
Appeal Reference:	2021/E0057
Appeal by:	Mr Norman Graham
Appeal against:	The refusal of a Certificate of Lawfulness of Existing Use or Development
Proposed Development:	Erection and use of two agricultural sheds for agricultural uses for storing farm machinery and equipment for active farm and provide lambing/calving, TB testing on site facilities with crush
Location:	50m to north and rear of 46 Riverside Road, Ballynahinch
Planning Authority:	Newry Mourne and Down District Council
Application Reference:	LA07/2021/0778/LDE
Procedure:	Written representations and Commissioner's site inspection 16 th May 2024
Decision by:	Commissioner Kenneth Donaghey dated 10 th June 2024

Decision

1. The appeal is allowed, and a Certificate of Lawfulness of Existing Use of Development (CLEUD) is attached.

Reasons

2. The main issue in respect of this appeal is whether the buildings and agricultural use are lawful.
3. Section 169 of the Planning Act (Northern Ireland) 2011 (the Act) makes provision for the issue of a Certificate of Lawfulness of Existing Use or Development. Section 169(1) states that "if any person wishes to ascertain whether – (a) any existing use of buildings or other land is lawful; (b) any operations which have been carried out in, on, over or under land are lawful; or (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful, that person may make an application for the purpose to the appropriate council specifying the land and describing the use, operations or other matter".
4. Section 169(2) indicates that "for the purposes of this Act uses and operations are lawful at any time if – (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force".

5. Section 169(4) states that “if, on an application under this section, the council is provided with information satisfying it of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the council or a description substituted by it, the council must issue a certificate to that effect; and in any other case it must refuse the application”.
6. Section 132 of the Act refers to time limits for taking enforcement action against breaches of planning control. Section 132 (1) states that where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of 5 years beginning with the date on which the operations were substantially completed. Section 132 (2) of the Act states that where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling-house, no enforcement action may be taken after the end of the period of 5 years beginning with the date of the breach. Section 132 (3) of the Act states that in the case of any other breach of planning control, no enforcement action may be taken after the end of the period of 5 years beginning with the date of the breach.
7. In the case of an application for a CLEUD, the onus is on the applicant to provide evidence of the lawfulness of the use or development cited in the application forms. The issue in this case is whether the submitted evidence is sufficient to demonstrate, on the balance of probabilities, that the buildings have been used for agriculture for a period of 5 years or more. Immunity from enforcement action could also be achieved if the use had been continuous for the requisite period at some time in the past and had not been abandoned or superseded by another use when the CLEUD application was made. The application for a CLEUD was received by the Council on 22nd April 2021. The application was refused on 27th August 2021.
8. The Council stated in its evidence that it is likely that the two buildings, access/driveway and area of hardstanding were constructed more than five years prior to the receipt of the certificate application. This CLEUD does not refer to the access or hardstanding within the stated description. Whilst the CLEUD was refused for the buildings and the associated use, the Council have accepted that the operational development is immune from enforcement action. As such the operational development element of this CLEUD can be approved.
9. The Council’s objections are in relation to the agricultural use of the sheds. The Council visited the site and questioned whether the buildings were in agricultural use. The Council’s site inspection was carried out on the 22nd June 2021 and was after the date of submission of the CLEUD. The Council stated that it appears that the buildings are being used for general storage.
10. The appellant has provided a significant volume of receipts and information in respect of the erection of the sheds, I have already considered that this element of the development is immune from enforcement action. The appellant has provided the following documentary evidence in respect of the building’s agricultural use;

- Aerial images from Google Earth dated June 2010, June 2013, August 2015, August 2016, May 2018;
 - Signed statement from Mr A Brown, stating that he has visited Mr Graham at this address regularly since 2013;
 - Signed statement from Mr D Lee, cattle dealer, stating that he has delivered calves to the sheds at 46a Riverside Road since 2013 until the date of application;
 - Signed statement from Mr S Dickson detailing that he has visited Mr Graham regularly at this address since 2015 and that the appellant has kept livestock in the adjoining sheds;
 - Two letters from Lisburn Veterinary Clinic, signed by Ms C Rodgers MVB MRCVS, confirming that routine tuberculosis testing was carried out on animals belonging to the appellant at 46a Riverside Road, dated 18th March 2021 and 5th April 2022;
 - Five invoices from Reid Feeds for bagged animal feedstuff, dated 31st July 2017, 30th July 2018, 8th October 2019, 10th January 2020 and 23rd January 2021;
 - A copied excerpt from a sales day book from Reid Feeds. This shows 32 purchases by Mr Graham in a period between 3rd August 2017 – 9th June 2021;
 - A letter from McKelvey Bros Farm Supplies stating that Mr Graham has been trading with them since 2013; and
 - Various undated photographs showing the interior of the buildings.
11. Whilst the Council have stated that it is likely that the buildings were constructed more than five years prior to receipt of the certificate, it has not stated when it concluded that the structures were actually substantially complete. The various invoices for building materials which the appellant has provided in respect of the erection of the buildings are all dated from July – December 2012. This corresponds with the submitted aerial imagery which demonstrates that the buildings were erected between June 2010 and June 2013.
 12. The aerial photograph from June 2010 shows a hard standing area which appears to be used for agricultural activity. There are various bales of silage stacked and stored at the site as well as several items of farm machinery. The appellant argues that the erection of two agricultural sheds upon this hardstanding area was the continuation of the agricultural use which was ongoing at the site.
 13. The invoices for animal feedstuffs demonstrate that Mr Graham was purchasing bagged animal feed for a sustained period between 3rd August 2017 – June 2021. These invoices and sales book records are all in the name of the appellant. Some of the internal images of the sheds show feed being stored, in bags within the sheds. This demonstrates that the sheds have been used for some sort of agricultural activity since at least August 2017.
 14. Various internal images of the sheds show various items which are associated with an agricultural use stored within the site. These include tractors, trailers, feedstuffs and tools. Various images have also been provided to show the housing of animals within the sheds, including sheep, calves and horses. Whilst these images are undated they do demonstrate an ongoing agricultural use at the site.

