

## **Minutes of Meeting of Planning Committee of Mid Ulster District Council held on Monday 2 March 2015 in Magherafelt District Council Offices**

### **Members Present**

In the Chair, Councillor Kearney (Chair)

Councillors Bateson, Bell, Clarke, Cuthbertson, Gildernew, Glasgow, McEldowney, McPeake, Mallaghan (7.07 pm), Mullen, T Quinn (7.11 pm), Reid, Robinson and J Shiels

### **Officers in Attendance**

Mr Tohill, Chief Executive (7.26 pm)  
Mr Melvin Bowman, Senior Planning Officer  
Ms Sinead McEvoy, Principle Planning Officer  
Ms Maeve McKearney, Senior Planning Officer  
Mrs Grogan, Committee Services/Senior Admin Officer (D&STBC)

The meeting commenced at 7.04 pm.

### **P16/15 Apologies**

Councillor Derek McKinney.

### **P17/15 Declarations of Interest**

The Chair reminded members of their responsibility with regard to declarations of interest.

### **Matters for Decision**

#### **P18/15 Receive and Confirm Minutes of the Planning Committee Meeting held on Monday 2 February 2015**

Proposed by Councillor Bateson  
Seconded by Councillor Gildernew and

**Resolved** That the minutes of the meeting of the Planning Committee held on Monday 2 February 2015, (P9/15 – P15/15) were considered and signed as accurate and correct.

Councillor J Shiels sought clarification from the Chief Executive on the second last sentence on page 4 of the minute. The Chair advised that this will be given later in the meeting.

#### **P19/15 Planning Enforcement Case Work**

Ms Maeve McKearney presented a paper on Planning Enforcement Casework and discussed with members planning enforcement matters.

She advised that the majority of proposals to develop land require permission, with the exception of Permitted Development. She added that enforcement exists to protect the integrity of the planning system and if unauthorised development is not addressed credibility and integrity of the planning system can be undermined.

Ms Sinead McEvoy went through 4 cases studies with members, present as noted:

- 1) Unauthorised fence to the rear of dwelling
- 2) Breach of condition, non-compliance with condition 6 of Planning approval M/2005/0186/F regarding access and visibility splays
- 3) Unauthorised erection of agricultural shed
- 4) Unauthorised use of the land for the storage of plastic pipes, associated materials and equipment

Councillor Cuthbertson enquired about restriction on working hours for engineering firms and shops.

Ms McEvoy stated that the Planning Service work in unison with Environmental Health colleagues and other Government Agencies to try and regulate the site.

Councillor McPeake enquired about the size of dwellings in the countryside and how changes can be made to the design without planning permission being sought.

Councillor Clarke agreed with Councillor McPeake and felt that on numerous occasions dormer windows appear on new buildings when they are not included in the plans. He felt that it would be essential that a system should be in place where no slippage can occur as this would set a precedent and level playing field needed to be adhered to.

Ms McEvoy advised that Planning Service does react to complaints raised through the public, Building Control and Environmental Health. The possibility of working closer with these departments will be looked at.

*Councillor Mallaghan left the meeting at 7.24 pm and returned at 7.46 pm*

*Chief Executive entered the meeting at 7.26 pm.*

## **P20/15      Scheme of Delegation**

Ms Sinead McEvoy presented a paper detailing the amended Scheme of Delegation for planning applications and a revised Scheme of Delegation for planning consents, certificates, tree preservation orders and the enforcement of planning control for Mid-Ulster Council from 1 April 2015.

The Officer stated that the paper was being provided following discussion with Members at previous Planning Committee meetings on Monday 12 January and Monday 2 February 2015.

At the meeting on 12 January 2015 a Scheme of Delegation was provided in relation to planning applications. That Scheme has now been updated to reflect subsequent discussions with Members.

At the Planning Committee meeting on 2 February 2015 it was agreed that a revised Scheme of Delegation under Part 4 Section 7 (4) (B) of the Local Government Act (Northern Ireland) 2014 would be provided to reflect Members' discussions on the enforcement of planning control.

The Scheme of Delegation for planning applications, previously presented to the Planning Committee, has been amended to clarify a number of points on officer delegated authority around local applications, development management.

The Scheme of Delegation for planning consents, certificates, tree preservation orders and the enforcement of planning control has been amended following discussion with Members' on the enforcement of planning control.

