

**Minutes of Meeting of Planning Committee of Mid Ulster District Council held on Tuesday 1 October 2019 Council Offices, Ballyronan Road, Magherafelt**

**Members Present**

Councillor Mallaghan, Chair

Councillors Bell, Black, Brown, Clarke, Colvin, Cuthbertson, Gildernew, Glasgow, Kearney, McKinney, D McPeake, McFlynn, S McPeake, Quinn, Robinson

**Officers in Attendance**

Mr Tohill, Chief Executive  
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  
Mr Marrion, Senior Planning Officer  
Ms McNally, Council Solicitor  
Mrs Grogan, Democratic Services Officer

**Others in Attendance**

**Applicant Speakers**

LA09/2017/1426/F	Les Ross
LA09/2018/0519/LBC	Jim Maneely Emma Donaghy
LA09/2018/0526/F	Jim Maneely Emma Donaghy
LA09/2018/0826/F	Gemma Jobling
LA09/2019/0183/F	Derek Whyte Robert Cochrane
LA09/2018/1349/F	Joe McNulty Councillor Monteith Eamon Cushnahan
LA09/2017/1384/O	Councillor McAleer

The meeting commenced at 7 pm

The Chair, Councillor Mallaghan welcomed Councillor McFlynn to her first meeting as a member of the Planning Committee.

**P116/19      Apologies**

None.

**P117/19      Declarations of Interest**

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

## **P118/19      Chair's Business**

The Planning Manager provided Members with an update to advise that:

- The Council had received their revised HGI figure for the period 2016-2030 and that a report would be brought to the November Planning Committee and stated that the revised figure was 10,300.
- Notification had been received from HED advising that they have decided not to list the telephone box at Bovean Cottages. This is a telephone box that the Council recently served a BPN on. They have advised the following.

➤ *“HED surveyed and evaluated this kiosk following the serving of the BPN, but it will not be taken forward for listing.*

*This is due to the fact that although the kiosk itself is of a pre-1953 version of the K6 design which was superseded by the modernist K8 in 1968, it is not marked on this site on the 1972 OS map, and as such would appear to have been relocated. Should further information come to light, we would be happy to review this decision.”*

- Planning Department held a meeting with DfI and their appointed consultants to discuss the traffic model work for the Cookstown by-pass. At the meeting DfI indicated that they aim to have draft vesting orders issued by late 2020.
- Members should be aware that DAERA have recently issued a consultation on a Northern Ireland Environment Strategy – and any response to it would need to be cross-departmental.
- On 17 September 2019 a consultation was received from DAERA – Forestry Service on a Forestry Planning Area at East Fermanagh/East Tyrone.

This is the scoping stage intended to enable Council, and other stakeholders, to become involved, in the process of developing a plan for the promotion of afforestation and sustainable forestry in the East Fermanagh/East Tyrone Forestry Planning Area.

The Forestry Service advise that the plan will be focused on the management of Forest Service forests, and it is intended that it will also consider management planning of forests and woodland managed by others. It was noted that the consultation period is extended to the 4 October 2019, and Planning Department intend to submit a response in conjunction with the bio-diversity officer. It is worth noting that MUDC Parks Department have already submitted a response.

- It was noted that dates for Special Planning Committee meetings would be scheduled in late October/November to discuss the Local Development Plan. It is intended to take place on the counter representations on the Council website and those in the 3 Council Offices in the next 2 – 3 weeks.

- Members were advised of the recent performance statistics published by DfI in respect of the statutory targets and note the local applications are meeting the statutory target of 15 weeks, and in fact, just over 12 weeks processing time has been achieved for the first quarter of the financial year. It noted that approval rates in some of the other Councils are now more in line with the rates in Mid Ulster.
- Members were advised that DfI notified Mid Ulster Council on 30 September that they had decided not to disallow the Councils direction to remove permitted development rights in respect of the Shackleton notification. Also, note Council has advised Shackleton of this and it is intended to notify the community representative, following the committee meeting.

### **Matters for Decision**

The Chair advised that there would be a change in order of the agenda tonight and advised that items 6, 7 and 8 would be presented first.

#### **P119/19      Receive report on Consultation from DfC Historic Environment Division regarding Telephone Kiosk at Knockanroe Road, Ardtrea**

The Head of Development Plan presented previously circulated report to provide Members with background and draft response to a consultation by Department for Communities, Historic Environment Division (DfC HED) regarding their consideration to list a Telephone Kiosk within Mid Ulster District Council's District at: 69 Knockanroe Road, Ardtrea, Cookstown

Proposed by Councillor Cuthbertson  
Seconded by Councillor McFlynn and

**Resolved**      That it be recommended to agree that the draft response as set out in appendix 2 be issued to DfC, HED to support the listing of the aforementioned telephone box.

#### **P120/19      Consultation from Northern and Western Regional Assembly on Material Amendments to the Draft Regional Spatial and Economic Strategy for the Northern Western Regional Assembly Area**

The Head of Development Plan presented previously circulated report to provide members with information on a consultation from Northern and Western Regional Assembly (NWRA) on material amendments to the Draft Regional Spatial and Economic Strategy (RSES) for the Northern Western Regional Assembly Area.

Proposed by Councillor Bell  
Seconded by Councillor Clarke and

**Resolved**      That it be recommended to agree that a response be issued to advise that the previous response remains the position of this Council.

**P121/19      Receive Correspondence from the Ulster Farmers Union on Ammonia Emissions**

The Planning Manager presented previously circulated report to inform members that the Farmers Union has written to all Chief Executives expressing concerns over the assessment.

