



Appeal Decision

by John Braithwaite BSc(Arch) BA(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2025

Appeal Ref: APP/U1430/X/24/3354697

Bantham Farm, London Road, Hurst Green TN19 7QY

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the 1990 Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Nicholas Watts against the decision of Rother District Council.
 - The application ref RR/2024/1360/O, dated 7 August 2024, was refused by notice dated 2 October 2024.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 (as amended).
 - The development for which an LDC is sought is agricultural barn for storage of farm machinery and implements, hay and farm products/supplies.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Determination of the appeal requires an assessment of documentary evidence. In these circumstances visiting the site is unnecessary. The appeal has been determined without undertaking a site visit.
3. The application for an LDC was submitted on the basis that it was for 'an existing use'. An appeal against refusal of an LDC for an existing use is made under section 191(1)(a) of the 1990 Act. But the Appellant is claiming that the barn has been in place for in excess of four years and that it is development permitted under "...Section 2, Part 6..." of The Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO). Both of these matters relate to the carrying out of building works; an appeal against refusal of an LDC for existing building works is made under section 191(1)(b) of the 1990 Act. The appeal has been determined on this basis. The reference to section 192 of the 1990 Act on the appeal form must be an error.

Reasons

4. Enforcement notice ENF/169/16/HUG, issued by the Council on 28 February 2018 and amongst other things, alleged 'the erection of a timber building on the Land, shown marked A on the attached plan' and required the removal of the building. The Council maintains that the barn that is the subject of the appeal is, by reference to section 181(5) of the 1990 Act, a reinstatement or restoration of the timber building, albeit in a different position and reduced in size. They claim that the notice remains in effect and that the requirement to remove the building has not been complied with.
5. On page 9 of the Delegated Officer's Report there are photographs of the timber building and the barn. The timber building had lean-to side elements to the central gable structure whereas the barn is a simple gable structure, and the Council accepts that the barn is not in the same position as was the timber building. The barn cannot

be a restoration, and it is not, despite the re-use of materials and as a matter of planning judgement, a reinstatement of the timber building that was a subject of the enforcement notice, which may remain in effect but not for the removal of the barn.

6. An LDC is sought to establish the lawfulness of either an existing or proposed use or development. The appearance of the barn and its visibility in the landscape are not relevant matters, nor are the barn's ecological and biodiversity credentials. To be lawful the barn must either be immune from enforcement action through the passage of time or is permitted development. The appeal has been made on the basis that "The barn was substantially complete by 1 June 2020 (and) has been in...continuous use since that date..." and, rather than or, is permitted development.

7. Planning application RR/2020/913/P dated 6 May 2020 was submitted to the Council for the barn that is the subject of the appeal. The application form indicated that work had not started. The application ultimately remained undetermined. The claim is made that the barn was substantially complete by 1 June 2020, which was less than four weeks after the date of the application. It is inconceivable that the barn was substantially complete by 1 June if work had not started on 6 May. Furthermore, there is no evidence of when the barn became substantially complete either by 1 June or by any date that was more than four years before the date of the application that is the subject of the appeal. The barn is not immune from enforcement action.

8. The GPDO does not have a Section 2 but it is assumed that the Appellant is referring to Schedule 2. Class A of Part 6 of Schedule 2 to the GPDO states that the erection of a building on land comprised in an agricultural unit of 5 hectares or more is permitted development; Bantham Farm is about 7 hectares. A condition of Class A for the erection of a building is that "...the developer must, before beginning the development, apply to the local planning authority for a determination as to whether the prior approval of the authority will be required..." for various matters (emphasis added). The consequence of this condition, for a building on an agricultural unit, is that permitted development rights cannot be applied retrospectively. The constructed barn is not permitted development.

9. The barn is not immune from enforcement action through the passage of time and is not permitted development. In these circumstances an LDC cannot be granted.

10. For the reasons given above, and on all the evidence now available, the Council's refusal to grant an LDC for agricultural barn for storage of farm machinery and implements, hay and farm products/supplies at Bantham Farm, London Road, Hurst Green was well-founded and the appeal fails. The powers transferred under section 195(2) of the 1990 Act as amended have been exercised accordingly.

John Braithwaite

Inspector