

**Minutes of Meeting of Planning Committee of Mid Ulster District Council held on Tuesday 3 August 2021 in Council Offices, Ballyronan Road, Magherafelt and by virtual means**

**Members Present**

Councillor S McPeake, Chair

Councillors Black\*, Bell, Brown, Clarke, Colvin, Corry, Cuthbertson, Glasgow, Hughes, Mallaghan, McKinney\*, D McPeake, Quinn, Robinson

**Officers in Attendance**

Dr Boomer, Planning Manager  
Ms Donnelly, Council Solicitor  
Mr Marrion, Senior Planning Officer  
Mr McClean, Senior Planning Officer  
Ms McCullagh, Senior Planning Officer  
Ms Grogan, Democratic Services Officer

**Others in Attendance**

LA09/2020/0641/F - Spokesperson for Stop Clunty MX Group  
LA09/2020/1375/F –Francisco & Teresa Martin  
LA09/2020/1375/F –Trevor Hutton  
LA09/2019/0944/F - Damien Murray  
LA09/2019/0944/F - Paul Bradley

Councillor Gildernew\*\*  
Councillor Wilson\*\*

- \* Denotes members and members of the public present in remote attendance
- \*\* Denotes Officers present by remote means
- \*\*\* Denotes others present by remote means

The meeting commenced at 7 pm.

In the absence of the Chair, Councillor Black, the Vice-Chair, Councillor S McPeake took the Chair.

**P100/21 Apologies**

Councillor McFlynn.

**P101/21 Declarations of Interest**

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

Councillor Hughes declared an interest in Agenda Item 4.4 – LA09/2020/0641/F - Retention of Motocross Racetrack comprising earthworks forming jumps and tracks,

portacabin office, parking and access via existing laneway at land approx. 600m NW of 54 Drumearn Road, Cluntyganny, Cookstown for Clunty Cookstown MX Track.

Councillor Clarke declared an interest in Agenda Item 4.4 – LA09/2020/0641/F - Retention of Motocross Racetrack comprising earthworks forming jumps and tracks, portacabin office, parking and access via existing laneway at land approx. 600m NW of 54 Drumearn Road, Cluntyganny, Cookstown for Clunty Cookstown MX Track.

Councillor Bell declared an interest in Agenda Item 4.6 – LA09/2020/1375/F – Dwelling (in substitution for I/2009/0372/F) and retention of existing mobile home for a temporary period of 3 years at 27a Drumconvis Road, Coagh, Cookstown for Mr and Mrs Cotton.

Councillor Hughes declared an interest in Agenda Item 4.6 – LA09/2020/1375/F – Dwelling (in substitution for I/2009/0372/F) and retention of existing mobile home for a temporary period of 3 years at 27a Drumconvis Road, Coagh, Cookstown for Mr and Mrs Cotton.

Councillor Black declared an interest in Agenda Item 5.1 – LA09/2019/0944/O – Infill dwelling and garage between 90 and 92 Iniscarn Road, Desertmartin for Mr Paul Bradley.

## **P102/21      Chair's Business**

The Planning Manager said he wished to bring members attention the fact that there would be two planning committee meetings to deal with a backlog of business. He was proposing to bring the first time items which included approvals and non- contentious matters to meeting on Tuesday 7<sup>th</sup> September and then any deferrals, refusals, speakers etc. being brought to meeting on Tuesday 28<sup>th</sup> September. He said the purpose of this was to make sure that members and officers were not here until midnight trying to get through potentially a huge agenda. If it comes to the point of sitting down and creating the agenda, which may not look to difficult then the meeting on 28<sup>th</sup> could be cancelled but he was not anticipating that to happen. He felt that this was the time to catch up as everything was kept going over Covid and 1½ years over lockdown was a long time.

He said another thing he wished to bring to the committee's agenda was an appeals decision and sometimes there was a need to go to enforcement in the event of the applicant not carrying out what was promised when building so in that event an enforcement notice is served. He stated that there was an old water maintenance building next to the lough at Washingbay area of Coalisland and obviously there has been a long dispute as the gentleman has been doing some industry cutting up metal amongst other things and in front of that there was a dwelling and the occupants felt their immunity was being harmed. He advised that a lot of events have happened over a number of years and at one stage a certificate for lawful development was obtained for the use he was doing, with an appeal decision being sought or a decision he ended up with a condition which meant he could do that use but couldn't store his materials outside or do anything that intensified the use at that property. He said that he took great note on that appeal decision, due to the fact that whilst it was a minor extension it does actually recognise that this gentleman could facilitate his rights under planning policy to extend his business in some shape or form albeit minor. A planning application was received after the appeal decision which put the condition on, but where the planning

appeals commission imposes a condition, planning department do not have to entertain that planning application so that application was still in abeyance for the last 2 to 3 years otherwise could end up on the constant cycle and the planning appeals would be the last place to go.

The Planning Manager stated that his own view would be that planning appeals decision means that consideration be given to that application and although the outcome couldn't be predicted, it does say that there could be a change in circumstance and if this was the case, then further consideration should be given. He advised members that he had asked officers to go and consider that application and bring it back to committee. He also has instructed the solicitor that if the person before the courts asks for the prosecution to be deferred and if the judge was willing, then we would have no objection to it being deferred whilst that application was being considered.

The Chair felt that the Planning Manager had indicated a very sensible approach as members had to learn from all previous decisions, especially when it impacts on applications pending.

