

Finding

Appeal Reference:	2024/L0001
Appeal by:	Mr Michael Haughian
Appeal against:	The decision to decline to validate an application seeking a Certificate of Lawful Development for the lawful commencement of P/2005/0338/RM
Proposed Development:	Erection of dwelling and garage
Location:	35m SE of no. 17 Ballyveaghmore Road, Ballymartin, Kilkeel
Planning Authority:	Newry, Mourne and Down District Council
Application Reference:	LA07/2024/0198/CLEUD
Procedure:	Written representations
Decision by:	Commissioner Paul Duffy, dated 9 October 2024

Finding

1. There is no valid appeal

Reasons

2. An appeal was submitted to the Commission on 9 April 2024, under Section 173 of the Planning Act 2011, in respect to the Council's failure to determine an application for a certificate of lawfulness of existing use or development under reference LA07/2024/0198/CLEUD.
3. The application was submitted to Newry, Mourne and Down District Council on the 16 February 2024. The applicant wished to ascertain whether the dwelling and garage approved under planning decision: P/2005/0338/RM had been lawfully commenced.
4. The Council were of the view that they could not validate the application because an Enforcement Notice (EN) was in effect. An EN in relation to the development had been served on 5 May 2022. The EN subsequently came into force on 16 June 2022 and the remedy stated on the notice is to remove the building works and reinstate the land to agricultural use, these remedial works have not taken place. The Council declined to validate the application and returned it on 6 March 2024 because they considered it to be incomplete for the following reasons:

“Section 169 of the Planning Act (NI) 2011 relates to a certificate of lawfulness of existing use or development. Paragraph (2) states “For the purpose of this Act uses and operations are lawful at any time if:

- (a) *No enforcement action may 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 and for any other reason); and*
- (b) *They do not constitute a contravention of any of the requirements of any enforcement notice then in force”.*
5. Whilst Section 169 (2) (b) provides an indication that the development in question may be unlawful because of the extant EN, that does not make an application invalid. The relevant test which sets out the formal requirements which govern the validity of an application is contained within Article 11 of The Planning (General Development Procedure) Order (NI) 2015 (GDPO). The Council has therefore misdirected itself to the requirements for validity.
 6. The right of appeal against a local planning authority’s failure to give a decision for a certificate of lawfulness is provided for under Section 173 of the Planning Act (Northern Ireland) 2011. Under Section 173 (1) (b) (ii) any appeal in respect of non-determination must be made to the PAC within the period of 4 months from the end of the time period for a decision. Under section 20(b) of The Planning (General Development Procedure Order (NI) 2015, the time period for a decision is 8 weeks beginning with the date the application was received by council.
 7. The application for a certificate of lawfulness was submitted to the local council on the 16 February 2024, accordingly the council has a statutory period of 8 weeks beginning with the period in which the application was received. In this case the statutory 8-week period ended on the 12 April 2024.
 8. Given that the appeal was lodged on the 9 April 2024, prior to the expiry of the statutory 8-week period, there is no valid appeal, and the Commission do not have jurisdiction to consider the merits of the case.

COMMISSIONER PAUL DUFFY

List of Documents

Planning Authority:- Letter dated 6 March 2024
Letter dated 13 June 2024

Appellant(s):- Letter dated 14 June 2024 – Planning Permission Experts
Planning Permission Experts – Supporting Evidence
Document
Application form – Application for certificate of lawfulness for
existing use or development
Site location map
P1 Form P/2005/0338/RM
Decision Notice P/2005/0338/RM and approved drawings 01,
02, 03, 04
P1 Form - P/2001/2023
Decision Notice P/2001/2023/O and approved location map
Decision Notice P/2004/3157/RM and approved drawings.
Decision Notice P/2001/1412/O and approved location map