

Enforcement Appeal Decision

Appeal Reference:	2023/E0018
Appeal by:	Mr. Wesley Thomspen
Appeal against:	An enforcement notice dated 26 th May 2023
Alleged Breach of Planning Control:	Unauthorised erection of shed and laying of hardstanding laneway marked by 'X' on attached map
Location:	Lands approximately 740 metres south of the junction of Cotton Road (A48) and Murdocks Lane, Bangor, Down
Planning Authority:	Ards and North Down Borough Council
Authority's Reference:	LA06/2021/0110/CA
Procedure:	Informal Hearing on 5 th March 2024
Decision by:	Commissioner Trudy Harbinson, dated 20 th May 2024

Grounds of Appeal

1. The appeal was brought on Grounds (b) and (c) as set out in Section 143(3) of the Planning Act (Northern Ireland) 2011 (the Act).

The Notice

2. The matters which appear to constitute the Breach of Planning Control as set out in the Enforcement Notice (EN) are the alleged 'unauthorised erection of shed and laying of hardstanding laneway marked by X on attached map'.
3. The Appellant alleged three matters of inaccuracy in the EN had caused prejudice. He referred to the wording 'marked by 'X' on attached map' on the EN and the map attached to the EN with an X located centrally towards the southern boundary of the notice site. He stated that the X created confusion as it is erroneous and does not define the alleged development. The Council confirmed that the Appellant is correct that the 'X' is 'off' where the shed is located but they considered that there is no prejudice as there is only one new unauthorised shed and only one hardstanding laneway within the lands edged red on the map attached to the EN.
4. The Appellant further stated that the farm unit was not accurately plotted on the map with the agricultural holding encompassing a greater area. He also stated that there is no laneway as alleged on the EN. He said that a laneway goes from 'a' to 'b' connecting one point with another and this was not the case as it does not go to anything and is hardstanding through the wet terrain.

5. The Council stated that the red line on the map includes the alleged unauthorised shed and hardstanding laneway only and does not refer to land ownership or the alleged extent of the farm unit. They stated that with respect to the laneway the EN also references hardstanding however they had no objection to the laneway reference being reworded if it was considered necessary to do so.
6. Section 140 (1) (a) of the Act requires that an EN must state the matters which appear to the Council to constitute the breach of planning control. At subsection (2) it further states that a notice complies with subsection (1)(a) if it enables any person on whom a copy of it is served to know what those matters are.
7. It is for the Council to describe the matters which appear to be a breach of planning control. A laneway is generally a narrow path over which access is taken. Whilst the Appellant states that this term is incorrect as it does not lead from one place to another, I found that it travelled south from the access gate at Murdocks Lane, through a field to a gate that accesses the next field, within which the alleged unauthorised shed is located. Whilst it may not continue through the second field to the shed itself it permits access from one field gate to another. The Appellant in their Statement of Case say 'it is not a laneway but a strip of land to enable pedestrian, vehicular and animal-suitable access over a considerable wet area within the farm plot to reach the remaining grounds'. I consider there to be some contradiction in the position that it is not a laneway yet it permits access to reach remaining grounds. I am not persuaded that reference to a hardstanding laneway is incorrect.
8. I am content that, notwithstanding the incorrect positioning of the 'X' on the map that accompanied the EN, all parties understood the areas being referred to for the purposes of the appeal. I am also content that the land outlined in red on the map attached to the EN is not required to align with lands that may be within the alleged wider ownership of the Appellant or within their agricultural holding. This does not preclude consideration of those lands under the grounds of appeal.
9. Section 144 (2) of the Act allows the Commission to correct any misdescription, defect or error in the 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. Given that it was agreed that the position of the 'X' on the map is incorrect I consider the references to 'marked by 'X' on attached map' at Part 3 and 4 of the EN can be deleted. Given the minor nature of the correction, which seeks only to provide clarity on the EN, I find this change can be made and that there is no prejudice as there is only one shed and only one hardstanding laneway within the site outlined in red on the map attached to the EN.

Ground (b) - that the matters alleged in the Notice have not occurred.

10. Under this ground of appeal, the onus is on the Appellant to demonstrate that the matters alleged in the EN had not occurred when the EN was issued.
11. The EN is dated 26th May 2023. The Council in their evidence include google earth orthophotography dated March 2022 and 12th August 2022 which show the shed together with site photographs of the shed taken on 29th September 2022 and site photographs of the hardstanding laneway taken on 19th May 2023. At the hearing

the Appellant did not dispute that at the date the EN was served the shed and hardstanding laneway were in place.

12. I have considered matters raised by the Appellant in respect of the accuracy of the EN above. The remaining argument provided by the Appellant under this ground is that the erection of the shed and the laying of a hardstanding laneway is permitted development under the Planning (General Permitted Development) Order (NI) 2015 (GPDO) Part 7 Class A (a) and (b). However, this is not a ground (b) argument.
13. Accordingly, I am satisfied that the matters as alleged in the EN had occurred. The appeal on ground (b) does not succeed.

Ground (c) - that those matters (if they occurred) do not constitute a breach of planning control.

