

Minutes of Meeting of Planning Committee of Mid Ulster District Council held on Tuesday 3 March 2020 in Council Offices, Ballyronan Road, Magherafelt

Members Present

Councillor Mallaghan, Chair

Councillors Bell, Black, Brown, Clarke, Colvin (7.05 pm), Cuthbertson, Glasgow, Kearney, McFlynn, McKinney, D McPeake, S McPeake, Quinn, Robinson

Officers in Attendance

Dr Boomer, Planning Manager
Mr Bowman, Head of Development Management
Ms Doyle, Senior Planning Officer
Ms McCullagh, Senior Planning Officer
Ms McEvoy, Head of Development Plan
Ms McNally, Council Solicitor
Ms Grogan, Democratic Services Officer

Others in Attendance

Applicant Speakers

LA09/2018/1213/O	Tess Maginess
LA09/2018/1213/O	Sara Tinsley
LA09/2018/1213/O	Mark Wilson
LA09/2018/1213/O	Stephen Houlihan
LA09/2019/0928/F	Gemma Jobling
LA09/2019/1131/F	Ryan Dougan
LA09/2019/0539/O	Chris Cassidy
LA09/2019/1402/O	Chris Cassidy

The meeting commenced at 7 pm.

P026/20 Apologies

Councillor Gildernew.

P027/20 Declarations of Interest

Councillor Cuthbertson declared an interest in Agenda Item 4.2 – LA09/2018/1213/O – Capper Trading Ltd

Councillor Glasgow declared an interest in Agenda Item 5.9 – LA09/2019/1148/O – Thomas David James Harkness.

P028/20 Chair's Business

The Planning Manager updated members on issues from last meeting and referred to the matter of the Ulster Farmers' Union launching a legal challenge against Shared Environmental Services (SES) and their decision to change planning rules for assessing

ammonia for farm applications without any warning or consultation. He advised that SES were withdrawing the guidance as a consequence and that the challenge would therefore be withdrawn. This Council was accessing each application on its own merits taking into account the risks as presented. He stated that in due course DAERA and Environment Agency would have to collate some guidance on a way forward as this was a very delicate situation. He said that concerns around livestock houses etc will cause many problems in the interim and that as a consequence he had set up special group meetings with team leads to go through any issues which may arise regarding the intensive housing of cattle, pigs, hens and sheep and members can be rest assured that all issues would be addressed.

Councillor McKinney referred to the letter sent to the Ulster Farmer's Union and wanted to thank the Planning Manager and the committee for their support as this may elevate the pressure and help with the struggle of these issues.

Councillor Colvin entered the meeting at 7.05 pm.

The Planning Manager referred to item 3 on circulated addendum regarding correspondence received from Planning Appeals Commission setting a date for Hearing in respect of Upperlands application (H/2009/0264/O, H/2009/0270/F and H/2009/0271/LB). He advised that he was disappointed that the Department didn't answer any queries which were previously raised.

Matters for Decision

P029/20 Planning Applications for Determination

The Chair, Councillor Mallaghan referred to the below applications which were on the agenda for determination and sought approval to have the following applications deferred from tonight's meeting schedule for an office meeting/submission of further information/withdrawn –

Agenda Item 4.5 – LA09/2019/0944/F – Infill dwelling and garage between 90 & 92 Iniscarn Road, Desertmartin (retrospective) and new access laneway 130m W from the junction of Iniscarn/Gortahurk Road

Agenda Item 4.7 – LA09/2019/1119/O – Site for dwelling and domestic garage at approx. 50m W of 62 Reclain Road, Dungannon

Agenda Item 4.9 – LA09/2019/1157/F – Part retrospective domestic garage shed with extension of curtilage at 5 Jacksons Drive, Gulladuff

Agenda Item 4.13 – LA09/2019/1540/O – Infill dwelling and garage between 29 and 31 Macknagh Lane, Maghera

Agenda Item 4.14 - LA09/2019/1597/O – 2 Infill Dwellings, between 39 & 47 Cookstown Road, Dungannon

Agenda Item 4.15 – LA09/2019/1649/O – Dwelling and domestic garage at site to the rear of NW of 20 Aghaginduff Road, Dungannon for Mr Dessie Donnelly

Proposed by Councillor Clarke
Seconded by Councillor Bell and

Resolved That the planning applications listed above for deferral be deferred for an office meeting/submission of further information/to consider additional information received.

