

# Appeal Decision

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**Appeal Reference:** 2020/A0091  
**Appeal by:** Mrs Caryl Hayes  
**Appeal against:** The refusal of full planning permission.  
**Proposed Development:** Retention of retaining wall, yard, hardstanding area and agricultural building for sheep/lambing, farm machinery and fodder store in conjunction with proposed (dirty water) underground storage tank & associated site works ( amended description).  
**Location:** 4 Park Road Dromara , Dromore  
**Planning Authority:** Lisburn and Castlereagh City Council .  
**Application Reference:** LA05/2018/ 0900/F  
**Procedure:** Written Representations with Commissioner's Site Visit on 15<sup>th</sup> September 2022.  
**Decision by:** Commissioner Helen Fitzsimons 16<sup>th</sup> March 2023

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## Decision

1. The appeal is allowed subject to the conditions set out below.

## Reasons

2. The main issue in this appeal is whether the retention of the agricultural building would have an unacceptable adverse impact on the residential amenities of the occupiers of an adjacent property.
3. Section 45 (1) of the Planning Act (Northern Ireland) 2011 (the Act) requires the Commission, in dealing with an appeal, to have regard to the local development plan (LDP), so far as it is material to the application, and to any other material considerations. Section 6(4) of the Act requires that where in making any determination, regard is to be had to the LDP, the determination must be made in accordance with the plan unless material considerations indicate otherwise.
4. The Lisburn Area Plan 2001(LAP) operates as the Local Development Plan (LDP) for the area the appeal site lies within. The appeal site is located in the open countryside as designated by LAP. There are other no plans or policies within LAP that are pertinent to the appeal proposal.
5. The Strategic Planning Policy Statement for Northern Ireland 'Planning for Sustainable Development' (SPPS) sets out the transitional arrangements that will

operate until a Plan Strategy for the Council area is adopted. During the transitional period the SPPS retains certain existing Planning Policy Statements including Planning Policy Statement 21 'Sustainable Development in the Countryside'

6. Policy CTY1 of Planning Policy Statement 21: Sustainable Development in the Countryside (PPS21) sets out the types of development that are considered to be acceptable in the countryside. One of these is Agricultural and Forestry Development in accordance with Policy CTY 12 .
7. Policy CTY 12 of PPS 21 indicates that planning permission will be granted for development on an active and established agricultural and forestry holding where it is demonstrated that a number of stated criteria are met. One of these is criterion (e) which requires is that it will not result in detrimental impact on the amenity of residential dwellings outside the holding or enterprise including potential problems arising from noise, smell and pollution. It is under this criterion that the Council's objections are based, a third party raised similar concerns in respect of the impact of the proposal on their residential property. It was also argued that the 3<sup>rd</sup> party enjoyed a standard of amenity reflective of living in a countryside location that was peaceful and tranquil and that the use of the shed has changed this to their detriment.
8. The appeal site comprises an access lane and a concrete yard within which the agricultural shed is sited. The southern boundary of the appeal site is defined by post and wire fencing and mature vegetation. It in this portion of the appeal site that the appeal building is located. The building is some 348.5 m<sup>2</sup> in area , some 116.2 m<sup>2</sup> of which will be used to house a maximum of 35 sheep and 45 lambs during January and December each year. This area is located in the western portion of the building. The remainder of the building is separated by an internal wall and is used to store farm machinery and fodder. The 3<sup>rd</sup> party's dwelling lies on higher ground some 30m or so from the shed.
9. It was argued by the Council's Planning Authority and the 3<sup>rd</sup> party that as the shed is not outwith a 75m separation distance between farm buildings and a dwelling not associated with the application, as advocated by the Council's Environmental Health Department (EHD) , in the interests of protecting amenity. In both parties view this would give rise to unacceptable noise and odour impacts. In this instance the Planning (General Permitted Development) Order (Northern Ireland ) 2015, raised by the 3<sup>rd</sup> party, does not apply as this is an application for full planning permission, and not one for development that does not require same . Therefore, it must be noted that in this case the 75m separation distance is advice set out by EHD **only** and not a statutory requirement. It is therefore not a provision that must be slavishly adhered to especially if there are good reasons for departing from it.
10. In its initial consultation response to the Council's Planning Authority dated 24<sup>th</sup> October 2018 the Council's (EHD), who are the Council's experts in matters of noise and odour, stated 'This department recommends that in order to protect the amenity of residential dwellings a minimum separation distance is maintained between the agricultural buildings and any associated residential buildings. Therefore Environmental Health advise that the proposed development is unsuitable as there would be a loss of amenity due to noise , odours and insects.' I was given no evidence of any 3<sup>rd</sup> party complaints regarding noise or odour made to the EHD.

