

PLANNING APPEALS COMMISSION

THE PLANNING ACT (NORTHERN IRELAND) 2011

SECTION 143

Appeal by Mr Niall Bell

against an enforcement notice concerning an alleged breach of planning control involving the unauthorised material change of use of land to a builders yard and the unauthorised laying of hardcore (highlighted in blue) to facilitate this unauthorised use; the unauthorised storage of construction plant/machinery, equipment, building materials and items associated with the unauthorised material change of use; the unauthorised erection of a building; the unauthorised siting of 4 metal containers; the unauthorised creation of an earth bund; and the unauthorised erection of floodlighting at land approximately 20m west of 101 Dungannon Road, Cookstown, Tyrone.

Report

by

Commissioner Jacqueline McParland

Planning Authority References: EN/2020/0283 & LA09/2020/0015/CA

Procedure: Informal Hearing on 17th November 2021.

Report Date: 11th November 2022.

1.0 BACKGROUND

- 1.1 A copy of the Enforcement Notice (the Notice) was issued on 14th December 2020 and served by post on the appellant on 17th December 2020. The Commission received an appeal against the Notice on 15th January 2021. The appeal was lodged on grounds (a), (b), (c), (d), (f) and (g). The appellant withdrew ground (g) at the hearing. There is a deemed planning application by virtue of Section 145 (5) of the Planning Act (Northern Ireland) 2011, but this aspect of the appeal is dealt with in the preliminary section.
- 1.2 The appellant is appealing different elements of the Notice within each ground of appeal. These are as follows:
- The ground (a) of appeal relates to all alleged breaches of planning control;
 - The ground (b) of appeal (which is mainly considered in the preliminary section of this report) relates only to the alleged unauthorised material change of use of land to a builder's yard and the alleged unauthorised laying of hardcore to facilitate this use; and the alleged unauthorised specified storage;
 - The ground (c) of appeal relates to all alleged breaches of planning control excluding the flood lighting;
 - The ground (d) of appeal relates only to the laying of an area of the hardcore; and
 - The ground (f) of appeal relates to the requirements to: (i) permanently cease the use of the land as a builder's yard; (ii) the cessation and removal of the alleged unauthorised specified storage; (iii) the demolition of the alleged unauthorised building and removal of all the debris from the land; and (iv) the removal of the alleged unauthorised hardcore.
- 1.3 The Commission notified Mid Ulster District Council of the appeal by letter dated 21st January 2021. Notice of the appeal was advertised in the local press on 4th February 2021. No representations were received.

2.0 SITE AND SURROUNDINGS

- 2.1 The site is situated within the open countryside approximately 2.5km southwest of Cookstown. It is accessed by a hardcore lane which itself takes access onto the Dungannon Road.
- 2.2 The majority of the appeal site is in hardcore. It contains various items including concrete slats, a pallet of blocks, wood, corrugated iron, a forklift, a mini digger, three digger buckets, and two piles of stones. There are two containers located along the northern boundary of the site with a makeshift covered area between them. Hay and animal feed are stored within the containers. Four floodlighting columns are located around the perimeter of the hardcore area.
- 2.3 A building is located to the northeast of the hardcore area within the adjacent agricultural field. It is constructed of corrugated metal sheeting. It is open to one gable end.

- 2.4 A 1.8 metre close boarded fence defines the site's boundaries to the south and east. The eastern boundary is supplemented by trees approximately 6 to 10 metres tall. An earth bund approximately 2 metres high demarcates the site to the west. This bund continues along the majority of the northern boundary, with a cattle gate located along the northeast portion. This allows access between the hardcore area and the neighbouring agricultural field. The surrounding area is mainly agricultural in nature.

3.0 **Preliminary Matters**

The Notice

The Appellant's Case

- 3.1 At the hearing and within his ground (b) of appeal, the appellant stated that the appeal site was used solely for agricultural purposes and not as a builder's yard as alleged in the Notice. He stated that the hardcore was laid to facilitate the agricultural use. At the hearing he requested that the Commission use their powers under Section 144 (2) of the Planning Act (Northern Ireland) 2011 to correct this misdescription on the Notice to read "the unauthorised material change of use of land to an agricultural yard". The appellant's agent went on to indicate that the ground (a) of appeal was predicated on the Notice being changed to reflect the use of the land as an agricultural yard.
- 3.2 With reference to the laying of hardcore, the Notice does not identify its extent. Without prejudice to the position that the yard is used for agricultural purposes, the appellant is agreeable to the Council's proposed suggestion to amend the first bullet point of Part 3 of the Notice to read "The unauthorised material change of use of the land to a builder's yard and the unauthorised laying of hardcore (highlighted blue) to facilitate this unauthorised use". The proposed wording would not cause any injustice. Arguments in relation to the alleged use and the alleged immunity of the hardcore area are unaffected by this change.

