
Appeal Reference:	2024/L0003
Appeal by:	Matthew Bell
Appeal against:	The refusal of an application for a Certificate of Lawfulness for Proposed Use or Development
Proposed Development:	Proposed agricultural building and all associated site works.
Location:	Lands 300m south of No.9 Glenhead Road, Ballyward
Planning Authority:	Armagh City, Banbridge & Craigavon Borough Council
Application Reference:	LA08/2023/1964/CLOPUD
Procedure:	Informal Hearing on 14 th August 2024
Decision by:	Commissioner Carrie McDonagh, dated 10th September 2024

Decision

1. The appeal is dismissed and a Certificate of Proposed Development is refused.

Reasons

2. The main issue in this appeal is whether the proposed agricultural building would be lawful in accordance with the schedule of development permitted under Article 3 Part 7 titled 'Agricultural Buildings and Operations' of The Planning (General Permitted Development) Order (Northern Ireland) 2015 (GPDO).
3. Section 170 of the Planning Act (Northern Ireland) 2011 (the Act) makes provision for a Certificate of lawfulness of proposed use or development (CLOPUD). Section 170 (1) of the Act provides for when a person wishes to ascertain whether any operations proposed to be carried out in, on, over or under land would be lawful. Section 170 (2) of the Act states "If, on an application under this section, the council is provided with information satisfying it that the use or operations described in the application would be lawful if instituted or begun at the time of the application, it must issue a certificate to that effect; and in any other case it shall refuse the application".
4. The proposed agricultural building would be positioned in the southeastern section of a 0.26h field, approximately 3m below the Glenhead Road and orientated at a right angle to the road. It would be 6m in height (4.5m to eaves), with an under build of up to 1.9m to the rear/southern section, in line with the steeply sloping topography. The proposed roof and walls would be finished in profiled metal cladding, coloured green, over rendered blockwork at the lower

level. It would comprise of 230m² of floorspace (19.2m long and 12m wide) divided between an animal pen and storage for agricultural machinery.

5. The southern site boundary is a mixture of post and wire fencing interspersed with trees. The eastern and northern boundaries are defined by wire fencing. The roadside western boundary comprises of a native species hedgerow, with two field accesses. One of which is a stoned vehicular entrance set behind a galvanised steel gate and the second, a grassed access that falls steeply into the field behind metal gates. A stone building sits with its side gable to the roadside. It has a corrugated tin roof and is accessed via a red coloured wooden door. On 17th November 2022, the application LA08/2022/1296/LDE was granted for this building to Mr Charles Bell on the basis that the Council were satisfied no enforcement action may be taken as the operations on the site were complete in excess of five years. The existing development was described as ‘an agricultural shed, yard and all associated site works’.
6. Article 3 (1) and (2) of the GPDO indicates that subject to the provisions of the Order, planning permission is granted for the classes of development described as permitted development in the Schedule (to the Order). Part 7 of the Schedule to the GPDO relates to ‘Agricultural Buildings and Operations’. To qualify as permitted development, the fundamental requirements of Class A are (i) the works are to be carried out on agricultural land comprised in an agricultural unit; and (ii) the proposed development is reasonably necessary for the purposes of agriculture within that unit. An agricultural unit is defined as “land which is occupied as a unit for the purposes of agriculture other than fish farming but includes any dwelling house or other building occupied by the same person for the purpose of farming the land by the person who occupies the same unit.”
7. The appellant does not have a farm business registered by the Department of Agriculture, Environment and Rural Affairs (DAERA) so there are no farm maps or subsidies claimed. The appellant’s agent advises that since 16th of March 2023 the appellant has owned an agricultural unit. They provided a map from Land and Property Services (LPS) also dated 16th of March 2023 to identify that unit. The folio map for DN227558 with the reference surname “Bell” covers the appeal site, including the existing shed referred to above and five additional fields to the east and south – equating to 6.08ha. The agent further advises the appellant acquired this folio after a family farm, previously belonging to the appellant’s grandfather, Mr Charles Bell (deceased since 2017) was split into three parts, one of which was transferred to the appellant.
8. At the hearing, the Council advised that the LPS map was only provided at appeal stage and thus it was the first time they had sight of it. However, in preparation for the hearing, they had undertaken their own land registry search which indicated that the above folio has been registered to a Mr. Thomas Niall Bell at an address in Banbridge since 19th April 2018. I was advised by the appellant’s agent that this address is the appellant’s father’s family home and that, whilst the appellant’s full name is Matthew Thomas Bell, he is known as Thomas. It was unfortunate that the appellant was not at the hearing to provide clarification on this issue or that a legal document verifying his actual name was

not submitted. In the evidential context, there is doubt over who owns the land as the name is not the same and the information proffered by the agent contradicts the date of transfer of ownership. The agent acknowledged this ambiguity.

