



Appeal Decision

Hearing held on 3 October 2023

Site visit made on 3 October 2023

by Peter White BA(Hons) MA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 November 2023

Appeal Ref: APP/U1430/C/22/3308463

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. The appeal is made by Mr N Watts against an enforcement notice issued by Rother District Council.
- The notice was issued on 26 August 2022.
- The breach of planning control as alleged in the notice is:
 - I) Without planning permission the material change of use of land at Bantham Farm from private recreation equestrian agricultural use to a mixed use comprising private recreational equestrian agricultural and residential use of the land.
 - II) Without planning permission a material change of use of the Art Studio building shown in the approximate position marked in Blue on the attached plan from approved B1 Art Studio use to a mixed use comprising B1 Art Studio and residential use.
- The requirements of the notice are:
 - i. Cease the use of the land at Bantham Farm and the Art Studio Building in the approximate position marked in blue on the attached plan for residential purposes.
 - ii. Remove from the Art Studio Building and the land within Bantham Farm all domestic goods, furniture and other domestic paraphernalia required for the unauthorised residential use of the land and Art Studio Building not connected to the authorised use of the building for B1 Art Studio use and the land for private recreational equestrian / agricultural use.
 - iii. Remove from the Land all equipment, materials, debris, rubble, rubbish and tools arising from complying with steps i)-ii) above.

The period for compliance with the requirements is: 4 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of decision: The appeal is dismissed and the enforcement notice is upheld with corrections.

Procedural and Preliminary Matters

1. At the time the appeal was submitted there were two other outstanding appeals made by the appellant relating to Bantham Farm¹. Those appeals considered very similar matters to those relevant to the current appeal before me on ground (a), and were dismissed on 9 February 2023.
2. On 20 September 2023 the appellant withdrew his case in this appeal on ground (a). Nevertheless, as a valid appeal was initially made on ground (a), an application for planning permission is deemed to have been made (DPA), and I must come to a determination on that application.

¹ APP/U1430/W/22/3295647 and APP/U1430/W/22/3295188

3. The appellant's original case raised arguments typically considered as a ground (c) appeal. That is, that the matters alleged, if they occurred, do not constitute a breach of planning control. His argument appeared to relate to whether a decision notice issued by the Council, but later quashed by Order of the High Court, temporarily afforded him planning permission, during which time he implemented the material change of use of the art studio to a live/work unit. However, at the hearing the appellant advised that, once the decision notice was quashed, he accepted that he did not have planning permission, and had not benefitted from it. He confirmed that no ground (c) appeal was made.
4. The appellant also confirmed at the Hearing that references to the period of time during which he had lived on the land were not to be construed as an appeal on ground (d).
5. At the Hearing, the appellant indicated that an Inquiry may be required to consider legal submissions. However, he subsequently confirmed that the points of law raised were of no consequence to his remaining arguments associated with the validity of the notice. I am satisfied that the Hearing procedure was suitable to hear, and sufficiently explore, the matters at issue.
6. 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 appeal at Bantham Farm². Although I am aware of the complaint, it has no relevance to the matters under consideration in this appeal and has not affected my reasoning.

The Notice

7. The appellant submits that the enforcement notice is invalid. The concept of invalidity is that the enforcement notice needs to be corrected, but cannot be without causing injustice to the appellant or the LPA. Section 173 of the Town & Country Planning Act 1990 relates to the content and effect of an enforcement notice. Section 173(1)(a) and (2) require a notice to state the matters which appear to the Council to constitute the breach of planning control (the allegation), and sufficiently so to enable any person on whom a copy of it is served to know what those matters are. In this case the allegation is described in Section 3 of the Notice.
8. The appellant submits that the alleged breach in the notice ought not to say "without planning permission" as the LPA has purported to grant planning permission for a live/work unit on the Land. That reference is to the refusal by the LPA in September 2021 of an application for planning permission for such development. The LPA incorrectly issued a notice stating planning permission had been granted. The notice was subsequently quashed by the High Court in February 2022. Given the appellant accepts that, at the time the EN was issued, no planning permission existed for the alleged material change of use stated in the EN, it follows that the EN should not be corrected to omit the words "without planning permission".
9. In addition to the appellant's concerns, I note the allegation is in two parts. The first part relates to the use of the land, and the second to the use of the art studio building. The Council considers the two elements of the allegation are simply elements of the same use, and compatible with each other.

