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<b>Appeal Reference:</b>	2023/L0001
<b>Appeal by:</b>	Mr. Willie O'Kane and Mrs Deirdre O'Kane
<b>Appeal against:</b>	The refusal to certify a Certificate of Lawfulness of Proposed Use or Development
<b>Proposed Development:</b>	To lay out a farm laneway and to erect an agricultural shed on land used for agricultural purposes, under the GPDO, Part 7, Agricultural Buildings and Operations, Classes C and A
<b>Location:</b>	Approx. 25m North of 144 Largy Road, Carnlough
<b>Planning Authority:</b>	Mid & East Antrim Borough Council
<b>Application Reference:</b>	LA02/2022/1001/CLOPUD
<b>Procedure:</b>	Written representations and Commissioner's site visit on 28 <sup>th</sup> June 2024
<b>Decision by:</b>	Commissioner Trudy Harbinson, dated 25 <sup>th</sup> July 2024

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## Decision

1. The appeal is dismissed.

## Reasons

2. The main issue in this appeal is whether the proposed development of an agricultural shed and farm laneway is permitted development under The Planning (General Permitted Development) Order (Northern Ireland) 2015 (GPDO) as amended.
3. Section 170 of the Planning Act (Northern Ireland) 2011 (the Act) makes provision for the issue of a Certificate of Lawfulness of Proposed Use or Development (CLPUD). Section 170(1) states that 'if any person wishes to ascertain whether – (a) any proposed use of buildings or other land; or (b) any operations proposed to be carried out in, on, over or under land, would be lawful, that person may make an application for the purpose to the appropriate Council specifying the land and describing the use or operations in question'. Section 170 (2) indicates that '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 application for a CLPUD was received by the Council on 21<sup>st</sup> November 2022, in accordance with Section 170 of the Planning Act. The application was refused on 2<sup>nd</sup> February 2023. This appeal was made under Section 173 of the Act against the Council's refusal of the application.

5. The description of the proposal as set out in the notice of refusal is as follows: -  
*'To lay out a farm laneway and to erect an agricultural shed on land used for agricultural purposes, under the Planning (General Permitted Development) Order (Northern Ireland) 2015 (the GPDO), Part 7, Agricultural Buildings and Operations, Classes C and A*

*The proposed shed, served by the proposed hardcore laneway, will be a basic agricultural shed (per enclosed plans), considered wholly necessary for the efficient and effective management of the farm. The shed is to be sited close to the farmhouse and existing shed, as per enclosed plans and as detailed in the enclosed document, Additional Detail.*

*No new, nor any alteration to, any public road access is required'.*

6. The Council refused to certify that the development was lawful citing the following reason:  
*'The Council having considered the information provided, is not satisfied that the proposal above and shown on drawing No's 01, 02 & 03 which were received on the 21st November 2022 constitutes Permitted Development under Schedule 1, Part 7, Class A & C of The Planning (General Permitted development) Order (Northern Ireland) 2015, in that it has not been demonstrated that the proposed works are reasonably necessary for the purpose of agriculture within this unit'.*
7. Part 7 of the GPDO deals with 'Agricultural Buildings and Operations'. Class A of Part 7 allows for 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. Paragraph A.1 sets out nine circumstances where agricultural buildings or operations would not qualify as permitted development.
8. The Council did not submit a Statement of Case in support of their refusal. The Development Management Officer Report (DMOR) is included in background papers. It has scant detail of its overall assessment of the proposal. It would appear however that there is no dispute between the parties in respect of criteria (a), (b), (c), (d), (f), (g), (h) and (i). Criterion (e) specifies that development will not be permitted 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 DMOR stated that *'the proposed shed is not within 75m of the principal farm buildings and therefore does not meet the criteria for permitted development,...'*. I will consider this in detail below.
9. The Appellants, having relied on the DMOR are under the impression that criterion (e) is the only issue of contention and that the Council's refusal derives from its interpretation of same. Their evidence is predicated on the inference from the Council's assessment, that the proposed shed is reasonably necessary for the purposes of agriculture within this unit and would be lawful if proposed within 75m of a principal group of farm buildings, which they contend it is. However, despite the Council's DMOR lacking detail, in addition to its statement in relation to criterion (e) it notably goes on to state *'....it has not been demonstrated the proposed shed is reasonably necessary at this location for the*

*purpose of agriculture...'*. That also reflects the reason given on the refusal to certify the proposed works.

