

# Appeal Decision

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<b>Appeal Reference:</b>	2021/A0222
<b>Appeals by:</b>	AMD Homes NI Ltd
<b>Appeals against:</b>	The refusal of outline planning permission
<b>Proposed Development:</b>	Proposed site for 2 infill dwellings
<b>Location:</b>	Land between 1 and 5 Carnlea Road, Ballymena
<b>Planning Authority:</b>	Mid and East Antrim Borough Council
<b>Application Reference:</b>	LA02/2021/0882/O
<b>Procedure:</b>	Written representations with Commissioner's site visit on 10 <sup>th</sup> January 2024
<b>Decisions by:</b>	Commissioner Kevin Gillespie, dated 3 <sup>rd</sup> April 2024

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## Decision

1. The appeal is dismissed.

## Preliminary Matter

2. On 7<sup>th</sup> December 2021, Mid and East Antrim Borough (Council) refused planning application LA02/2021/0812/O because it was, in their opinion, contrary to the Strategic Planning Statement for Northern Ireland (SPPS) and Planning Policy Statement 21: Sustainable Development in the Countryside (PPS21).
3. Following the adoption of the Mid and East Antrim Local Development Plan 2030: Plan Strategy on 16<sup>th</sup> October 2023 (PS), the Council wrote to the Commission on 1<sup>st</sup> February 2024 to advise that the refusal reasons for the above applications were being revised to take account of the recently adopted Plan Strategy.
4. The Appellant argued that the revised reasons for refusal should not be accepted and that the appeal should be determined in accordance with PPS21 given that this was the relevant planning policy context at the time the appeal was made to the Commission in 2021. They went on to argue that to consider the appeal under the revised Local Development Plan (LDP) context would be contrary to the principle of administrative fairness.
5. The PS was adopted in October 2023 by the Council as a corporate body and is germane to my consideration of the appeal given the specific legislative requirements set out in Sections 6 and 45 of the Planning Act (Northern Ireland) 2011 (the Act). Furthermore, Section 59 (2) of the Act states that nothing within Section 59 (1) affects any requirement or entitlement to have regard to the provisions of the LDP or any material consideration. The Council, in formally adopting the PS, endorses the policies within and despite the arguments advanced about the change in circumstances, the plan-led system must prevail

given the wording of the Act. In any event, as the appellant has had the opportunity to make representations on the new plan policy context and the revised reasons for refusal at appeal stage, no prejudice arises. This appeal decision is based on the revised reasons for refusal.

## **Reasons**

6. The main issues in this appeal are whether the appeal development would be acceptable in principle in the countryside and create a ribbon of development.
7. Section 45(1) of the Planning Act (NI) 2011 (the Act) requires the Commission, in dealing with an appeal, to have regard to the local development plan (LDP), so far as material to the application, and to any other material considerations. Section 6(4) of the Act states that where regard is to be had to the LDP, the determination must be made in accordance with the plan unless material considerations indicate otherwise.
8. As indicated above, in October 2023, Mid and East Antrim Borough Council adopted its PS. In line with the transitional arrangements as set out in the Schedule to the Local Development Plan Regulations (NI) 2015 (as amended), the LDP now becomes a combination of the Departmental Development Plan (DDP) and the PS read together. Again, in accordance with the subject legislation, any conflict between the DDP and the PS must be resolved in favour of the PS.
9. The Ballymena Area Plan 1986 - 2001 (BUAP) comprises the departmental development plan (DDP). In it, the appeal site is in the countryside outside any defined settlement limit. There are no other policies in the DDP that are pertinent to the appeal.
10. Whilst the Strategic Planning Policy Statement for Northern Ireland (SPPS) remains material in accordance with paragraph 1.9 thereof, as the Council has adopted its PS, the previously retained policies have now ceased to have effect. I now turn to the particular policies of relevance to this appeal in the PS.
11. The PS Policy CS1 'Sustainable Development in the Countryside' sets out a range of types of development which, in principle, are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development. One of these allows for the development of a small gap site within an otherwise substantial and continuously built-up frontage in accordance with Policy HOU13 'Ribbon/Infill Development' and the relevant policy provisions of Policy GP1 'General Policy for all Development'.
12. Policy HOU13 of the PS states that planning permission will be refused for a building that creates or adds to a ribbon of development in the countryside. It goes on to state that an exception will be permitted for the development of a small gap site sufficient to accommodate only one dwelling within an otherwise substantial and continuously built-up frontage and provided this respects the existing development pattern along the frontage in terms of size, scale, siting, and plot size, meets the General Policy, and accords with other provisions of the LDP.
13. For the purpose of this policy, the definition of a substantial and built-up frontage includes a line of three or more substantial buildings with a common frontage to a