11. In support of her application for planning permission the appellant submitted a Noise Impact Assessment (NIA) and an Air Quality Impact Assessment (AQIA). Both the NIA and AQIA were carried out using an accepted industry standardised methodology to predict noise and odour impacts. The outcomes of those assessments were considered against what is deemed to be acceptable levels for noise and odour. In the case of noise, the World Health Organisation (WHO) Guidelines for Community Noise were employed. In respect of odour the Northern Ireland Environment Agency (NIEA) guidance 'H4 Odour Management : How to comply with your environment permit' was relied upon.
12. I have been given no substantive evidence from the 3<sup>rd</sup> party or the Council's Planning Authority in respect of the veracity of both the NIA and AQIA or the robustness of their conclusions. I have considered both impact assessments and I see nothing in them to persuade me that an incorrect approach was taken and I am satisfied that a robust analysis was carried out in accordance with industry methodology standards.
13. WHO noise levels advocate that the sound levels should not exceed 55dB LAeq for outside areas in day time and that at night an individual noise events exceeding 45dB(A) should be avoided outside a bedroom. The NIA predicted noise levels are 32.7 dB LAeq in daytime hours, some 17.3 dB below the WHO guidelines, and at night 31.5 dB LAeq. which is some 13.5 dB below the WHO guidelines. In respect of odour the AQIA concluded that odour would be confined to around the appellant's property and would not spill out into the areas around the 3<sup>rd</sup> party's dwelling.
14. I note that the Council's Environmental Health Department (EHD) had no concerns with either the NIA or the AQIA and the robustness of the conclusions contained therein. Consequently, in respect of both noise and odour the EHD's final position in its consultation response dated 21 October 2019 was that it had reviewed both the NIA and AQIA and following a meeting with the Planning Authority on 15<sup>th</sup> October 2019 it had no objections to the development subject to conditions. Given my own conclusions of both impact assessments; that I have been given no substantive reason to depart them; and the EHD final position on the appeal development I am satisfied that the matters of the impact of noise and odour arising from the shed have been properly addressed.
15. It is both reasonable and necessary to impose planning conditions to restrict the timing of and number of livestock to be housed in the shed in order to give effect to the conclusions of both the NIA and AQIA and to ensure that there would be no unacceptable adverse impact on the residential amenity of the 3<sup>rd</sup> party by virtue of noise and odour. Such conditions would be enforceable.
16. I was given no persuasive evidence in respect of the 3<sup>rd</sup> party concerns regarding the presence of vermin as a result of the appeal proposal. I consider it unlikely that the housing of livestock at the numbers and frequency that has occurred has resulted in levels of vermin over and above what could reasonably be expected in a rural setting. I am therefore not persuaded that continued use of the shed would attract pests to the extent that there would be an adverse impact on the residential amenity of the 3<sup>rd</sup> party.

17. The matter of why the shed was constructed prior to planning permission being sought that is not a matter for me in this appeal. Planning permission is now being sought and I can only consider the planning merits of the case. As the shed is now constructed there would be no more noise disturbance from the construction phase. A woodland planting barrier is proposed as detailed on drawing 01P dated August 2018 the provision of which would further assist in protecting the amenity of the 3<sup>rd</sup> party's property and this could be secured by condition.
18. The 3<sup>rd</sup> party argued that animal matter was stored outside the shed and that odour from it had an adverse impact on their property. I witnessed no storage of such materials at the time of my site visit. The 3<sup>rd</sup> party submitted no evidence to the frequency or extent of such occurrences. Regarding the spreading of slurry in the adjacent fields this is a common practice throughout the agricultural industry in Northern Ireland and I am not persuaded that odour arising from a necessary agricultural activity associated with farming is sufficient reason of itself to withhold planning permission.
19. None of the 3<sup>rd</sup> party's other concerns are determining in this appeal.
20. Taking account of all of the above I am satisfied that there would be no unacceptable adverse impact on the 3<sup>rd</sup> party's residential amenity or that the peace and tranquillity of this countryside location would be adversely impacted upon. Consequently, I see no good reason to impose the advisory EHD 75m separation distance in this case. The Council has not sustained its reason for refusal and the 3<sup>rd</sup> party's objections are not upheld.

### **Conditions**

1. The lambing and general storage area of the shed as indicated on drawing numbered 01P dated August 2018 shall be only used to house a maximum of 35 sheep and 45 lambs during the months of January and December in any calendar year.
2. No keeping of livestock shall occur in the farm machinery and fodder storage area indicated on drawing 01P dated 18<sup>th</sup> August 2018
3. Within the first available planting season from the date of this permission the Woodland Barrier Mix indicated on the southern boundary of the appeal site shall be planted in full. Trees or shrubs dying, removed or becoming seriously damaged within five years of being planted shall be replaced in the next planting season with others of a similar size and species unless the planning authority gives written consent to any variation.

This decision relates to the drawing numbered 01P dated 18<sup>th</sup> August 2018.

**COMMISSIONER HELEN FITZSIMONS**

**List of Documents**

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|---------------------------|--------------------|--|
| Planning Authority: -     | C1<br>C2           | Written Statement and Appendices<br>Comments |
| Appellant: -              | A1<br>A2           | Written Statement and Appendices<br>Comments |
| 3 <sup>rd</sup> Party : - | 3 <sup>rd</sup> P1 | Written Statement<br>Comments                |