14. Ground (c) relates to whether the alleged breach of control constitutes 'development' and if so, is planning permission required. Ground (c) is argued in respect of the alleged unauthorised erection of shed and laying of hardstanding laneway.
15. The Appellant considered that the alleged unauthorised erection of shed is permitted under Part 7 Class A (a) of the GPDO and that the alleged unauthorised hardstanding is permitted development under Part 7 Class A (b) of the GDPO.
16. Part 7 Class A permits 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 purposes of agriculture within that unit. Development not permitted under Class A is set out at A.1 criterion (a) to (i). For the purposes of Class A an "agricultural unit" means land which is occupied as a unit for the purposes of agriculture other than fish farming but includes any dwellinghouse or other building occupied by the same person for the purpose of farming the land by the person who occupies the same unit.

Erection of shed

17. The Council consider that the alleged unauthorised shed is not reasonably necessary for the purposes of agriculture and that it fails to comply with Class A A.1 criteria (c), (d) and (e).
18. The Appellant states that his farm unit encompasses the fields within the notice site together with fields to its south and southeast. These had been part of a larger agricultural plot farmed by his uncle and were inherited by him in 2016. The registration of transfer of the land took place in February 2018. The Appellant states that the land has been continuously farmed by him since 2017 including harvesting, goats and horses, together with continuous maintenance of the holding generally in good agricultural and environmental condition as per Article 4 of Regulation (EU) No 1307/2013 of the European Parliament and of the Council (as amended).
19. He states that he installed drainage between 2016 and 2020 in response to flooding issues on the site. He has retained and maintained hedges, trees, fences and watercourses. He has laid hügelkultur beds to improve soil fertility and water

retention to benefit arable farming. 500 tonnes of clean stone and 300 tonnes of spoil were imported to reclaim gorse and brambles. In written evidence he refers to approximately £70,000.00 being spent on the plot to date, but at the hearing he referred to a sum of £100,000.00. He states that detailed accounts are not required for this smallholding as it only generates a very modest return but is normally at a loss. Whilst the Appellant states that they have been carrying out agricultural activity with continuous maintenance of the holding generally in good agricultural and environmental condition no documentary evidence has been provided to that effect. The evidence states that many agricultural activities are not recorded but are carried out either personally or by various contractors. Given the sum of money the Appellant has spent I would expect to see some documentary evidence in the form of receipts or invoices however none were provided.

20. The Council include correspondence with DAERA which advises that the Appellant's land is part of a larger farm holding for which Basic Payment Scheme (BPS) has been claimed by another individual since 2017. The Appellant stated that there was no conacre agreement in place and whilst he received an annual payment from the individual for the grazing of horses on his land, he had been unaware that payment could be claimed for livery, having only found out in recent weeks. He stated that whilst another individual's horses grazed the land he still carried out and financed work on the land. He had applied for a farm ID in 2023 prior to the EN. He intends to put sheep on the land which will be split into 4 paddocks. He stated that he now has a flock number. The ground has to be made good, ploughed, sowed and rested afterwhich the sheep can be introduced.
21. Prior to the alleged unauthorised shed being erected the Appellant has advised that he had been assisted by a neighbour who allowed him to use their agricultural equipment. He decided however to purchase his own and hence the requirement for the increased size of agricultural building. It is to suit modern day needs of farming and to be multi use for the storage of agricultural implements and testing of animals.
22. At my initial site visit there were no goats present, however there were horses grazing on the lower field within which the alleged unauthorised shed is located. The alleged unauthorised shed is a large steel building with two roller shutter doors to the front and a separate access to the rear. My internal inspection showed a division into two parts, one with a mezzanine storage area above. The main part of the shed to the front contains a tractor, trailer, tool bench, fence posts, various tools and farming implements all of which would be commonly found in an agricultural shed. The back part of the shed has a table, seating and blackboard. Boxes of shooting pellets were stored in a cupboard. There were numerous spent pellets on the land the shed provides access to at the rear. The Appellant states that he has continued to facilitate the historical use of the land by the local gun club. At the hearing the Appellant stated that the gun club have access to all his land and use of the alleged unauthorised shed and that they tend to use this once a fortnight.
23. The Appellant owns and occupies the land and aspires to keep sheep. However, I have not been provided with persuasive evidence in relation to previous ownership of goats and the horses grazing on site are in the ownership of someone else. Whilst he stated that he carried out maintenance of the lands for agricultural purposes, no documentary evidence was provided to support this, despite the

assertion of significant expenditure and the continued maintenance of hedgerows, trees, fences and watercourses etc.. Despite owning the lands since 2017 an application for farm ID was only made in 2023. The shed facilitates storage of items related to agriculture as outlined above however it also accommodates facilities related to the gun shooting club. The term 'reasonably necessary' must relate to the existing needs of the agricultural business or to some tangible plans for the agricultural business. I have not been persuaded that the alleged unauthorised shed was reasonably required for the purposes of agriculture as required by Part 7 Class A (a) of the GPDO.