The Chair said that he wished to raise one issue and asked for some views from Planning Manager or officers. He advised that everyone was eagerly anticipating the rollout of Project Stratum throughout Mid Ulster and thankfully it started at pace in Maghera/Magherafelt area in recent weeks with a lot of activity regarding cabling along the roads and new poles being erected where they were needed. He stated that members received huge amount of calls about the erection of poles where they were not placed previously and poles appearing up overnight and in many cases residents living nearby at the end of their laneways and impacting on visibility splays and disappointing that there has been no consultation with landowners. He stated that he had 2 or 3 different representations made to him on the matter in recent times and was aware of other Councillors also and felt that there was a need to get a ruling, especially when it was impacting on the householders and also visibility splays. He said that it was his understanding that the requirement for visibility splays were quite rigid and onerous and ordinary landowners would not be permitted to build pillars due to obstruction. He advised that he was made aware of legislation to allow and permit Telecoms to erect poles wherever they wish and felt that it would be useful for members to get a ruling on it and stated that if it hadn't reached a certain area, it certainly would it eventually. He said that everyone wished to work with Telecom providers and was fantastic to see the work being rolled out but felt that clarity was needed on whether this type of work can happen and what impact it could have on landowners in terms of visibility splays and access.

The Planning Manager advised that this situation was very complex as there were a wide range of powers relating to poles with lines on them without needing any planning permission as it was granted by a general permitted development order. He said that the same criteria does not apply to masts and telecom poles can be erected in many instances without permission unless they require another consent. He said as this was someone's land, then this would be moving out of planning law and into the area of land law and whilst poles may be able to be erected and if potentially developing on someone else's land, then consent was needed from that person and this was where it got complex as these things tend to go in the verge, up against someone's land. Land registry showed land ownership up to the road edge and often there would be a hedgerow or fence, but when there was that gap, it was his understanding that there was

a long established case law that if someone gives up a bit of land (erection of fence or hedgerow) basically means that the landowner has given up their land and given control to Roads Service who may cut the verge once or twice a year. The point here was that in terms of planning control, there was not a lot we can do, but in terms of land ownership, then this would result in people having to take their own advice as Planning Officers cannot intervene. In the past people may have moved the pole, but this may not be the case now as everything seems to be off monetary value to do anything and if a planning application was received and was in a visibility splay, like reserved matters for instance, Officers would then investigate if it had prejudiced the visibility splay and only way to investigate would be to visit the site to see if there was an obstruction and this could only be assessed while going out to investigate.

Councillor Quinn said that there were similar complaints in Coalisland regarding Project Stratum and felt that the only way the company could deliver the project financially viable was to erect overhead cables instead of under the ground. He advised that he also had received several complaints from the Torrent area and in fairness to Fibrus they did come out and move the poles to a different location along the road. He said that he wasn't au fait with planning laws but felt that there could be problems regarding the delivery of Project Stratum to the areas especially out in the countryside, but agreed with the Chair that work needed to be done with Fibrus, possibly a weekly or monthly conversation on where these poles were going. In this incidence the poles have been erected where people intended to build a house and a pole set right in the middle of the entrance, but thankfully this was moved to allow access and may be a case of local Councillors meeting with Fibrus to make sure the poles were erected where they were accessible.

The Chair said that if this was the case of blocking an entrance, then it was right and proper that they be moved, but was aware of incidents where poles were not moved and contractors saying that they have legislation to place poles wherever they feel fit.

He asked if it would be possible for Planning Department to get a ruling from Roads Service through an email to steer them as this was a Roads Service issue.

The Planning Manager said that he would be happy to write to Roads Service to ask for their view intake and report back to committee on impact of poles and visibility splays.

Councillor Cuthbertson advised that he was just coming from a site meeting in Dungannon where Openreach and Virgin Media were both working this last three weeks in one housing estate, competing against each other down the same footpath and was a nightmare for residents. He felt that this may not be the correct committee to discuss this matter and maybe better bringing it to the attention of the Environment Committee, but in relation to Dfl placing poles in the wrong place, we have a location in Dungannon where the Public Realm placed a street light column in front of a window opening, although the window was of a derelict building it was hoped that this building may come back to life in Dungannon. He said that Developers had been approached numerous times to get it moved which was difficult due to circumstances relating to liquidation etc. He said that going forward that this should not be permitted to happen.

The Council Solicitor advised that Officers on the ground were continuing to work with Fibrus.

The Planning Manager 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 –

Agenda Item 4.7 - LA09/2020/1524/O - Dwelling and domestic garage, adjacent to SW boundary of 43 Glengomna Road, Draperstown for James Kelly

Agenda Item 4.11 – LA09/2021/0657/O – Dwelling and garage in a gap site at 40m S of 28 Ballynafeagh Road, Stewartstown for Gary Miller

Proposed by Councillor Bell  
Seconded by Councillor Corry and

**Resolved** That the above planning applications be deferred for an office meeting.

### **Matters for Decision**

#### **P103/21 Planning Applications for Determination**

**LA09/2019/0229/F Housing development along with right hand turning lane & associated site works & private treatment plant at S & adjacent to Abbeyvale, Mullinahoe Road, Ardboe, for Farasha Properties Ltd**

Members considered previously circulated report on planning application LA09/2019/0229/F which had a recommendation for approval.

Councillor McKinney advised that when he sees 'private treatment plant' he had concerns as the committee passed something similar in Cookstown which hasn't been a very good success and asked whoever was dealing with this could guarantee that this application wasn't going to end up the same scenario. He said that this wasn't a planning problem anymore and was NIEA issue whenever the treatment plant wasn't working and not fit for purpose. He felt now was the time to tackle this problem as sewage is now a huge problem.