The Chair drew Members attention to the undernoted planning applications for determination.

LA09/2017/1676/F 1 detached dwelling and garage and 4 semi-detached dwellings with car parking and new access onto Station Road at 32 Station Road, Magherafelt for MCL Ltd

Members considered previously circulated report on planning application LA09/2017/1676/F which had a recommendation for approval.

Proposed by Councillor McKinney
Seconded by Councillor Brown and

Resolved That planning application LA09/2017/1676/F be approved subject to conditions as per the officer's report.

LA09/2018/1213/O Agri Development Hub for processing, research and development facility and agri-business/logistics centre, associated access, parking landscape and environmental enhancement works at lands at Tamnamore, N of the M1 motorway, W of Annaghbeg Road/Junction 14 for Capper Trading Ltd

The Planning Manager drew members attention to item 4.2 of circulated agenda providing copy of letter of support from Arlene Foster MLA in support of the application.

Ms Doyle (SPO) presented previously circulated report on planning application LA09/2018/1213/O which had a recommendation for approval.

The Chair advised the committee that requests to speak on the applications had been received by a few people/agents and invited Ms Maginess to address the committee in the first instance.

Ms Maginess advised that she would be speaking against the application tonight but wanted to say that she wasn't against the ongoing employment element and wanted to wish her neighbour well. She referred to the letter from Minister Arlene Foster and felt that a planning process should be followed by the local authority and an outside influence shouldn't be involved in local matters.

She stated that within the case officer's report it was indicated that part of the proposed site was located within the 1 to 100 year flood plain, but said that this could be resolved by applying conditions to provide permeable surfaces to allow for early warning systems in the event of flooding. She felt that this was inaccurate as the Rivers Agency were not content as it didn't meet their criteria. In referring to correspondence from DfI Roads she

stated that the application did not allow access onto the public highway which also demonstrated a negatively worded statement and lack of detail.

Ms Maginess said that the road and parking area were not stable for use as the existing land was bog and liable to flooding. She said that the report had indicated that conditions would be applied to access the risk of flooding and flood plain but enquired who was going to police this and also the lack of empathy for neighbouring properties due to large lorries and noise pollution. She also stated this would also have a negative effect regarding the pond area.

Ms Maginess raised concern about her personal data being breached in this instance and when she sought expert advice, she was told that she should have been given prior notice as there was no justification for this being used.

The Chair welcomed Ms Tinsley and Mr Wilson to address the committee.

Ms Tinsley advised members that she was going to speak in support of the application and said that she welcomed the positive recommendation for the proposed Agri Development hub which adhered to the scheme of the policy and allowed Capper Trading Ltd to progress into a new and innovative way in the supply of animal feed which was within a close proximity of their address.

Ms Tinsley stated that this was fantastic news for the regional economy as it allowed for the creation of 40 additional jobs and £83k rates revenue for the Council. She said that amendments were made to the proposal to allow for reorganisation and appropriate mitigation purposes so that there was no detrimental effect to the protected and natural heritage environment.

The Planning Manager in reply to a comment regarding the support of the development as it was regionally important, stated that officers do not consider regional importance when making their decision and take each application on its own merit, but welcomed the opportunity for people to speak so clarity can be sought.

He said that Arlene Foster had written the letter of support as an MLA which she was quite entitled to do and not under the credentials as First Minister and felt that this needed to be addressed. He said that he had sat around the table with MPs and MLAs and had Ms Foster written the letter on behalf of a party we would have concerns, but she hadn't done that.

In referring to response from DfI regarding carparking, he said that this was nothing to do with a planning decision and more of a means of securing the policy and a matter of negotiation between the applicant and Roads Service.