The Council's Case

- 3.3 At the hearing the Council stated that it remained of the opinion that the appeal site was operating as a builders storage yard and that the hardcore was laid for the purposes of storing the material, plant and machinery. The description of the alleged breach of planning control as described on the Notice is correct.
- 3.4 Notwithstanding the arguments presented within the Council's case, the Commission can correct some minor errors in the Notice to clarify that the laying of hardcore relates only to the area shaded blue on the map which accompanied the Notice. This can be done without any prejudice or injustice to the appellant as he was offered the opportunity to comment on it and put forward his case at the hearing.
- 3.5 The Notice can be clarified by the following rewording:
- "The unauthorised material change of use of the land to a builder's yard and the unauthorised laying of hardcore (highlighted blue) on the attached site location map to facilitate this use" at bullet point one of Part 3 of the Notice: and

- “Permanently remove the unauthorised hardcore from the land highlighted blue on the attached site location map” at bullet point 7 Part 4 of the Notice.

Consideration

- 3.6 Section 144 (2) of the Planning Act allows the Commission to correct any misdescription, defect or error in an enforcement notice, or vary its terms if it is satisfied that the correction or variation can be made without injustice to the appellant or to the Council.
- 3.7 Mid Ulster District Council considered that there had been an alleged breach of planning control at the appeal site as described in the Notice as an unauthorised material change of use of the land to a builders yard. The Council did not accede to the appellant's request to amend the alleged breach of planning control to an agricultural use. It is for the Council to describe what it considers to constitute the breach of planning control and the subsequent remedies. Accordingly, as the alleged breaches are not captured by Section 144 (2) they must form part of my consideration in the appeal.
- 3.8 Given that the ground (a) of appeal was predicated on an agricultural use, the appropriate deemed planning fee was not paid. The ground (a) of appeal has therefore lapsed. As the floodlighting was only included within the appellant's ground (a) of appeal, I must conclude that it is unauthorised development and therefore represents a breach of planning control.
- 3.9 However, the Notice, as issued, does not clarify the extent of hardcore which is alleged to constitute the breach of planning control. The Council consider that this can be clarified by the above rewording. The area highlighted in blue represents a reduction in the area of hardcore considered to be a breach of planning control. Given this, and the latitude provided by Section 144(2) of the Planning Act, I am satisfied that the Notice can be corrected in respect of the extent of the alleged unauthorised hardcore without injustice to the appellant.

Legal Grounds

4.0 GROUND (B): - that those matters have not occurred

The Appellant's Case

- 4.1 The ground (b) of appeal relates to the alleged breaches of planning control outlined in bullet points one and two of Part 3 of the Notice. The appellant stated that construction materials and equipment which the Council had photographed were only present temporarily to facilitate works to upgrade the yard, relocate the building referred to in the Notice, demolish old agricultural buildings and renovate and extend the neighbouring dwelling (101 Dungannon Road) which is adjacent to the appeal site.
- 4.2 The appellant returned a Planning Contravention Notice (PCN) to the Council on 22nd October 2020. At question 4 (v) and (vi) of the PCN he stated that no change of use had occurred, and the land was used for agricultural purposes. Bell Contracts Ltd, of which the appellant is a director, purchased the site in 2017. The appellant leases the land from the company for his own personal use. At the hearing the

appellant stated that the house was now rented to Mr Eastwood, who has no connection to the farm business or Bell Contracts Ltd.

- 4.3 There were pre-existing farm buildings and a small yard on site at the time of purchase. Thereafter, between 2017 to 2020, the agricultural yard was renovated and extended on the appeal site and the pre-existing farm buildings were demolished. The aerial photography taken on 9th February and 29th June 2018 shows the agricultural buildings demolished, an extended yard laid out in hardcore, and the earth bunds. Substantial renovations to the dwelling adjacent to the appeal site also took place. These works included a small rear extension, new wooden floors, new joists to the upper floor, a complete rewiring of the electrics, re-plastering, loft insulation, a new kitchen and new bathrooms. At the hearing the appellant stated that the equipment and plant/machinery were owned by Bell Contracts Ltd. The building materials were in place in association with the demolition of the farm buildings, the relocation of the building and the renovation of the dwelling. The storage of such items for the duration of these works did not constitute a change of use to a builder's storage compound.
- 4.4 Some hardcore has been laid to the north and west of the appeal site. However, it was not laid to facilitate the alleged use. There was an existing hardcore yard present on the site which was extended. This area was extended to increase the farmyard and provide a dry level platform to erect polytunnels. Whilst the appellant accepts that a large area of hardcore was laid after 2017, the photographs taken by the appellant between 2017 to 2018 and the aerial photography taken on 26th November 2008, 25th May 2012 and 16th June 2014, show a pre-existing farmyard and the now demolished buildings on the appeal site. As can be seen from the sales brochure for the property when it was purchased in 2017, it was advertised as a "farmhouse, small farmyard and paddock". Therefore, there was an area of hardcore already in situ prior to 2012. This area is illustrated (see Drawing Number 21-105-SP-01).
- 4.5 The appellant lives within the settlement limit of Cookstown. He uses the yard for agricultural purposes only now that the works to the farmyard and dwelling are finished. There was significant delay in removing the construction equipment from the site given the national Covid-19 lockdown, as there were legal restrictions on movements and activities.
- 4.6 The appellant brought on machinery/materials to the appeal site for two reasons. Firstly, in respect of the agricultural use and for works to upgrade the farmyard and wider farm holding, he brought on diggers, telehandlers, bowzers and mixers. He has a farm holding and a farm business ID number issued by the Department of Agriculture, Environment and Rural Affairs (DAERA). This comprises of the large field immediately adjacent and north of the appeal site used as grazing land for his three sheep, four goats, three alpacas and three donkeys. The machinery and materials were also used for the undertaking of work in association with this farm business. These works included:
- The relocation of the building;
 - The extension to the yard;
 - The erection of the perimeter bund;
 - Improvements to land drainage and septic tank connections;