The Planning Manager said that we all knew the issue and the issue related to sewage infrastructure as well as sewage works i.e. pipes from across streets to the treatment works. Water Service were very much adopting the line in a lot of developments that they were not prepared to provide for any more houses unless they are provided the money to upgrade the infrastructure so the Council were left in this very unenviable position of whether refusing any further development on that basis. His view was that the Council can't refuse an application as there was nothing to stop somebody putting in their own works. Planning consult to see if this would be an acceptable standard with both Environmental Health and Water Service and if no issues were raised by them, then this would be approved. He advised that he wouldn't be in a position to provide a guarantee as he wasn't in control of it as this was down to the developer and carrying out the work in accordance with speculations in which he was given along the line. The Council were not a sewage works authority and if work was not carried out accordingly, then this could raise all sorts of issues and problems. He said that the Council had no other option but

to approve these type of developments as it would be absurd to stop development from proceeding.

Councillor Colvin advised that he did comment on this in the past and at the end of the day the people who suffer most was the people buying houses. He said that these people end up in financial difficulties and issues with mortgages amongst other things and felt that this was just kicking the can down the road and leaving it for someone else to deal with and was not the way forward. He said that he would like to see a report being brought with some legal opinions on what the Council's duty of care and obligations were towards the people who were ultimately the citizens of this borough and although it may look ok on paper it was not sufficient, particularly when we know there are live issues at the minute. He felt that the citizens just fall in between the cracks of public authorities and which was unacceptable and should be at the forefront of the committee's minds as well.

The Planning Manager said although he agreed with Councillor Colvin's comments to some extent, this Council was not a sewage water authority and although consultation takes place with the relevant authorities and no planning permission granted without having done so. Rivers and Water Agencies would say that their works are up to capacity, consultation takes place with Environmental Health to see if they felt there were odours and any issue with discharge, then discharge consent was needed with NIEA and any issues close to water courses then this was consulted with NIEA. He advised that this was all planning could do and could not refuse something on the basis of suspicion of what they might do or say. He stated that the Council could not make a decision on fears and if we cannot substantiate that the proposed works wasn't going to work especially when all the rest of the relevant authorities are saying it was ok.

The Chair agreed with the Planning Manager's comments and whilst there was no issue with looking at the stuff in the longer term and reports being brought back, there was thinking of cusp of approval here tonight for committee to query what might happen, but if they are meeting all their statutory obligations, it would be unwise otherwise.

Proposed by Councillor S McPeake  
Seconded by Councillor Mallaghan and

**Resolved** That planning application LA09/2019/0229/F be approved subject to conditions as per the officer's report.

Councillor Glasgow referred to temporary treatment plant and enquired what exactly was the timeframe and if commitment was given.

Mr McClean (SPO) advised that there were two conditions – 8 and 9 within the report:

8. *No dwelling hereby approved shall be occupied until the private sewerage treatment plant has been put in place and is in working order with the appropriate statutory consents.*

*Reason: To ensure a proper means of waste water disposal to serve the development and ensure environmental protection.*

9. *The private sewerage treatment plant shall be managed and maintained in accordance with arrangements to be agreed with the Council in writing prior to occupation of any dwelling hereby approved.*

*Reason: To ensure a proper means of waste water disposal to serve the development and ensure environmental protection.*

He said that the description of the proposal does state that it was a private treatment plant and although it was referred to within the report as a temporary waste water treatment plant, it was because it wasn't a permanent means in terms of connection to main sewage.

The Planning Manager stated that the developer applied for a private treatment plant and this was what planning was allowing for and no condition on it to say that once pipework was available it would connect to pipework.

**LA09/2019/0597/O Mixed use development to include Community Centre and Multi Use Games Area, Fuel Filling Station and Shop, Small Business Units and Residential Development at lands to the rear of 114 Bush Road, Dungannon for Silverford Properties Ltd**

Members considered previously circulated report on planning application LA09/2019/0597/O which had a recommendation for approval.

The Planning Manager commended the Developer on bringing forward this proposal as the original site was considered for a huge development of houses. He said that it was great to see that something was now being put in place to enhance the community in Bush with a range of facilities being made available which in turn would bring employment.

Proposed by Councillor Cuthbertson  
Seconded by Councillor Brown and

**Resolved** That planning application LA09/2019/0597/O be approved subject to conditions as per the officer's report.

**LA09/2020/0459/RM Dwelling and garage at 72m NW of 21 Whitetown Road, Newmills Dungannon for David Weir**

Members considered previously circulated report on planning application LA09/2020/0459/RM which had a recommendation for approval.

Proposed by Councillor Colvin  
Seconded by Councillor Quinn and

**Resolved** That planning application LA09/2020/0459/RM be approved subject to conditions as per the officer's report.

**LA09/2020/0641/F Retention of Motocross Racetrack comprising earthworks forming jumps and tracks, portacabin office, parking and access via existing laneway at land approx. 600m NW of 54 Drumearn Road, Cluntyganny, Cookstown for Clunty Cookstown MX Track**

Mr McClean (SPO) presented a report on planning application LA09/2020/0641/F advising that it was recommended for refusal.

Councillor Hughes declared an interest in planning application LA09/2020/0641/F.

The Chair advised that a request to speak against the application had been received and invited the Spokesperson for Stop Clunty MX Group to address the committee.

The Spokesperson stated that they were speaking on behalf of the 'Stop Clunty MX Track' group, a collective of concerned residents and neighbours who are firmly opposed to the unauthorised development and operation of this track.

Since May 2019, the formerly peaceful and quiet nature of this neighbourhood has been all but destroyed by the intrusive noise, disruption, and detrimental impact caused by the operation of this motocross track – operating, without permission or authorisation to do so.

As regards local residents, Clunty MX Track was forced upon them - no communications were entered into nor consideration given to the detrimental impact this was having on residents.

