

PLANNING APPEALS COMMISSION

**THE PLANNING ACT (NORTHERN IRELAND) 2011
SECTION 58**

**Appeal by Mr John Moore
against the refusal of outline planning permission for Proposed Infill Dwelling and
Garage
between No. 56 Shillanavogy Road and Agricultural Building 50m south of No. 56
Shillanavogy Road, Glenarm**

**Report
by
Commissioner Gareth McCallion**

Planning Authority Reference: LA02/2022/0590/O

Procedure: Written Representations

Date of Site Visit: 16th April 2024

Report Date: 13th June 2024

1.0 BACKGROUND

- 1.1. Mid and East Antrim Borough Council (the Council) received the planning application on 5th August 2022. By notice dated 14th October 2022, the Council refused permission giving the following reasons: -
- 1. The proposal is contrary to Strategic Planning Policy Statement for Northern Ireland (SPPS) and Policy CTY 1 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.**
 - 2. The proposed development is contrary to the Strategic Planning Policy Statement for Northern Ireland (SPPS) and Policies CTY8 and CTY14 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that there is no gap and the proposed site is not located within a substantial and continuously built up frontage and would, if permitted, result in a suburban style build up of development in this Area of Outstanding Natural Beauty when viewed with existing and approved buildings.**
 - 3. The proposal is contrary to the SPPS and Policy CTY13 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that the proposed site lacks long established natural boundaries and the proposed dwellings would not visually integrate into the surrounding landscape.**
- 1.2. The Commission received the appeal on 19th December 2022 and advertised it in the local press on 9th March 2023. No representations were received from third parties.
- 1.3. The Mid and East Antrim Borough Council Local Development Plan 2030 - Plan Strategy (Plan Strategy) was adopted on 16th October 2023. Following this change in circumstances, the Council stated that their reasons for refusal should be superseded with the following:
- 1. The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland and Policy CS1 of the Mid and East Antrim Borough Council Local Development Plan 2030 – Plan Strategy in that there are no overriding reasons why this development is essential in the countryside and could not be located within a settlement.**
 - 2. The proposal is contrary to Policy HOU13 of the Mid and East Antrim Borough Council Local Development Plan 2030 – Plan Strategy, in that it has not been demonstrated that the site is a small gap within an otherwise substantial and continuously built up frontage consisting of at least three or more substantial buildings with a common frontage to a road, footpath or private lane.**
 - 3. The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland and Policies GP1 (f i, vi) and CS5 of the Mid and East Antrim Borough Council Local Development Plan 2030 – Plan Strategy, in that the proposed site lacks long established natural boundaries and**

development on this site would not visually integrate into this Area of Outstanding Natural Beauty. In addition, development on this site would result in a suburban style of build-up when viewed with existing and approved buildings.

- 1.4. The appellant was provided with the opportunity to comment on the revised reasons for refusal at appeal stage.

2.0 SITE AND SURROUNDINGS

- 2.1 The appeal site, which is irregular in shape, lies within a rural setting and directly south of the dwelling at No. 56 Shillanavogy Road. Bar the post and wire fencing demarcating its southwestern boundary, the appeal site is largely undefined.
- 2.2 There are the remains of what appears to have been an agricultural building within the site. These largely comprise of its concrete floor, associated yard area and some constituent parts, including fragmented concrete materials, metal sheeting and some residual steel compositions. The remnants of a concrete lined sump, most likely a wheel wash, remain to the front of the appeal site, near its northeastern boundary, close to the road. The appeal site is accessed directly from the public road, via a hardstanding area.
- 2.3 Directly south, and adjoining the appeal site, is a large, linear, agricultural building. Directly east, and in front of this building, there is an area of hardstanding. Beyond that, and adjoining the Shillanavogy Road, is an expanse of grassland which also wraps around the southern side of this building. This building has a shared access with the appeal site.
- 2.4 No. 56 Shillanavogy Road is a bungalow, built on a linear plan, with an attached double garage. This property, which is situated at a lower level than that of the appeal site, faces northeast, with its rear largely facing southwest towards the appeal site. This dwelling, which has a grey textured render, brown window furnishings and red painted fascia, also has a smaller outbuilding located within its curtilage, to the west of it. This building has also been developed on a linear plan. It has two single doors located, side by side, at the most northerly position along its front and its ridge height is lower than that of No. 56. A line of mature trees, scrub and dry-stone wall define this property's northern and western boundaries. Grey brick pillars, measuring c. 0.5 metres from the ground up, capped with concrete coping stones, with an occasional chain strung between them, defines the eastern roadside boundary of this property. There is no demarcation along the southern boundary, between No. 56 and the appeal site.
- 2.5 Lands west and directly to the rear of the appeal site comprise of grassland, rotting vegetation and piles of natural stone. The dwelling at No. 58 Shillanavogy Road and its associated metal clad outbuilding are located northwest of the appeal site. Further north, beyond the northern boundary of No. 56, is a field with a small square shaped pumping station sited in its southwestern corner.