- Improvements/repairs to fences by installing new fence posts and wire;
- Clearance/repairs to field drains;
- The demolition of the existing farm sheds and storage of component parts for future use, including concrete slats;
- Some block removed from sheds was also kept on site and broken up for use across the yard;
- Laying of new hardcore across the farm yard;
- Concrete rings used to create drinking troughs;
- General farming activities, including maintaining grass crops and land in good condition.

Secondly, construction materials, equipment, plant and machinery were used during the renovations of the dwelling. They were temporarily stored on the appeal site between 2017 to 2020. The construction materials included:

- Pallets of roof tiles for the retiling of the rear extension of the dwelling;
- Cement mixers and road curbs for the repair of the laneway;
- Scaffolding for repointing chimneys;
- Manholes and drainage to replace the pipework from the dwelling to the septic tank;
- Pallets of plasterboard and new insulation panels as the entire house was reinsulated, some walls replastered and refinished;
- Rolls of new electrical cables and trunking as house was re-wired;
- Pipework and plumbing renewed in dwelling;
- Old patio removed and completely re-laid;
- Several skips were used for clearance of the dwelling and removal of items through construction and new fit out such as carpets etc.

Planning Authority's Case

- 4.7 The Council consider that at the time the Notice was issued the appeal site was being used as a builder's yard. Photographs taken on 10th February 2020, 26th May 2020 and 23rd September 2020 show the unauthorised use on site. During these times the site was in use for the storage of construction plant/machinery, equipment such as cement mixers, scaffolding, skips, metal containers, building materials and other related construction items. These photographs also show the unauthorised floodlights, metal containers, building and earth bund. The photographs taken on 10th February 2020 show 3 cement mixers, two mini excavators, a dumper truck, two trailers, builder's skips, scaffolding, a work van, a small lorry and a mobile crane. The large volume of construction machinery stored on the site is excessive for the alleged renovations including a small extension to the rear of the dwelling.
- 4.8 The orthographic images taken on 31st May 2016 shows that the site consisted of an agricultural building, hardcore yard, silage pit and agricultural land. A Google Street View image taken in May 2017 shows that the appeal development was not present on this date. In the aerial photograph taken on 29th May 2020, it is evident that a material change of use of the land to a builder's yard has occurred. It shows five excavators, two dumper trucks, 4 steel containers, a work van and various items of construction materials stored throughout the hardcore yard, which facilitate the unauthorised use as a builder's yard. This new use has replaced the previous agricultural use on the site.

- 4.9 A site photograph taken on 10th February 2020 shows the “Bell Contracts” logo on the sliding electric security gate at the entrance into the site. The photograph indicates the site was used in association with Bells Contracts who specialise in the construction of commercial and domestic buildings. Further site photographs taken on 23rd September 2020 show building blocks, skips, oil tanks, scaffolding bars, wooden pallets etc. to be present on the appeal site. The day prior to the hearing two Bell Contract vehicles, cement mixers and excavators were on the hardcore yard.
- 4.10 Within his statement of case the appellant stated that No. 101 Dungannon Road and the adjoining land and farm buildings were bought by Bell Contracts Ltd. He stated that he leases the house and the land from the company for his own personal use. However, the occupier of the dwelling is now Mr Eastwood who is a publican. The printout from Companies House shows that Mr Eastwood was appointed a director of BSL Bars Ltd on 13th November 2019 and listed his address as No. 101 Dungannon Road, Cookstown at that time. It is likely that the works to the dwelling were completed by that time. Given all of the above, the Notice is correct to describe that a material change of use to a builder’s yard has occurred.