The Spokesperson said that the group, like the Planners at Council, were not consulted, their opinions were not sought, their comments, livelihoods, peace, quiet, family lives, mental health and wellbeing were not considered for an instant, and they were left to 'like it or lump it' and persevere with an eye and ear sore.

It was stated that the group were all of the firm opinion that Clunty motocross track is an unwanted blot on the landscape. It is not aesthetically pleasing to the eye, not in keeping with the local architecture or landscape of the area. Its unpermitted construction has seen 3 hectares of land stripped of vegetation and replaced with imported soil and gravel – much of which regularly washes into Clunty River as can be seen in submitted objections.

When operational, the noise generated on the course is unbearable, it is intrusive, distracting, and disruptive. Outdoor activities at our homes are impossible due to the constant noise of the bikes. Readings taken by Environment Health were found to have a detrimental impact on nearby properties and prompted their recommendation for planning refusal and a noise abatement order.

Indoors, there is little respite or escape from the noise. It permeates through the walls of our homes and resonates in every room. Televisions must be turned up to drown out the background drone and it still persists. It echoes through children's bedrooms while they are trying to sleep and follows us around every room.



For those of them that work from home, workplaces are marred by the distracting drone of motocross engines.

By way of context, in late May 2019, residents were greeted by a motocross track business that invites users from near and far to attend multiple times per week.

Since then, there have been 87 sessions held at the track. These have run on mornings, afternoons and evenings and have included large-scale Championship events complete with overnight camping, caterers and more than 100 competitors, not to mention spectators.

Even a global pandemic and its associated regulations have failed to stop bikes running on the track, with sessions running from March of this year.

The last Championship event at the track attracted over 150 vehicles to the site and exposed the inadequacies of the infrastructure and the track to accommodate these numbers.

This resulted in vehicles blocking the only entrance and exit to the track, parking over essential access gates to fields and parking in necessary passing areas along the Drumearn Road.

The Spokesperson stated that residents now believe the Planning Committee was now being asked to consider approval for an application that has:

- ignored strict planning legislation at every stage,
- ignored the concerns of those living in the area
- contravened numerous Planning Policy Statements,
- currently been subject to enforcement cases and court proceedings, and
- destroyed the natural beauty and tranquillity of a rural area.

Like the residents, the group feel the opinion of the Planning Committee has not mattered to the applicant:

- it didn't matter when the track was being built,
- it didn't matter when rural lands were being destroyed
- it didn't matter when the track operated on almost 100 occasions over 2 years
- it didn't matter when the incessant noise of motorbikes was making life hell for those living in the area

The group understood that the committee is now to make a decision on how this nuisance of a track is to progress: We would implore you to listen to the local residents and wider community and -

- uphold planning regulations that stop unauthorised development
- not permit the construction of major developments as and where individuals and companies see fit, regardless of the wider impact

Councillor Clarke advised that he had declared an interest in this application as he had been in contact with residents and was aware of the ongoing issues that they have when he visited the scene when activity was going on. He concurred with everything the Spokesperson had told the committee and said that the noise was horrendous and depending on which way the wind was blowing, the noise carried as it was surrounded by four roads, Lough Fea Road, Creevagh Road, Feegarron Road and Drumearn Road which totally enclosed it. It is a quiet area and very well wooded and work which had been done has left it a very open site which was very visible from a lot of locations and because it was so open, the sound definitely travelled long distances. He referred to farm diversification and in his opinion this was not typical or anything to do with farm diversification, as this would be something to add value from the product of the land or manufacturing something that was produced on the land like meat, but this application had nothing to do with farm diversification. He stated that there were two other motocross racetracks not far away in Desertmartin which was only cross-country from this site. He said that he would agree with the case officer and with residents that this was not a project suitable for the location which it is in.

Councillor Hughes wished to double check on making a Declaration of Interest as she was new to the committee. She advised that she hadn't been out to see the site or speaking to residents about it, but she helped to facilitate a meeting between her employer and local residents and was not sure in terms of what her position was regarding declaring an interest. She advised that she declared an interest to keep herself right but sought clarification in terms of voting.

The Planning Manager advised that declaring an interest was quite tricky and obviously if a member had a vested interest in an application like i.e. owning a piece of land, commercial interest, family member or a close friend then this would be crystal clear, but when someone approaches you it becomes a little bit more complicated. He gave an example of when the Tories went into alliance with the Liberal Democrats and the Liberal Democrat was the Business Minister and arguments ensued over Sky, in that instance the Minister said he would oppose the development prior to looking at the case, this he was perceived to have an interest because he had a predefined position. He advised the member that only she knew what her employer had done and whether a commitment was given. Councillor Clarke had indicated that he had visited the site and was already persuaded before he came to committee and therefore was arguing for the residents on that basis, resulting in him losing his vote as he has taken that interest.

The Chair said that there was obviously a strong case here tonight against the proposal with evidence from the residents regarding noise pollution etc. and as there was no representation for the applicant he sought members views.

Councillor Brown said that he knew the application site as it was in his DEA, advised that he hadn't met with the residents or the applicant, but by reading through and looking at it, in his opinion it didn't fit in this part of the countryside as it was totally out of character. The noise issue which would be endured by the residents would be horrendous and it may be alright for this committee to say it needed approved but we are not the ones living beside it day and daily. He said that where the site lies there was a valley resulting in the noise travelling down it and if approved the residents would have to live with this for the rest of their lives and with all things considered would be happy to go with the case officer's recommendation of refusal.

Councillor Mallaghan advised that by looking at the proposal it looked like a very success venture with a surrounding campsite etc. but it was in the wrong location and if the applicant had to come first for an approval, then they would have found out very quickly that it was in the wrong place and would be happy to second Councillor Brown's recommendation of refusal.