3.0 PLANNING AUTHORITY'S CASE

- 3.1 The planning application pertains to the erection of an infill dwelling and garage between No. 56 Shillanavogy Road and agricultural building 50m south of No. 56 Shillanavogy Road. The proposed site falls within the rural countryside, outside the development limits of any settlement, as defined by the Ballymena Area Plan (1986 – 2001). The site is also located within the Antrim Coast and Glens Area of Outstanding Natural Beauty (AONB).
- 3.2 Section 45(1) of the Planning Act (NI) 2011 (the Act) requires that regard must be had 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.
- 3.3 The Planning Act (NI) 2011 establishes a planning system which gives primacy to the plan in the determination of planning applications unless other material considerations indicate otherwise. The Council adopted the Local Development Plan 2030 Plan Strategy (PS) on 16th October 2023. The PS became effective from the date of adoption and is relevant to the consideration of this planning appeal. The Council has yet to adopt the Local Plan Policies (LPP), so in the interim, decisions fall to be made in light of current circumstances.
- 3.4 The Planning (Local Development Plan) Regulations (Northern Ireland) 2015 (as amended) (Regulations) makes provision for the preparation of a LDP by a Council. Part 9 and the Schedule contain the arrangements for the transition from Departmental Development Plans to the new council Local Development Plans. It also defines what constitutes an LDP during the transition period until the council has fully adopted its own LDP. In line with the transitional arrangements set out in the Schedule to the Regulations, the LDP is currently a combination of the Departmental Development Plan (DDP) and the PS read together. Any conflict between a policy contained in the DDP and those of the PS must be resolved in favour of the PS.
- 3.5 The Ballymena Area Plan 1986-2001 comprises the DDP for this proposal. There are no policies contained within the DDP which are relevant to this appeal and therefore no conflict arises between the DDP and the Plan Strategy.
- 3.6 The proposed development was refused on the basis that it was contrary to the Strategic Planning Policy Statement, Policy CTY8 of Planning Policy Statement 21 'Sustainable Development in the Countryside' (PPS 21) and Building on Tradition 'A Sustainable Guide for the Northern Ireland Countryside'.
- 3.7 Elements of Policy CTY8 'Ribbon Development' of PPS 21 have been incorporated into the PS Policy HOU13 'Ribbon/Infill Development'. However, there are notable differences in the operational policy including:
- i. HOU13 only allows for the development of a small gap site sufficient to accommodate only one dwelling, whereas CTY8 allowed up to a maximum of two dwellings.

- ii. Regarding the definition of a substantial and built-up frontage, HOU13 refers to 'a common frontage' which is further defined in paragraph 8.1.68. The CTY8 definition only referred to a 'along a road frontage'.
 - iii. Regarding the definition of a substantial and built-up frontage, HOU13 refers to 'substantial buildings', which is further defined in paragraph 8.1.68. The CTY8 definition only referred to 'buildings'.
 - iv. Regarding the definition of a substantial and built-up frontage, HOU13 refers to a 'visual linkage' which is further defined in paragraph 8.1.68. The CTY8 definition did not refer to visual linkages.
- 3.8 The PS introduces a new Policy, GP1 'General Policy for all Development'. This Policy brings together many of the general policy criteria that featured across the various Planning Policy Statements, including PPS 21. It also includes new and additional criteria that all development proposals requiring planning permission (with the exception of minor proposals as defined in footnote 20 of the PS) must be assessed against and where relevant demonstrate compliance with. Along with the requirement to comply with general policy criteria a) – e) all development proposals outside settlement limits and within the countryside will be required to demonstrate compliance with criteria f) relating to development in the countryside.
- 3.9 Paragraph 5.9.9 of the PS states that there are a range of types of development considered to be acceptable in principle in the countryside, which are set out within Policy CS1 'Sustainable Development in the Countryside'. Policy CS1 sets out the opportunities when development in the countryside will be permitted. Under the 'Housing Development' section, one type is 'the development of a small gap site within an otherwise substantial and continuously built-up frontage in accordance with Policy HOU13. As the proposed development does not comply with Policy HOU13, then it follows that it also does not comply with Policy CS1.
- 3.10 Policy HOU13 states that planning permission will be refused for a building which creates or adds to a ribbon development. 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 it respects the existing development pattern along the frontage in terms of size, scale, siting and plot size, meets the General Policy and other planning and environmental requirements.
- 3.11 Policy HOU13 defines a substantial and built-up frontage, including 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. Paragraph 8.1.68 states that for the purposes of HOU13 'substantial buildings' that are being relied upon to create a substantial and built-up frontage, should have their own defined curtilage, and cannot include ancillary domestic sheds, outbuildings or garages or small agricultural buildings.
- 3.12 The application proposes a single dwelling and garage to be sited between No. 56 Shillanavogy Road and the agricultural building 50m south of No. 56. There is no existing gap at present as the agricultural building on the site will have to be demolished to create a site for dwelling. The proposed site (following demolition)