Consideration

- 4.11 The appellant’s ground (b) of appeal relates only to the first two alleged breaches of planning control. The matters to be considered within the ground (b) of appeal are whether the alleged material change of use, the laying of hardcore to facilitate it and the storage of plant/machinery, equipment and materials as described was occurring on the appeal site at the time the Notice was issued.
- 4.12 The aerial photography taken on 9th February and 29th June 2018 shows the agricultural buildings demolished, an extended yard laid out in hardcore and the earth bunds. It is evident in the aerial image of 29th May 2020 that significant quantities of equipment, including five excavators, two dumper trucks, a van and construction materials were stored on the extended hardcore yard some 23 months after the works to create the earth bunds, demolish the farm buildings and extend the yard had been completed. Given this passage of time, I am not persuaded by the appellant’s argument that the machinery/plant, equipment and construction materials were present to facilitate these works.
- 4.13 At the hearing, the appellant stated that the dwelling is leased to Mr Eastwood. The printout from Companies House shows that Mr Eastwood was appointed a director of BSL Bars Ltd on 13th November 2019 and listed his address as No. 101 Dungannon Road, at that time. The appellant did not dispute this. As such, I find it likely that the works to the dwelling were completed by that time. This was around four months prior to the Covid19 national lockdown on 23rd March 2020. I consider this would have provided a sufficient timeframe for the appellant to remove the plant/machinery, equipment and materials associated with the renovations. Therefore, I am not persuaded by the appellant’s argument that the lockdown prevented the removal of the above items from the site in a timely manner following the completion of the works at No. 101 Dungannon Road.
- 4.14 The appellant also stated that the renovations to the dwelling included a small rear extension, new wooden floors, new joists to the upper floor, a complete rewiring of the electrics, re-plastering, loft insulation, a new kitchen and new bathrooms. However, given the quantity, nature and type of machinery and materials present on

site shown within the photographic evidence combined with the delay in removing it, I am not persuaded that all were present for the stated work to renovate the dwelling.

- 4.15 Photographs taken on 23rd September 2020 show the extended hardcore yard to contain a mini excavator, a tank, a large skip full of demolition/construction items, pallets of breeze blocks, barrels, and piles of timber. This is approximately 10 months after Mr Eastwood occupied No. 101 Dungannon Road. The appellant stated that the majority of the construction plant/machinery and equipment which was on the appeal site is owned by Bell Contracts. Site photographs taken 10th February 2020 shows the Bell Contracts logo on the security gate at the entrance into the site. All of this suggests that the extended hardcore area was being used in association with Bell Contracts construction business.
- 4.16 The appellant has not provided any persuasive evidence demonstrating that he has a lease or rental agreement to use the hardcore yard from Bell Contracts for agricultural purposes. Therefore, he has not demonstrated that the hardcore yard formed part of his farm business. Notwithstanding this, the appellant has a relatively small farm holding on the land adjacent to the hardcore yard used as grazing land for his three sheep, four goats, three alpacas and three donkeys. Even if the hardcore yard did form part of his farm business, he has not demonstrated why the extent of the hardcore yard was required given the limited agricultural activity undertaken on the farm holding. He has also not demonstrated why the building materials, or the quantity of equipment, plant and machinery photographed on the site would be required for undertaking agricultural activities on the adjacent farm holding.
- 4.17 Taking all the above into account, I am not persuaded that the stated materials, equipment, plant and machinery were on the appeal site for agricultural purposes. I consider the quantity and type of materials, equipment and plant/machinery evident on the appeal site in the photographs of 10th February 2020 and 29th May 2020 to be excessive for the specified renovations to the dwelling and other works. Given this, I find that it is likely on the balance of probabilities, that the hardcore yard was being used as a builder's storage yard at the time the Notice was issued. The aerial photography taken on 9th February and 29th June 2018 shows the hardcore yard was being used to store equipment, materials and plant/machinery. Given that this was shortly after Bell Contracts purchased the appeal site in 2017, I find that it is more likely than not that the hardcore yard as highlighted blue was laid to facilitate its use for builder's storage.
- 4.18 In respect of the appellant's evidence about the accuracy of the alleged breach relating to the material change of use, I find that the Notice is accurate in describing the alleged breach at the time of issue for the reasons given. Accordingly, the appeal on ground (b) fails.

5.0 GROUND (C): - that those matters (if they occurred) do not constitute a breach of planning control

The Appellant's Case

- 5.1 The appellant's ground (c) of appeal relates to the laying of the hardcore yard, the siting of the 4 containers, the erection of the building and the creation of the earth bund. He contends that these works are permitted development as per Class A of Part 7 "Agricultural Buildings and Operations" of the Planning (General Permitted

Development) Order (Northern Ireland) 2015 (GPDO). He also stated that the appeal site was used temporarily to store equipment, plant, machinery and materials in association with construction works taking place at the appeal site and the adjoining property at 101 Dungannon Road, Cookstown.

5.2 The appellant has a farm holding and a farm business ID number issued by DAERA. This comprises of the large field immediately adjacent and north of the appeal site used as grazing land for his three sheep, four goats, three alpacas and three donkeys. The erection of the building, earth bund and the siting of the containers were carried out between 2017 and 2020. The machinery and materials were used for the undertaking of work in association with this farm business. These works included:

- The relocation of the building;
- The extension to the yard;
- The erection of the perimeter bund;
- Improvements to land drainage and septic tank connections;
- Improvements/repairs to fences by installing new fence posts and wire;
- Clearance/repairs to field drains;
- The demolition of the existing farm sheds and storage of component parts for future use, including concrete slats;
- Some block removed from sheds was also kept on site and broken up for use across the yard;
- Laying of new hardcore across the farm yard;
- Concrete rings used to create drinking troughs;
- General farming activities, including maintaining grass crops and land in good condition.