The Planning Manager in referring to comments about the flood plain and duck pond, stated that it was his understanding that the buildings had been kept out of the flooding area and if the situation does arise regarding an issue of flooding, conditions are in place to overcome any concerns. He said that based on consultations with the Rivers Agency, they had not raised any concerns regarding flooding dangers to neighbouring properties and policy stated that it allowed for certain infrastructure, the policy was silent on whether this included carparks. Levels were not being raised and no playparks etc in the area. In relation to carparks it should be remembered vehicles can be moved on the basis.

He said that in relation to data protection, he advised that this was outside planning committee remit and if the objector felt that there was a breach, they could write into the Council but was confident that everything was above board and no breach had occurred.

Councillor McKinney enquired if this was a last-minute objection as he wasn't aware of any others.

Ms Doyle advised that there were four letters of objection in total.

The Planning Manager advised that he was aware of concerns people have regarding the impact of this hub having on local properties but wanted to assure the committee that the case officer had evaluated all objections and considered all issues which were raised.

Proposed by Councillor McKinney
Seconded by Councillor Brown and

Resolved That planning application LA09/2018/1213/O be approved subject to conditions as per the officer's report.

LA09/2019/0313/F 5 detached & 12 no. semi-detached dwellings, detached garage, car parking, landscaping, retaining walls and all other associated site works including temporary treatment works, at lands to the NE of 3 Old Omagh Road, Ballygawley for Dr J Gormley

Members considered previously circulated report on planning application LA09/2019/0313/F which had a recommendation for approval.

Proposed by Councillor Clarke
Seconded by Councillor Robinson and

Resolved That planning application LA09/2019/0313/F be approved subject to conditions as per the officer's report.

LA09/2019/0928/F Retention of existing re-sited dwelling (M/2014/0585/F) and retention of associated ancillary works at lands at 67 Glenhoy Road, Ballygawley & approx. 100m SW of 68 Glenhoy Road, Ballygawley for Keith Gladney

Members considered previously circulated report on planning application LA09/2019/0928/F which had a recommendation for approval.

Proposed by Councillor Robinson
Seconded by Councillor McKinney and

Resolved That planning application LA09/2019/0928/F be approved subject to conditions as per the officer's report.

LA09/2019/0944/F Infill dwelling and garage between 90 and 92 Iniscarn Road, Desertmartin (retrospective) and new access laneway 130m W from the junction of Iniscarn/Gortahurk Road for Paul Bradley

Agreed that application be deferred for one month for additional information.

LA09/2019/1110/F Retention of temporary waste storage yard at site 70m W of 39 Cullenramer Road, Greystone, Dungannon for Mr Sean McCaul

The Head of Development Management presented report on planning application LA09/2019/0110/F advising that it was recommended for refusal.

Councillor McKinney left the meeting at 7.33 pm and returned at 7.35 pm.

Councillor Colvin advised that environmental matters were very important and would be happy to accept the Officer's recommendation for refusal.

Proposed by Councillor Colvin
Seconded by Councillor Black and

Resolved That planning application LA09/2019/1110/F be refused.

LA09/2019/1119/O Site for dwelling and domestic garage at approx 50m W of 62 Reclain Road, Dungannon for Ms Margaret Donnelly

Agreed that application be deferred for an office meeting.

LA09/2019/1131/F Demolition of existing boundary wall and erection of new boundary wall to church graveyard at 48 Main Street, Bellaghy, Magherafelt for Ballyscullion Parish Church, Church of Ireland c/o Wesley Davidson

Members considered previously circulated report on planning application LA09/2019/1131/F which had a recommendation for approval.

Proposed by Councillor Brown
Seconded by Councillor Kearney and

Resolved That planning application LA09/2019/1131/F be approved subject to conditions as per the officer's report.

LA09/2019/1157/F Part retrospective domestic storage shed with extension of curtilage at 5 Jacksons Drive, Gulladuff for Paul McGarvey

Agreed that application be deferred for an office meeting.

LA09/2019/1362/O Dwelling and garage at site 25m SE of 90 Moneymore Road, Magherafelt for Ian Henry

Members considered previously circulated report and planning application LA09/2019/1362/O which had a recommendation for approval.