Councillor McKinney raised concern about the changes and stated that the Shared Environmental Services (SES) were not even accountable to the Permanent Secretary and would propose that this Council lead the way bringing all departments together as a collective to include the Ulster Farmer's Union, DAERA and Shared Environmental Services to find a way forward. He said that if a farmer wanted to replace a shed with a new up to date system with fans that this wouldn't be within the law and believed that this whole process hadn't been thought out properly and going to cause major issues reaching a final process as 7.5 km distance was going to be a major concern especially in Tyrone. He stated that Mid Ulster was the lead for Agri-Food production due to meat, chicken and pork factories and there was a need to sustain this by drawing back and seeing what direction to proceed in. He concluded by saying that there was a need to bring all these departments together to accommodate everyone.

Councillor Glasgow seconded Councillor McKinney's proposal.

Councillor Glasgow said that a wise and calm approach was needed as there could be repercussions for everyone if farming goes down. He stated that in 2018 agriculture showed that it was leading the way in Northern Ireland with 84% compared to 50% in Great Britain resulting in higher employment rates but stressed that there was a need to be proactive in our approach as this could bring Mid Ulster to its knees.

Councillor Gildernew agreed with Councillors McKinney and Glasgow and said that this was a very important issue for the district.

Councillor Kearney said that it was important to note that there were no discussions with stakeholders unlike the Republic of Ireland and stated that there was a lot of work to be done yet.

The Planning Manager stated that other Planning Managers could have been persuaded to get involved but that he was more sceptical as Mid Ulster was different. He said what was concerning most was that there was an assumption that the monitoring regime was accurate across all the sites and more debate was needed for people to buy into this and if no partners were involved something was wrong but would try and set up something to bring all stakeholders together to raise concerns.

He said that he would be happy to be guided by the committee, but that we would need to deal with each application on its own merits.

Councillor McKinney felt if the process was successful it wouldn't be long before there would be a request for more funding.

The Planning Manager advised that Mid Ulster received very little subsidy and wouldn't be happy to participate in that request.

Proposed by Councillor McKinney  
Seconded by Councillor Glasgow

**Resolved** That it be recommended that the Planning Manager writes back to the Ulster Farmers Union recognising their concerns but also explaining the obligations which the Council has when assessing applications. Agreed that this Council lead the way in bringing all stakeholders together as a collective to include the Ulster Farmer's Union, DAERA and Shared Environmental Services to find a way forward.

#### **P122/19 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/withdrawn from tonight's meeting schedule for an office meeting or withdrawn for further information –

**Agenda Item 4.1 - LA09/2017/1426/F** - Retention of boundary wall and the alteration of ground levels to provide concrete finish to hard corded yard at 55 Knockanroe Road, Cookstown for Reid Engineering (withdrawn for further information). -

Councillor Cuthbertson referred to Environmental Health consultation response and enquired if this was due to a late response.

The Head of Development Management advised that the application had been withdrawn from the schedule in order to further consider Environmental Health information. He said that both parties had been advised that this was the issue.

**Agenda Item 4.11 – LA09/2019/0408/F** – Dwelling and garage approx 50m SE of 25 Longfield Lane, Desertmartin, for Mr John Higgins

**Agenda Item 4.12 – LA09/2019/0417/O** – Dwelling and garage 180m NW of 18 Lower Grange Road, Cookstown for Mr Lawson Martin

**Agenda Item 4.13 – LA09/2019/0468/F** – 2 Storey side annex extension to provide granny flat; 2 no dormer windows to the existing dwelling and new retaining wall to rear garden at 40 Coolshinney Road, Magherafelt for Claire McWilliams (withdrawn for further information).

**Agenda Item 4.15 – LA09/2019/0539/O** – Site for a dwelling and garage 35m S of 98 Desertmartin Road, Magherafelt for Mr John Tohill

**Agenda Item 4.16 – LA09/2019/0569/O** – Site for farm dwelling and domestic garage 35m ENE of 22 Dirnan Road, Dirnan, Cookstown for Mr Noel Conway

**Agenda Item 4.19 – LA09/2019/0633/O** – Site for dwelling and garage (amended access) at 25m NE of 59 Ferry Road, Coalisland for Mr Patrick McNeice

**Agenda Item 4.20 – LA09/2019/0640/O** – Site for dwelling and garage 40m N of 210 Shore Road, Magherafelt for Mr Conor Doyle

**Agenda Item 4.21 – LA09/2019/0763/O – Dwelling and garage 29m S of 6 Annaghmore Road, Cookstown for Mr Sean Quinn**

**Agenda Item 4.22 – LA09/2019/0767/O – Dwelling and garage approx. 150m NE of 230 Coalisland Road, Gortin, Dungannon for Mr Cathal Keogh**

**Agenda Item 4.26 – LA09/2019/0909/O – Dwelling and domestic garage/store at approx. 50m W of 34 Drumard Road, Magherafelt**

Proposed by Councillor Colvin  
Seconded by Councillor Clarke and

**Resolved** That the planning applications listed above be withdrawn for further information or deferred for an office meeting.

**LA09/2017/1426/F Retention of boundary wall and the alteration of ground levels to provide concrete finish to hard cored yard at 55 Knockanroe Road, Cookstown for Reid Engineering**

Agreed that application be withdrawn earlier in the meeting.