5.3 The dwelling at No. 101 Dungannon Road, Cookstown has been rented to Mr Eastwood, who is not involved in the farm holding. The dwelling was renovated over several years following its purchase in 2017. The construction materials, equipment, plant and machinery were used during the renovations of the dwelling. They were temporarily stored on the appeal site between 2017 to 2020. The construction materials included:

- Pallets of roof tiles for the retiling of the rear extension of the dwelling;
- Cement mixers and road curbs for the repair of the laneway;
- Scaffolding for repointing chimneys;
- Manholes and drainage to replace the pipework from the dwelling to the septic tank;
- Pallets of plasterboard and new insulation panels as the entire house was reinsulated, some walls replastered and refinished;
- Rolls of new electrical cables and trunking as house was re-wired;
- Pipework and plumbing renewed in dwelling;
- Old patio removed and completely re-laid;
- Several skips were used for clearance of the dwelling and removal of items through construction and new fit out such as carpets etc.

5.4 The building in the northeast corner of the site is not new. Rather, it was located to the rear of the dwelling, and it was subsequently relocated to its current position within the adjacent agricultural field. Its use remains agricultural as it provides shelter

for the animals. The building was moved in its entirety as the structure was able to be lifted and re-sited using a digger with a front loader attachment and a tractor with attachments. The relocation of the building and the siting of the containers were carried out after the demolition of the existing farm buildings. The containers were brought to the site on a lorry and lifted into place.

- 5.5 The building and the containers are permitted development as the development is on agricultural land (3.09 acres) and it does not relate to the erection, extension or alteration of a dwelling house. The building and containers are designed for the purpose of agriculture as evidenced by their continuous agricultural usage. The use of containers on farmyards are commonplace offering a low-cost solution particularly for young farmers. The nearest part of the building and the containers are within 75m from the nearest part of a group of principal farm buildings located at No. 101 Dungannon Road. The nearest part of the building and the containers are more than 75m from a neighbouring dwelling house and the ground area covered by both is considerably less than 500m². The height of the building is 2.5m and it is 58m from the road. The height of the containers is 2m and they are 90m from the road.
- 5.6 The erection of the earth bund is considered to be classed as permitted development in Class A, Part 7 of the GPDO. The development is on agricultural land of 3.09 acres and it does not relate to the erection, extension or alteration of a dwelling house. The bund is designed for the purpose of agriculture. The bund is located within 75m from the nearest part of a group of principal farm buildings located at No. 101 Dungannon Road. The majority of the bund is more than 75m from a neighbouring dwelling house and the ground area to be covered by the bund is less than 500msq. The height of any part of the bund is 2.5m and it is 60m from the road. It helps to integrate the development into the rural area.

Planning Authority's Case

- 5.7 Section 23 of the Planning Act (Northern Ireland) 2011 sets out the meaning of development. Section 23 (3) of the Act defines operations or uses of land which do not constitute development of land. Section 24(1) of the Act states "subject to this Act, planning permission is required for the carrying out of any development of land". Section 131(1) of the Act states "For the purposes of this Act carrying out development without the planning permission required constitutes a breach of planning control".
- 5.8 The appellant has an agricultural holding and DAERA ID number which was established on 7th January 2021. The storage of construction plant/machinery, equipment, building materials and items associated with the unauthorised builder's yard fall under Class B4 of the Planning (Use Classes) Order (Northern Ireland) 2015 (UCO). The Council considers that the use of the land for commercial storage purposes is a change of use from agricultural land, which is a development that requires planning permission. The Council also considers that the siting of 4 metal containers and the creation of an earth bund is also development that requires planning permission.
- 5.9 The unauthorised development identified on site and outlined in the Notice does not constitute permitted development in accordance with the GPDO. The use of the land is not agricultural and therefore would not benefit from agricultural permitted

development rights. In any event, the unauthorised development would not meet agricultural permitted development for the following reasons:

- The earth bund is not permitted under Part 7, Class A (f) of the GPDO as it is located within 75m of residential dwellings outside the farm holding, including No. 101 Dungannon Road, and Nos. 54 and 56 Tullyard Road.
- The building and 4 metal containers are not permitted development under Part 7, Class A (d) and (f) of the GPDO as these are the first buildings on the site and they are located within 75m of residential dwellings outside the holding, including No. 101 Dungannon Road, and Nos. 54 and 56 Tullyard Road. The pre-existing agricultural building on site was demolished following the acquisition of the site in 2017 to make way for the unauthorised builder's yard.
- Furthermore, the corrugated building, 4 metal containers and the earth bund are not reasonably necessary for the purposes of agriculture within this agricultural holding as set out in Part 7, Class A of the GPDO.