Proposed by Councillor Brown
Seconded by Councillor McKinney and

Resolved That planning application LA09/2019/1362/O be approved subject to conditions as per the officer's report.

LA09/2019/1412/O Site of dwelling and detached garage at 500m SE of 19 Drumimerick Road, Kilrea for Mr M Kelso

Members considered previously circulated report on planning application LA09/2019/1412/O which had a recommendation for approval.

Proposed by Councillor Kearney
Seconded by Councillor Glasgow and

Resolved That planning application LA09/2019/1412/O be approved subject to conditions as per the officer's report.

LA09/2019/1510/F Amendment to condition No. 2 of LA09/2018/1632/F (reduction in 1 No. sight splay from 2.4 x 60m to 2.4m to 33m) at land approx. 29m SE of the junction of Ballydermot and Drumanee Road, Bellaghy for Mid Ulster District Council

All Members declared an interest in application LA09/2019/1510/F.

Members considered previously circulated report on planning application LA09/2019/1510/F which had a recommendation for approval.

Proposed by Councillor McKinney
Seconded by Councillor Robinson and

Resolved That planning application LA09/2019/1510/F be approved subject to conditions as per the officer's report.

LA09/2019/1540/O Infill dwelling and garage between 29 and 31 Macknagh Lane, Maghera for Mr Pdraig McGuigan

Agreed that application be deferred for an office meeting.

LA09/2019/1597/O 2 infill dwellings, between 39 & 47 Cookstown Road, Dungannon for Mr Colm McCann

Agreed that application be deferred for one month for additional information.

LA09/2019/1649/O Dwelling & domestic garage at site to the rear of NW of 20 Aghaginduff Road, Dungannon for Mr Dessie Donnelly

Agreed that application be deferred for an office meeting.

LA09/2019/1658/F New hard surfaced MUGA with multi use goals, fencing boundary, improved lighting and associated site works adjacent to 70 Main Street, Castledawson for Ms Joanne McGurk

Members considered previously circulated report on planning application LA09/2019/1658/F which had a recommendation for approval.

All members declared interest in planning application LA09/2019/1658/F.

Proposed by Councillor McKinney
Seconded by Councillor D McPeake and

Resolved That planning application LA09/2019/1658/F be approved subject to conditions as per the officer's report.

LA09/2017/1717/F Dwelling and garage on a farm at lands 250m E of 107 Dunamore Road, Cookstown for Mr T Loughran

Members considered previously circulated report on planning application LA09/2017/1717/F which had a recommendation for approval.

Proposed by Councillor Clarke
Seconded by Councillor Quinn and

Resolved That planning application LA09/2017/1717/F be approved subject to conditions as per the officer's report.

LA09/2019/0017/O Dwelling and garage, 100m SW of 48 Tirgan Road, Carncose, Moneymore for P O'Neill and C Hall

Members considered previously circulated report on planning application LA09/2019/0017/O which had a recommendation for approval.

Councillor McFlynn declared an interest in planning application LA09/2019/0017/O.

Proposed by Councillor Clarke
Seconded by Councillor Bell and

Resolved That planning application LA09/2019/0017/O be approved subject to conditions as per the officer's report.

LA09/2019/0334/F One year retention of temporary dwelling at 24 Derryveen Crescent, Granville, Dungannon for Mr Ronnie Smyth

Councillor Cuthbertson declared an interest in planning application LA09/2019/0334/F.

Members considered previously circulated report on planning application LA09/2019/0334/F which had a recommendation for approval.

Proposed by Councillor McKinney
Seconded by Councillor Robinson and

Resolved That planning application LA09/2019/0334/F be approved subject to conditions as per the officer's report.

The Chair advised that requests had been made for further extensions for three Deferred Applications on the list tonight and advised that this was a matter for the committee to decide whether they agreed to these requests or not on the following applications:

- Agenda Item 5.4 – LA09/2019/0475/O
- Agenda Item 5.6 – LA09/2019/1045/O
- Agenda Item 5.8 – LA09/2019/1090/F

Planning applications seeking further deferral:

- Agenda Item 5.4 – LA09/2019/0475/O – Phase 1 housing development at lands opposite 2 Lisnamuck Road, Tobermore for Tobermore Concrete

The Council Solicitor advised that if additional information was being proposed to be put forward, then it would be appropriate for the Committee to defer to allow consideration of same. However, it should not be delayed indefinitely or for an inordinate amount of time to allow additional information to be submitted.