9. It was further argued that Part 7 of the GPDO does not require that the appellant must control the agricultural land or unit at the time of the submission of the application to certify lawfulness and that he could erect the proposed agricultural building once the land had been acquired. Notwithstanding, the uncertainty in respect of land ownership, Part 7 does not require that the appellant owns the land or building, only occupation as per the terms of the legislation.
10. The definition of an agricultural unit is as set out above. It requires that the land is occupied for agricultural purposes and that any building thereupon is occupied by the same person for the purpose of agriculture. In terms of the use of the land for such purposes, the Council agree with the findings in appeal 2017/E0005, that the GPDO does not require proof of how long a farm business has been active and established. However, they dispute that the folio map and alleged incidents of cattle grazing undertaken by a local farmer via a 'gentleman's' rental agreement is sufficient evidence to demonstrate the proposal meets the terms of the GDPO.
11. The appellant's references to the dictionary definition of "reasonably necessary" insofar as it relates to the GDPO requirements is noted. The appellant advised that they have also maintained the land by cutting trees, baling the grass and erecting some electric fencing. They say the existing agricultural shed is used for the storage of materials and machinery for grass cutting and bale lifting and other equipment including a cattle feeder and a link box. The future intention is to maximise what is referred to as "their small holding" by erecting a modern building. This would house livestock, including cattle and store farm machinery and vehicles which cannot be accommodated inside the existing shed, given the physical size and height restrictions, including the proportions of the access door.
12. The existing shed is modest in size and I agree that it could not easily accommodate vehicles or large items of machinery. However, the appellant does not own a farm vehicle and apart from assertions, no documentary evidence has been provided to corroborate his position that the above agricultural work was ongoing at the time of the application or that any large agricultural equipment was being rented at that time. Whilst there is no dispute that the existing shed is well packed, my observations did not indicate it was full to capacity and some of the materials stored therein, such as silage bales can be kept outside when wrapped in plastic so this could free up storage space, if necessary. Furthermore, there is no evidence of any livestock at the pertinent date, nor were the fields in use for grazing at the time of my site visit. An intention to purchase livestock does not make the proposed building reasonably necessary for the purposes of agriculture at the date of the application. Given the limited information before me, I cannot be satisfied that on the balance of probabilities the proposed building is reasonably necessary for the purposes of agriculture on an agricultural unit.

13. Article 3 (2) of the GPDO confirms that each part of the schedule is subject to any relevant exception, limitation or condition. Within Part 7 each of the criterion within A.1 a) to i) are specific exceptions to Class A. If any of the criteria apply, development is not permitted and the proposal will not benefit from the permitted development provisions in Class A. The Council further consider that the proposed building is not permitted development under A.1 as it does not meet criteria (a), (d) and (e).
14. In respect of criterion (a) I agree with the appellant that the limitation relates to agricultural land less than 0.5h, rather than the agricultural unit. As there is no dispute that the appeal site is part of a folio of agricultural land exceeding 0.5h criterion a) is not offended. In respect of criteria (d) and (e) the concern is specific to the LDE for the existing agricultural shed being granted in the name of a different individual and a lack of evidence to demonstrate the shed is now within the ownership of the appellant.
15. The LDE for the agricultural shed certifies that it was used for that purpose prior to the pertinent date. In the evidential context of this appeal, the qualifications set out within Class A.1 (d) and (e) are not offended.
16. Notwithstanding my consideration in respect of criteria (a), (d) and (e), I have found that the proposed agricultural building is not reasonably necessary for the purposes of agriculture within an agricultural unit and is therefore not lawful development in accordance with Part 7, Class A of the GPDO. I am satisfied that the Council's refusal of this CLOPUD application was well founded. All in all, I consider the appeal must fail.

COMMISSIONER CARRIE MCDONAGH

This decision relates to the following drawings, dated March 2023:

- Drawing No 14A: 1:1250 @A3 Site Location Map for Proposed Agricultural Shed (As submitted in Statement of Case)
- Drawing No 11: 1:1250 @ A3 Proposed Site Plan
- Drawing No 12: 1:100 @ A3 Proposed Plans and Elevations
- Drawing No 13: 1:100 @ A3 Proposed Elevations and Section

List of Appearances

Planning Authority: A Gerard McGee, Armagh City, Banbridge & Craigavon Borough Council

Appellant: B Andrew Stephens, Matrix Planning Ltd on behalf of Matthew Bell

List of Documents

Planning Authority: A Statement of Case, Armagh City, Banbridge & Craigavon Borough Council

Appellant: B Statement of Case, Matrix Planning Ltd on behalf of Matthew Bell