Ms Sinead McEvoy recommended that members agree the proposed Schemes of Delegation as outlined in Appendix 1 and Appendix 2 of the previously circulated paper, and referenced as:

### ***Draft Scheme of Delegation of Planning Applications***

*The Scheme of Delegation for planning applications was agreed by Mid Ulster District Council at its meeting of XXX following approval by the Department of the Environment for Northern Ireland on XXX. The approval is in accordance with Section 31 of The Planning Act (NI) 2011. The Scheme of Delegation takes effect from XXX.*

#### ***Part A – Mandatory applications for determination by the Planning Committee:***

*Statutory requirements require that certain types of application must be determined by the planning committee and these cannot therefore be delegated to officers:*

- *Applications which fall within the Major category of development;*
- *An application for planning permission where the application is made by the council or an elected member of the council, and*
- *The application relates to land in which the council has an interest/estate.*

#### ***Part B – Delegated Applications:***

*The appointed person within the Council is the Planning Manager. To determine all local development applications whether for approval or refusal with the exception of:*

- *Applications which are significant departures from the Development Plan or planning policy and which are recommended for approval.*
- *Applications submitted by the Chief Executive, Directors, planning staff, or their close relatives (parents, partners, siblings, and children).*
- *Applications attracting valid planning objection including those from a statutory consultee, where the officer's recommendation is to approve.*
- *Any application referred to the Planning Committee by a Council Member, subject to a valid planning reason being provided by the Member for the deferral.*

- All refusals of planning permission.
- Applications where the Planning Manager considers that the proposal merits consideration by the Committee, for example an application subject to an Enforcement Notice where the recommendation is to refuse permission.
- Applications where a legal agreement is required.

### **Part C – Publicity:**

On adoption of this scheme of delegation the council made a copy

- available on the councils website at [www.midulstercouncil.org](http://www.midulstercouncil.org).

- available at Mid Ulster Council Offices

Magherafelt Office  
50 Ballyronan Road  
Magherafelt  
BT45 6EN

### **Draft Scheme of Delegation of planning consents, certificates, tree preservation orders, enforcement of planning control and other determinations**

The Scheme of Delegation for planning consents, certificates, tree preservation orders, enforcement of planning control and other determinations was agreed by Mid Ulster District Council at its meeting of XXX following approval by the Department of the Environment for Northern Ireland on XXX. The Scheme of Delegation takes effect from XXX and is in accordance with Section 7 (4) (b) of the Local Government Act 2011.

### **The Planning Committee shall be required to consider and determine:**

- the serving of a Tree Preservation Order
- confirmation of a Provisional Tree Preservation Order.

### **Delegated planning consents, certificates, orders and other decisions:**

The Planning Manager is delegated the authority to:

- serve a Provisional Tree Preservation Order;
- determine an application:
- to carry works to a Protected Trees;
- for Hazardous Substance Consent;
- for a Certificate of Lawful Use of Development and for Non Material Changes.

All applications for listed building consent, conservation area consent and advertisement consent are delegated with the exception of the following which require determination by the Planning Committee:

- The application is made by the council or an elected member of the council.
- The application relates to land in which the council has an interest.
- The application is submitted by the Chief Executive, Director, planning staff, or close relatives (parents, partners, siblings, and children)

- *The application has attracted valid planning objection including those from a statutory consultee, where the officer's recommendation is to approve.*
- *The application is recommended for refusal.*
- *Where the Planning Manager considers that the proposal merits consideration by the Committee.*

*The Planning Committee reserves the right to request a report for information purposes on any of these delegated matters.*

### ***Investigation of Breaches of Planning Control and Enforcement Action:***

*The Planning Committee shall be required to consider and determine the serving of an Enforcement Notice, Stop Notice, and Listed Building Enforcement Notice.*

*The Planning Manager is delegated the authority to:*

- *investigate all complaints of a breach of planning control and where appropriate may close a case on the grounds that a breach has not occurred or that it is not expedient or in the public interest to take action;*
- *serve of a Breach of Condition or Submission Notice;*
- *instruct the District Solicitor in the pursuit of legal action provided the Committee is aware of the action and may instruct the Planning Manager to cease or to hold in abeyance any legal proceedings.*

*The Planning Manager may in exceptional circumstances and where there is a risk to human health or safety serve an enforcement notice or stop notice.*

*The Planning Committee reserves the right to request a report for information purposes on any of these delegated matters.*

Proposed by Councillor Bell  
Seconded by Councillor McPeake and

**Resolved** That it be recommended to the Council to approve Appendix 1 and Appendix 2 on the paper for Schemes of Delegation on Planning matters.