Proposed by Councillor Brown  
Seconded by Councillor Mallaghan and

Councillor Wilson advised that he had visited the site at the invitation of the residents and concurred with Councillor Mallaghan's comment regarding it being an ideal event but in the wrong place. He stated that there were additional problems coming in from that general area also as he was led to believe that the track at Desertmartin was now closed therefore increasing additional traffic onto that track. The Saturday in which he visited the site was fairly windy and the noise levels were very high and very loud and would agree with the decision which was being recommended by the case officer here tonight. He advised that there were a number of issues relating to access and where additional traffic was able to go and he would be speaking in support of the residents as well.

Councillor Glasgow referred to the document in the addendum from DfI and assumed that this was their response back that they were not content and recording their objection.

The Planning Manager advised what DfI basically said was that the person would need to do some works and provide lay-bys etc. before any events happened and whether this could be done and the land controlled, there was no evidence to say that we can or cannot, but the point was that this was all beforehand whereas the applicant had ploughed on regardless.

Councillor Glasgow advised that this was his thinking also and referred to the overhead map and enquired if the access was the only proposed access which they were currently using was out onto the Drumearn Road and on that note would be happy to support what was being recommended by the committee tonight.

**Resolved** That planning application LA09/2020/0641/F be refused.

**LA09/2020/1039/O Dwelling and garage adjacent to 16 Woodhouse Road  
Killwoolaghan Ardboe for Martin Teague**

Members considered previously circulated report on planning application LA09/2020/1039/O which had a recommendation for approval.

Proposed by Councillor Colvin  
Seconded by Councillor Quinn and

**Resolved** That planning application LA09/2020/1039/O be approved subject to conditions as per the officer's report.

**LA09/2020/1375/F Dwelling (in substitution for I/2009/0372/F) and retention of existing mobile home for a temporary period of 3 years at 27a Drumconvis Road, Coagh, Cookstown for Mr and Mrs Cotton**

Ms McCullagh (SPO) previously circulated report on planning application LA09/2020/1375/F which had a recommendation for approval.

The Chair drew members' attention to the addendum where representation was circulated on behalf of the objector and listening to presentation tonight it would be important that members have regards to that.

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

Mr Martin stated that in the case officer's report it was stated that the boundary line was defined by a fence along the eastern boundary, this was not the case as this was shown on the maps sent in to planners, this shows a clear gap between the fence line and the boundary line. These applications being put in with the building being built on the boundary line there was no room in between the boundary line and the building. He said that it was in dispute and would be going to Court on who was in ownership of this and advised that a solicitor's letter was sent to this committee from him and his wife to say that where this was going. All LPS plans have been put forward and set forward, LPS letters stating that the land was in their name and has been as part of this property since 1998. It was also stated within the report that the caravan that was cited on the site was there for a number of years, with no planning permission for the caravan as yet. A temporary planning application for a mobile home was made so therefore this was still going against the existing approved, which should not have been approved in the first place. The first approval was put in 2009 also used this strip of land which was not owned by the occupier and over the years that strip of land and wasn't owned by them and the plans having changed. The report also refers to the timeframe of the application being lawfully started and as shown in documents provided, Building Control allowed this to go on for almost five years and after three years they issued a letter to Mr Paine stating that it was an administrative error because of the amalgamation of the Councils in 2013, but this wasn't the case as amalgamation didn't happen until 2014-15, therefore allowing another 14 days and this still went outside this window. Satellite imagery shows the date the Building Control Officer was cited on site stating that he had seen partial foundations that it wasn't there and no partial foundations on that date and several months later when the foundations were created. The foundations are still partially created and open and part of MUDC requirements was that all foundations be completed prior to site visit. Therefore, there has been a number of misleading and errors being made between Building Control and Planning. Also within the report it doesn't give any implementation to the fact for best practice for this being built for his autistic children which were already referred to in several letters and emails to the Council, which has not been referred to at all. He was aware that the land was not owned by the occupier, and it seems that the occupier and the applicant were two different people and has been requested several times to who actually owns the site and has been rectified twice by the Council's own briefings.

The Planning Manager enquired when Mr Martin became aware of when the gentleman was building on his land.

Mr Martin advised that they had always known that they had owned that land and when they bought the property in 2012 a request and a phone call was put into MUDC asking if there was any planning applications for next door. From 2012 they were aware that there were no applications. He said that he first became aware of a planning application on the site when the Cotton's purchased the land and arrived on site.

Ms Martin advised that she witnessed them digging the foundation and whenever she phoned the Council she was told that there were no plans and everything had lapsed because it was outside of building control. She said that she was content knowing that although something was being dug she wasn't concerned due to Building Control not being aware. Ms Martin said that they became aware of the situation when the Cotton's moved in and when they went over to introduce themselves were told that they were building right beside them and were taking their land. They then raised the issue with the Council's Planning and Building Control sections and have subsequently taken their own legal advice as a portion of the development is on their land.

The Planning Manager advised that Building Control does not determine when a start has occurred, it could be used as evidence to submit to Planning, but what Building Control would see as being a start and what Planning would see as a start can be two different things.

Ms McCullagh (SPO) in response to the Planning Manager's query advised that the original planning permission was issued on 12 February 2010 to Mr Paine.

The Planning Manager advised that the planning permission goes with the land rather than with the applicant unless there was a condition to basically say who should occupy it.

