

# Enforcement Appeal Decision

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<b>Appeal Reference:</b>	2020/E0003
<b>Appeal by:</b>	Mrs Gladys Heatherington
<b>Appeal against:</b>	An enforcement notice dated 20 <sup>th</sup> February 2020
<b>Alleged Breach of Planning Control:</b>	Unauthorised erection of an agricultural building with underground slurry tank
<b>Location:</b>	Land at 31 Crosh Road, Omagh
<b>Planning Authority:</b>	Fermanagh and Omagh District Council
<b>Authority's Reference:</b>	LA10/2016/0060/CA
<b>Procedure:</b>	Written Representations and Commissioner's site visit on 24 <sup>th</sup> May 2022
<b>Decision by:</b>	Commissioner Laura Roddy, dated 9 <sup>th</sup> January 2023

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## Grounds of Appeal

1. The appeal was brought on Grounds (a), (f) and (g) as set out in Section 143(3) of the Planning Act (Northern Ireland) 2011 ('the Act'). There is a deemed planning application by virtue of Section 145 (5) of the Act.
2. The appellant alleged that it was not expedient to issue the Enforcement Notice (EN) as the Council were aware of the unauthorised development since at least July 2016 but did not serve the enforcement notice until February 2020. The issue of the expediency of the service of the EN is not one of the grounds of appeal on which a notice can be challenged.

## Ground (a) and the Deemed Planning Application

3. The main issues in this appeal are whether the retention of the appeal development would have an unacceptable impact on nature conservation or residential amenity.
4. Section 6(4) of the Act requires that, where in making any determination under the Act, regard is to be had to the LDP, the determination must be made in accordance with the plan unless material considerations indicate otherwise. Section 45(1) of the Planning (Northern Ireland) Act 2011 states that regard must be had to the Local Development Plan (LDP), so far as material to the application, and to any other material considerations.
5. The Omagh Area Plan 1987-2002 (OAP) operates as the local development plan for the area within which the appeal site lies as Fermanagh and Omagh District Council have not, as yet, adopted a Plan Strategy. The development is located in

the countryside outside of any settlement limit. Part eight of the OAP sets out the policy statement for the rural area. However, the rural policies in the OAP are now outdated, having been overtaken by a succession of regional policies for rural development, and determining weight cannot be attached to them. There are no other provisions in the OAP that are material to the determination of the appeal.

6. The Strategic Planning Policy Statement for Northern Ireland (SPPS) sets out the transitional arrangements that will apply until a local authority has adopted a Plan Strategy for its council area. The SPPS retains certain existing Planning Policy Statements (PPSs) including PPS21 'Sustainable Development in the Countryside' and PPS2 'Natural Heritage'. There is no conflict between the provisions of the SPPS and those of retained policy regarding issues relevant to this appeal. In accordance with the transitional arrangements set out in the SPPS, the appeal should be determined in accordance with the retained policies of PPS21 and PPS2.
7. The appeal development is located in the countryside approximately 5km northeast of Omagh. It is within an existing agricultural holding which contains a number of other agricultural buildings, including several pig sheds. The development relates to an agricultural building. The building measures approximately 38.5m x 15m, is some 2.4m high and sits adjacent to but below the level of the public road. It has a pitched roof with mechanical ventilation fans. The shed is in use to house 448 fattener pigs. There is also an underground slurry tank
8. The Council's draft reason for refusal is grounded in Policy NH1 'European and Ramsar Sites' of PPS2. The refusal reason states that it has not been demonstrated that the appeal development will not have an adverse impact upon features of nature conservation interests, namely Tully Bog Special Area of Conservation (SAC) and Deroran Bog SAC. Tully Bog and Deroran Bog are also designated as Areas of Special Scientific Interest (ASSI's). The Council also raised concerns with Criterion (d) of Policy CTY12 of PPS21 in respect of adverse impacts on natural heritage.
9. PPS2 Policy NH1 states 'planning permission will only be granted for a development proposal that, either individually or in combination with existing and/or proposed plans or projects, is not likely to have a significant effect on:
  - a European Site (Special Protection Area, proposed Special Protection Area, Special Areas of Conservation, candidate Special Areas of Conservation and Sites of Community Importance); or
  - a listed or proposed Ramsar Site.'
10. The Council's concerns in relation to the identified European protected sites relate primarily to the impact arising as a result of ammonia emissions from the use of the building to house pigs. An Air Quality Impact Assessment (AQIA) was submitted which assesses the impact of the appeal development in relation to odour and ammonia emissions. The Northern Ireland Environment Agency (NIEA) guidance 'livestock installations and ammonia: advice for planning officers and applicants seeking planning permission for livestock installations which may impact on natural heritage 2015' notes a significant impact is one where the Process Contribution (PC) of an existing/proposed farm is 1% or more of the guideline value of ammonia at a designated site. The AQIA states that a

cumulative assessment is only required where the development has a significant impact on an ammonia sensitive site, and this was not challenged by the Council.

