at that time, which he had bought in 2001 and sold in 2015. He previously owned, lived and painted in other properties; one of which he sold in 2001 as it was too big for his needs and another which he sold in 2006 as it was on a remote farm abroad. The

appellant was therefore aware that Bantham Farm was an unsuitable place to live and paint when he purchased the site, in contrast to his previous properties. That was prior to obtaining planning permission for the Art Studio and painting there.

36. It was also confirmed during the hearing that the appellant had not explored any opportunities to buy or rent alternative suitable accommodation to live and/or paint in. The appellant advised that this was because he is happy at Bantham Farm which has the Art Studio, and because he cannot contemplate living or painting elsewhere at this point in his life. Although the appellant benefits from planning permission for the Art Studio, it does not follow that he must carry out his art there.
37. The appellant previously earned a living from selling his art, but the evidence indicates that the art currently carried out by the appellant and his wife comprises a hobby, which does not finance their living. I accept that this hobby forms an important part of their lives, but I am unconvinced that there are no other suitable places for the appellant and his wife to live and carry out their art, or that the appellant and his wife must carry out their art at Bantham Farm. There is no need for living accommodation to be provided at the site other than to enable the appellant to continue his art there, which is essentially a matter of personal preference and convenience rather than one of planning need or merit.
38. Each proposal would improve the quality of life for the appellant and his wife. This would be a benefit weighing in favour of each proposal. However, it has not been demonstrated that such benefit could not be achieved through other, more appropriate means, such as by the appellant painting and/or living at other properties. I therefore assign only modest weight to that private benefit.

Other Considerations and Planning Balance

39. I have not been presented with comprehensive details of any proposed re-wilding or other ecological enhancements. It has been explained in general terms that bat boxes, swift boxes and beehives could be provided, fields could be turned into wildflower meadows, and ancient woodland and ponds would be maintained as part of each proposal. The appellant claims to have taken professional advice in these regards, and he would be unable to carry them out if he does not live at Bantham Farm.
40. No ecological surveys or proposed ecological enhancement and maintenance schemes have been presented as part of the proposals. There is no detailed case explaining why any such ecological enhancements could not be carried out without someone living at Bantham Farm.
41. I have no doubt that each proposal would be capable of delivering some form of ecological benefits. However, based on the very brief information provided, the scale of such benefits would appear to be minimal, and it is not clear to what extent they would off-set any ecological harm caused by residential occupancy of Bantham Farm. The provision of bat and swift boxes would be very easily achieved without residential occupation. I therefore assign modest weight to the potential ecological benefits of each proposal, which would be supported by paragraph 174 of the Framework. As it is not the primary objective of either proposal to conserve or enhance biodiversity, no support is provided by paragraph 180 of the Framework.

42. Items stored at Bantham Farm could be at risk of being stolen and the land could be subject to fly tipping. The residential occupation of the land would provide some deterrent to thieves and fly-tippers, but that will always be the case with secluded sites. I am unconvinced that the appeal site would be at greater risk of such crimes if it was not occupied residentially, or that more appropriate security measures could not provide similar deterrents. I therefore assign little weight to the security benefits associated with each proposal.
43. Paragraph 82(d) of the Framework refers to the need for planning policies to be flexible enough to accommodate needs not anticipated in the development plan, allowing for new and flexible working practices, such as live-work accommodation. The aims of this part of the Framework offer a very limited amount of support for the proposal in Appeal A, as it primarily relates to the drafting of new policies and does not indicate live-work accommodation should be approved in all instances.
44. No examples have been provided of how each proposal would enhance or maintain the vitality of any rural communities. No clear explanations have been provided of how each proposal would reflect any local needs other than those personal to the appellant, or lead to the sustainable growth and expansion of business in the rural area. I therefore find no support for either proposal at paragraphs 78, 79 or 84 of the Framework.
45. The Council is unable to demonstrate a five-year housing land supply. Where this is the case, paragraph 11 of the Framework advises that in applications involving the provision of housing, the policies which are most important for determining the application are deemed to be out of date. The Framework explains that planning permission should therefore be granted unless the application of policies that protect areas or assets of particular importance, such as the AONB, provides a clear reason for refusing the development.
46. Paragraph 176 of the Framework states that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs, and that the conservation and enhancement of wildlife in these areas is also an important consideration. I have found harm which each proposal would cause to the landscape character, settlement pattern and tranquillity of the AONB. Each proposal would not therefore conserve and enhance the landscape and scenic beauty of the AONB. Although I have found that each proposal could potentially conserve and enhance wildlife, that would not be their primary objective and insufficient information has been provided to demonstrate there would be any meaningful ecological benefits.
47. The application of paragraph 176 of the Framework therefore provides a clear reason for refusing each proposal. I assign significant weight to the harm which would be caused to the landscape character, settlement pattern and tranquillity of the AONB. This would not be outweighed by the benefits of each proposal, including any potential ecological enhancements, security improvements, personal circumstances, or potential window alterations to control light spill.
48. Dismissing the appeals would interfere with the rights of the appellant under Article 8 and Article 1 of the First Protocol of the HRA. As qualified rights, that interference may be justified in the public interest, where proportionate. There is public interest inherent in the legitimate and well-established planning policy aims of conserving and enhancing the landscape and scenic beauty of the AONB. Having regard to that public interest, I find that dismissing both appeals

would be proportionate and necessary and would not unacceptably violate the rights of the appellant under Article 8 or Article 1 of the First Protocol. The protection of the public interest cannot be achieved by means that are less interfering with their rights.

49. I have had due regard to the PSED, but the harm which would be caused by each proposal outweighs their benefits in terms of eliminating discrimination against persons with the protected characteristics of age and disabilities, advancing equality of opportunity for those persons, and fostering good relations between them and others.

50. The Council's handling of other applications at other sites relating to the development of isolated homes in the countryside, as referred to in detail by the appellant, does not lead me to any different conclusions on the relevant matters in these appeals.

Conclusion

51. For the reasons outlined above, I conclude that the appeals should be dismissed.

L Douglas

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Nigel Watts	The appellant
Laurence Walker	Westall Walker Associates

FOR THE LOCAL PLANNING AUTHORITY:

Sarah Shepherd	Rother District Council
Myles Joyce	Rother District Council

INTERESTED PARTIES:

Robert Banks	Northern Parishes Group and Burwash: Save our Fields
Anthony Lloyd	Parish Councillor and Vice Chair of Ticehurst Parish Council
Graham Browne	District Councillor and Chair of Hurst Green Parish Council