road, footpath or private lane served by individual accesses and visually linked when viewed from that road, footpath, or private lane. The Justification and Amplification (J&A) indicates that the 'substantial buildings' should not be located within a designated settlement limit; each should have their own defined curtilage and they cannot include ancillary domestic sheds, outbuildings or garages or small agricultural buildings.

14. The appeal site, which slopes sharply from north to south/south-west, is broadly rectangular in shape and cut from a larger agricultural field. Its western boundary, which is adjacent to Carnlea Road and which incorporates an existing field entrance, is defined by a 1 metre high (approx.) ranch-style fence. Its north-eastern and south-eastern boundaries are defined by a 1 metre high (approx.) post and wire fence behind which are positioned a mature hedge and trees whilst its eastern boundary is undefined. To the north-east of the appeal site is No. 5 Carnlea Road which is a detached two storey dwelling and garage set-back from the Carnlea Road. To the east of the appeal site, planning permission was granted for one dwelling under G/2007/0928/RM. This structure only has its foundations constructed. To the south of the appeal site lies No. 1 Carnlea Road which comprises a detached two storey dwelling and a detached agricultural building. To the west of the appeal site lies Nos. 2 and 4 Carnlea Road. No. 2 is a detached two storey dwelling and garage which fronts onto the road whilst No. 4 is a detached single storey dwelling and garage which is set-back from the road.
15. The policy requires at least three substantial buildings with common frontage to a road to make up a 'substantial and continuously built-up frontage'. From my observations, the dwellings at Nos.1 and 5 Carnlea Road are both qualifying buildings as they are substantial buildings with their own curtilage and have frontage to the road. Their associated ancillary garages and agricultural buildings however do not constitute substantial buildings for the purposes of Policy HOU13 as they do not have their own defined curtilage. In respect of the structure granted planning permission under G/2007/0928/RM, as it remains in the course of construction with no walls as yet, it does not represent a 'substantial building' for the purposes of Policy HOU13 of the PS.
16. There are only two substantial buildings along the common frontage of Carnlea Road, namely the dwellings at Nos. 1 and 5. The appeal site is therefore not within a substantial and continuously built-up frontage. This element of Policy HOU13 of the PS is not therefore met.
17. Policy HOU13 also requires the gap site to be small and sufficient to accommodate only one dwelling. The appellant measures the appeal site frontage to be some 110 metres. Given these measurements, the appeal site could accommodate more than one dwelling in my judgement having regard to the plot sizes, frontages and general settlement pattern in the surrounding area. Consequently, the appeal site does not represent a small gap site suitable to accommodate only one dwelling within an otherwise substantial and continuously built-up frontage.
18. 'Building on Tradition' – A Sustainable Design Guide for the Northern Ireland Countryside (BoT) is supplementary planning guidance. It does not therefore supersede the planning policies contained within the PS. The appellant regards the appeal site as a gap site and that the size of the plot is comparable to those in

the surrounding area. However, both the PS and BoT state that the gap site should be within a 'substantial and continuous built-up frontage'. For the reasons given above, as the appeal site is not within such frontage and the size of the gap is too large, the proposal fails to satisfy Policy HOU13. The Council has sustained its second reason for refusal in so far as stated and the third party's concerns are sustained.