10. In considering an appeal relating to the refusal of an CLPUD, the Commission must be satisfied that the development would be lawful. This is a matter of fact. It is important that all requirements of the relevant legislation are met before accepting that the development would be lawful, even in relation to aspects of the permitted development legislation where the Council has not clearly articulated their issues.
11. In making an application under Section 170 of the Act the onus is on the applicant to provide information to satisfy that the use or operation described in the application would be lawful if instituted or begun at the time of the application.
12. A Department of Agriculture, Environment and Rural Affairs (DAERA) 2022 scheme map for the Business Reference provided by the Appellants encompasses some 19 hectares of land. The appeal site is located outwith and to the north of this. On the Form P1C that accompanied the application for a Certificate, the Appellants stated that they had purchased this additional land in November 2022 and it was not yet part of the farm map. The newly acquired land sits across the existing laneway from the Appellants' dwelling at number 144 Largy Road.
13. The Appellants stated that two additional fields, adjacent to the farm dwelling, had been bought to accommodate earlier lambing of the farm's sheep flock and extensification of the farming operation. They stated that this would take advantage of spring grass and increase economic performance of the farm by having lambs ready earlier in the season. They stated that the proposed agricultural shed and laneway are necessary to help overcome the challenges of bringing lambing forward in the challenge of unpredictable weather.
14. A three sided timber clad shed of some 50sqm, less than 3m in overall height with a tin clad roof is proposed within part of one of the recently purchased fields. It is to be open fronted with steel or timber gates. That part of the field is to be delineated by a new post and sheep wire fence. The Appellants stated that the shed is to be used for the lambing of sheep and storage of equipment and materials on the unit. They stated that the size of the farm's sheep flock will not increase and that no animals will be overwintered in the shed, which is to be used in inclement weather for short term housing of sheep due to lamb or those fostering lambs.
15. The Council stated that the 'main farm buildings' are located approximately 200m to the southwest of the appeal site. The Appellant contends that the dwelling at 144 Largy Road and its associated ancillary buildings are the principal farm buildings and not the old farmyard buildings as relied on by the Council. They reference a previous appeal decision (2014/A0255) which they stated found that the GPDO provided no definition of a group of principal farm buildings and appeal decision (2013/LDC005) in which the Commission found that a dwelling cannot be described as an agricultural building. However, criterion (e) at Paragraph A.1 of Part 7 Class A of the GPDO, refers to farm buildings and not agricultural buildings. The full details of those cases are not before me however I do not disagree that is the case. For the purposes of Class A "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'. Nowhere is it stated that a dwelling on a farm occupied by the person farming the land should not be described as a farm building. I also concur with the Appellant that the requirement is for the nearest part of any building or structure so erected to be no more than 75m from the nearest part of 'a' and not 'the' principal group of farm buildings.