The Planning Manager advised members there were two things that had to be taken into consideration, firstly where the Case Officer had said that the planning application was live and if what the objectors were saying was correct, then this could be disputed if permission was granted in 2015 therefore that permission had passed but asked if this would change how we work through material considerations. He said if this had been started and there was no change in policy or material circumstances, then the committee would be pretty much bound to reissue the same decision unless a very clear change in policy or circumstance. In this instance it may be out of time but the planning policy which allows for an infill between buildings still remains so in relation to planning policy, it was quite clear that this was an infill site so the policy context hasn't changed. He stated that ownership was difficult and some the questions he sought was to find out how long the objectors had known about the issue because as a planning authority we do not pass judgement on who owns or doesn't own a bit of land. He said that in this instance from what was submitted that the objectors can lay claim to that bit of land but also know that in law possession can be 9/10 of the law and the planning department cannot resolve that. He said he was curious to know if the objectors had time to lodge a dispute and defend themselves and was confident that they did have time as they had indicated that they were going to represent themselves in a Court of Law or the Land's Tribunal resulting in

Planning Commission not having any bearing on that as this would be between the parties concerned.

The Planning Manager advised that planning permission could still be granted on land not owned by the applicant even when the land owner objects. He felt that objectors were not being prejudiced as they had known about this for long enough to take action and if someone proceeded to build it could be very expensive if they don't own the land.

*Councillor Hughes stated that similar to the previous circumstances she wished to declare an interest in the above application.*

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

Mr Hutton stated what he was going to say initially had changed slightly as the conversation had diverged into the issue of ownership of the disputed portion of land which he wasn't going to discuss as it wasn't a material consideration of planning, however some comments have been made and he had a lot of sympathy for the objectors in terms of where they were coming from in correspondence they had received from Land and Property Services as they received misleading information initially. Comments have been made that Mr Paine had lodged an application for the boundary rectification between these two properties, but in fact it had been Land Registry which had lodged this application in Mr Paine's name. He advised that all Land Registry maps come out with a disclaimer in the left-hand corner stating that this was for location purposes only and not definitive boundaries and any dispute it had to revert back to the deed map that produced the instrument in the first place which dated back to October 1997 and at that time Mr Paine owned both properties. The fence was erected, measured and the map produced to create the two folios or two individual boundaries. He advised that there was a land registry map dated 2009 that indicated the boundary as it was today, the fence line, albeit one small discrepancy of one small portion towards the rear. Another land registry map was produced in 2020 that indicated that the boundary being moved into Mr Paine's current property which was the disputed area. Following correspondence between the objector and Land Registry, it was himself that got Land Registry to look at the original deed map and they lodged on the basis of that an application for boundary rectification in the name of Raymond Paine and stressed that Mr Paine did not lodge this. Land Registry had indicated that they cannot unilaterally change a correction as it goes through an electronic system that moves folio boundaries in conjunction with OSNI maps. He advised the committee that this was the underlying issues relating to the boundary dispute and when the application was lodged, the objectors objected as they felt that they own the land and now basically it will have to go to Court. He said that this was a civil matter and should not be involved in planning and felt that this be moved forward for a decision this evening on the basis of planning policy.

In response to the Planning Manager's query, Mr Hutton advised that the fence line hadn't move from it was first erected prior to initial planning application being lodged in 2009.

The Planning Manager said that his view everyone should enjoy their own home and any disputes goes against that. In relation to the disputed land, it struck him that part of the

upset was the close nature of the building to the boundary and enquired if Mr Hutton would consider moving it away a few metres from the boundary.

Mr Hutton referred to the amended design to date which reduced the windows to a bare minimum which was now a kitchen window looking into a 2 metre high fence and didn't think a 2 metre move would make much of a difference.

The Planning Manager enquired if the dwelling was to be built directly onto the foundation which was laid.

Mr Hutton advised that it would be an amended foundation.

The Planning Manager stated that he noted the revisions which were made as they were requested by the planning department. He asked Mr Hutton to go back and ask his client if the dwelling could be moved back a few metres from the boundary as it would be them living there and would be more beneficial if neighbours got on for the long term future.

The Planning Manager said that it was Mr Hutton's view that a 2 metre distance would make a difference but asked him to go and ask his client whether they would be satisfied to move the dwelling a metre or two and would like to have their answer.

Councillor Bell said that he would be happy to make the proposal to defer this application as this was very helpful advice from the Planning Manager and may help resolve this dispute and may possibly mean a resolution could be brought about for the land disputed also.

The Planning Manager said his reasons for doing this was because it helped protect both parties and may help solve the problem.

Councillor McPeake said that he would be happy to second Councillor Bell's proposal.

Councillor Cuthbertson enquired if the applicant could be penalised on something like this and whether it was a planning issue. If he comes back here and says that he wasn't willing to move the few metres would this change the recommendation from the planners on the application.

The Planning Manager advised that there would be an issue on whether there was enough space between the boundary and the wall to maintain it properly and by giving that bit of separation it would give room to maintain it.

In response to a query from Councillor Cuthbertson, he stated that the case officer had looked at it and it was permitted to build against somebody and none of this was black and white and down to maintenance. This was when a person asked another person if they could go on their land to maintain it, but in this instance where there was a dispute between the parties, all this just escalates and gets worse over time.

The Chair commended the Planning Manager as he always tried to find a favourable solution to these types of issues.

Councillor Mallaghan said that he hoped that there could be some negotiation in this particular context. He sought clarity in regards to the previous application and approvals and asked if he was right in thinking that regardless of what had happened before on the site, that criteria had been met for an infill dwelling.

The Planning Manager advised that a dwelling was acceptable on this site in policy terms and what fits the bill of an infill development.

Mr Martin said that he couldn't commit to something that he hasn't seen yet.