**LA09/2018/0519/LBC Conversion of coach house as existing to provide pre-function room; installation of temporary sectional sanitary and food preparation buildings and erection of garden function marquee with associated internal bar, kitchen, sanitary and carparking facilities, within grounds of former Killyman Rectory, 38 Trewmount Road, Killyman for Paul Quinn and Emma Donaghy**

**LA09/2018/0526/F Conversion of coach house as existing to provide pre-function room; installation of temporary sectional sanitary and food preparation buildings and erection of garden function marquee and associated internal bar, kitchen, sanitary and carparking facilities, within grounds of former Killyman Rectory, 38 Trewmount Road, Killyman for Paul Quinn and Emma Donaghy**

Members considered previously circulated report on planning applications LA09/2018/0519/LBC and LA09/2018/0526/F advising that it was recommended for approval.

*Councillor Cuthbertson declared an interest in planning applications LA09/2018/0519/LBC and LA09/2018/0526/F.*

Councillor Cuthbertson said that he had been approached by members of the public regarding noise complaints at the site and the business being in existence for quite a while and felt that this application should have been put down as a retention.

The Head of Development Management said that his understanding at the time was that everything was done above board and that the marquee was raised and coach house

operational after the application was made. He said that inspections had been carried out robustly to see everything was legitimate.

The Planning Manager advised that no-one was being prejudiced by this application but obviously people would be still objecting, but there was a lot of changes made to this application, particularly to the property to include re-siting of carparking facilities and other issues which originally raised a lot of objections. He said that these issues had now been addressed but there was still an element of objectors who didn't wish to see this facility there anyway.

Proposed by Councillor Gildernew  
Seconded by Councillor Quinn and

To approve the application.

Councillor McKinney felt that this facility was unfitting for the area as there was a place of rest beside it and may look disrespectful if there was a funeral taking place and something taking place across the hedge and proposed to refuse the application.

Seconded by Councillor Glasgow

To refuse the application.

Members voted on Councillor Gildernew's recommendation for approval -

For - 9  
Against - 6

Members voted on Councillor McKinney's proposal recommending for refusal -

For - 6  
Against - 9

**Resolved** That planning applications LA09/2018/0519/LBC and LA09/2018/0526/F be approved subject to conditions as per the officer's report.

**LA09/2018/0826/F New gantry crane and retention of extension to concrete yard at Blackpark Road, Toomebridge for Creagh Concrete Products Ltd**

Mr Marrion (SPO) presented previously circulated report on planning application LA09/2018/0826/F advising that it was recommended for approval. He drew members attention to circulated addendum advising of late correspondence received, no new issues raised.

Proposed by Councillor Brown  
Seconded by Councillor Kearney and

**Resolved** That planning application LA09/2018/0826/F be approved subject to conditions as per the officer's report.

**LA09/2018/1129/F    Extension to forklift gantry and reroofing of production area at 4 Ballygillen Road, Coagh, Cookstown for Thomas Hutchinson & Sons Ltd**

Members considered previously circulated report on planning application LA09/2018/1129/F advising that it was recommended for approval.

Proposed by Councillor Brown  
Seconded by Councillor Bell and

**Resolved**      That planning application LA09/2018/1129/F be approved subject to conditions as per the officer's report.

**LA09/2018/1575/F    Replacement garage/general store at 25 Gulladuff Road, Maghera for M Hutchinson Esq**

Members considered previously circulated report on planning application LA09/2018/1575/F advising that it was recommended for approval.

*Councillor McKinney declared an interest in planning application LA09/2018/1575/F.*

Proposed by Councillor Glasgow  
Seconded by Councillor Kearney and

**Resolved**      That planning application LA09/2018/1575/F be approved subject to conditions as per the officer's report.

**LA09/2018/1598/O    Dwelling and garage 40m NW of 109 Drumenny Road, Ardboe for Anthony Mallon**

Mr Marrion (SPO) presented a report on planning application LA09/2018/1598/O advising that it was recommended for refusal.

Councillor Bell felt that this application should be deferred for 4 weeks to allow time to submit all relevant information.

Proposed by Councillor Bell  
Seconded by Councillor McKinney and

**Resolved**      That planning application LA09/2018/1598/O be deferred for 4 weeks to allow the submission of additional information.

**LA09/2018/1617/F    Additional broiler breeder laying poultry shed including link to existing with 2 No. additional feed bins and associated site works at land approx. 100m NW of 43 Errigal Road, Ballygawley, Dungannon for Mr Clive Allen**

Members considered previously circulated report on planning application LA09/2018/1617/F advising that it was recommended for approval.



Proposed by Councillor McKinney  
Seconded by Councillor Robinson and

**Resolved** That planning application LA09/2018/1617/F be approved subject to conditions as per the officer's report.

**LA09/2018/1636/O Dwelling and garage at and approx. 30m W of 9 Ballymaguigan Road, Magherafelt for William Love**

Members considered previously circulated report on planning application LA09/2018/1636/O advising that it was recommended for approval.

Proposed by Councillor Brown  
Seconded by Councillor Bell and

**Resolved** That planning application LA09/2018/1636/O be approved subject to conditions as per the officer's report.

**LA09/2019/0183/F Retention of cattle shed 30m SE of 112a Innishrush Road, Portglenone for Mr Derek White**

Members considered previously circulated report on planning application LA09/2019/0183/F advising that it was recommended for approval.

Proposed by Councillor McKinney  
Seconded by Councillor Black and

**Resolved** That planning application LA09/2019/0183/F be approved subject to conditions as per the officer's report.

**LA09/2019/0408/F Dwelling and garage approx 50m SE of 25 Longfield Lane, Desertmartin for John Higgins**

Agreed that application be deferred for an office meeting earlier in the meeting.