24. Development is not permitted under A.1 criterion (c) where a building, structure or works not designed for the purposes of agriculture is provided on the land. Externally the shed does have the appearance of an agricultural shed designed for the purposes of agriculture and as such satisfies criterion (c) of Part 7 Class A1 of the schedule to the GPDO.
25. Development is not permitted under criterion (d) where the building or structure to be erected is the first agricultural building on the unit. The Appellant refers to the existence of a historic building within his agricultural unit. Whilst ownership searches by the Council had failed to identify a landowner for the field within which this is located, the Appellant provided a copy of a legal assent that the land was bequeathed to him. He states that the historic building was erected by his uncle in 1980 and it was normal practice to have a satellite building to store agricultural implements for everyday farm maintenance and repairs on a plot the size of the original farmland. He assumes there would also have been a need for a building to test and isolate cattle that were historically kept on the holding. The Council consider the historic building upon which the Appellant relies to be more akin to a hut/structure with evidence of shooting activity and that it is not used for the purpose of agriculture. The Appellant references the Cambridge dictionary definition of a building as a structure with walls and a roof. From my observation on site it is a small wooden structure with four walls and a tin roof overhang, internally there is a storage box and a wooden notice board. The floor is a mixture of soil and gravel stones. Limited details have been provided regarding its agricultural use.
26. A statement is included in the Appellant's evidence from a member of the shooting club confirming that they have used it since around 1990. They state that the previous owner permitted them 'to operate the shooting club from the building on his land'. They state that they remain a member of the club and 'is still using the shed as the base for our shooting club' at which clay pigeons are shot. This correlates with photographs of the historic structure taken by the Council and with my own observations on site that the structure appears to be connected to the shooting club activity. It has been used by the shooting club since 1990 to the present day, some 34 years, and whilst the Appellant asserts it was originally an outlying satellite building within the previous larger farm holding and continued to store certain implements related to agriculture, I have no evidence to confirm that it was the first agricultural building on the unit. As a result the appeal development would fail to satisfy criterion (d) of Part 7 Class A1 of the schedule to the GPDO.
27. Development is not permitted under criterion (e) where 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 building upon which the Appellant relies is the historic wooden structure. Given the circumstances set out

above I do not consider this to be an agricultural building. In any event criterion (e) refers to a group of principal farm buildings; this is clearly plural. I have not been persuaded that the appeal building is within 75m of a group of principal farm buildings. As a result the appeal development would fail to satisfy criterion (e) of Part 7 Class A1 of the schedule to the GPDO.

28. Even if the Appellant had presented documentary evidence of agricultural activity by them on the land that reasonably required provision of a shed, it fails to comply with criteria (d) and (e) of Class A and is not permitted development.

Laying of Hardstanding Laneway

29. The Council consider that the alleged unauthorised hardstanding laneway is not permitted development as there is no evidence of ongoing agricultural use at the site by the Appellant and that it exceeds what would be considered reasonably necessary for the purpose of agriculture. The Appellant considers that it is permitted under Part 7 Class A (b) any excavation or engineering operation; reasonably necessary for the purposes of agriculture within that unit.
30. The Appellant states that the area in question is not a laneway but a strip of land to enable pedestrian, vehicular and animal suitable access over a considerable wet area within the farm plot to reach remaining grounds. I have already considered the use of the term laneway to be appropriate. It may be problematic for a pedestrian to cross the field when it is flooded however most agricultural vehicles should be capable of navigating such ground conditions. The Appellant has no animals, the horses grazing in the lower field belonging to another individual.
31. The Appellant included photographs of flooding within their land and I noted part of the field adjacent to Murdocks Lane was waterlogged when I visited. The Appellant stated at the hearing that there is a shuck to the back of the field which has not been cleared for some time and flooding is an issue in the area as responsible departments have not carried out necessary maintenance. They said that they had yet to finish drainage in the fields. I was presented with no detailed evidence of the nature and extent of flooding on the site, nor was I presented with any convincing evidence that the laying of the hardstanding laneway was a necessary response to such an issue.
32. Whilst I acknowledge that the division of the uncle's original farm may have resulted in some historical access arrangements to the Appellant's inherited land being severed, I am not persuaded that the hardstanding laneway is reasonably necessary for the purposes of agriculture within that land. In any event I have considered the agricultural use at the site above and concluded that there is lack of documentary evidence of the Appellant's agricultural activity on the lands.
33. Advice on permitted development rights given to the Appellant upon enquiry through the Council's duty planner is a matter between those parties.
34. It has not been demonstrated that the matters described in the EN do not constitute a breach of planning control. Consequently, the appeal on ground (c) fails.

Decision

The decision is as follows:-

- The notice is corrected at paragraph 3 and 4 to remove the words 'marked by 'X' on attached map'
- The appeal on Ground (b) fails;
- The appeal on Ground (c) fails; and

The enforcement notice, as so corrected, is upheld.

COMMISSIONER TRUDY HARBINSON

List of Appearances

Planning Authority:- Clare Barker, Ards and North Down Borough Council

Appellant:- Wesley Thompson, Appellant
Trevor Hollinger, Agent

List of Documents

Planning Authority:- Ards and North Down Borough Council
Statement of Case

Appellant: - Ballantyne Hollinger
Statement of Case
Copy of Legal Assent (received at hearing)