would be located to the north of the remaining poultry house and south of the dwelling at No 56, both of which would be considered substantial buildings and have frontage with the Shillanavogy Road.

- 3.13 The former hatchery building, which is an ancillary structure within the curtilage of No. 56, would not be considered a substantial building nor does it have its own defined curtilage. The former pump house which is located to the northwest of No. 56 on the opposite side of the lane which serves No. 58, would not be considered a substantial building nor does it have its own defined curtilage. The pump house is set back from the Shillanavogy Road by approximately 80m and is practically invisible to passing traffic and therefore does not form part of a common frontage nor is it visually linked to the existing development.
- 3.14 In this instance there is no substantial and continuously built up frontage of 3 or more buildings as required under Policy HOU13.
- 3.15 Policy GP1 (f) states that development should not have a significant adverse impact on landscape character, the rural character or the locality or environmental quality. It sets out a number of criteria to ensure appropriate forms of development in the countryside. Criterion (i) states that development should integrate into the surrounding landscape through the use of established boundaries and not rely on new landscaping or significant earthworks. Criterion (vi) states that proposals should not result in a suburban style build-up of development in the area.
- 3.16 The boundaries of the site are currently defined by a 2m high chain link fence with concrete posts. There are patchy trees along the western boundary. The proposal would rely primarily on the use of new landscaping for integration. The proposal is located at the foot of Slemish mountain, within a high-quality landscape where the preservation of its character is paramount.
- 3.17 In this instance, the proposed site is artificially contrived and does not respect the existing pattern of development in the area. A dwelling and garage on the proposed site would result in a suburban style build-up of development when viewed with existing and extant approvals, further eroding the character of this rural area.
- 3.18 Policy CS5 of the PS, seeks to protect, conserve and where possible enhance the scenic quality and distinctive character of the AONB and its associated environmental and heritage values, whilst accommodating the necessary development needs of local communities and visitors to the area, in a sustainable manner. Development proposals will only be permitted if there is no adverse individual or cumulative impact on the exceptional landscape quality of the area.
- 3.19 Assessment of issues raised under CS5 are mostly covered under GP1. In relation to CS5 criterion (b), the proposed dwelling would rely entirely on new landscaping for any form of integration and, if permitted, would further erode the character of the AONB.
- 3.20 The proposed development does not accord with the local development plan which seeks to cluster, consolidate and group new development with existing established buildings. The appeal proposal fails to comply with the PS, specifically Policy CS1, GP1(f), CS5 and HOU13.

3.21 Draft conditions have been provided on a without prejudice basis:

- Time Limits;
- Ridge height, finished floor levels and angle of roof pitch;
- Landscaping scheme.

4.0 APPELLANT'S CASE

- 4.1 The Appellant's applied for an infill dwelling based on precedents and Commission decisions which were outlined in their submission to the Council. Cognisant of the new Local Development Plan (LDP), and that once adopted, the proposal would be refused as ancillary buildings would no longer be considered under the LDP, it is important to note that the planning application was submitted under PPS 21, the exception under Policy CTY 8 and previous precedents which allowed for approval in line with that.
- 4.2 The Council refused planning permission on 14th October 2022 based on PPS 21. The Appellant was allowed four months to lodge the appeal and it was submitted on 19th December 2022. The statement of case of 1st August 2023 was based on policy contained within PPS 21. On 18th August 2023 the rebuttal was provided. The Commission did not carry out its assessment and instead wrote out to indicate that the appeal will be considered under the adopted Local Development Plan which was introduced on 16th October 2023. This process began with the planning application and continued with the appeal, the submission of the statement of case and rebuttals and took up time, expense and caused stress. The Commission's decision should be based upon PPS 21, Policy CTY8 under the original reasons for refusal as issued by the Council. The policy is silent as to such a situation. Respectfully the Commission is requested to determine the appeal on the information forwarded to it, including the Appellant's statement of case and rebuttal.
- 4.3 Judgements held by the judiciary referring to the application of policies are outlined below and there is latitude for the Commission to approve this application. A letter from a Member of the Legislative Assembly of Northern Ireland (MLA) has outlined concerns with the chronology of events which have caused distress and raises concerns about fairness. The MLA says that it does seem inappropriate that the Appellant could be "*denied an appeal on policy prevailing at the point of application, particularly given the suggestion of related delay*". The Commission does not have to abide by Council policies. As, referred to in several judicial decisions, policy is not law.
- 4.4 For the above stated reasons, the appeal should be assessed under PPS21 as the application was assessed and refused under that policy document. The LDP process was poorly notified. The public and many new applicants are unaware of the changes, the timetable for adoption and they were not notified of the eventual adoption of the LDP. The Planning Act referring to the adoption of the LDP refers to the Council, as does the Strategic Planning Policy Statement (SPPS) under the transitional arrangements. Both are silent with regards to the role of the Commission. The SPPS does state at paragraph 5.62 that "*planning appeals are an important part to the fairness of the planning system. The Planning Appeals*