**LA09/2019/0417/O Dwelling and garage 180m NW of 18 Lower Grange Road, Cookstown for Lawson Martin**

Agreed that application be deferred for an office meeting earlier in the meeting.

**LA09/2019/0468/F 2 storey side annex extension to provide granny flat; 2 no. dormer windows to the existing dwelling and new retaining wall to rear garden at 40 Coolshinny Road, Magherafelt for Claire McWilliams**

Agreed that application be withdrawn earlier in the meeting to consider a late objection.

**LA09/2019/0490/F     Public car park (33 new spaces); new entrance onto the Barrack Street Road and drainage for surface water to be included in the works adjacent to properties 10 and 22 Barrack Street, Coalisland for Mid Ulster District Council**

*All members present declared an interest in planning application LA09/2019/0490/F.*

Members considered previously circulated report on planning application LA09/2019/0490/F advising that it was recommended for approval.

Proposed by Councillor Gildernew  
Seconded by Councillor Bell and

**Resolved**     That planning application LA09/2019/0490/F be approved subject to conditions as per the officer's report.

*Councillor McKinney left the meeting at 7.50 pm.*

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

Agreed that application be deferred for an office meeting earlier in the meeting.

**LA09/2019/0569/O     Site for farm dwelling & domestic garage 35m ENE of 22 Dirnan Road, Dirnan, Cookstown for Mr Noel Conway**

Agreed that application be deferred for an office meeting earlier in the meeting.

**LA09/2019/0606/O     Dwelling and Garage between 76 & 82 Hillhead Road, Toomebridge for Mr J Nugent**

Members considered previously circulated report on planning application LA09/2019/0606/O advising that it was recommended for approval.

Proposed by Councillor D McPeake  
Seconded by Councillor Clarke and

**Resolved**     That planning application LA09/2019/0606/O be approved subject to conditions as per the officer's report.

**LA09/2019/0621/F     Replacement Dwelling 160m SW of 37 Syerla Road, Dungannon for Farasha Properties Ltd**

Members considered previously circulated report on planning application LA09/2019/0621/F advising that it was recommended for approval.

Proposed by Councillor Gildernew  
Seconded by Councillor Clarke and

**Resolved** That planning application LA09/2019/0621/F be approved subject to conditions as per the officer's report.

**LA09/2019/0633/O Site for dwelling and garage (amended access) at 25m NE of 59 Ferry Road, Coalisland for Mr Patrick McNeice**

Agreed that application be deferred for office meeting earlier in the meeting.

**LA09/2019/0640/O Site for dwelling and garage 40m N of 210 Shore Road, Magherafelt for Mr Conor Doyle**

Agreed that application be deferred for office meeting earlier in the meeting.

**LA09/2019/0763/O Dwelling and garage 29m S of 6 Annaghmore Road, Cookstown for Mr Sean Quinn**

Agreed that application be deferred for office meeting earlier in the meeting.

**LA09/2019/0767/O Dwelling and garage approx 150 NE of 230 Coalisland Road, Gortin, Dungannon for Mr Cathal Keogh**

Agreed that application be deferred for office meeting earlier in the meeting.

**LA09/2019/0808/F Demolition of an existing commercial building and redeveloped with 5 residential apartments at Silver Saddle Antiques, 1 West Street, Stewartstown for Mr Don Ryan**

Members considered previously circulated report on planning application LA09/2019/0808/F advising that it was recommended for approval.

Proposed by Councillor Colvin  
Seconded by Councillor Bell and

**Resolved** That planning application LA09/2019/0808/F be approved subject to conditions as per the officer's report.

**LA09/2019/0826/RM Dwelling and domestic garage at Site 170m E of 18 Cavey Road, Ballygawley for Mr James Frizelle**

Members considered previously circulated report on planning application LA09/2019/0826/RM advising that it was recommended for approval.

Proposed by Councillor Robinson  
Seconded by Councillor Gildernew and

**Resolved** That planning application LA09/2019/0826/RM be approved subject to conditions as per the officer's report.

**LA09/2019/0851/F      Retention of store (change of use of an agricultural building) at lands N and to the rear of 46 Oaklea Road, Magherafelt for Oaklea Kitchens Ltd**

Members considered previously circulated report on planning application LA09/2019/0851/F advising that it was recommended for approval.

Proposed by Councillor D McPeake  
Seconded by Councillor McFlynn and

**Resolved**      That planning application LA09/2019/0851/F be approved subject to conditions as per the officer's report.

**LA09/2019/0909/O      Dwelling and domestic garage/store at approx 50m W of 34 Drumard Road, Magherafelt for Anne and Leo McPeake**

Agreed that application be deferred for office meeting earlier in meeting.

**LA09/2019/0914/O      Dwelling S of 96 English Road, Dungannon for Kevin Daly**

Mr Marrion (SPO) presented a report on planning application LA09/2019/0914/O advising that it was recommended for refusal.

*Councillor McKinney returned to the meeting at 7.53 pm.*

Councillor Gildernew proposed that it may be worthwhile holding an office meeting for this application.

The Planning Manager advised that if someone was interested in requesting a meeting then they would need to tell him why and what officers hadn't considered within their report. He stated that everything was open and transparent and any applications which were deferred tonight went through a process.

Councillor Gildernew withdrew his recommendation.

Proposed by Councillor Cuthbertson  
Seconded by Councillor Colvin and

**Resolved**      That planning application LA09/2019/0914/O be refused on grounds stated in the Officer's report.

**LA09/2019/0988/F      Two storey extension to right hand side of dwelling at 15 Fairlea Close, Moneymore for Declan McDonald**

Members considered previously circulated report on planning application LA09/2019/0988/F advising that it was recommended for approval.

