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<b>Appeal Reference:</b>	2021/E0058
<b>Appeal by:</b>	Mr Norman Graham
<b>Appeal against:</b>	The refusal of a Certificate of Lawfulness of Existing Use or Development
<b>Proposed Development:</b>	Erection and use of a dwelling house
<b>Location:</b>	50m to north and rear of 46 Riverside Road, Ballynahinch
<b>Planning Authority:</b>	Newry Mourne and Down District Council
<b>Application Reference:</b>	LA07/2021/0780/LDE
<b>Procedure:</b>	Written representations and Commissioner's site inspection 16 <sup>th</sup> May 2024
<b>Decision by:</b>	Commissioner Kenneth Donaghey dated 10 <sup>th</sup> June 2024

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## Decision

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

## Reasons

2. The main issue in respect of this appeal is whether the dwelling house is 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.
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 building has been used as a dwelling 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 22<sup>nd</sup> April 2021. The application was refused on 27<sup>th</sup> August 2021.
8. The Council stated in its evidence that it is likely that the building was constructed between May 2012 and July 2014, more than five years prior to the receipt of the certificate application. Whilst the CLEUD was refused for the building and the associated residential use, the Council have accepted that the operational development is immune from enforcement action. As such this element can be certified.
9. The appellant has provided a significant volume of receipts and information in respect of the erection of the building, 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 use of the building as a dwelling;
  - Aerial images from Google Earth dated June 2010, June 2013, August 2015, August 2016, May 2018;
  - Fourteen separate invoices from AJ Plumbing supplies dated from 13<sup>th</sup> January 2015 – 28<sup>th</sup> January 2020 recording the appellant’s address as 46a Riverside Road;
  - Motor insurance certificate issued on the 22<sup>nd</sup> October 2020 for the appellant at 46a Riverside Road;
  - Statement from Ms E McPolin stating that the building was used as a dwelling since 2013 and was previously inhabited by the appellant’s son and daughter-in-law;
  - Signed statement from Mr S Geddis stating that the building was used as a dwelling since 2013 and was previously inhabited by the appellant’s son and daughter-in-law;

- Signed statement from a party, whilst the name is illegible the address is provided, indicating that the appellant has lived at the address since 2015;
  - Signed statement from Mr A Brown, stating that he has visited Mr Graham at this address regularly since 2013;
  - Signed statement from Mr R Clarke, Saintfield Accountancy Services, stating that the appellant has lived at the address since 2015 and that this address has been used for the completion of self-assessment tax returns;
  - Signed statement from Mr D Lee, cattle dealer, stating that he has delivered calves to the sheds at 46a Riverside Road since 2013;
  - 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;
  - Signed letter from Mr D Cochrane stating that the appellant has lived at this address since 2015;
  - Various social media screen grabs dated between December 2015 and June 2016, and,
  - Various dated and undated photographs. The dated photographs range from between December 2015 and June 2016.
10. The appellant alleges that since the erection of the dwelling in 2013 electric and services were initially taken from 46 Riverside Road and due to various reasons, the appellant does not have any further bills associated with this address. The appellant has also advised that the electricity supply is now from a generator.
  11. The invoices from AJ Plumbing supplies indicate that from 2015 the appellant was using 46a Riverside Road as a business address for various purchases, it does not on its own demonstrate that the building was used as a dwelling.
  12. From my own inspection, the social media posts show the inside of the dwelling. Whilst time has passed and there is different furniture within the building, the spatial arrangement of the dwelling shown in the photographs remains the same to that which was evident upon my inspection. From the dated social media posts and photographs, it is evident that they were taken within the building and demonstrate that it was being used as a dwelling around Christmas of 2015. These images show a fully fitted and functioning kitchen area and a fully furnished living room, all aspects which would be required to demonstrate that the building was functioning as a dwelling at the time which the images were captured.
  13. The various signed statements refer to an ongoing residential use within the building. Numerous parties have described visiting the appellant at his home which is stated to be 46a Riverside Road, from 2015 onwards.
  14. The documentary evidence demonstrates that the building was erected around 2013 and used as a dwelling in 2015. The evidence demonstrating a continuing residential use since 2015 is somewhat sporadic. However, there are various pieces of evidence which refer to specifically 46a Riverside Road, which is the accepted address for the residential property. The dated photos and social media posts also assist in establishing that the interior of the building was constructed as a dwelling since at least 2015 and has remained as such until the date of application. The signed statements from third parties indicate that the building has been in residential use since at least 2015. Taking the evidential picture as a

whole, I consider that it has been demonstrated that the building has been used as a dwelling since at least 2015. The dwelling has been in place for a period in excess of five years prior to the submission of the CLEUD.

15. In the evidential context assessed above, it has been demonstrated on the balance of probabilities, that the dwelling has been in 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 001, site location plan at 1:2500, stamped received by the Council 22<sup>nd</sup> April 2021

Drawing No 003, site block plan 1:500, stamped received by the Council 22<sup>nd</sup> April 2021

Drawing No 005, floor plans and elevations at 1:100, stamped received by the Council 22<sup>nd</sup> 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 *22<sup>nd</sup> 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**  
10<sup>th</sup> June 2024

**FIRST SCHEDULE**

Erection and use of a dwelling house

**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.