5.10 DAERA have stated that the appellant's farm business is category 3 which allows the appellant to keep a small number of animals on agricultural land immediately north of the hardcore yard. He is unable to claim area-based schemes or other farm subsidies. The animals kept on the holding consist of non-commercial animals such as donkeys, alpacas and goats.

5.11 Photographs taken on 10th February 2020, 26th May 2020 and 23rd September 2020 show the unauthorised use on site. During these times the site was in use for the storage of construction plant/machinery, equipment such as cement mixers, scaffolding, skips, metal containers, building materials and other related construction items. Within his statement of case the appellant stated that No. 101 Dungannon Road and the adjoining land and farm buildings were bought by Bell Contracts Ltd. He stated that he leases the house and the land from the company for his own personal use. However, the occupier of the dwelling is now Mr Eastwood who is a publican. The printout from Companies House shows that Mr Eastwood was appointed a director of BSL Bars Ltd on 13th November 2019 and listed his address as No. 101 Dungannon Road, Cookstown at that time. It is likely that the works to the dwelling were completed by that time.

5.12 The unauthorised development fails to fulfil the criteria for exemption under Section 23 (3) of the Act. The unauthorised development as outlined in the Notice therefore constitutes a breach of planning control in accordance with Section 131 (1) of the Act.

Consideration

5.13 The consideration within the ground (c) of appeal is whether the matters identified in the Notice constitute a breach of planning control. I have found that the laying of the hardcore facilitated the use of the yard for builder's storage at the time the Notice was issued. Given this, it cannot be considered agricultural permitted development and therefore constitutes a breach of planning control and fails under ground (c) of appeal. The remaining elements of the Notice to be considered within the ground (c) of appeal are the erection of the building, the siting of four containers, the creation of the earth bund and whether the temporary use of the appeal site for the storage of plant and machinery, equipment and materials constituted permitted development.

There was some conflation of the grounds of appeal in the evidence provided by the appellant. In the interests of fairness and completeness I have considered that evidence comprehensively under grounds (b) and (c) of appeal.

- 5.14 Part 5 of the schedule to the GPDO, Class A states that “the provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land” is permitted development. I have already concluded within the ground (b) of appeal that the construction works to the dwelling at 101 Dungannon Road Cookstown and to the appeal site had likely been completed by November 2019. However, the plant, machinery, equipment and materials remained stored on the appeal site beyond the duration of the construction operations to the dwelling and yard as demonstrated in the photographs taken on 10th February 2020, 26th May 2020 and 23rd September 2020. Given this, I consider that at the time the Notice was issued, the storage of plant, machinery, equipment and materials at the appeal site were not in connection with the construction works specified. Therefore, the storage of these items would not have constituted permitted development under Part 5, Class A of the GPDO.
- 5.15 The appellant stated that he has a farm holding of over 3 acres, comprising the large field immediately adjacent to the north of the appeal site. DAERA has confirmed this and that he was awarded a DAERA Business ID on 7th January 2021. He stated that this comprises of mostly grazing land for his three sheep, four goats, three alpacas and three donkeys. The keeping of animals has been confirmed by the Council. I also observed donkeys, alpacas and goats in this field at the time of my site visit. Given all the above, I am satisfied that the appellant has an agricultural unit at this location.
- 5.16 Neither party submitted any evidence to demonstrate what was stored in the four containers at the time the Notice was issued. At the hearing the Council confirmed they had not carried out an internal inspection of the containers during any of their site visits. The Notice relates to a commercial use and not the use of the containers for agricultural purposes. At my site visit I observed only two containers on the site. These were in use storing hay and animal feed and were not associated with the builder’s yard. In the particular evidential context provided, I consider them to be agricultural in nature. Given that the containers are not associated with the use as a builder’s yard and taking into account the limited quantum and scale of same, I consider that the Notice can be varied to remove reference to two of the containers.
- 5.17 The appellant contends that the erection of the building and the creation of the earth bund constitute permitted development under the GPDO. This states that development is permitted for the carrying out on agricultural land comprised in an agricultural unit of works for the erection, extension or alteration of a building or any excavation or engineering operation reasonably necessary for the purposes of agriculture within that unit. However, it goes on to state that development is not permitted by Class A if the development does not meet a list of legislative points.
- 5.18 The appellant argues that the building and earth bunds are reasonably necessary for the purposes of agriculture within his unit. He also stated that the existing farm buildings were demolished prior to the creation of the earth bund and the erection of the building in its current location. At the hearing the appellant told me that the

dwelling at No. 101 Dungannon Road was rented out and that the occupier is not engaged in the agricultural activity on the farm holding. The DAERA farm business is also registered to the appellant at a different location. I was given no credible evidence to demonstrate that the buildings at 101 Dungannon Road were part of the agricultural unit. Therefore, the appeal development cannot be said to be within a group of principal farm buildings and the subject building would be the first to be erected on the agricultural unit. Whilst the appeal building is used to provide shelter for animals, it is located within 75m of this dwelling (No. 101). Furthermore, the earth bund is located within 75m of the dwellings of No. 101 Dungannon Road and Nos. 54 and 56 Tullyard Road. As such the building and the earth bunds are located within 75m of three dwellings which are occupied by people not engaged in the operations on the appellant's agricultural unit. Moreover, the appellant has not submitted any persuasive evidence to demonstrate why the bunds are reasonably necessary for the purposes of the agricultural unit. Consequently, the appeal development does not meet the legislative requirements of Part 7, Class A of the GPDO.