Proposed by Councillor Colvin  
Seconded by Councillor McFlynn and

**Resolved** That planning application LA09/2019/0988/F be approved subject to conditions as per the officer's report.

**M/2014/0524/F      Mushroom production, packaging, storage and distribution, storage and distribution complex and associated works at land approx 30m SW of 15 Annaghilla Road, Augher for Mr Peadar McGee**

Mr Marrion (SPO) presented a report on planning application M/2014/0524/F advising that it was recommended for approval.

Councillor Cuthbertson advised that he was one of the Councillors which initially attended the site meeting and now it's back to committee tonight as if it was the first time. He said that it's indicated that DfI Roads had no objections and that the policy hadn't changed but during one discussion the agent advised that there was only one accident on the road, but he was aware of 3 fatalities on that stretch of road. He said that DfI Roads were distancing themselves from making a decision and were putting the responsibility onto Mid Ulster District Council.

He referred to the planned footpath at the other side of the road to ease carparking and said that this would be an extra danger trying to cross this busy road and also a blight on the nice green fields entering Augher village.

Councillor Cuthbertson said that he would be requesting a recorded vote on the proposal tonight as DfI Roads has put this Council in a difficult position and he didn't want his name attached to someone's death or accident on that stretch of busy road.

He said that he wanted to put it on record that he had been approached by two individuals on two separate occasions regarding this application. In the first instance he advised the person to seek speaking rights and a short time after the committee he had been approached by another person who may have had an interest in the site but had no proof, and in this instance, he was threatened and wanted it put on record. He said that he was aware of letters of support from the First Minister Arlene Foster and Michelle O'Neill the Minister for Agriculture at the time regarding the potential for job creation, but those letters did not tell this Council to go out and take action on a protected route. He concluded by saying that he was aware of another person being unable to get permission for an entrance onto the same stretch of road and feels that this shouldn't be the case as everyone should have the same opportunity.

Councillor Robinson agreed that it was bringing employment to the area and that it would be a very welcome bonus, but this was a protected route and would be very difficult for someone trying to get an application approved but now there was a recommendation of approval presented for a mushroom factory. He said that this stretch of road is very dangerous and accidents occur regularly.

He advised that the proposal was to construct 12 mushroom houses, resulting in 24 lorry loads moving out each week and although may be safe enough turning left it would be hazardous turning right towards the Belfast area. He said that on top of the 24 loads per week there would be numerous journeys to draw compost in and out and if workers were not there between 8 am and 9 am, where would they park. He stated that this

application was going to create a lot of problems and would be seconding Councillor Cuthbertson's proposal to refuse the application. He concluded by saying that he would agree with Councillor Cuthbertson's comments regarding the dangers linked to this fast road.

Councillor McKinney referred to Councillor Cuthbertson's comments regarding a recorded vote and felt that this was not a sensible comment as it was not the committee's responsibility for the poor judgement of someone else's driving.

Councillor S McPeake said that there could be challenges ahead regarding this if we do not approve the application. If DfI indicated that they are happy to agree to this and meets their standards, and we don't approve it, we could be challenged on our decision when DfI has signed it off.

The Planning Manager advised that this application had a long story to it and had come a long way over the 5 years, with the committee trying to move this along as much as possible. Previously, there was a very long debate at the committee meeting around agriculture and the difficulties of placing mushroom houses inside the settlement.

He said that the roads around Augher were very bendy and twisty and next to a settlement with the traffic emerging from the village speeding up but there was the ability to see everything in front. He advised that the officers had decided to recommend the application for approval at this stage, the Department of Infrastructure had decided not to call in the application and a pre application hearing had been held allowing DfI Roads opportunity to give their arguments and letting us make the decision. A decision had been made to accept the application in principle subject to a safe access being provided. He said although officers were concerned about road safety and had to admit when standing at the site there was a rush of traffic, but the key issue here was that DfI Roads were now willing to accept the application as being safe. He concluded by saying that after the work done on this it would be unreasonable for the council to refuse it on road safety when it's being endorsed by DfI Roads.

Councillor Clarke said that he had listened to what had been said that there was a similar scenario with the Jungle on the A29 route and as there was a roundabout about 100 yards from the proposed site in Augher, it would be difficult to refuse it as it looks like the Council were interfering.

The Council Solicitor noted that the Planning Manager had made a point about a decision in principle some time ago which could lead to the applicant arguing they had a legitimate expectation of an approval. The Council Solicitor noted that the applicant had provided a number of technical assessments and report(s) that didn't appear to have been challenged. In any event, the Council Solicitor asked that the case officer provide a step by step guide in relation to the protected route criteria for members present Mr Marrion (SPO) took members through the Protected Routes criteria to provide clarification.

Councillor Cuthbertson said that he was disappointed with DfI's response and backing out of making a decision when they had indicated that this stretch of road was a protected route and letting this fall back on the responsibility of Mid Ulster District Council.

Councillor Gildernew advised if there was any issue with road safety then he would be the first to refuse it but that he had taken his advice from Engineers and would be happy to propose the application for approval.

Councillor S McPeake seconded Councillor Gildernew's proposal.

The Planning Manager advised members before voting on this, that there would be no precedence taken from this. He said that the application before members tonight was taking in account policy and merits and just because an exception was being made for the mushroom houses it doesn't mean that it was a precedent. He stated that this application had taken five years to get to this position and that engagement was not taken very lightly and an officer, his first starting point would be the protected route but there were merits to the application.

Councillor Cuthbertson called for a recorded vote on the application.

