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| <b>Appeal Reference:</b>      | 2023/L0014  |
| <b>Appeal by:</b>             | Mr Adam White   |
| <b>Appeal against:</b>        | The refusal to certify a Certificate of Lawfulness of Existing Use or Development |
| <b>Development:</b>           | Retention of existing structure as garden room                                    |
| <b>Location:</b>              | 40 Loughmourne Road, Middle Division, Carrickfergus, Antrim, BT38 9AW             |
| <b>Planning Authority:</b>    | Mid and East Antrim Borough Council   |
| <b>Application Reference:</b> | LA02/2023/1106/CLEUD  |
| <b>Procedure:</b>             | Written representations and accompanied site visit on 6 <sup>th</sup> August 2024 |
| <b>Decision by:</b>           | Commissioner Trudy Harbinson, dated 27 <sup>th</sup> September 2024               |

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## Decision

1. The appeal is dismissed.

## Reasons

2. The main issue in this appeal relates to whether the retention of the existing structure on site as a garden room 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 (CLEUD). Section 169(1) states that “if any person wishes to ascertain whether – (a) *any existing use of buildings or other land ... would be 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” (*my emphasis*). 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”.
4. 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 (my emphasis)*, 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”.

5. The application for a CLEUD was received by the Council on 10<sup>th</sup> January 2023, in accordance with Section 169 of the Act. The Appellant stated on the application form *'the structure is currently in place and is to continue to be used as a garden room and relaxation room for the occupants of the dwelling' (my emphasis)*. He relied on the Planning (General Permitted Development) Order (Northern Ireland) 2015 (GPDO) Part 1 Class D which allows for the provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse, or the maintenance, improvement or other alteration to such a building or enclosure subject to nine criteria being satisfied. The Council, on 8<sup>th</sup> December 2023, refused to certify that the structure was lawful as it was outside the domestic curtilage of the dwelling house and so cannot benefit from development permitted under Article 3 of GPDO Part 1.
6. The Appellant claims that he had previously used the garden pod as an Air BnB and was unaware that he could apply for a CLEUD to retain the pod for that use due to the time periods for enforcement, as set out in Section 132 of the Act, expiring. However, he does not pursue that matter further. Whilst the description of development on the CLEUD is for the retention of the existing structure as garden room the drawings that accompanied the application are entitled 'Proposed Glamping Pod'. They detail a curved timber structure which accommodates an open plan sleeping, kitchen, living area and a bathroom.
7. The Council in their evidence stated that, following the instigation of enforcement action, a retrospective planning application for the change of use from a garden room to a glamping pod was received on 16<sup>th</sup> March 2022. According to the submitted evidence there had been 149 online reviews posted by customers on an Air BnB website in January 2022 and 263 online reviews on 30<sup>th</sup> July 2024. At that date the glamping pod was available on the website for the public to book. The council have stated that the use of the structure is as a glamping pod for holiday accommodation, and not a garden room ancillary to the domestic use of the dwelling at no. 40 Loughmourne Road.
8. Notably, I am advised that an Enforcement Notice (EN) was served for land or premises at 40 Loughmourne Road on 2<sup>nd</sup> November 2023. The matters that appeared to constitute a breach of planning control were described on the EN as an unauthorised glamping pod used for the purposes of holiday accommodation. The remedy required the notified parties to; (a) permanently remove the unauthorised glamping pod, (b) cease the unauthorised use as holiday accommodation and (c) carry out steps (a) and (b) within 4 weeks of the date on which the EN takes effect.
9. No appeal against the EN was lodged and the EN took effect on 17<sup>th</sup> December 2023. The fact that there is an outstanding EN which has taken effect means that under Section 169 (2) (b) of the Act, as the development stands, it is unlawful because it is currently in contravention of an EN. The retention of the pod would contravene the requirements of the EN now in force. The Council had issued their decision on the CLEUD prior to the EN taking effect. However, given that the EN is now in force, the existing structure is not lawful by virtue of part (b) of Section 169 (2). I am precluded from issuing a CLEUD and need not consider the Council's reason for refusal further.

10. The Appellant raised concerns in respect of the timing of the service of the EN. Under Section 138 of the Act, the Council may issue an EN where it appears that there has been a breach of planning control in relation to any land in its district; and that it is expedient to issue the notice, having regard to the provisions of the local development plan and to any other material considerations. The service of an EN is discretionary. Whether or not the Council consider it expedient to issue a notice is a matter for them. It is not a matter for the Commission to decide upon. I have not been presented with any evidence that the Council has failed to treat each case the same and provide each applicant with correct and fair parity of treatment.
11. Given the reasons set out above, I consider that the development is not lawful. The appeal must fail.

This decision is based on the following drawings; 01 Location Map and Block Plan and 02 Sketch Scheme.

**COMMISSIONER TRUDY HARBINSON**

**List of Appearances**

Planning Authority:- Julie Blue  
Emma Graham

Appellant:- Lisa White

**List of Documents**

Planning Authority:- A Written Statement of Case  
A1 Rebuttal

Appellant:- B Written Statement of Case