- 5.19 Given all of the above, the appeal fails in relation to the storage of plant, machinery, equipment and materials, the building, the siting of two metal containers and the creation of the earth bund. However, the appeal succeeds in relation to the siting of two of the four metal containers.

6.0 GROUND (D): - that, at the date when the notice was issued, no enforcement action could be taken.

The Appellant's Case

- 6.1 Whilst it is accepted that a large portion of the hardcore was constructed after 2017, the ground (d) of appeal relates only to a small area of hardcore, which was laid in hardcore prior to 2012. The photographs taken between 2017 - 2018 and the aerial photography taken 25th May 2012 and 16th June 2014 show an original farmyard which was laid out in hardcore and (now demolished) buildings on the appeal site. These buildings sat upon a concrete hardstanding adjacent to the original farmyard. Therefore, an area of hardcore comprising of the original farmyard was in situ prior to 2012 as shown on Drawing Number 21-105-SP-01 dated 22nd April 2021. The area shaded blue on the map which accompanied the Notice includes part of this original farmyard.
- 6.2 The property sales brochure demonstrates that there was an original farmyard and small farm holding present on the site prior to 2017. The brochure describes a two-storey farmhouse, small farmyard, paddock and 3.09 acres for sale. It further describes a separate hardcore farm entrance to a range of farm buildings consisting of 2 slotted pens, a dry floor shed and a range of piggeries. The tanks under the buildings with slotted pens have been filled in to create part of the current yard.

Planning Authority's Case

- 6.3 Section 132 (1) of the Planning Act (Northern Ireland) 2011 sets out that enforcement action may be commenced within 5 years of the breach of planning control. The Notice was served on 17th December 2020. Therefore, to be immune from enforcement action the appellant must prove that the hardcore was laid on site on or before 17th December 2015.

- 6.4 The Council accept that an area of original hardcore was present on the site and is immune from enforcement action. This is the area excluded from the area shaded blue on the map which accompanied the Notice. It is estimated that the original area of hardcore amounted to 760m². The aerial photograph dated 31st May 2016 and the Google Street image taken in May 2017 shows the majority of the site formed an agricultural field. The remainder of the site comprised of agricultural buildings, hardcore yard and a silage pit. This aerial photograph confirms that the majority of the hardcore was not in place and no commercial use is evident on those dates.
- 6.5 The appellant has stated that the area which formed tanks under the agricultural buildings that were previously on site have been filled in. Given this, the Council would argue that this is new development and do not accept that this area would be immune from enforcement action.

Consideration

- 6.6 The area of infill under the tanks is outside the area of hardcore as identified as a breach of planning control in the map which accompanied the Notice. It is therefore not pertinent to my consideration.
- 6.7 The appellant's ground (d) of appeal relates solely to a small portion subsumed within the hardcore yard highlighted blue in the map which accompanied the Notice. He argued that this small portion was in hardcore and formed part of the original agricultural yard since 2012. Section 132 of the Planning Act sets out time limits for taking enforcement action. In relation to building, engineering, mining or other operations and changes of use, no action may be taken after the end of the period of 5 years beginning with the date on which the operations were substantially completed. The Notice was issued on 14th December 2020. Therefore, in order to be immune from enforcement action, the appellant must demonstrate that this small portion of the yard was substantially complete before 14th December 2015.
- 6.8 The aerial photography dated 25th May 2012 and 16th June 2014 shows the area in question to be covered with green vegetation, and it is not clear whether there is hardcore on this portion. The aerial photography dated 31st May 2016 clearly shows an area of hardcore along the southern boundary of the site and adjacent to the agricultural sheds previously on site. However, the small portion which the appellant is contesting is shown as vegetated in this image. Given this, I have not been persuaded that all of the area of hardcore highlighted in blue is immune from enforcement action. In the evidential context provided, I consider that the area shaded blue on the map which accompanied the Notice represents a new hardcore area. As such, the appellant has not demonstrated that the area of hardcore highlighted in blue on the map which accompanied the Notice, was in place for a five-year period in accordance with the legislative requirement. For the reasons outlined above, the appeal on ground (d) fails.

