

# Enforcement Appeal Decision

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<b>Appeal Reference:</b>	2022/E0004
<b>Appeal by:</b>	Mr A Dodds
<b>Appeal against:</b>	An Enforcement Notice dated 16 <sup>th</sup> May 2022
<b>Alleged Breach of Planning Control:</b>	Erection of an agricultural shed
<b>Location:</b>	Land adjacent to 40 Craigy Road, Saintfield, Down
<b>Planning Authority:</b>	Newry, Mourne and Down District Council
<b>Authority's Reference:</b>	EN/2022/0094
<b>Procedure:</b>	Written representations and Commissioner's site visit 9 <sup>th</sup> May 2024
<b>Decision by:</b>	Commissioner K Donaghey, dated 10 <sup>th</sup> June 2024

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## Grounds of Appeal

1. The appeal was brought on Ground (a) as set out in Section 143(3) of the Planning Act (Northern Ireland) 2011 (the Act). There is a deemed planning application by virtue of Section 145(5).

## Ground (a) and the Deemed Planning Application

2. The main issue in this appeal is if the development would be acceptable in principle in the countryside.
3. Section 45(1) of the Planning Act (NI) 2011 requires that regard must be had to the Local Development Plan (LDP), so far as material to the application, and to any other material considerations. Section 6(4) of the Act states 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. The Ards and Down Area Plan 2015 (ADAP) operates as the LDP wherein the appeal site lies. In the ADAP, the appeal site is located within the countryside outside any defined settlement limit. The ADAP offers no proposals, policies or designations material to this appeal.
4. The Strategic Planning Policy Statement 'Planning for Sustainable Development' (SPPS) sets out transitional arrangements that will operate until a Plan Strategy (PS) adopted. No PS has been adopted for this council area. During the transitional period, the SPPS retains certain existing Planning Policy Statements including Planning Policy Statement 21 'Sustainable Development in the Countryside' (PPS21). Paragraph 6.73 of the SPPS contains policy in respect of agriculture development, which essentially repeats elements of PPS21. Given that the SPPS is no more prescriptive than the retained policy insofar as it relates to the appeal proposal, PPS21 provides the policy context for assessing this appeal.

5. Policy CTY1 of PPS21 sets out a range of types of development which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development. One is agricultural development in accordance with Policy CTY12 of PPS21. Policy CTY12 of PPS21 states that planning permission will be granted for development on an active and established agricultural holding where certain criteria are met. Paragraph 5.56 of its amplification explains that for the purposes of Policy CTY12, the determining criteria for an active and established farm business will be that set out under Policy CTY10. The policy therefore requires that the appellant's farm business is currently active and has been established for at least six years.
6. The appeal site is cut out of the northern part of an agricultural field some 6m directly south of No. 40 Craigy Road. The appeal building is situated parallel to a hedgerow that defines the northern boundary of the site and set back approximately 20m from the road. It measures around 13m in width, 36m in length and 5.5m to the ridgeline and is finished in green coloured metal cladding.
7. The appellant's evidence indicates that he operates a sheep breeding and lamb producing business on an active holding that extends over 60ha, keeping around 600 sheep. The Council did not dispute that the appellant's farm business is currently active and established. The Council's objection to the development relates to criterion (a) of Policy CTY 12 in that it has not been demonstrated that the shed is necessary for the efficient use of the agricultural holding. The Council further argue that it has not been demonstrated that there are no suitable existing buildings on the holding which could be used.
8. The appellant states that the shed is required to provide a covered shelter for wintering his flock and for lambing purposes. Several images have been provided which demonstrate the loss of lambs to predators. Several letters of support have also been provided from elected representatives which support this argument. A letter of support from the Ulster Farmers Union also details the daily requirements of a sheep farmer and stated that the shed is required due to the legal and moral need to comply with basic animal welfare standards. This is supported by a letter from a veterinary surgeon working for the Department of Agriculture, Environment and Rural Affairs (DAERA) which states that covered buildings can be needed for the shelter of sheep during inclement weather or during periods of vulnerability in the breeding cycle.
9. The Council argue that the requirement within Policy CTY 12 that any new building is necessary for the efficient use of the agricultural holding sets a high policy bar. They argue that it is not sufficient that the building would increase convenience or profitability for the farmer but that it is essential. The test within Policy CTY 12 is not that the building itself is essential but rather that it is essential for the efficient use of the agricultural holding. Whilst it may not always be required that sheep are wintered indoors or that lambing takes place in a shelter, to do so may be necessary for the efficient functioning of this holding. The appellant previously had access to several sheds some distance from his dwelling, these were not in the appellant's ownership and were rented from other farmers. These sheds are no longer available to the appellant. The fact that the appellant sought to rent sheds from other farmers to facilitate his herd suggests that the efficient use of the appellant's agricultural holding requires some form of shelter. The appellant's evidence demonstrates that the provision of a farm building would provide adequate animal welfare standards during lambing periods. This would reduce animal mortality and is necessary for the

efficient use of the holding. I consider that this element of Policy CTY 12 is satisfied and that the agricultural building is necessary for the efficient use of the agricultural holding.

10. Policy CTY12 states that in cases where a new building is proposed, the appellant must provide sufficient information to demonstrate that there are no suitable existing buildings on the holding or enterprise that can be used. The evidence from the appellant and the Council refers to farm business maps. However, a full set of farm maps has not been provided in support of this appeal. Page 7 of 10 (2020 scheme maps) and page 5 of 10 (2022 scheme maps) have been provided by the Council. Whilst the appellant has stated that there are no other buildings on his holding, without a full complement of farm maps this cannot be properly verified.
11. The Council identified a farm building which was approved in the appellant's name and erected on lands which appeared on the provided 2020 scheme maps. The Council conducted a land registry search for this shed and determined that it was not owned by the appellant. The appellant has also stated that this building was located on lands which he had taken in conacre but that are no longer part of his holding. It is evident from the information provided that this building is not on the appellant's agricultural holding.
12. The appellant refers to several buildings which he once rented and that are no longer available. Whilst not owned by the appellant they would have constituted a part of his agricultural holding. No information was provided to this appeal in respect of the location of these buildings, when they were used or when they became unavailable. Furthermore, without a complete set of farm maps the appellant's statement that these buildings no longer form part of his agricultural holding or that there are no other buildings upon the appellant's holding, cannot be verified. The written statements from three elected representatives and a letter from the Ulster Farmers Union all state that the appellant no longer has access to the rented sheds and that the appeal building is the only building upon the agricultural holding. However, this is not quantified with any detailed information about the appellant's holding itself. The information provided, including the evidence from unrelated third parties, is not sufficient to establish that there are no other suitable buildings on the appellant's agricultural holding. I consider that this element of Policy CTY 12 and the policy when read as a whole, is not satisfied.
13. A previous appeal decision in respect of this building was provided in evidence. Appeal decision 2020/A0103 considered similar issues to this enforcement appeal but was decided in its own evidential context.
14. In consideration of the points above, the Council's deemed reason for refusal has been sustained. Consequently, the appeal under Ground (a) must fail and the Enforcement Notice is upheld.

## **Decision**

- The decision is as follows:-
- The appeal on Ground (a) is dismissed.
  - The Enforcement Notice is upheld.

**COMMISSIONER KENNETH DONAGHEY**

**List of Documents**

Planning Authority:-

“A1” Statement of case and appendices  
“A2” Rebuttal statement

Appellant:-

“B1” Statement of case and appendices  
“B2” Rebuttal statement