² APP/U1430/W/22/3302950

10. The Land as a whole had formerly been in agricultural use. Planning permissions have been granted, and implemented, for a stable building/store and an art studio in a building constructed for that purpose³. There is no active agricultural use of the land, but there has relatively recently been the grazing of horses. The appellant and the Council consider there is no physical or functional separation associated with the art studio and equestrian uses, and agreed at the Hearing that the land remained a single planning unit. On the basis of the evidence before me I have no reason to disagree.
11. Although it is not necessary for the allegation to describe the previous use, the notice does so in the first part of the allegation, describing it as "private recreation equestrian agricultural use". The alleged use is described in a similar way, with residential use added as a further component. The Council advise that a previous enforcement notice⁴ described the use of the land as "private recreational equestrian/agricultural" use, which itself reflected the planning permission for the stables. Although the description found in the current enforcement notice could be clearer, it could not be described as hopelessly ambiguous or uncertain.
12. I also note the absence of any reference to the lawful art studio use in the mix of uses described in the first part of the allegation. The art studio use is acknowledged by the parties and, although the Council seek to rely on the second part of the allegation, where reference is made to the mix of uses it should be correctly described.
13. The second part of the allegation relates only to the Art Studio building, and would be unnecessary if the mix of uses was correctly identified in the first part. As currently drafted, there is also some incompatibility between the first and second parts. The second part refers to art studio use of the building, which is not identified as a component of the use of the land as a whole in the first part. The second part also makes reference to "approved B1 Art Studio", but as the land is in mixed use, none of its constituent parts fall within classes A-F of the Use Classes Order⁵.
14. It therefore falls to me to determine whether I can correct the allegation without injustice to the appellant or the Council. To do so would be to remove the reference to the lawful use in the first part of the allegation, insert reference to the art studio use, and delete the second part of the allegation.
15. The appellant considers the notice to be invalid, and that correcting the allegation would cause him injustice. At the hearing his reasons were, firstly, that there is currently no contravention of the notice or planning control, and secondly, that even after compliance with the notice, it remains in force on the land.
16. Shortly before the hearing the appellant advised that he had ceased his residential occupation and now lived elsewhere. But, by his own admission, he was living on the land at the time the notice was served. The appellant has withdrawn his case on ground (a), and I have not seen any convincing case that removing unnecessary references and acknowledging the art studio element of the use would cause him injustice. That is particularly so given that

³ The art studio building is indicated in blue on the enforcement notice plan.

⁴ As considered in appeals APP/U1430/C/18/3200586 & 3200591

⁵ The Town and Country Planning (Use Classes) Order 1987 as amended

it is undisputed that a lawful art studio exists in accordance with the planning permissions granted for it. And removal of the reference to a limitation on the extent of the lawful Art Studio use of the building would have no effect on the appellant.

17. There would also be no injustice to the appellant on account of the permanence of the notice, as removal of the inaccurate description of the existing mix of uses would ensure there was no abrogation of his existing use rights associated with the art studio use.
18. Equally, there would be no injustice to the Council. Deleting the inaccurate descriptions of the lawful mix of uses and inserting reference to the existing art studio use in the first part of the allegation would simply acknowledge the lawful art studio use of the building for which the Council granted planning permission.
19. In conclusion, the notice can be corrected without injustice to the appellant or the Council.

The appeal on ground (a) and the DPA

Background and main issues

20. Appeals on ground (a) are made on the basis that planning permission should be granted for the development alleged. As corrected, the development is essentially the use of the art studio building and the land for residential use as part of a mixed use which also includes agricultural, private recreational equestrian and art studio uses.
21. The Council's reasons for issuing the notice relate to largely the same issues as those considered at the appellant's recent appeals, albeit in relation to the entire parcel of land, rather than smaller parts of it. The personal circumstances of the appellant were also considered at those appeals. However, as the appellant has confirmed he is no longer living on the land, the personal implications of the appellant being required to leave his home no longer stand to be considered.
22. The main issues are therefore:
 - Whether the land is a suitable location for the development, having regard to local and national policies; and
 - Whether the development conserves the landscape and scenic beauty of the High Weald Area of Outstanding Natural Beauty (AONB).

Location

23. The land is a parcel of around 7.2 hectares in the countryside, outside of any settlement. It is accessed from the A21 via a private drive, which appears to serve a small number of residential properties, agricultural land, and a cattery.
24. There is no active agricultural use of the land at the present time, or any proposed farming. Neither is there an economic or tourism need for the development. The appellant is an artist who has chosen to carry out his art in the countryside, and I note it would be convenient for him to live on the land alongside his art studio. However, his work would not amount to a land-based industry, for which functional need and financial soundness have been

demonstrated. Neither is the development the conversion of historic farm buildings, replacement dwellings, or to meet an identified affordable housing need. It is also some distance from the nearest settlement, and poorly located in terms of access to existing infrastructure and services.