Councillor Glasgow said that by listening and reading through the report and understood what Dr Boomer was trying to achieve here. He advised that he had picked up seven other issues and was always bearing in mind and always trying to solve these problems, but said if he was being very honest, he foresees this application just coming back to committee on numerous occasions. He felt that this was a huge civil matter and was nothing to do with this committee and was content what the case officer had actually done and proposed to accept the officer's recommendation to approve the application.

Councillor Cuthbertson seconded Councillor Glasgow's to approve the recommendation.

Councillor McKinney advised that we were a Planning Committee not a legal committee and this was not the platform for this kind of thing, defer it for an office meeting was fair enough, but felt that there was a lot of time wasted as there was no movement. He said that the application was up for an approval and can't see why this can't be the case, but was aware of private issues and Dr Boomer had tried his best but felt that this was going nowhere. He said that there was a protocol to follow and sought clarification on the reason why he wasn't legally bound to make a proposal, second or vote on an application while joining the meeting remotely.

The Council Solicitor advised that it wasn't recommended at present due to the legislation not being in place to make a vote online and everyone had been asked to attend in person if they could.

Councillor McKinney stated that he couldn't attend the meeting tonight due to isolation reasons and enquired if the legislation had changed.

The Planning Manager advised that the legislation which facilitated the remote meetings expired, but there was new legislation coming on and been through the Assembly and it was his understanding that it was currently waiting on Royal consent.

The Council Solicitor advised that it wasn't the case that a member remoting in virtually couldn't comment, but was just recommended that they didn't exercise their right to vote at present virtually.

The Planning Manager advised members that he felt that his suggestion was sensible as this could save a lot of time and expense for the person wishing to build in the long run.

The Chair said that a lot of time had been given tonight discussing this application and as it was the first time that it had been brought, he felt that it wouldn't be unreasonable to



defer the application for a wider discussion as there were a huge amount of issues and felt it would be prudent to have these thrashed out a bit further.

He advised that there was two proposals being brought forward tonight, one for deferral and one for approval of the application.

Councillor Bell's proposal was put to the vote -

For	7
Against	5

Councillor Bell advised that he had previously declared an interest in the application and withdrew his voting rights.

Councillor Clarke proposed to defer the application to replace Councillor Bell's proposal.

The recommendation to defer the application was put to the vote again –

For	6
Against	5

**Resolved** That planning application LA09/2020/1375/F be deferred.

The Planning Manager reminded everyone in the room that Speaking Rights only existed once so when the planning application comes back to committee, the parties do not have an opportunity to come back to speak.

**LA09/2020/1524/O Dwelling and domestic garage, adjacent to SW boundary of 43 Glengomna Road, Draperstown, for James Kelly**

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

**LA09/2020/1591/F Variation of Condition 3 and Removal of Condition 4 of M/2015/0082/F to accommodate class B4 Storage and Distribution Use and facilitate more flexible operating hours at 199 Killyman Road, Dungannon, for SCL Exhausts Ltd**

Mr McClean (SPO) presented a report on planning application LA09/2020/1591/F advising that it was previously recommended for refusal. However, since the agenda was sent out, additional information has been received from the agent and Environmental Health has had a chance to consider this additional information (on attached e-mail and images on the presentation). He presented the change in recommendation to members, from refusal to approval for their consideration.

In the original planning report to the Planning Committee, the Case Officer recommended that condition 3 of M/2015/0082/F could be amended to include a B4 storage and distribution use, but that Condition 4 could not be removed as it was not demonstrated by the agent that the removal of this condition for the hours of operation would not cause

detrimental impact to nearby residential amenity. The closest resident to this site is 50m away.

The agent has indicated that the building, instead of being used as one unit, will be subdivided into between 30 to 70 self-contained storage units (on attached e-mail and photos). From the time Members received the Agenda until now, Environmental Health have had time to consider this additional information and are of the view that, should the proposal be used for self-contained storage units, that the hours of operation can be amended to 7am to 11pm 7 days a week, as the proposed self-contained units would be of a size, scale and nature that would mean that it is highly unlikely that the development would attract large volumes of people or HGV's, therefore impacts on nearby amenity would not be detrimental between these hours.

The proposal requests the removal of condition 4. The Planning Department contacted the agent to advise that while condition 4 would be removed, that it will be substituted with the revised hours of operation as suggested by Environmental Health. The agent has agreed and accepted this approach and the revised hours of operation. To fully remove the hours of operation would allow unfettered access to this proposed facility 24/7 which, in his view, may cause potential detriment to nearby residential amenity, therefore he advised members that he found these revised hours of operation to be reasonable.

As the original application, M/2015/0082/F, had no reference to self-contained storage units, it may be possible to use the facility as one unit for a class B2, B3 or B4 use, which could pose a potential detrimental impact to nearby residential development if the hours of operation were to be 7am to 11pm 7 days a week.

Mr McClean (SPO) advised Members to consider the following varied conditions to substitute conditions 3 and 4 of M/2015/0082/F;

Condition 3 should be revised to include a Class B4 storage and distribution use, therefore amended to:

The premises shall be used only for Class B2 Light Industry, Class B3 General Industrial Use, or, Class B4 Storage and Distribution of the Schedule to the Planning (Use Classes) Order (NI) 2015.

Reason: To prohibit a change to an unacceptable use within this Use Class.

Condition 4 should be revised to the following;

The development hereby permitted shall not remain open for business prior to 07:00hrs nor after 20:00hrs Monday to Friday, prior to 08:00hrs nor after 14:00hrs on Saturdays nor at any time on a Sunday. Should the premises be subdivided to 30 or more self-contained storage units, then the hours of operation shall be between 07:00hrs and 23:00hrs only, 7 days a week, and no business or other ancillary activities shall occur outside these hours, unless otherwise agreed with Council.

Reason: In order to safeguard the living conditions of residents in adjoining and nearby properties.