11. The AQIA assessed the sheds based on there being four fans in shed one and three fans on sheds two, three, four and five. This is consistent with the numbers observed by the Council on its site visit. In relation to the number of pigs, the Council observed 448 fattener pigs were in the appeal shed at the time of its site visit. This is consistent with the number assessed in the AQIA for the appeal development, although the number of pigs contained in the other sheds varied from that assessed in the AQIA.
12. The Council raised concerns that the AQIA refers to a low protein feed but does not reflect reductions in ammonia as a result. This raises questions about the outcome of the modelling. The AQIA stated that the use of low protein feed would result in a reduction in ammonia emissions in the region of 30%. However, the assessment does not rely on this reduction to achieve the figures stated in the AQIA and this is clearly stated within the report. I am therefore satisfied that the AQIA provides a more conservative outcome as it does not rely on use of low protein feed to achieve acceptable ammonia levels.
13. Taking all of the above into account, I am satisfied that the conclusions in the AQIA are sound. I accept the figures provided in the AQIA in relation to ammonia which show the highest PC would be  $0.001\mu\text{g}/\text{m}^3$  at Tully Bog and  $0.002\mu\text{g}/\text{m}^3$  at Deroran Bog. These are significantly lower than the  $1\text{--}3\mu\text{g}/\text{m}^3$  guideline values and these limits have not been disputed by the Council. The process contribution from the appeal development is less than 1% at all sites assessed within the AQIA. I therefore accept that the ammonia impact from the appeal development is within acceptable levels. As the AQIA indicates that the ammonia contribution from the appeal development is not significant a cumulative assessment is not required.
14. The Council also raised concerns regarding the design and construction of the slurry tank. It considers that there remains a risk, if the underground slurry tank is not to the standards required by the relevant regulations, that there could be leakage resulting in damage to downstream salmon habitat. The appellant has provided certification from a chartered civil engineer that the underground slurry tank was designed and constructed in line with the Nitrates Action Programme Regulations (Northern Ireland) 2014 (NAP Regulations). Given this, I consider the underground slurry tank is not likely result in leakage and therefore will not have a significant effect on the integrity of the identified designated sites.
15. The NIEA response (19/12/19) notes a tenuous hydrological connection to Tully Bog SAC and ASSI through a watercourse located 50m from the southern boundary of the site. It does not state that there is a risk of any adverse impacts but advises that all contaminated run off must be directed to an appropriate collection tank with no overflow or outlet to any waterway or soakaway. As such run off could contaminate this watercourse, if allowed to flow freely. I therefore consider that a condition would be necessary to prevent any overflow into adjacent waterways or soakaways.
16. Given all of the above, I consider the AQIA submitted to be an accurate assessment which demonstrates that the appeal development would not have an adverse impact upon features of nature conservation interests. Therefore, it is not

likely to have a significant effect on any European site and it would comply with PPS2 Policy NH1. The Council has not sustained its draft reason for refusal. The appeal development also complies with criterion (d) of CTY12 of PPS21. As the development would not give rise to any likely significant effect on any designated sites it is not necessary to carry out an appropriate assessment in respect of the deemed planning application.

17. Although not included in the draft reason for refusal, the Council's evidence also refers to Policy CTY12 of PPS21. Policy CTY1 'Development in the Countryside' of PPS21 states that there are a range of types of development which are considered, in principle, to be acceptable in the countryside including nine types of non-residential development. One of these is development in accordance with Policy CTY12 'Agricultural and Forestry Development'.
18. The Council raised concerns regarding criteria (b) and (e) of Policy CTY12 of PPS21. Criterion (b) requires the development to be appropriate to its location in terms of character and scale. Although the Council considers that the building visually integrates into the landscape, it argued that this criterion is more than a visual test and is linked to criterion (e). Criterion (e) requires the development will not result in a detrimental impact on the amenity of impact of residential dwellings outside the holding including potential problems arising from noise, smell and pollution.
19. The Council stated that whilst the predicted odour levels in the AQIA are within the recommended limits (3ou/s), the accuracy of the information in relation to the number of fans and pigs in each shed was questionable. Therefore, the Council state that there is potential for an adverse impact on the amenity of nearby third parties in respect of odour.
20. The AQIA assessed the odour impacts resulting from the appeal development (448 fattener pigs) plus four other existing pig sheds on the site. A total of 2,200 pigs (600 weaners and 1,600 fatteners) and the underground slurry tank were included in this assessment. I have already concluded that there is no discrepancy between the number of fans in each shed as set out and assessed in the AQIA and that noted at the Council's site visit. However, a discrepancy in the number of pigs contained in the other sheds at the time of the Council's site visit compared to that assessed in the AQIA was raised as an issue by the Council. This is relevant to the cumulative assessment of odour.
21. The Council at its site visit counted 2,240 pigs between pig sheds 2-5 (shed 1 was not in use) and an additional 260 fatteners in another shed yielding a total of 2,500 pigs, some 300 more than assessed in the AQIA. The appellant stated that this variation in the number of pigs in each shed was due to pigs temporarily being moved there from a sister site. Shed 1 was stated to be empty due to work ongoing on this shed at the time. The appellant stated works on shed 1 are now complete, it is now used to house pigs, and that the additional pigs have been returned to the sister site. It is not unusual for there to be variations in the number of animals on a farm or within a farm building. I therefore accept the appellant's explanation in relation to the increase in the number of pigs on the day of the Council's site visit and that this was a temporary increase only. Importantly, the Council stated that 448 fattener pigs were in the appeal shed at the time of its site visit and this is consistent with what has been assessed within the AQIA.