Administrative Ground

- 7.0 **GROUND (F) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.**

The Appellant's Case

- 7.1 The requirement to permanently cease the unauthorised use of the land as a builder's yard is unnecessary as this use has not occurred. The requirement to permanently cease the unauthorised storage of construction plant/machinery, equipment, materials and items associated with the alleged material change of use and remove them from the land is excessive. Agricultural machinery could be classified as plant/machinery. Tractors and telehandlers have been used on the agricultural unit to move feed and materials such as fence posts. This requirement is prohibitive and if enacted affects the storage of agricultural machinery on this site.
- 7.2 The requirement to permanently remove the unauthorised hardcore and to restore the land to its previous condition as an agricultural field is excessive. It includes areas that are immune from enforcement by virtue of the length of time they have been in place. The requirement to demolish the building will result in animal welfare issues as it provides a safe area for animals during inclement weather and during testing.

Planning Authority's Case

- 7.3 The use of the land as a builder's yard is a material change of use from agricultural land. This is development that requires planning permission. No planning permission exists, and the only remedy is to cease this use. The storage of plant and machinery, equipment, materials and items to facilitate the unauthorised use is development that requires planning permission. No planning permission exists and the only remedy for this breach is to remove all plant and machinery, equipment, buildings materials and items that are associated with the unauthorised use.
- 7.4 The laying of the hardcore has been created to facilitate the unauthorised commercial use. This, the erection of the earth bund and the creation of the building are developments requiring planning permission. As no planning permission exists, the only remedy for the breach is to remove the hardcore, the building and the earth bund. Prior to the hardcore being laid, the land was in grass and formed part of a larger agricultural field as can be seen in an aerial image taken 30th May 2016. The remedy to reinstate this rural area is necessary and not excessive.

Consideration

- 7.5 The onus is on the appellant to explain why, in the event that his other arguments are rejected and the notice is upheld, the steps required by the notice exceed what is necessary to remedy the breach of planning control. I have previously found that the use as described in the Notice is as made out. However, the appellant also has an active farm business. The DAERA ID number is registered solely to the appellant. I acknowledge that this farm holding will require some equipment/machinery to be on site to enable him to carry out his agricultural activities.
- 7.6 I consider that the wording of the second bullet point of Part 4 of the Notice ties the storage of machinery/plant to the unauthorised use as a builder's storage yard. At the hearing the appellant stated that the majority of the equipment and machinery on the site during the enforcement proceedings belonged to Bell Contracts Ltd. This is registered to the company, whereas machinery for his agricultural activity is separate from the construction business and would be registered or leased to the appellant for his farm business. This could be easily demonstrated through DVLA documents or

lease agreements should a query arise. As such, I find that the wording of the Notice would not prejudice the appellant from keeping machinery/equipment in connection with his agricultural holding on the land. Given this, I am not persuaded this requirement goes beyond what is necessary to remedy the breach of planning control.

- 7.7 The remainder of the appellant's ground (f) of appeal relates to the small area within the hardcore which he contends to be immune from enforcement action, the use of the yard as a builder's yard and the building. I have already found that this use has occurred. I have also found that the area of hardcore shaded blue within the map which accompanied the Notice is not immune from enforcement action and that the building is not permitted development in accordance with Part 7, Class A of the GPDO. Furthermore, the appellant has not demonstrated that animal welfare would be significantly impacted by the removal of the building. Given this, I find that they are all breaches of planning control which require planning permission. As no planning permission has been granted, I consider that the requirements of the Notice do not exceed what is necessary to remedy the breaches of planning control. For the reasons given, the ground (f) of appeal fails.

8.0 **RECOMMENDATION**

- 8.1 I recommend to the Commission as follows: -

- The notice is corrected at Part 3 bullet point one to state "*The unauthorised material change of use of the land to a builder's yard and the unauthorised laying of hardcore highlighted blue on the attached site location map to facilitate this use*" and at Part 4 bullet point seven to state "*Permanently remove the unauthorised hardcore from the land highlighted blue on the attached site location map*".
- The appeal on ground (b) fails.
- The ground (c) appeal succeeds only in relation to the siting of two containers. Accordingly, the fourth bullet point in Part 3 and the fourth bullet point in Part 4 of the Notice are varied to delete the word four and insert the word two.
- The remaining appeal on ground (c) fails.
- The appeal on ground (d) fails.
- The appeal on ground (f) fails
- The notice, as so corrected and varied, is upheld.

List of Appearances

Planning Authority:- Mr Paul McClean, Mid Ulster District Council
Mr David Stewart, Mid Ulster District Council

Appellant:- Ms Gemma Jobling, JPE Planning
Mr Niall Bell (appellant)
Mr Martin Bell (the appellant's father)
Mr Eamon Moore (architect)

List of Documents

Planning Authority:- "A1" Statement of Case, Mid Ulster District Council
"A2" Rebuttal, Mid Ulster District Council

Appellant:- "B1" Statement of Case by JPE Planning on behalf of Mr Niall Bell.
"B2" Rebuttal by JPE Planning on behalf of Mr Niall Bell.

