

Appeal Decision

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Appeal Reference:	2021/E0076
Appeal by:	Mr Jim Austin
Appeal against:	The refusal of an application for Certificate of Lawfulness for Proposed Use or Development
Proposed Development:	Proposed erection of agricultural shed. Shed will be used for machinery storage and hay for cattle fodder. No new access to public road, existing entrance off private laneway will be utilised. All storm water to existing piped storm drain.
Location:	Lands on Raughlan Lane approximately 607m northeast of Wolfe Tone GFC clubhouse, Derrymacash Road, Craigavon
Planning Authority:	Armagh City, Banbridge & Craigavon Borough Council
Application Reference:	LA08/2021/1607/LDP
Procedure:	Written Representations
Decision by:	Commissioner C McDonagh, dated 29th March 2023

Decision

1. The appeal is dismissed.

Reasons

2. The main issue in this appeal is whether the proposed development is lawful in accordance with the schedule of development permitted under Article 3 Part 7 Agricultural Buildings and Operations of The Planning (General Permitted Development) Order (Northern Ireland) 2015 (GPDO).
3. Section 170 of the Planning Act (Northern Ireland) 2011 (the Act) makes provision for a Certificate of lawfulness of proposed use or development (CLUD). Section 170 (1) of the Act provides for when a person wishes to ascertain whether any operations proposed to be carried out in, on, over or under land would be lawful. Section 170 (2) of the Act states "If, on an application under this section, the council is provided with information satisfying it that the use or operations described in the application would be lawful if instituted or begun at the time of the application, it must issue a certificate to that effect; and in any other case it shall refuse the application".
4. The CLUD subject of this appeal relates to the proposed erection of an agricultural shed to be used for machinery storage and hay for cattle fodder. The proposed shed would be 5.1 metres in height above FFL and comprise of 95

square metres of floorspace (14 metres long and 6.5 metres wide). The proposed roof and walls would be finished in corrugated iron sheeting over timber poles with a hardcore base floor. The proposed shed would be accessed through metal gates on the eastern elevation fronting Raughlan Lane. It would be orientated at a right angle to Raughlan Lane to the north of an existing L shaped farm building constructed from concrete and iron sheeting. The northern elevation of the existing shed has a roller door which leads to an agricultural field to the north and rear. An existing concrete yard area is located to the south of the existing farm building and a second smaller area abuts Raughlan Lane.

5. Article 3 (1) and (2) of the GPDO indicates that subject to the provisions of the Order, planning permission is granted for the classes of development described as permitted development in the Schedule (to the Order). Any permission granted is subject to any relevant exception, limitation or condition specified in the Schedule. Part 7 of the Schedule to the GPDO relates to Agricultural Buildings and Operations. Class A of Part 7 makes provision for the permitted development of the carrying out on agricultural land comprised in an agricultural unit of (a) works for the erection, extension or alteration of a building; or (b) any excavation or engineering operation; reasonably necessary for the purpose of agriculture within that unit. An agricultural unit” is defined as “land which is occupied as a unit for the purposes of agriculture other than fish farming but includes any dwelling house or other building occupied by the same person for the purposes of farming the land by the person who occupies the same unit.”
6. A PIC form relating to DEARA business ID 611309 was provided by the appellant. It confirms the farm business was established in 1980 and is registered at 100 Ardmore Road. This is approximately three miles from the appeal site. There is no dispute between the parties in this appeal that the erection of the proposed shed would be reasonably necessary for the purposes of agriculture within the agricultural unit.
7. The Council identify buildings at the registered farm address at 100 Ardmore Road as the principal group of farm buildings. In addition to the appellant’s dwelling at this location, there are polytunnels and several buildings of agricultural design located to the rear. The Council state that the agricultural buildings are in the same folio as an adjoining field and in consultation with DEARA have confirmed it is farmed by the appellant. This evidence indicates that the principal farm buildings for the appellant’s agricultural unit are located at 100 Ardmore Road.
8. However, Part A.1 of Part 7 of the GPDO sets out nine circumstances, (a) to (i), when development is not permitted by Class A. Criterion e) requires ‘the nearest part of any building or structure so erected or extended is more than 75 metres from the nearest part of a group of principal farm buildings’. The principal group of buildings at 100 Ardmore Road is more than 75 metres from the appeal site.
9. The proposal before me relates to a site fronting Raughlan Lane. In support of their position that this out farm location is part of the business ID 611309 the appellant provided two DEARA maps relating to two adjacent fields abutting

Raughlan Lane. An agricultural building is in field 1. It is this building which the appellant seeks to rely on in the context of their consideration of what is permitted development. However, this one building does not comprise 'a group of principal farm buildings'. As noted already, the principal group of farm buildings associated with the appellant's agricultural unit are located at 100 Ardmore Road.

10. The appellant considered the Council have wrongly adopted the position that criterion e), may be interpreted to frustrate the clear intention of the GPDO, as set out in criterion d). Part 7, Class A of the Order A.1 Criterion d) states development is not permitted when 'the building or structure to be erected is the first agricultural building on the unit'. Given the proposed building is clearly not the first agricultural building on the unit there are no concerns with Criterion (d). However, the appellant considers that it follows that the legal provisions intend that the second (or any subsequent) building, will benefit from the permitted development provisions and to interpret criterion e) as a contradiction to the preceding (numerically specific criterion) must be contrary to the intention of the legal provisions.
11. Part 7 A.1 criterion e) contains a more specific circumstance when development is not permitted than set out by the appellant. While it may relate to the siting and position of the proposed development in relation to the existing agricultural built development it also requires the existence of a principal group of farm buildings and positioning within a specific distance of that group. This extends beyond ensuring that new buildings are in proximity to existing established agricultural development on the farm unit. In this case the proposed shed relates to development located beside one standalone agricultural building and not the principal group of farm buildings referred to in A.1 criterion e).
12. Article 3 (2) of the GPDO confirms that each part of the schedule is subject to any relevant exception, limitation or condition. Within Part 7 of the Schedule of the GPDO each of the criterion within A.1 a) to i) are specific exceptions to Class A. If any of the criteria apply development is not permitted and the proposal will not benefit from the permitted development provisions in Class A.
13. As already noted, A.1 (e) of Part 7 of the GPDO requires 'the nearest part of any building or structure so erected or extended is more than 75 metres from the nearest part of a group of principal farm buildings'. As the group of principal farm buildings within the appellant's agricultural unit is located at 100 Ardmore Road and they are more than 75 metres from the proposed agricultural shed development is not permitted under Class A.1 e). The proposed shed is therefore not lawful development in accordance with Part 7, Class A of the GPDO.
14. I am satisfied that the Council's refusal of this CLUD application was well founded. All in all, I consider the appeal must fail.

COMMISSIONER CARRIE MCDONAGH

This decision relates to the following drawings, date stamped 04 November 2021:

- Drawing No 01: 1:2500 Location Map for Proposed Agricultural Shed Raughlan Lane for J Austin (Drg No 3);
- Drawing No 02: 1:500 site plan (Drg 02); and
- Drawing No 03: 1:100 Plans, elevations and sections (Drg JA/01)

List of Documents

Planning Authority:	A	Statement of Case Armagh City and Banbridge & Craigavon Borough Council
	A1	Rebuttal Armagh City and Banbridge & Craigavon Borough Council
Appellant:	B	Statement of Case, Tom Wilson on behalf of Jim Austin