Commission is a tribunal non-departmental public body, sponsored by the OFMDFM, which deals with a wide range of land use planning issues and related matters". Paragraph 5.63 of the SPPS refers to the statutory requirement of submitting an appeal within four months. Therefore, the Appellant believes that the appeal should be based upon the refusal under Policy CTY 8. Respectfully, the Commission has jurisdiction to assess the appeal under regional policy.

- 4.5 The Appellant's case will deal with the Council's refusal reasons 2 and 3. If the Council's reasons for refusal are not sustained, it follows that the proposal will be acceptable under Policy CTY 1 and the first reason for refusal will fall away. It is noted that the Council quote the SPPS in refusal reasons 1 and 2 but fail to recognise paragraphs 3.8 and 5.62 of the SPPS, pages 12 and 34 respectively, and the importance of appeals and fairness.
- 4.6 The Council had previously set a precedent under planning applications LA02/2018/0880/O and LA/02/2019/0441/O, the latter was refused. During appeal 2019/A0138 it was agreed that the grant of planning permission LA/02/2018/0880/O was not approved based on the intention of the policy but by precedent which was set by the Council. Therefore, we should not be treated differently.
- 4.7 The Commission in 2019/A0138 held that "*a precedent has been set and this outweighs the requirements of Policy CTY 8 of PPS 21*". The above referenced cases were then followed by LA02/2020/0251/O which the Council approved based on the precedent.
- 4.8 Unfortunately, even though the above cases were referred to in the planning application, they appear to have not been read by the Council. They were again submitted along with additional information and raised during a meeting with the Council held on 28th September 2022. An MLA attended this meeting.
- 4.9 We also refer to planning appeals "2016/A0146, 2021/A0123, 2021/A0124 [and] 2021/A0244" along with those of "2021/A0123 and 2021/0244". Furthermore, there are other cases wherein ancillary buildings have been considered and accepted by the Council, creating further precedents including LA02/2021/0827 and LA02/2022/0268/F.
- 4.10 The Council also refused to accept the pumphouse within its consideration and refer to it as "*backland*" development. In the case of LA02/2020/0426/F, development cannot be considered "*backland*" if it has frontage to the road. It is our understanding that "*backland*" development means an existing building that has a frontage which extends to the public road and could not have proposed development in front of said existing building. Furthermore, ribbon development can include buildings which are staggered or set back as outlined by Policy CTY 8.
- 4.11 Regarding the Council's position "*in this instance the proposed site is artificially contrived*", it is acknowledged that this was not a gap site. Again, 2019/A0138 indicates that a precedent has been created by the Council which outweighs the policy. There have been at least 3 precedent cases. A gap site is defined as the space between buildings. It implies that a gap can be formed between two buildings which have two different curtilages. This has been previously accepted by the Council in LA02/2021/0246/O wherein they did not object to that application being

“artificially contrived”. The Council do not accept the appeal site as a gap, even though the same Council created a precedent.