Those in favour of approving the application:

Councillors: Bell, Clarke, Colvin, Gildernew, Glasgow, Kearney, McFlynn, D McPeake, S McPeake, Mallaghan and Quinn

Those against approving the application:

Councillors: Black, Brown, Cuthbertson and Robinson

**Resolved** That planning application M/2014/0524/F be approved subject to conditions as per the officer's report be approved.

**LA09/2017/1384/O Dwelling on a farm at land approx 110m E OF 208 Carnteel Road, Lisgallon, Dungannon for Augustine McMullan**

*Councillor Colvin left the meeting at 8.20 pm and returned at 8.22 pm*

Mr Marrion (SPO) presented a report on planning application LA09/2017/1384/O advising that it was recommended for refusal.

The Chair advised that a request in speak in favour of the application had been received and invited Councillor McAleer to address the committee.

Councillor McAleer advised that this was a family run farm with two sons previously getting planning permission for two sites in 2009 and 2012. The third son submitted an application for a dwelling on the farm but unfortunately it was refused due to the criteria and he wasn't aware of the urgency within the timeframe.

She said that the father has four sons, 2 active farms, but all in one son's name as a collective approach in the daily running of the farms. In 2004 approval was granted for the father to get a replacement dwelling on the farm which was transferred to one son in 2012, and in hindsight the applicant should have sorted this out previously. The applicant has remained on the footprint of the farm and carries out all the daily chores and takes holidays from his full-time employment to attend to busy times on the farm i.e.

lambling and calving season. He also purchases farm machinery which he has receipts for dating back for a 6-year period.

Councillor McAleer advised that the father has now retired and had been diagnosed with cancer in 2018 and his help on the farm has decreased to nothing with the applicant taking all on the duties and was anticipating expanding the herd size and this proposed site would be very much beneficial.

The Planning Manager asked if there was any evidence that this was transferred to the applicant before 2012.

Councillor McAleer advised that there was transfer from the father to the applicant, but deeds were only put into one son's name as it was easier for the running of the farm.

The Planning Manager advised that these were cases that he was not comfortable with and felt if the Development Plan was adopted this would allow applications like this to move forward.

Councillor McKinney referred to the 10-year deadline and felt that this was more about a technicality and paperwork and felt the process was going down a fine line as it was only 1.5 years out and would be of the mind that this was a special circumstance and move forward on the application.

In response to the Planning Manager, Councillor McAleer said that she could provide evidence that the house was constructed in 2009.

The Planning Manager stated that technically if a dwelling was started on that date, it would have been there anyway but going back to policy it's unfortunate that there was a flaw about proceeding.

Councillor McPeake advised that although the transfer of lands should have been investigated at the time, he enquired about the land registry map and if there could have been an agreement date on it.

The Planning Manager advised that the transfer in 2012 was the starting point.

Councillor Gildernew said that the father had 4 sons with some being able to build a dwelling and another not and felt that this was a bad situation which needed changing. He said if a son or daughter was looking to build a dwelling on farm that this wouldn't fit in with policy CTY10 of PPS21.

Councillor Clarke referred to the transfer being agreed in 2012 but there was no clarification when the process started.

Councillor McKinney enquired if the applicant could apply for the dwelling on his own right on the farm.

The Planning Manager advised if the applicant was an active farmer for 6 years, he could have done that, but within the policy, you cannot subdivide a farm as this would go



against the applicant. He said that the policy states that a farm has to be operational for 6 years, but it was difficult to get over the evidence of existence.

Councillor McAleer said what she was trying to indicate earlier was that the transfer wasn't signed off but that the applicant was very much within the farm holding and only one son's name was on the deed as a collective.

The Planning Manager said that this was where the situation got complex and was unfair as this was much depended on the sequence of the applications and he referred to the Minister's statement which advised clearly that where disposals had taken place.

The Chair said that it was worth noting the 2<sup>nd</sup> issue for refusal and sadly the length of time has lapsed and due to policy, there was very little option other than accept the Officer's recommendation for refusal.

Proposed by Councillor Mallaghan  
Seconded by Councillor Robinson and

**Resolved** That planning application LA09/2017/1384/O be refused on grounds stated in the officer's report.

**LA09/2018/0925/O Dwelling 50m SW of 27 Letteran Road, Moneymore for Desmond Bell**

Members considered previously circulated report on planning application LA09/2018/0925/O advising that it was recommended for approval.

Proposed by Councillor McKinney  
Seconded by Councillor Brown and

**Resolved** That planning application LA09/2018/0925/O be approved subject to conditions as per the officer's report.

**LA09/2018/1258/F Storage building and infilling of lands with inert material at approx 110m NE of Portafill International Ltd, Dungannon Business Park, Killyliss Road, Dungannon for Acrow Formworks N.I.**

Proposed by Councillor Glasgow  
Seconded by Councillor Brown and

**Resolved** That planning application LA09/2018/1258/F be deferred for 1 month to allow submission of further ecology information.

**LA09/2018/1349/F Cattle handling and isolation facilities (cattle shed, force pen, cattle crush, collecting pen and hard-standing area) at lands to the front of and NE of 102 and 104 Ballygawley Road and S of 101 Ballygawley Road, Glenadush for Mr Bernard McAleer**

*Councillor Glasgow left the meeting at 8.38 pm.*

Mr Marrion (SPO) presented a report on planning application LA09/2018/1349/F advising that it was recommended for approval.