The Planning Manager said that on one application information had been requested in writing on four different occasions and when they were put to the committee previously, opportunity was provided for further information to be submitted.

In response to Planning Manager's concern on agenda item 5.4 – LA09/2019/0475/O, the Mr Cassidy (agent) advised that due to adverse weather conditions, it was impossible to get the relevant evidence required and both reports collated.

The Planning Manager advised that it was up to members to use their discretion when making the decision on whether to agree to a further extension or not.

Councillor Brown enquired if the committee accepts the request to further defer these three applications, does this set a precedent which must be followed as it could be seen as giving some agents an advantage over some others.

The Planning Manager said that it was important that the committee shows impartiality amongst all people making requests.

Mr Cassidy (agent) stated that he had one report but was still waiting on one to be completed by an associate on noise and this was proving difficult within the timeframe due to harsh weather conditions.

Councillor Glasgow said that it was important to keep everyone on the same level and proposed deferring the application for 30 days for further information with the Planning Manager's word being taken on board.

The Planning Manager felt that it would be more appropriate having a six-week timeframe rather than a 30 day one if members were in agreement. Councillor Glasgow said that he would be happy to withdraw his original proposal and agree to a six-week timeframe as suggested by the Planning Manager.

Proposed by Councillor Glasgow
Seconded by Councillor Colvin and

Resolved That planning application LA09/2019/0475/O be deferred for six weeks for additional information.

- Agenda Item 5.6 – LA09/2019/1045/O – Dwelling and domestic garage/store at 130m NW of 27 Tirnaskea Road, Pomeroy for Mr Mick Mallon

The Planning Manager advised that deferral was requested for an office meeting.

Proposed by Councillor Glasgow
Seconded by Councillor Clarke and

Resolved That planning application LA09/2019/1045/O be deferred for an office meeting.

- Agenda Item 5.8 – LA09/2019/1090/F – Isolation shed for animals and storage machinery at approx. 165m NW of 81 Kinturk Road, lower Mullan, Cookstown for Mr Eamonn Maynes

The Planning Manager said that when he went through the application, there was nothing in it which warranted a deferral as there were lots of things outstanding which most likely would never be resolved and recommended refusing the application.

The Chair asked members if they would they be happy to defer the application or prefer to keep it on the schedule to hear more details later in the meeting.

Proposed by Councillor McKinney
Seconded by Councillor Brown and

Resolved That planning application LA09/2019/1090/F be kept on tonight's schedule for determination later in the meeting.

LA09/2019/0475/O Phase 1 housing Development at lands opposite 2 Lisnamuck Road, Tobermore for Tobermore Concrete

Agreed that application be deferred for six weeks to consider additional information.

LA09/2019/0539/O Site for dwelling and garage 35m S of 98 Desertmartin Road, Magherafelt for Mr John Tohill

Ms McCullagh (SPO) presented report on planning applications LA09/2019/0539/O advising that it was recommended for refusal.

The Chair advised that a request to speak had been requested and invited Mr Cassidy to address the committee.

Mr Cassidy advised the applicant has a farm holding of 25 acres and DARD had confirmed that it was a full working one established in excess of 6 years, which the case officer previously confirmed raising no concerns re integration or build up. He said that the applicant was an active farmer who put a lot man-hours into his work and this fitted into the CTY10 Policy.

Mr Cassidy advised that the applicant maintained his land in good environmental condition which included cutting of hedges and slurry spreading, with invoices being submitted for the last 6 years for work carried out. The golf course which he owns, and runs is kept in excellent condition and could be considered something which he maintains. He said that the site meets the infill policy as there was a single dwelling constructed and a new house under construction which was approved in 2017, giving frontage onto the road. This application sits in the middle of 3 houses and garage. He concluded by saying that this site meets the criteria for infill purposes in that it had a substantial built up frontage and should be recommended for approval.