- 4.12 The Appellant is not a poultry farmer. Therefore, the intention was always to rationalise the machinery and materials, eventually removing the smaller poultry building as indicated on the drawings which accompanied the planning application. However, more time was needed to fully vacate and demolish the smaller poultry building. The reason for refusal indicates that there is no gap. This was correct at the time of submission of the planning application. The Council was made aware that we could demolish the poultry building, if required, although this offer was not accepted. The demolition is now considered irrelevant as the Council were always minded not to consider the ancillary buildings (hatchery and water pump house) and refuse the application. The poultry building on the appeal site has since been demolished.
- 4.13 The substantial build up is considered to refer to 5 buildings all fronting the Shillanavogy Road. Following the removal of the smaller poultry building there will be a build-up of 4 buildings i.e. the larger poultry building, proposed gap precedent, No. 56 Shillanavogy Road, the hatchery building and then the water pump house. There is a line of 3 or more buildings. The Council appear to be irritated by the reference to the hatchery building as being part of the build-up associated with the grant of planning permission LA02/2021/0193/O. However, this approval relates to a corner site off the private laneway. There is nothing within the policy which states that an ancillary building cannot be used more than once and referenced in two planning applications.
- 4.14 Regarding the Council’s comment *“does not respect the existing development plan”* this is a separate criterion that has not been stated within the Council’s refusal notice. The Commission has been critical of Councils when applying frontages, size and plots as *“merely a mathematical exercise”* i.e. or where the development pattern varies in terms of size, scale, siting and plot sizes as per appeal 2017/A0109. The document ‘Building on Tradition’ was considered prior to the submission of the application.
- 4.15 The demolition of the poultry building is ‘planning gain’, as this building was insufficient for storage and in a dilapidated condition compared to the larger building. The Council are correct that this poultry building is ancillary and within the same curtilage of the dwelling at No. 56 Shillanavogy Road which lead to the approval of the infill under LA02/2021/0193/O. However, the Council now does not consider this as an ancillary building fronting onto the Shillanavogy Road.
- 4.16 The pump house is the 4th building within the substantial built-up frontage. To consider this building as being too small and practically invisible to passing traffic is subjective. The pump house is not temporary. It is a permanent structure, with blockwork walls, foundations, concrete floor and corrugated roof. It is still in use, when required and is used for storage. Policy CTY 8 does not stipulate the distance a building must be from the road frontage to be part of the substantial build up. Policy recognises that buildings can be set back.
- 4.17 Policy CTY 8 does not stipulate a minimum size, so any building can be part of the substantial build up irrespective of their nature, form, material, length of time in

existence - see appeals 2016/A0146 and 2021/A0124. Similar sized buildings have been approved by the Council – see planning permissions LA02/2021/0827 and LA02/2021/0208/O and the case officer report associated with the latter.

- 4.18 A note on the planning application file indicates that the Council acknowledged that if the exception under Policy CTY 8 was acceptable then the secondary reasons for refusal under Policies CTY 13 and CTY 14 would fail also.
- 4.19 With regards to Policy CTY 13, during the meeting, reference was made by the Appellant to planning permission LA02/2020/0426/F. This permission is still to be implemented. Policies CTY 13 and CTY 14 were not raised as issues during the processing of that application due to the existing mature boundary to the north, west and east of that application site. The appeal site has the additional benefit of the larger retained poultry building to the south, forming a substantial boundary/integration for this proposal, which is on lower ground level than the approval. The approval will also form a “backset” when implemented.
- 4.20 It may be that this application also complies with the LDP policies, e.g. HOU13. It is believed it complies with CS1, GP1 – *there is no demonstrable harm to interests of acknowledged importance*. Given their similarities, as the proposal complies with PPS21, CTY13 and CTY14 it is considered that it complies with policy criteria as outlined in GP1 a), GP1 e) and GP1 f). This is a proposal for a single infill within a substantial built up frontage. It includes the remaining large agricultural building (which is a substantial ancillary building and not a small agricultural building), and the dwelling at No. 56 together with its substantial hatchery building. This building has received planning approval for conversion. The appeal site is the gap site between the substantial agricultural building and No. 56 including its substantial hatchery. The appeal site has defined boundaries and a backdrop which comprises of rising topography and the approved 2 storey farm dwelling. Furthermore, there is no objections from any of the statutory consultees including DFI Roads.
- 4.21 It is clear from the examples highlighted that planning permission has been granted nearby that obviously exceed the ridge height that has been suggested by the Council in this appeal. The principle of consistency is central to the argument in favour of the proposed ridge-height. Full account must be taken of previous planning permissions and if the Council is not minded to accept the ridge height, clear and adequate reasons for reaching this decision would be expected. A two-storey dwelling is preferable, but we are willing to accept a single storey or ridge restriction together with siting conditions.
- 4.22 As the proposal is located within the AONB, it is recognised that it must comply with the design criteria for the AONB, but the principle for this type of proposal, specifically in this area, has been previously approved by the Council without issue.
- 4.23 The Council says that no weight can be attached to extant planning approvals, only existing buildings. The Council accepted planning application LA02/2020/0421/F. The dwelling was set further back on higher ground. The only existing landscaping was to the rear of the site and all remaining landscaping was new. The benefit of this proposal is that it is on lower ground level and adjacent to the retained larger poultry building, with rising topography to the rear. The appeal site benefits from the same existing background for integration, and new landscaping, as that approved by

LA02/2020/0421/F. In addition, the proposal includes the retention of an 8m high existing hedgerow to the south-west boundary along the road frontage.