### **P21/15 Organisational Structure of Planning Service**

Mr Bowman presented a paper and advised that the purpose of the report was to seek approval for the organisational structure for the delivery of planning services in Mid Ulster from 1 April 2015.

Mr Bowman advised that members are also asked to agree to the authorisation of officers to sign decisions and Orders in accordance with Schemes of Delegation.

Mr Bowman stated that from 1 April Dr Chris Boomer, Area Planning Manager, and his staff will become Mid Ulster Council Employees. It is proposed that the Planning

function remains under the leadership of Dr Boomer and that Planning Services comprise two sections each headed by a Principal Officer:

***(i) Development Management headed by Melvin Bowman***

This section will be responsible for processing planning applications, where appropriate presenting recommendations to Planning Committee and making delegated decisions on the local, non-controversial applications. The Section will also deal with other statutory consents including advertisements, demolition within a conservation area and listed building consents. It will also make determinations on what constitutes lawful development or is a non-material change. It is proposed that the section comprise three teams each with a team leader, senior planning officer, geographically defined to coincide with:

- (a) Dungannon and Clogher Valley
- (b) Cookstown and Torrent
- (c) Magherafelt, Carntogher and Moyola.

The benefit of this approach is that officers will become familiar with their area and Members will know which team to contact with regards to an application in their electoral area. It will also allow for a future decentralisation of Planning Services.

***(ii) Plan, Environment and Enforcement headed by Sinead McEvoy***

This section comprises three centrally based district teams each with a Team Leader, senior planning officer):

- (a) *The Plan Team* is responsible for the preparation of the Local Development Plan and it will undertake most of the evidence gathering and analysis needed to support the Plan Strategy. It will also undertake settlement appraisals to define settlement limits, zonings and policy designations to be contained in the Local Policies Plan. Most of the work of this team will focus on socio economic issues linked to land use needs, together with considering any Equality Impacts of policies in the plan.
- (b) *The Environment Team* will be responsible for overseeing a Strategic Environmental Assessment of the Plan and will also contribute to the identification of environmental designations, relating to natural and built heritage. The team also includes a conservation officer who will advise on matters relating to built heritage and will also undertake work relating to Tree preservation Orders. The environmental specialism of this team also means it will become well equipped to handle strategically important planning applications related to sand and gravel extraction and waste.
- (c) *The Enforcement Team* will be responsible for investigating breaches of planning control arising from complaints received from members of the public. In most instances it is anticipated that most reports may be remedied through submission of a planning application, but in some instances it is necessary to serve an enforcement notice followed by legal action. The Planning Committee will receive reports from this team where the serving of an Enforcement Order is

recommended and will be kept up to date on any investigations or legal proceedings.

Complementing the two Sections is a Business Support Section led by Jean Connelly, Senior Administration Officer. This team will assist in the processing of planning applications, but is also charged with functions including business planning, procurement and financial reporting, customer care including overseeing efficiency in responding to information requests and planning inquiries' including:

- (a) Freedom of Information and Environmental Information Requests;
- (b) Complaints;
- (c) Searches and Property Certificates
- (d) Procurement and Financial Record Keeping

The staff structure was included in appendix one of the report as presented showing the names of all officers and the team to which they are assigned. However, the paper noted that under the Department all planners were generic to their grade meaning they could be assigned to any planning duty. It was not proposed to change this element of their employment contract, and to allow for the running of the service it would be important to allow the Planning Manager flexibility to be able to move staff if gaps arise and equally for the heads of each service to assign work to staff under their line management as needs dictate.

### **Authorisation and signing of decisions**

The report set out the details of those key officers being proposed to be nominated to sign decisions on behalf of Council. It should be noted that signing decisions is not the same as taking the decision. All decisions will be undertaken either by:

- (i) Planning Committee; or
- (ii) Planning Manager under the scheme of delegation.

Where a decision is made under the scheme of delegation it will be the Planning Manager's responsibility to ensure decisions are made in accordance with the policies of the Council and that the right checks and balances are in place. For the Department this meant that all decisions were subject to a recommendation by a group signed by three officers one of which had to be a team Leader or above. The paper proposed that the existing would be maintained, whilst advice was sought in formulating a new system of checks and balances.