25. The land is therefore not a suitable location for the development. It conflicts with Rother Local Plan Core Strategy (2014) (CS) Policies OSS3, RA2 and RA3. Among other things, these policies relate to access to existing infrastructure and services, limit new development in the countryside to that which supports local agricultural, economic or tourism needs. They also allow new dwellings only in extremely limited circumstances, including those to support farming and land-based industries (where functional need and financial soundness are demonstrated), the conversion of historic farm buildings, replacement dwellings, and to meet affordable housing need. The development also conflicts with Development and Site Allocations Local Plan (2019) (DASA) policy DIM2, which normally limits development outside settlement development boundaries to that which accords with specific Local Plan policies, or that for which a countryside location is demonstrated to be necessary.

Landscape and scenic beauty of the AONB

26. The land lies in a relatively remote location in attractive countryside within the AONB. A narrow unmade track runs through it to an area of higher ground to the north, where the art studio and a small cluster of other buildings are located adjacent to woodland.
27. This part of the AONB is characterised by open, undeveloped rolling fields and woodland, with a few remote buildings. A large dwelling opposite the track to the south is undergoing works, but I agree with the previous Inspector that its presence does not indicate that residential buildings or uses are typical or expected features in this part of the AONB.
28. At the time of my visit the appellant advised there was no active residential use of the building or land. That occurring at the time the notice was issued was a low level of residential use by one individual with very basic domestic facilities. The appellant advises he has no intention of resuming that lifestyle, and permanent residential use could have greater effects.
29. Residential use of the land and art studio building is likely to result in greater and more conspicuous use of external areas than would occur without residential use. Domestic use of areas outside the building for activities such as domestic storage, living and recreation, and car parking, would all reduce the open and undeveloped character of the area and erode its distinctive qualities. Traffic movements associated with residential use in the longer term are also likely to reduce the tranquillity of the area, further harming its character.
30. The development therefore fails to conserve the landscape and scenic beauty of the High Weald AONB. Consequently, it conflicts with CS policies OSS4, RA2, RA3 and EN1, which among other things, require the intrinsic value and distinctive landscape character and settlement pattern of the AONB to be preserved, ensuring that all development in the countryside is of an appropriate scale, and will not adversely impact on landscape character. It also conflicts with DASA policies DEN1 and DEN2, which requires all development within the AONB to conserve and seek to enhance its landscape and scenic beauty.

31. In addition, it does not accord with the aim of the High Weald Management Plan 2019-2024 to protect the historic pattern and character of settlement. And there is conflict with paragraphs 174 and 176 of the National Planning Policy Framework (the Framework), which seek to protect and enhance valued landscapes, recognise the intrinsic character and beauty of the countryside, and expect great weight to be given to conserving and enhancing landscape and scenic beauty in AONBs.

Conclusion

32. I have found that the land is not a suitable location, and the development does not conserve the landscape and scenic beauty of the AONB. Consequently, it conflicts with development plan policies. There are no other material considerations that require a decision to be made other than in accordance with the development plan.
33. I therefore conclude the appeal on ground (a) should not succeed. I shall uphold the enforcement notice, as corrected, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Decision

34. It is directed that the enforcement notice is corrected by deletion of Sections 3.I) and 3.II) and their replacement with:
- “Without planning permission, the material change of use of the Land to a mixed use comprising private recreational equestrian, agricultural, art studio and residential use.”
35. Subject to the correction, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Peter White

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Nigel Watts – appellant
Mr Laurence Walker - Westall Walker Associates

FOR THE LOCAL PLANNING AUTHORITY:

Mrs Sarah Shepherd – Team Leader Development Management
Mr Mark Bright – Enforcement officer

INTERESTED PARTIES:

Mr Robert Banks – Northern Parishes Group and Burwash: Save our Fields
Mr Graham Browne – Hurst Green Parish Council
Mrs Francesca Nowne – Ticehurst Parish Council

DOCUMENTS SUBMITTED AT THE HEARING:

1. Site location plan for planning permission RR/2007/3367/P
2. Letter from Wealden District Council Legal Services to the registered landowner and the appellant's agent dated 1st November 2021.