- 4.24 The Council has been inconsistent when applying planning policy and precedents. Case law has also been provided which should be considered by the Commission and the refusal reasons should not be sustained.
- 4.25 In *Butterworth v Secretary of State for Communities and Local Government & Anor* [2015] WEHV 108 (Admin) the Judge in his introductory remarks stated, “*consistency in decision making is a well-established principle in planning which has been supported by many court decisions*”. The basis of the legal challenge in this case was that there was a failure to deal lawfully with two previous appeal decisions on proposals for other buildings nearby. The Appellant would contend that “*this ground comprised of two alternatives: the planning official failed to have proper regard to the two previous planning decisions and the importance of consistency in decision making or the planning [officer] has not properly explained the reasons for [their] decision*”. In line with the above decision and on foot of the representations made by the Appellant, it was clear that planning permission was granted at nearby sites to the appeal site where the ridge height obviously exceeds that of what is proposed. The principle of consistency is central to our argument.
- 4.26 In *North Wiltshire District v Secretary of State for Environment and Clover* [1993] 65 p.& C.R137 (at p.145) further amplifies this principle of consistency as shown in the following dicta in that case: “*it was not disputed in argument that a previous planning decision is capable of being a material consideration. The proposition is in my judgement indisputable. One important reason why previous decisions are capable of being material is that like cases should be decided in a like manner so that there is consistency in the planning process. Consistency is self-evidently important to both developers and development control authorities. But it is also important for the purpose of securing public confidence in the operation of the development control system. An inspector must always exercise his own judgement. He is therefore free upon consideration to disagree with the judgement of another but before doing so he ought to have regard to the importance of consistency and give his reasons for departure from the previous decision*”.
- 4.27 Judge Treacy stated in [2014] NIQB 3 [48] “*of course, the Planning Service need not ‘slavishly’ follow the policy...the policy itself, and much case law on this and similar issues, acknowledges that no policy can take into account the myriad considerations that may arise in individual fact scenarios that arise in the broad policy area. No planning policy can anticipate the personal, environmental, logistical etc. circumstances of all the individual planning applications made under the policy that need to be considered*”. However, Treacy J recognised that policy cannot be ignored, referring to the Gransden case, which simply means that if ignoring policy, the reasons must be stated. It also indicates “*the Minister has a right to depart from that policy*” and also states “*it would be an improper attempt to curtail the discretion which is provided by the Act, which indicates that in determine planning applications regard is not only to be had to the provisions of the development plan so far as material, but also to any other material considerations*”.
- 4.28 These statements have been reiterated by recent judicial decisions by McCloskey J and Scofield J, that decisions are a “*juggling act*” or a “*balancing act*”.

5.0 CONSIDERATION

Claim for Costs

- 5.1 A claim for costs was made by the Appellant against the Council. The merits of this claim are the subject of a separate recommendation to the Commission.

Reasoning

- 5.2 The main issues in this appeal are whether the proposal would be acceptable in principle in the countryside and whether it would visually integrate into the Area of Outstanding Natural Beauty (AONB).
- 5.3 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, 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.
- 5.4 Mid and East Antrim Borough Council adopted the Mid and East Antrim Borough Council Local Development Plan 2030 – Plan Strategy (PS) on 16th October 2023. In line with the transitional arrangements, as set out in the Schedule to the Planning (Local Development Plan) Regulations (Northern Ireland) 2015 (as amended), the Local Development Plan (LDP) now becomes a combination of the Department Development Plan (DDP), in this case the Ballymena Area Plan 1986 – 2001, and the PS read together. Any conflict between a policy contained in the DDP and those of the PS must be resolved in favour of the PS.
- 5.5 Paragraph 1.9 of the Strategic Planning Policy Statement 2015 (SPPS) makes it clear that as the Council has now adopted its PS, the previously retained regional policies, such as the Planning Policy Statements, now cease to have effect within the Council Borough. In compliance with paragraph 1.11 of the SPPS, operational policies set out in Part 2 of the Plan Strategy are now in effect.
- 5.6 Despite the fairness arguments advanced by the Appellant, pursuant to the statutory provisions outlined above, the previous regional policies, including those contained within Planning Policy Statement 21 ‘Sustainable Development in the Countryside’ (PPS 21) have now been superseded in this Council area. Therefore, it now falls to the Commission to assess the appeal proposal in the context of the LDP, in accordance with the legislative provisions, in light of the amended reasons for refusal.
- 5.7 In the DDP, the appeal site is in the open countryside, within the Antrim Coast and Glens AONB. The DDP policies which are relevant to the control of residential development and the AONB had been superseded by regional policy and for the reasons given above no longer apply. The proposal falls to be considered against the provisions of the most up to date operational policy for the countryside which is contained in the PS.
- 5.8 Policy CS 1 of the PS is titled ‘Sustainable Development in the Countryside’. It advises that opportunities for development in the countryside are permitted in certain

cases. One of these is *“the development of a small gap site within an otherwise substantial and continuously built up frontage in accordance with Policy HOU 13”*.