Councillor Cuthbertson left the meeting at 8 pm and returned at 8.04 pm.

The Planning Manager said that he wasn't convinced that this was an acceptable farm case, however it was reasonable to consider other policy considerations, in looking at the road, consideration needed to be given as to what was the road frontage and whether there was an infill opportunity, he asked what was the major and minor road.

Councillor Clarke said that this was on the main road from Magherafelt to Desertmartin and the road to the left was the Mullaghboy Hill Road which was a minor road.

Councillor Brown said that he would contest that Mullaghboy Hill Road was a minor road. He referred to the 2nd site in question and said as the application required road frontage on Desertmartin Road but couldn't get any frontage on the bend at Mullaghboy Hill Road, he doesn't see the road frontage being a question.

The Planning Manager said that the frontage was the area between the 2 sites rather than the access point and it was quite clear it does seem to have a bit of frontage onto Desertmartin Road. He said that you could sit down and quite reasonably refuse the application as it did not share the common road frontage.

The Head of Development Management advised that he recently visited the site and the front of the house had no part as the frontage was set back and felt the application was weak and didn't fit into policy.

The Planning Manager said that it may be in members best interest to take the Head of Development Management's advice as it was clear that it did not meet policy and it was important to follow policy.

Councillor Bell said that by looking at the red line on the overhead presentation the boundary was at the house and suggested there was going to be frontage on Roshure Road and Desertmartin Road at some stage. He said that by listening to all comments

tonight and referring to No. 98 and application LA09/2017/1796/F asked how much of a difference would a dwelling being located there have on the rural character. The Planning Manager said that it was up to members to decide.

Councillor McKinney said that by looking at the overhead presentation he had no hesitation agreeing to the officer's recommendation as there was no frontage on Roshure Road and Mullaghboy Hill Road and evident that a clean-up has been done. He enquired how accurate the overhead map was.

The Head of Development Management said that for members clarity it may be worthwhile having a site visit to see the layout for themselves.

The Planning Manager agreed that as there seemed to be a bit of disquiet, it would be better if a visual assessment was made on site.

Proposed by Councillor Bell
Seconded by Councillor Quinn and

Resolved That planning application LA09/2019/0539/O be deferred for a site visit.

LA09/2019/1045/O Dwelling & domestic garage/store at 130m NW of 27 Tirnaskea Road, Pomeroy for Mr Mick Mallon

Agreed that application be deferred for an office meeting.

LA09/2019/1069/F Dwelling and domestic garage on a gap/infill site approx. 100m NW of 88 Washingbay Road, Coalisland for Mr Ciaran Lynch

Members considered previously circulated report on planning application LA09/2019/1069/F which had a recommendation for approval.

Proposed by Councillor Quinn
Seconded by Councillor Colvin and

Resolved That planning application LA09/2019/1069/F be approved subject to conditions as per the officer's report.

LA09/2019/1090/F Isolation shed for animals and storage machinery at approx. 165m NW of 81 Kinturk Road, Lower Mullan, Cookstown for Mr Eamonn Maynes

Ms McCullagh (SPO) presented report on planning application LA09/2019/1090/F advising that it was recommended for refusal.

The Chair advised that a request in speak in support of the application had been received and invited Mr Cassidy to address the committee.

Mr Cassidy stated that this application was a delicate one as he was dealing with the trustees of a will with lands and farm sitting in probate and said that due to the sensitive nature of this, it takes time to gain the agreement of all parties. He advised that one son wished to take over the farm but needed complete agreement from all trustees and

hopefully within the proposed 14 days extended timeframe this may be forthcoming and successfully sorted.

The Planning Manager stated that after hearing a list of refusals being read out by Ms McCullagh (SPO) advised that it was clear that the issue was a probate and issues between family members. He said that members needed to be careful in their consideration and suggested that this application be refused and if the family wished they could reapply at a later date when all was sorted.

The Council Solicitor advised members that a probate was a red herring and not a material consideration for this committee. The onus was on the applicant to submit sufficient information and evidence to support the case they are making for planning application to be granted.