15. The various signed statements also refer to an ongoing agricultural use within the sheds. Three separate, unrelated parties have described visiting the appellant at the site and witnessing activities associated with an agricultural use within the sheds. Whilst the letters from the veterinary practice do not refer to a timeline, they confirm that Tuberculosis testing was carried out on calves at the site address. The appellant has no other sheds at this site address other than the two sheds subject to the CLEUD.
16. The Council based its assessment upon observing some domestic items and items related to construction within the sheds at the time of its site inspection. However, the Council's photographs from its site visit on the 21st June 2021 also record several items of agricultural machinery. The use of the shed to store limited domestic or non-agricultural items alongside agricultural items does not necessarily mean that there has not been an agricultural use established within the sheds. The documentary evidence demonstrates that there have been agricultural activities within the sheds since at least August 2017, this is a period of around 3 year and 9 months prior to the date of the submission of the CLEUD. Prior to this date, there is a limited amount of documentary evidence. The fact that many of the photographs are undated does not assist.
17. The signed statements from third parties indicate that the buildings have been in agricultural use since their erection in 2013 and I have been given no reason to doubt the veracity of this testimony. Furthermore, the appeal buildings themselves have the appearance of typical agricultural sheds. They were erected on an area of hardstanding that was in use for agricultural purposes. It is also evident that there has been significant agricultural activity within the sheds. Taking the evidential picture as a whole, I consider that it has been demonstrated, on the balance of probabilities, that the agricultural use of the buildings was implemented upon the completion of the operational development. The buildings and their associated use have been in place for a period in excess of five years prior to the submission of the CLEUD.
18. In the evidential context assessed above, it has been demonstrated on the balance of probabilities, that the buildings have been in agricultural use for a period in excess of five years from the date of submission of the CLEUD. Therefore, the Council's reason for refusal is not well founded. The appeal is allowed, and a Certificate of Lawfulness of Existing Use or Development is attached.

This decision is based on the following drawings: -

Drawing No 002, site location plan at 1:2500, stamped received by the Council 22nd April 2021

Drawing No 004, site block plan 1:500, stamped received by the Council 22nd April 2021

Drawing No 006, floor plans at 1:100, stamped received by the Council 22nd April 2021

Drawing No 007, elevations at 1:100, stamped received by the Council 22nd April 2021

Drawing No 008, elevations at 1:100, stamped received by the Council 22nd April 2021

COMMISSIONER KENNETH DONAGHEY

List of Documents

Planning Authority:- "A1" – Statement of Case
"A2"- Rebuttal Statement

Appellant:- "B1" – Statement of Case and Appendices

PLANNING ACT (NORTHERN IRELAND) 2011: SECTION 169

CERTIFICATE OF LAWFULNESS OF EXISTING USE OR DEVELOPMENT

The Planning Appeals Commission hereby certifies that on *22nd April 2021* the matter described in the First Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate and shown hatched on the plan attached to this certificate was lawful within the meaning of section 169 of the Planning Act 2011, for the reasons set out in the appeal decision to which this certificate is attached.

Signed

Kenneth Donaghey
COMMISSIONER
10th June 2024

FIRST SCHEDULE

Erection and use of two agricultural sheds for agricultural uses for storing farm machinery and equipment for active farm and provide lambing/calving, TB testing on site facilities with crush.

SECOND SCHEDULE

50m to north and rear of 46 Riverside Road, Ballynahinch.

Notes:

(1) This certificate is issued solely for the purpose of section 169 of the Planning Act 2011.

(2) It certifies that the matter described in the First Schedule taking place on the land described in the Second Schedule were lawful on the specified date and, thus, were not liable to enforcement action under section 138 or 139 of the Planning Act (Northern Ireland) 2011 on that date.

(3) This certificate applies only to the extent of the matter described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any matters which are materially different from those described or which relates to other land may render the owner and occupier liable to enforcement action.