- 5.9 Policy HOU 13 ‘Ribbon/Infill Development’ states that *“planning permission will be refused for a building which creates or adds to a ribbon of development in the countryside. 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 with General Policy and accords with other provisions of the LDP”*. For the purposes of the policy, the definition of 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”*.
- 5.10 Whilst Policy HOU 13 and the reason for refusal refers to *“common frontage”*, the policy justification and amplification asserts that *“a building has a frontage to a road, footpath or private lane if the plot on which it stands abuts or shares a boundary with that road, footpath or private lane”*. The amplification clarifies that *“an access does not constitute a road frontage”* and goes on to state that *“the ‘substantial buildings’, being relied upon to create a substantial and built up frontage, should not be within a designated settlement limit, each should have their own defined curtilage and cannot include ancillary domestic sheds, outbuildings or garages or small agricultural buildings”*. The term ‘visually linked’ refers to *“a perception of a continuous line of development”*.
- 5.11 The Appellant contends that there are four buildings which constitute a substantial and continuously built up frontage, the large agricultural shed, the dwelling at No. 56 Shillanavogy Road, the building within that dwelling’s curtilage and the pump house within the field to the north of No. 56. Whilst the Appellant asserts that the outbuilding has been granted approval for conversion, there was no supporting evidence provided regarding this claim. In any event, this building does not have its own defined curtilage and, therefore, is not a qualifying building for the purposes of the policy. The Council did not dispute that No. 56 and the large agricultural building contribute to the substantial and built up frontage.
- 5.12 The small water pump house, found in the southwestern corner of the field north of No. 56 Shillanavogy Road, is now redundant following the installation of mains water. The Appellant’s plans show that the building is now used for *“agricultural storage”*. As a small agricultural building, is it not a qualifying building for the purposes of Policy HOU 13.
- 5.13 Given my on-site observations, I accept the Appellant’s confirmation that the dwelling approved under planning permission LA02/2020/0426/F has not been constructed. Therefore, as this building has no presence it cannot be a qualifying building or indeed be visually linked to the appeal proposal.
- 5.14 Accordingly, there are only two substantial buildings, No. 56 to the north and the large (non-ancillary) agricultural building to the south of the appeal site. Whilst both buildings have frontage to the road and the gap would be capable of accommodating

- one dwelling, there is no substantial and continuously built-up frontage at this location in line with the requirements of Policy HOU 13.
- 5.15 The Appellant has advanced a planning gain argument. Nevertheless, I am not persuaded that any potential betterment would outweigh the policy objection to the appeal development. Thus, the Council's second reason for refusal is sustained.
- 5.16 As the proposal offends Policy HOU 13, it follows that the appeal proposal is not one which satisfies the requirements of Policy CS 1. Consequently, the Council's first reason for refusal is sustained.
- 5.17 Policy GP1 of the PS is titled 'General Policy for all Development' and reflects the provisions of paragraph 3.8 of the SPPS. It states that "*planning permission will be granted for sustainable development where the proposal accords with the LDP and there is no demonstratable harm to interests of acknowledged importance. Where this is not the case there will be a presumption to refuse planning permission*". All development proposals outside settlement limits and within the countryside will also be required to demonstrate compliance with criterion (f).
- 5.18 Criterion (f) of Policy GP1 states that "*development proposals in the countryside should not have a significant adverse effect on landscape character, the rural character of the locality or environmental quality. The siting and design of proposals should overall be appropriate for the site, respect the rural character, distinctiveness and the pattern of settlement in the area*". There are several subsidiary criteria listed requiring that a proposal for a building and/or ancillary works should (i) be integrated into the surrounding landscape using established boundaries such as trees and hedges, without the need to primarily rely on new landscaping or significant earthworks and (vi) it should not result in a suburban style build-up of development.
- 5.19 Policy CS5 'Antrim Coast and Glens Area of Outstanding Natural Beauty' advises that development proposals within the AONB will only be permitted if there is no adverse individual or cumulative impact on its exceptional landscape quality, distinctive character, heritage and wildlife, which would prejudice its overall integrity. Furthermore, it advises that "*all new development proposals within the AONB must meet the General Policy, accord with other provisions of the LDP and meet all of the following additional criteria*", as listed under Policy CS5.
- 5.20 The Council's third reason for refusal is silent with respect to what criteria of Policy CS5 the proposal offends. However, within its evidence at appeal, the Council advises that the assessment of issues raised under Policy CS5 are mostly covered by its consideration of Policy GP1 and that, in relation to Policy CS5, criterion (b) is engaged. It is argued that the proposal would rely entirely on new landscaping for integration, and if permitted, would further erode the character of the AONB.
- 5.21 Whilst the Council refers to the site being closed off from the Shillanavogy Road by a 2m high fence, at the time of my site visit the front of the site, and the adjoining plot containing the agricultural building to the south, was undefined. The northern and southern boundaries of the appeal site were also undefined. I could walk, uninterrupted, from the agricultural building in the south, through to the curtilage of No. 56 Shillanavogy Road to the north, including onto those lands previously granted planning permission under LA02/2020/0426/F.