At present team leaders and above may sign decisions on behalf of the Department, as follows:

- Planning permissions and refusals
- Notices of intention to enter into planning agreements; ,
- Advertisement consents;
- Hazardous substances;
- Listed building and conservation consents;
- Enforcement related Orders and planning contravention notices;
- Submission and Breach of Condition Notices;

- Tree preservation Orders and consent for works to trees;
- Certificates of Lawful Use;
- Decision to institute prosecutions;
- Applications for registration in the Statutory Charges Register and Land
- Registration Act;
- Authorisation of powers of entry.

It was proposed that the Council operate a similar approach. Planning agreements are made under seal, the signing of which is a matter for wider debate and such were excluded from the report.

Mr Bowman stated that the authorisation of officers should be read in conjunction with the scheme of delegation and all delegated decisions must have a report with three officers signing in agreement, one of which must be authorised to do so.

Mr Bowman recommended that:

- a) Members agree the organisational structure
- b) Dr Chris Boomer be authorised to make planning decisions in accordance with the provisions of the Planning Act (NI) 2011 and Local Government Act 2011 on behalf of the Council in accordance with the schemes of delegation as of 1 April 2015
- c) The following nominated officers are allowed to sign decisions as specified:

Mr Melvin Bowman, Principal Planning Officer  
 Ms Sinead McEvoy, Principal Planning Officer  
 Mr Phelim Marrion, Senior Planning Officer  
 Ms Emma McCullagh, Senior Planning Officer  
 Ms Karen Doyle, Senior Planning Officer  
 Ms Maeve McKearney, Senior Planning Officer  
 Ms Elaine Heagney, Senior Planning Officer  
 Mr Michael McGibbon, Senior Planning Officer

Proposed by Councillor J Shiels  
 Seconded by Councillor McPeake and

**Resolved** That it be recommended to the Council to approve the above recommendations as outlined in the Organisational Structure of Planning Service paper.

## **P22/15 Shared Environmental Services Model**

Mr Bowman advised that the paper was to seek agreement that Mid Ulster would use a Shared Environmental Service and that Dr Chris Boomer be identified as the liaison officer to assist in developing a draft Service Level Agreement.

Mr Bowman advised that The European Directive (92/43/EEC) on Habitats requires any competent authority such as Mid Ulster District Council to carry out a Habitats assessment on any plan or project not directly connected or necessary to the



management of any Natura 2000 Sites but within the potential to have a significant effect upon them either individually or in combination with other plans or projects. The report confirmed that this is transposed in the Habitats Regulations for Northern Ireland. Mid Ulster borders Lough Neagh, for the most part sitting in its water catchment and also contains many other Special Areas of Conservation and Special Protected Areas which make up the Natura 2000 network.

The report confirmed that this meant the Council as the competent authority would need to carry out such assessments in formulating a Development Plan and in determining some planning applications. Planning staff do not have the skills needed to carry out such assessments, as historically such assessments were undertaken by NIEA.

The Regional Transition Operational Board (RTOB) agreed that a shared environment service would provide a suitable model for councils to meet their legal obligations and accordingly, Mid & East Antrim Council has agreed to host the Shared Environmental Service for local government.

The Chief Executive of Mid & East Antrim Council has written asking if Mid Ulster District Council would in principle utilise the service and appoint a liaison officer from planning to work on a draft service level agreement.

Mr Bowman stated that presently it would not be feasible for Mid Ulster to undertake Habitat Regulation Assessments on their own.

Mr Bowman advised that the agreement of Mid Ulster District Council is sought, in principle, to this Shared Service Model in which they are asking us to identify a Liaison Officer from Planning to work on a draft Service Level Agreement which could be presented to the Council in the next number of weeks.

He continued to state that The Shared Environmental Service model had been agreed by RTOB to be a suitable model to support local Councils in meeting their legal obligations relating to their enhanced environmental responsibilities arising from the transfer of planning responsibilities to local government.