22. Whilst the Council stated there was a strong and distinctive smell at the time of its site visit, I observed only a very faint odour at the time of my site visit. This was when standing immediately adjacent to the appeal development. No distinguishable odours were observed outside the site, including at the associated dwelling immediately adjacent.

23. Taking all of the following into account:

- The temporary nature of the increase in number of pigs in the other sheds at the time of the Council's visit;
- That the appeal shed itself had the correct number of pigs at the time of the Council site visit;
- That the number of fans on the sheds observed by the Council are consistent with that stated and assessed within the AQIA (Table 7);
- That the odour assessment was based on the use of low protein feed (Table 6);
- That I observed no strong odours or smells when standing immediately adjacent to the appeal shed; and
- I was given no record of any complaints in relation to odour in the submitted evidence

I consider the conclusions regarding odour within the AQIA to be sound, and that the odour at the nearest non-associated receptors meets the required levels (i.e. below 30/u).

24. The Council refer to a third party's property some 500m to the north, which was not assessed in the AQIA. This is located further away than the receptors identified in the AQIA by some 90m. It can be anticipated that it would therefore have lower odour levels than those identified receptors. For this reason, I am content that the occupiers of the property referred to by the Council would not suffer a detrimental impact on amenity by way of odour.

25. For the reasons stated, I consider the appeal development will not result in detrimental impact on the amenity of residential dwellings by virtue of smell. The appeal development complies with criterion (e) of Policy CTY12. As the AQIA was based on a defined number of pigs, a defined number of fans and pigs being fed a low protein diet, these matters must be conditioned in order to ensure the amenity of the nearby residents are protected.

26. Given my conclusions in respect of criterion (e), I consider the appeal development to be appropriate in terms of character and scale to its location and it therefore also complies with criterion (b) of Policy CTY12 of PPS21.

27. I have already determined that a condition on number of pigs, mechanical ventilation, low protein feed and run-off are required. The appeal development makes use of an existing access to the farm. The Council have recommended a condition requiring visibility splays of 2.4m x 45m in each direction. Although the existing access is in place, and there is sufficient land either side of it to provide these visibility splays, such splays are not formally in place. In the interest of road safety, it is necessary that formal provision is made and retained for the required visibility splays. This could be done by the imposition of a planning condition.

28. As, I have found the appeal development complies with the relevant policy and that the Council has not sustained its concerns in relation to it, the appeal on ground (a) succeeds. Accordingly, it is not necessary to consider the ground (f) and ground (g) appeals.

### **Decision**

29. The decision is as follows:-

- The appeal on Ground (a) succeeds and the deemed planning application is granted, subject to the conditions set out below.
- The notice is quashed.

### **Conditions**

- (1) The maximum number of pigs within the shed shall not exceed 448 fatteners.
- (2) Within one month of the date of this decision and in accordance with section 4.2.2 of the Air Quality Impact Assessment dated 23<sup>rd</sup> August 2019 a low protein diet shall be continuously adopted for any pigs housed within the hereby approved shed.
- (3) A mechanical ventilation system to the specification set out at section 4 of the Air Quality Impact Assessment dated 23<sup>rd</sup> August 2019 shall be installed within one month of the date of this decision and permanently retained in full operational condition.
- (4) Within one month of the date of this decision arrangements shall be made and agreed in writing with the Planning Authority to ensure that all contaminated run off from the development is directed to an appropriate collection tank, with no overflow or outlet to any waterway or soakaway. Such arrangements shall be put in place within one month of the Planning Authority's written agreement and permanently retained unless otherwise agreed with the Planning Authority.
- (5) Within one month of the date of this decision visibility splays of 2.4m x 45m shall be laid out in both directions at the junction of the access to the appeal site with Crosh Road, and thereafter permanently retained.

**COMMISSIONER LAURA RODDY**

**List of Documents**

Planning Authority:-

“A1” Statement of Case  
“A2” Rebuttal Comments

Appellant:-

“B1” Statement of Case  
“B2” Rebuttal Comments