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

*Councillor Glasgow returned to the meeting at 8.40 pm.*

Mr McNulty advised the committee that the applicant had purchased the land approximately in 2010 and was refused planning permission for 2 dwellings under file reference M/2010/0554/O and also a site was refused by the previous owner Mr Donovan Ross for his mother-in-law. He said that the land had been let out to a third party for the last 6 years but that there was no evidence of 6-year proof of active farming by the applicant which is a safety belt for anyone in the country which was genuinely interested. He stated that the 6-year rule was crucial for a non-pop up farmer and that Mr McAleer didn't own the land and was actually his son who was the rightful owner as his father was now a retired man in his 60's. He said that Mr McAleer was never an active farmer and only put 3 sheep on the land to portray that he was a farmer to keep himself right as a farm should be full and active which sells on animals and goods and felt that the planners were going against policy agreeing to this application. He stressed to members that this was only a hobby farm with 3 sheep on the land and stated that if this application was approved, that the committee would be making a mockery of the true farming community as this farm was not a true reflection of this.

The Chair advised that a request to speak against the application had been received and invited Councillor Monteith to address the committee.

Councillor Monteith referred to page 5 and 6 of the report which was alluded to earlier, where it states that the applicant does not meet the definition of the framework and does not meet the criteria for 6 years. He said that the policy was not met but can make an exception as was the case for a previous application earlier in the meeting where it was refused because it didn't meet the 6-year rule. He stated that this was only accrued 3 months ago when the farm was being taken and there was a need to take a minimal approach to make an exception on this and it was worrying ground for this Council to go down a minimal approach as this sets a precedent which is doing a disservice to the whole farming community. He urged the committee to support the working farming community and the residents of the area.

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

Mr Cushnahan said that previously stated by the case officer and similarly in the past year, that this land was well maintained and looked after. He said that when members upheld the opinion in the past, Dr Boomer met with the applicant and requested that he make the appropriate changes, and this was achieved. The case officer's report states that there are adequate hedgerows, land drainage and land is in good condition, with fields ploughed, potato drills and reseeded for grass indicating that the land was in good agricultural repair. He said that the applicant had a number of animals and an active farm business ID and asked members to consider the case officer's recommendation for approval.

In response to a query from the Planning Manager, Mr Cushnahan advised that the applicant had leased his land for conacre between 2010 and 2012.

The Planning Manager enquired if Mr McAleer ran the leasing of the conacre and collected the money as a business as it wasn't an active farm at the time.

Mr Cushnahan advised that the applicant was retired and it was his son who leased out the lands.

In response to the Planning Manager's query, Mr Marrion (SPO) advised that the land appeared to be in good conditions and when he visited there was cattle grazing on it.

The Planning Manager said that a common mistake in interpreting the policy is that there is a requirement for a business number with the Department of Agriculture, the applicant to receive the single farm payment for approval to be granted. He stated that there needed to be evidence of a farm business and that there needed to be evidence that the land was being maintained in good agricultural/environmental condition.

The Planning Manager advised that the applicant had submitted an application for a much larger building sited closer to Mr McNulty's house which he was concerned about and investigated a way that it could be downsized and moved further from the dwelling and felt that this was a reasonable way forward.

Councillor Cuthbertson said that previously there was a major objection to the application as it was too close to the dwelling, but conditions have been made to overcome issues and there is evidence of an active farming business ID so would be happy to propose the officer's recommendation of approval.

In response to Councillor McKinney's query about the size of the land, Mr Cushnahan advised that it was 4 acres.

Councillor McKinney advised that 4 acres would not fall into the criteria for claiming the single farm payment and too small for a farm business ID no. He said that 3 sheep or goats would be classed as hobby farming and does not make a person an active farmer and felt that there was clarification needed to see who actually owns the lands, as whoever lets out the land is not a farmer. He said that an active farmer was a person who takes risks, cuts and sells grass, works on the lands and sells crops and felt that it was unjust that a previous application was refused due to paperwork not being up to date when it was clear that there were a number of untruths with this application.

The Planning Manager advised that the policy came into effect in 2010. At that time a single farm payment was given for land let out in conacre and this was presented as evidence in making planning applications. Since then DEARA have changed their grant policy on a single farm payment. However, this change did not change planning policy. The conclusion was that planning policy was made by DfI and Department of Agriculture didn't have the remit to change planning policy as this would be unlawful. This was established in the legal challenge of Omagh Council v Department of Regional Development in relation to PPS14. He said that these were matters for the committee to make a decision on as officers could only give an interpretation.

The Council Solicitor said that members need to exercise caution when considering the application due to the wording within the planning policy and the subsequent justification and amplification. She said that it wasn't clear whether an applicant would be required to have a Business ID over 6 years or whether it could be read that provided there was a Business ID and sufficient evidence of active farming over 6 year period, if that would be sufficient. In relation to the information provided by the applicant, the Committee would have to be content on the balance of probabilities that it was sufficient to establish 6 years of required activity. The Council Solicitor also commented that GAEC was defined under farming activity but that she was unable to see a reference to farming activity in the relevant part of the policy.

Councillor Gildernew stated that things had changed, and Mr McAleer had done everything that he was asked to do and would have no hesitation in supporting Councillor Cuthbertson recommendation for approval.

Councillor McKinney said that he wasn't convinced and was persuaded by Councillor Monteith's comments as this was not an active farm which is the first step of getting a dwelling. He said that if the 6 years and criteria were not met, then he would be voting against the officer recommendation and would propose it for refusal.

Councillor Brown said that he concurred with Councillor McKinney's comments and would also take the point made by the Planning Manager. He said that some man had let out a piece of land in conacre to a lady who was looking after it for 6 years. He said that the ground had been re-drained in 2015 and the case officer's report advised that the lady had paid £400 per year for cattle grazing on it and now a hobby farmer has come along and has taken it over indicating that he was an active farmer which looked to be untrue and would be voting against the proposal.