### **Overview of the Shared Environmental Service (SES)**

The report provided an overview of the Service, which will be based in County Hall Ballymena and comprise eight specialist staff to provide expert advice and support to Councils. Its primary role would be to carry out Habitats Regulations Assessments on planning applications and during the preparation of Local Development Plans to assess and advise on impacts on European Sites such as Special Areas of Conservation and Special Protection Areas. The report indicated that this function was essential to ensure legal requirements would be fully met and to reduce the risk of challenge to planning decisions, development plans and policies. The full costs for delivery of the existing Service will be transferred to Mid and East Antrim Council from DoE and Department for Finance and Personnel, there being no costs to Councils to utilise the service.

Mr Bowman confirmed that the Head of Service, Susanna Allen, was in place and selection of the remaining staff was close to completion ready to commence delivery on 1 April. Work is ongoing with planners to detail the process of service delivery.

Mr Bowman recommended that the committee agree to Mid Ulster using a shared Environmental Service and that Dr Chris Boomer be identified as the liaison officer to assist Draft a Service Level Agreement.

Proposed by Councillor Bateson  
Seconded by Councillor McPeake and

**Resolved** That it be recommended to the Council to agree the recommendations as outlined in the Shared Environment Service paper.

### **P23/15 Mid Ulster Town Centres and Opportunity Sites**

Ms Sinead McEvoy presented a paper informing members on the nature of the current retail offering within Mid Ulster, the take up of town centre development opportunity sites, rental information and vacancy rates.

She stated that the key issues would be:

- Consideration of Mid Ulster Town Centres and Opportunity Sites in the context of existing Area Plans, Master plans and Town Centre Health Checks
- Consideration of whether there is a requirement to redefine town centre boundaries, retail designations and opportunity sites
- Consideration of the retail hierarchy and whether there is a need to alter the status of existing settlements

*Councillor McPeake left the meeting at 8.18 pm.*

Ms McEvoy recommended that members of the committee give consideration to the recommendations outlined in the paper, as:

- That Cookstown, Dungannon and Magherafelt be reaffirmed as Mid Ulster's three main town centres in the Preferred Options Paper
- That for the Planning Strategy there is no need to redefine the town centre boundaries, retail designations and opportunity sites as these provide an adequate framework up until 2018
- That a retail capacity study be commissioned in Dungannon to establish the capacity of Dungannon to support additional retailing and to update the Magherafelt and Cookstown studies
- The Preferred Options Paper should present Irish Street as a proposed addition to the Dungannon Retail Core and public comment should be invited to suggest where changes be made to town centre boundaries and retail designations or additional town centre opportunities identified
- That an appraisal be carried out to identify whether any settlements should be included in the Preferred Options Paper for reclassification from a village to a town and whether there is a retail offer to warrant the a town centre designation. Candidates could include:

- Fivemiletown

- Moy
  - Moneymore
  - Aughnacloy
  - Draperstown
  - Ballygawley
  - Stewartstown
- That the Oaks Centre be reaffirmed as a District Centre in the Preferred Options Paper and an appraisal be carried out to establish whether a District Centre be defined in southern Cookstown
  - Candidates locations should be appraised to establish whether any existing shopping facilities elsewhere in Cookstown Dungannon and Magherafelt can be identified in the Preferred Options Paper as neighbourhood shopping centres
  - Villages should be appraised to establish whether there is sufficient facilities clustered together to warrant identifying as village centres in the Preferred Options Paper
  - A policy review paper will be brought to the Planning Committee to consider the preferred approach for inclusion in the Preferred Options Paper

Proposed by Councillor Reid

Seconded by Councillor T Quinn and

**Resolved** That it be recommended to the Council to approve the recommendations as outlined in the Mid Ulster Town Centres and Opportunity Sites Paper.

Councillor McEldowney sought clarification from the Chief Executive on 2<sup>nd</sup> last sentence on page 4 of Planning Committee Minutes 2 February 2015.

The Chief Executive advised that it was his understanding that members should be present for the whole discussion before voting on an application can be made.

Councillor Gildernew felt that if a member left and returned within a few moments it should be at the discretion of the Chair whether a member can vote or not.

In response to a query about whether the Chair's decision can be overturned, the Chief Executive stated that the authority of the Chair cannot be challenged.

The Chairman advised that this meeting concludes the shadow Planning Committee period and thanked Senior Officers for their training which was very beneficial.

Councillor Glasgow agreed and advised that the Committee had come a long way from the start.

## **P24/15      DURATION OF MEETING**

The meeting was called for 7.00 pm and ended at 8.30 pm.

Chair \_\_\_\_\_

Date \_\_\_\_\_