Proposed by Councillor Colvin
Seconded by Councillor Brown and

Resolved That planning application LA09/2019/1090/F be refused.

LA09/2019/1148/O Dwelling and garage 140m SSW of 44 Drumearn Road, Cookstown for Thomas David James Harkness

Councillor Glasgow withdrew to the public gallery.

Ms McCullagh (SPO) presented report on planning applications LA09/2019/1148/O advising that they were recommended for refusal.

Proposed by Councillor Mallaghan
Seconded by Councillor Robinson and

Resolved That planning application LA09/2019/1148/O be refused.

Councillor McKinney said that in his opinion this was another issue relating to the 10-year rule and welcomed the new policy being introduced.

Councillor Glasgow returned to the meeting.

LA09/2019/1245/O Gap site for dwelling and garage at junction of Craigs Road & Killycurragh Road, Orritor, Cookstown for Mr Wesley Carson

Councillor Glasgow declared and interest in the application LA09/2019/1245/O.

Members considered previously circulated report on planning application LA09/2019/1245/O which had a recommendation for approval.

Proposed by Councillor Clarke
Seconded by Councillor McKinney

Resolved That planning application LA09/2019/1245/O be approved subject to conditions as per the officer's report.

LA09/2019/1402/O Site for a dwelling & domestic garage at approx. 50m NE of 45 Moneyneany Road, Draperstown for Mr Michael McWilliams

Ms McCullagh (SPO) presented report on planning applications LA09/2019/1402/O advising that they were recommended for refusal.

The Chair advised that a request to speak had been received and invited Mr Cassidy to address the committee.

Mr Cassidy advised that the applicant was seeking permission to build a dwelling on the farm. The family had farmed on the land for a very long time and were previously involved in pig breeding until the poor health of the owner forced them to stop.

He said that although Mr McShane (the Licensor & applicant) had not an active business ID Number, receipts presented provided evidence that there was ongoing maintenance taking place on the land for the last number of years. He said that evidence was also provided to show documentation that included a Licence Agreement between Mr McWilliams (Licensee) and the applicant dating back to 29 March 2015.

Mr Cassidy stated that there was a copy of the conacre agreement between the two parties covering the period from 29 March 2015 to 28 March 2022 and the terms of the agreement allows for Mr McShane the use of the lands to take one cut of hay/silage per year and have full responsibility for all maintenance including hedgerows.

In concluding Mr Cassidy advised that Mr McShane has proved activity on the farm and asked members consider the application for approval.

Councillor S McPeake said that he had to read the report a few times to see how this application was recommended for refusal. He said that one was approved earlier on something similar and whilst he sat and listened, he did agree there could be a grey area which would be somewhat awkward for the case officer to distinguish relating to issues around single farm payment and business ID no.

He stated that there was evidence of expenditure and on that basis, he felt that this application should be approved and couldn't grasp why it was being recommended for refusal.

Councillor Quinn left the meeting at 8.31 pm and returned at 8.32 pm.

The Planning Manager said that someone can put cattle on their conacre and actively use the land and this is not seen as much different from harvesting and not directly linked to farm payment. He said that there was no evidence that the land was actually used.

Councillor McKinney agreed that this was quite complicated. He said if the landowner leased the land to the Licensor, then it was up to him to keep it in good shape and not the landowner.

In response to the Planning Manager's query, Ms McCullagh (SPO) advised that evidence of expenditure was provided for cutting hedges, slurry spreading and grass topping.

Councillor S McPeake said that evidence of expenditure for grass topping was most likely for the previous year (pre 2013).

The Council Solicitor said that it would be important to consider the relevant planning Policy consideration and that the term “active farming” would be a DAERA test. She referred the Committee to the wording in the CTY10 Policy test and the relevant paragraphs of the Justification & Amplification of CTY10. The Committee needed to assess the information provided on the planning policy test.

Councillor McKinney said that the application doesn’t meet the Policy and if anyone wished to find out who owned the land, they should write to DAERA.

The Planning Manager said that many years ago when Planning NI done a consultation on strategic policy in the countryside, his department wrote back advising that the policy was unclear on active farming etc. He said that the review left everyone in the dark and his team had to work their way through things to find a solution that worked.