The Planning Manager said that the sheep weren't the issue here, but as the lands were well maintained and it was farmed for agriculture and evidence of investment, it had met all the required criteria for approval but that it was up to members to decide which way they wish to interpret things.

Councillor S McPeake said that the farm was actually active and well maintained for 6 years and was difficult to decide as within another council area in 2008 there was a case where the solicitor signed off that the farm had been active for years and this provided a lot of ambiguity resulting in the department taking the issue at face value and wonder where this would sit with this council as it was a grey area.

The Planning Manager said if we went down this road, he would be very wary about the whole notion and if anyone attended a planning appeal meeting on wind turbines, they would witness him having heated discussions with them over issues.

Councillor S McPeake said that he knew of other applicants which went down this route and their solicitors wouldn't touch it.

The Council Solicitor said that members should be concentrating on the evidence and information provided in this situation.

Councillor S McPeake said that he could see where the planning officers were coming from and had offered the same advice to people.

Councillor Quinn said that he had listened to both arguments. He said that by looking at it, the applicant comes in for an office meeting with the planners and were advised to implement a,b and c to get their application passed and over the line and asked if this was the case and he also enquired if members were objecting to the definition of the farm or were they objecting to policy.

The Planning Manager advised that people did not come into his office and be told how to get an application over the line, but officers only try to be helpful and advise the applicant. He said that the person who reports back was the senior officer with their view of the best way to proceed but that it was up to the committee to make the decision as officers had only made recommendations on their views. He said that this Council had highlighted to the Department in 2015/16 that the policy was very unclear and problematic and that it would be beneficial to have it reinvestigated again.

Those in favour of Councillor Cuthbertson's recommendation for approval:

For - 10  
Against - 4

Those in favour of Councillor McKinney's recommendation for refusal:

For - 4  
Against - 10

**Resolved** That planning application LA09/2018/0925/O be approved subject to conditions as per the officer's report.

**LA09/2018/1450/F Dwelling and garage between 6 & 6A Carncose Road, Moneymore for Mr Rodney Mitchell**

Ms McCullagh (SPO) presented a report on planning application LA09/2018/1450/F advising that it was recommended for refusal.

*Councillor Quinn left the meeting at 9.26 pm*

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

Mr Ross advised the committee that the site was located approximately 2.5 miles south of Desertmartin in open countryside in a roadside plot between No. 6 and 6A Carncose Road and consists of small agricultural field or paddock. The site sits slightly higher than the road and flat in nature, with post and wire fence defining the roadside boundary and hedgerows and mature trees to define the remaining boundaries. Immediately to the west of the site there is a residential property consisting of a single storey dwelling and garage and immediately to the east there is a small farm complex consisting of a roadside corrugated shed and to the rear of it there is a dwelling and some outbuildings. He said that the road frontage was unobscured due to long linear along the paddock and would be confident that this was classed as an infill as the large group of buildings were impressive. He felt that during discussion it was agreed that this site was well enclosed and completely obscured by the trees, with acceptable frontage and substantial buildings to the rear.

*Councillor Quinn returned to the meeting at 9.29 pm.*

The Planning Manager said that there was a different way of looking at things and by looking at it the road, fields and paddock didn't meet the policy. He noted there was frontage and the road went around the corner and in terms of cluster as described in policy it demonstrated a focal point. He said that in cases like, development has to integrate with the rural character and asked Mr Ross if the applicant would reconsider a re-siting.

Mr Ross agreed to this proposal.

The Council Solicitor stated as the members were content with the principle that the detail re re-siting could be delegated to the Planning Manager.

Proposed by Councillor Mallaghan  
Seconded by Councillor McKinney

**Resolved** That planning application LA09/2018/1450/F to be amended and delegated back to the Planning Manager for decision.

*Councillor Gildernew left the meeting at 9.52 pm.*

*Councillor McKinney left the meeting at 9.52 pm.*

**LA09/2018/1457/O Site for dwelling and garage 40m NW of 7 Glenmaquill Road, Magherafelt for Ms Mary Alice McGurk**

Ms McCullagh (SPO) presented a report on planning application LA09/2018/1457/O advising that it was recommended for approval.

Proposed by Councillor S McPeake  
Seconded by Councillor Robinson and

**Resolved** That planning application LA09/2018/1457/O be approved subject to conditions as per the officer's report.

## **Matters for Information**

### **P123/19 Minutes of Planning Committee held on 3 September 2019**

Members noted minutes of Planning Committee held on 3 September 2019.

### **P124/19 Receive Correspondence from the Chief Planner**

Members noted correspondence from Chief Planner in Department of Infrastructure.

### **P125/19 Receive Information on DfI Northern Ireland Planning Monitoring Framework 2018/19**

Members noted correspondence regarding the DfI Northern Ireland Planning Monitoring Framework 2018/19.

## **Local Government (NI) Act 2014 – Confidential Business**

Proposed by Councillor Quinn

Seconded by Councillor Robinson 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 P126/19 to P129/19.

## **Matters for Information**

P126/19 Confidential Minutes of Planning Committee held on 3 September 2019

P127/19 Enforcement Report

P128/19 Enforcement Cases Opened

P129/19 Enforcement Cases Closed

### **P130/19 Duration of Meeting**

The meeting was called for 7 pm and concluded at 10 pm.

Chair \_\_\_\_\_

Date \_\_\_\_\_