19. The Council and the third party also argue that the proposal would be contrary to Policy HOU13 and criterion (f) of Policy GP1 of the PS. These criteria relate to ribbon development, suburban-style build-up of development and visual integration.
20. Both the Council and third party contend that the appeal development would not respect the traditional pattern of settlement exhibited in the area and provided similar measurements regarding plot frontage. The appellant also provided measurements in respect of the plot sizes and showed in their statement of case an illustrative concept plan in respect of building scale and siting in the locality. However, any assessment of the pattern of development is not simply a mathematical exercise but rather entails a visual analysis of the surroundings including the configuration of how buildings sit within their plots, along with their relationship with other built development along the frontage. For reasons given above, I find that the proposal would not respect the pattern of settlement in the locality.
21. The local circumstances in this case render the appeal site an important visual break providing relief in the built-up appearance of the area. Travelling in both directions along Carnlea Road and in particular on its downward trajectory in the vicinity of No. 5, two dwellings sited within the appeal site would be prominent features in the landscape. This would be due to a combination of its open aspect, the lack of established natural vegetation along the eastern and western site boundaries and the consequent lack of enclosure for the proposed buildings. For this reason, the appeal development would not visually integrate into the landscape contrary to this element of criterion (f) of Policy GP1 of the PS.
22. Paragraph 8.1.67 of the J&A to Policy HOU13 recognises that ribbon development is detrimental to rural character, appearance and the amenity of the countryside. Paragraph 8.1.68 of the J&A goes on to state that a 'ribbon' does not necessarily have a continuous or uniform building line. Buildings sited back, staggered, or at angles and with gaps between them can still represent ribbon development if they have a common frontage and they are visually linked when viewed from the road.
23. The appellant accepts that there is an existing ribbon of development along this part of Carnlea Road which comprises the dwelling and agricultural buildings at No. 1 Carnlea Road and the dwelling and garage at No. 5. While the latter buildings are visually integrated to a large extent, they are still appreciable in the landscape. In any event, these buildings all have common frontage and are visually linked when travelling in either direction along this part of Carnlea Road. The appeal development would introduce two further dwellings along the road frontage which would add to the existing ribbon of development in this part of the countryside resulting in a suburban style build-up of development contrary to these elements of Policy HOU13 of the PS.

24. The appellant raised several appeal decisions and planning permissions for infill dwellings at a number of locations both in the Mid and East Antrim Borough Council area and further afield. Notwithstanding their conclusions, each application must be assessed on its own merits. The issues in this appeal are germane to this appeal site, its surroundings and the evidential context provided.
25. The third party raised concerns regarding road safety. The Council and DFI Roads had no objection on this basis. Based on this and my own observations, I do not consider that the volume of traffic that would be associated with two additional dwellings in the area would give rise to a level of intensification which would be prejudicial to road safety or significantly inconvenience the free flow of traffic on Carnlea Road. This issue, in itself, would not warrant a refusal.
26. As the appeal site is not within a substantial and continuously built-up frontage and it is not a small gap site suitable to accommodate only one dwelling, it does not satisfy Policy HOU13 and Policy GP1 of the PS. Moreover, as there are no overriding reasons why the appeal development is essential nor are there any material considerations to outweigh the policy objections to the proposal it also does not satisfy Policy CS1 of the PS. For the reasons given, the appeal development is not acceptable in principle in the countryside as it does not comply with the PS and thus the LDP. The Council's reasons for refusal and the related concerns of the third parties have been sustained as stated.
27. As the Council has sustained its reasons for refusal, the appeal must fail.

This decision is based on the following drawing numbers:

Drawing No.	Title	Scale	Received by the Council
01	Site Location Map	1:1250	8 <sup>th</sup> September 2021
PP02	Proposed Site Plan	1:1000 @ A2	14 <sup>th</sup> January 2022

**COMMISSIONER KEVIN GILLESPIE**

## **List of Documents**

### **Planning Authority:-**

“A1” Mid and East Antrim Borough Council – Statement of Case

“A2” Mid and East Antrim Borough Council – Rebuttal Statement

“A3” Mid and East Antrim Borough Council - LDP Comments

### **Appellant:-**

“B1” Donaldson Planning, Agent - Statement of Case

“B2” Donaldson Planning, Agent – Rebuttal Statement

“B3” Donaldson Planning, Agent – LDP Comments

### **Third Party:-**

“C1” Ms J Kelly - Statement of Case

“C2” Ms J Kelly – Rebuttal Statement

“C3” Ms J Kelly – LDP Comments