16. The Appellant references three groups of buildings on the farm, the 'farm dwelling group', 'forestry sheds' and 'the old farmyard'. The latter two were not identified on any map. The Appellant relies upon the 'farm dwelling group' in relation to criterion (e) and the requirement to be no more than 75m from the nearest part of a group of principal farm buildings. They state that this includes the farm dwelling, general purpose store, sheep dog pen and garden sheds. At my site visit I observed the dwelling, dog pen and timber sheds, one of which sat on breeze blocks. The Council provide no reason as to why they do not accept the buildings at 144 Largy Road to be a principal group of farm buildings.
17. Notwithstanding this, the DAERA Farm Map provided has no name or address to which the agricultural business is registered. I would expect to see some form of communication from DAERA confirming that the agricultural business is registered to the Appellant at 144 Largy Road, however no such correspondence is included. As such I cannot conclude that on the balance of probabilities the dwelling at 144 Largy Road is the farmhouse and that it and any outside sheds it may have could be considered to constitute a principal group of farm buildings on the agricultural unit. Given the limited evidence before me I am not satisfied that the proposed development complies with criterion (e) of Part 7 Class A of the GPDO.
18. In determining the matter of whether the shed is 'reasonably necessary' I must be satisfied on the balance of probabilities. Other than the DAERA scheme map, limited evidence has been presented by the Appellants about the scale and nature of their farming activities. At the time the application was made the appeal site was outside the farmland included within the business. Whilst the Appellants stated that those lands had recently been purchased, no further detail was provided with respect to their purchase and use. The reason for the proposed development is to overcome challenges in lambing sheep earlier, however no information is provided on the sheep flock, such as a flock number or register.
19. The Appellants stated that the old farmyard is redundant and that the second group of buildings referenced were specifically purposed for forestry. No detail was provided on facilities currently used by the Appellants for their agricultural activities. Given the limited information before me, I cannot be satisfied that on the balance of probabilities the appeal building is reasonably necessary for the purposes of agriculture within that unit.
20. The proposed laneway would begin at an existing field gate off an existing laneway to the northeast. It is to travel in a southwesterly direction, through the field, to the proposed shed in the adjacent field. The Appellant stated that the new laneway is intended to minimise damage to the land from the farm's quad bike during lambing in wet weather, to minimise deposits of muck on the existing

concrete laneway and to provide a higher traction surface for emergency use for the farm and farmhouse in frosty/snowy conditions. They stated the current concrete laneway to the existing farmhouse is steep and dangerous in such weather and that the shed in the old farmyard is much further uphill. I note however that the Appellant said that farmyard is redundant in any event.

21. Part 7 Class C allows for the construction, formation, laying out or alteration of a means of access to a road. Paragraph C1 sets out two criteria where such development is not permitted. The Council found that the proposed laneway failed to comply with criterion (a) as it is required in connection with development for which a planning application is required. The Appellant stated that if the shed complies with the GPDO and is lawful, then so too is the laneway. I note that a field gate is already in place at the proposed access point. The laneway to 144 Largy Road is quite steep, however I have not been presented with any persuasive evidence that it is dangerous in periods of inclement weather and that an alternative laneway as proposed is reasonably necessary for the purposes of agriculture. I have already found above that the proposed shed does not comply with criterion (e) of Class A and is not reasonably necessary for the purposes of agriculture. The shed would require a planning application. It therefore follows that the laneway to serve the proposed shed is not permitted development.
22. The Appellants stated that the shed and laneway are necessary for effective management of the holding. They stated that appeal decision 2019/E0072 supports them. Full details of that case were not provided. The Appellant proposed the laneway under Class C of the GPDO and the Council assessed it accordingly. However, for completeness I have considered above whether the proposed laneway would be reasonably necessary for the purposes of agriculture on the unit, and with the limited evidence before me was not persuaded that it was. I do not accept that the case before me and appeal decision 2019/E0072 are on all fours. The Appellants also referenced a DMOR by the Council for a CLPUD application elsewhere (LA02/2020/0540/LDP) however a full copy of that was not provided. I cannot be sure there are direct comparisons with the appeal proposal. In any event each appeal must be decided within its own evidential context.
23. The Appellants question the rationale of the Council for the inclusion of photographs within the background papers of an existing laneway. The Appellants' concern with the Council's assessment is a matter between those two parties and is not for this appeal. In any event I have assessed the proposed development against the relevant legislation.
24. Given the reasons set out above, I consider that the development proposed does not benefit from permitted development rights as set out in Part 7 Class A and Class C of the Schedule identified in Article 3 of the GPDO. I find that the Council's refusal to certify the CLPUD is well founded. The appeal is dismissed.

This decision is based on drawings 01 Location Map, 02 Site Plan and 03 Agricultural Building received by the Council on 21<sup>st</sup> November 2022.

**COMMISSIONER TRUDY HARBINSON**

**List of Documents**

Appellant:-

Statement of Case