- 5.22 Policy GP1 criterion (f) (i) and Policy CS5 criterion (b) both require the integration of new development and ancillary works, including buildings and accesses, into the surrounding landscape. Whilst there is a lack of extant boundary treatments to the east, north and south, this is largely due to the nature of the former use of the appeal site and the surrounding use of the large agricultural building to its south. Furthermore, the nature of the roadside boundary treatment of No. 56 Shillanavogy Road, which is open with pillars interposed at equal spacing along it and connected, in parts, with a chain, means there is no existing roadside vegetation associated with any of the plots on either side of the appeal site.
- 5.23 Nevertheless, a proposed dwelling at this location could utilise an existing access and laneway. It would also require the removal of waste materials associated with the demolition of the building within the appeal site. Given the juxtaposition, style, and current use of the buildings in the vicinity of the appeal site, combined with conditions which could control the height, scale, massing, and siting, if a dwelling were to be approved, I am not persuaded that there would be suburban style build up of development as a result of the proposal. Therefore, the proposal satisfies criterion (f)(vi) of Policy GP1.
- 5.24 Turning to criterion (f)(i), the plots on either side of the appeal site do not have defined boundary treatments. Their road frontages are free from vegetation and largely open to the public road. Therefore, it is acknowledged that the site, as proposed, could not integrate into the surrounding landscape through the use of established boundaries including trees and hedges. It is considered that through the careful siting of a dwelling within the appeal site to ensure it is grouped with the buildings in its environs, together with the application of appropriate materials, finishes and minimal boundary treatments would mean that it would not be out of keeping with the character of the locality despite its proximity to Slemish Mountain. However, it is for the Council to substantiate its position and concerns regarding how the proposal would offend the character of the AONB. Whilst technically criterion (f)(i) is not met, given my consideration above, in this case, it is not fatal. Taking all of the above into account, I find that Policy CS5 in the particulars of this case, is not offended. Therefore, for these reasons I find that the Council's third reason for refusal is not sustained.
- 5.25 Appeals 2016/A0146, 2017/A0109, 2019/A0138, 2021/A0123, 2021/A0124, 2021/A0244, 2022/A0012 and 2021/A0233, which were referred to in the evidence, together with the planning applications cited by the Appellant, have not been appended in full. Therefore, contextually I cannot compare their circumstances to those of the appeal proposal before me. It is acknowledged that Treacy J in [2014] NIQB 3 advised that planners need not slavishly follow planning policy. However, the evidence in the round does not persuade me that policies CS1 and HOU 13 as contained within the PS, should be outweighed in this case.
- 5.26 In conclusion, for the reasons given above, the proposal is contrary to Policies HOU 13 and CS1 of the Mid and East Antrim Borough Council Local Development Plan 2030 – Plan Strategy. The Council's first and second reasons for refusal are sustained and are determining in the appeal.

6.0 RECOMMENDATION

6.1 I recommend to the Commission that the appeal be dismissed.

6.2 This recommendation relates to the following drawing: -

Drawing No.	Title	Scale	Date
01	Site Location Plan	1:2500	Dated stamped by the Council on 5 th August 2022

Planning Authority: - Statement of Case & Rebuttal Comments on behalf of Mid and East Antrim Borough Council; and Comments on the adoption of the Plan Strategy.

Appellant: - Statement of Case & Rebuttal Comments, McNeill Architectural Consultancy; and Comments from McNeill Architectural Consultancy and others, on the adoption of the Plan Strategy.