He said that with this application he wouldn’t be happy to support it and although the land is kept in good condition, it may be seen as double counting.

Councillor S McPeake advised that from 2015 to 2020 was clear cut but the issue is pre 2015 and enquired if items of expenditure could be taken into consideration up to 2015.

The Planning Manager stated that a definition of a business is a transaction, service or product to somebody and making money from it and this was a business transaction. He said that he couldn’t see any information to suggest that prior to 2015 that it was used as an active farm business and found it strange that no evidence can be provided to show this.

Councillor S McPeake enquired why an invoice can’t be classed as proof.

The Planning Manager stated that this was a two-way thing.

Councillor Clarke advised that there were invoices submitted for a number of years for hedge cutting.

The Planning Manager said that there was evidence to show agricultural activity and that officers try and do their best to adhere to good planning decisions. What the policy states is that the agricultural land must be in activity good environmental condition and it proves that payment was being made to someone to keep the land up to standard, but it doesn’t prove that the business was active and established. There was no DARD farm business ID because it is someone else’s business number and only shown as a transaction farming.

Mr Cassidy said that further evidence wasn’t sought by the Planners and all relevant documentation was sitting on his desk and felt that a deferral of the application would be the best solution.

Councillor S McPeake enquired if an affidavit from a Solicitor would be suffice.

The Planning Manager said that there was a need to be very careful seeking an affidavit from a Solicitor.

Councillor S McPeake said that this was a very grey area which a Solicitor could possibly stand over and provide an affidavit to be taken as read.

The Council Solicitor said that she remembered looking at the example before when previously raised by Councillor S McPeake but remained not overly convinced. She said that the Affidavit(s)/Witness Statement(s) would be better coming from applicant and those with first hand knowledge along with any supporting documentary evidence provided as this would carry more weight. She said that she wouldn't recommend an affidavit as suggested by Councillor S McPeake as a possible solution for this or other cases.

Proposed by Councillor Bell
Seconded by Councillor Clark and

Resolved That planning application LA09/2019/1402/O be deferred for one month for further information.

Matters for Information

P030/20 Minutes of Special Planning Committee held on 30 January 2020

Members noted minutes of Special Planning Committee held on 30 January 2020

P031/20 Minutes of Planning Committee held on 4 February 2020

Members noted minutes of Planning Committee held on 4 February 2020.

Local Government (NI) Act 2014 – Confidential Business

Proposed by Councillor Quinn
Seconded by Councillor Brown and

Resolved In accordance with Section 42, Part 1 of Schedule 6 of the Local Government Act (NI) 2014 that Members of the public be asked to withdraw from the meeting whilst Members consider items P032/20 to P038/20.

Matters for Decision

P032/20 Receive Enforcement Report

Matters for Information

P033/20 Confidential Minutes of Special Planning Committee (Local Development Plan) held on 30 January 2020
P034/20 Confidential Minutes of Planning Committee held on 4 February 2020
P035/20 Receive Report on LDP – Draft Plan Strategy
P036/20 Enforcement Live Case List
P037/20 Enforcement Cases Opened
P038/20 Enforcement Cases Closed

P039/20 Duration of Meeting

The meeting was called for 7 pm and concluded at 9.20 pm

Chair _____

Date _____



Comhairle Ceantair
Lár Uladh
Mid Ulster
District Council

ADDENDUM TO PLANNING COMMITTEE AGENDA

FOR PLANNING COMMITTEE MEETING ON: 3rd Mar 2020

Additional information has been received on the following items since the agenda was issued.

ITEM	INFORMATION RECEIVED	ACTION REQUIRED
3	Correspondence received from Planning Appeals Commission setting date for Hearing in respect of Upperlands applications (H/2009/0264/O, H/209/0270/F & H/2009/0271/LB)	Members to note.
4.2	Letter received Arlene Foster MLA	Members to note.
11	Venue in Clogher not available for LDP exhibition. Therefore, list of exhibition locations updated to include Fivemiletown instead of Clogher.	Members to note.