

Finding

Appeal Reference:	2023/L0013
Appeal by:	Ms Margaret Kane
Appeal against:	Refusal of a Certificate of Lawfulness of Existing Use or Development
Development:	Retention of an existing agricultural building
Location:	28m south-east of No.42 Lavallyreagh Road, Rostrevor
Planning Authority:	Newry, Mourne and Down District Council
Application Reference:	LA07/2022/1723/LDE
Procedure:	Written representations and accompanied site visit on 30 th July 2024
Finding by:	Commissioner Diane O'Neill, dated 3 rd September 2024

Finding

1. There is no valid appeal.

Reasons

2. On 28th October 2022 the appellant applied for a Certificate of Lawfulness of Existing Use or Development for the retention of an existing agricultural building. On 17th October 2023 the Council issued a decision notice refusing to certify the proposal. The decision stated that the use would not have been lawful within the meaning of Section 169 of the Planning Act (Northern Ireland) 2011 (the Act) for the following reason(s). No such reason/s were stated.
3. Article 11(5) of the Planning (General Development Procedure) Order (NI) 2015 (the Order) states that where an application for a Certificate is refused the notice of decision shall state the council's full reason for its decision.
4. The parties argued that no prejudice arises from the lack of full reasoning as the application for certification is not advertised or publicly available and as neighbourhood notification is not carried out. It was stated that the Council provided the full reason for its refusal in that the development would not have been lawful within the meaning of Section 169 of the Act and that the appellant was informed of the opportunity to appeal the decision under Section 173 of the Act. The Council added that the reasoning for the refusal was transparent and clear throughout the processing of the application given the email trail provided.
5. However, as no reason/s are stated on the decision notice as required by Article 11(5) of the Order, the Council has failed to comply with this legislative requirement. Accordingly, the issue of prejudice does not arise in this case.

6. I therefore conclude that the Council's decision was not valid and accordingly there is no valid appeal to the Commission.

COMMISSIONER DIANE O'NEILL

List of Documents

Appellant (Planning Permission Experts-agent):-

Statement of Case (A 1)
Post site visit comments (A 2)

Planning Authority

(Newry, Mourne and Down District Council):-

Statement of Case (PA 1)
Post site visit comments (PA 2)

List of Appearances

Appellant (Planning Permission Experts-agent):-

Mr Declan Rooney
Mr John Kane (appellant's son)
Mr John Joe Kane (appellant's
grandson)

Planning Authority

(Newry, Mourne and Down District Council):-

Ms Roisin Bird