Councillor Cuthbertson said that he was aware that no objections had been received from neighbouring properties and in that instance would be happy to support the recommendation to approve.

Proposed by Councillor Cuthbertson  
Seconded by Councillor Glasgow and

**Resolved** That planning application LA09/2020/1591/F be approved.

**LA09/2021/0231/O Off site replacement dwelling and garage at lands immediately adjacent to 19A Kilmascally Road Ardboe for Noelle Wylie**

Members considered previously circulated report on planning application LA09/2021/0231/O which had a recommendation for approval.

Proposed by Councillor Robinson  
Seconded by Councillor Quinn and

**Resolved** That planning application LA09/2021/0231/O be approved subject to conditions as per the officer's report.

**LA09/2021/0458/F 1 sheep shed and 1 general agricultural storage shed and associated site works at lands 85m NE of 8 Macknagh Lane, Upperlands for Mr Anthony Mc Guckin**

Members considered previously circulated report on planning application LA09/2021/0458/F which had a recommendation for approval.

Proposed by Councillor Clarke  
Seconded by Councillor Corry and

**Resolved** That planning application LA09/2021/0458/F be approved subject to conditions as per the officer's report.

**LA09/2021/0657/O Dwelling and garage in a gap site at 40m S of 28 Ballynafeagh Road Stewartstown for Gary Miller**

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

**LA09/2021/0707/O Site for dwelling and garage at 20m E of 9A Moss Road, Coagh for Mark Cassidy**

Members considered previously circulated report on planning application LA09/2021/0707/O which had a recommendation for approval.

Proposed by Councillor Bell  
Seconded by Councillor D McPeake and

**Resolved** That planning application LA09/2021/0707/O be approved subject to conditions as per the officer's report.

**LA09/2021/0730/F Dwelling and garage (substitute to LA09/2020/0920/RM) at land adjacent to 17 Carricklongfield Road Aughnacloy for Mr John Burton**

Members considered previously circulated report on planning application LA09/2021/0730/F which had a recommendation for approval.

Proposed by Councillor Robinson  
Seconded by Councillor Colvin and

**Resolved** That planning application LA09/2021/0730/F be approved subject to conditions as per the officer's report.

**LA09/2019/0944/O Infill dwelling and garage between 90 and 92 Iniscarn Road, Desertmartin for Mr Paul Bradley**

Ms McCullagh (SPO) presented a report on planning application LA09/2021/0944/O advising that it was recommended for refusal.

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

Mr Murray advised that on 5 December 2018 the Enforcement team brought a report to the Planning Committee listing numerous breaches relating to this site, with the decision on the evening that it wasn't expedient to carry out any further enforcement action. However, 13 days later on 18 December, for a second time there was extensive flood damage caused to his property because of this unauthorised development. After a revisit from the Case Officer it was discovered more unauthorised works had been carried out on site. The then committee made the decision to give the applicant a chance to regulate this. He chose not to, therefore leaving the Council with no other option but to serve him with an Enforcement Notice on 25 June 2019.

He said that over the past 2 years the applicant had been afforded ample opportunities by the Planning Department to rectify these multiple breaches of planning control. However, the applicant still had chosen not to co-operate fully and thus the need for this to be brought back again to committee this evening.

The main issue in this case relates to flooding and the detrimental impact to his property. He said that a decision must be taken on whether it was deemed acceptable to be in clear breach of PPS 15 Planning and Flood Risk Policy FLD4 whilst significant flood damage was occurring to neighbouring properties.

The applicant had submitted numerous Flood Risk reports attempting to prove that the unauthorised pipework and alternations to his site would not cause further damage to site would not prove further future flooding. He said that in his opinion, these reports were only an interpretation of what was predicted to happen during a flooding event, whereas

the photos and videos that he had submitted showed the reality of what was actually happening.

He said that he wished to make it clear and put it on record that as neighbours of the applicant his family did not want to see his house being demolished. However, he could not stand by and watch his property continuing to be at risk of extensive damage from flooding. He felt that it was the unwillingness of the applicant to adhere to policy, remove the unauthorised pipework and lower his site back to predevelopment levels that was putting his property at risk from this enforcement action.

Mr Bradley said that as a parent, it was his responsibility to provide a safe and secure home for his family, not only for the present but for the future of his children. The ongoing action and indeed inaction of the applicant was making this very difficult. As a family, they wish to live peacefully in their home of over 20 years and not have to worry every time there was a forecast of heavy rain.

He asked the committee to agree to the Case Officer's recommendation of refusal. He said that not to do so would set a very dangerous precedent in that it was deemed acceptable to carry out unauthorised development, to be in clear breach of planning policy and doing so to flood a family home.

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

Mr Bradley said that the main issue and the only one not to be approved in the case officer's report was the culvert and the small sheugh at the side of his house. He stated that the sheugh was covered as it entered his site and also covered where it exits with a road access covered in between. There has always been issues in the past with the sheugh backing up and causing surface water flooding to the neighbouring properties and this was a case long before he developed the site and the objective No. 90 has evidence of surface water flooding in 2018 during very heavy rainfall, approximately 25ml of surface water on the objectors site. Rivers, Planning and various other agencies had studied the information along with flood risk assessments from his specialist consultant and they had no issues regarding flooding with this application before members tonight. The flood risk model showed a flood vent and the pipe running 15% of its current capacity. Both houses at No.s 90 and 92 were both built on flood plains and he could not guarantee that they wouldn't flood in the future but any work which approves this application does not increase the risk of flooding to them. Any information supplied by the objector regarding the flooding was not relevant to the culvert water course as this related to the previous open sheugh and no problems with the sheugh since it was completely covered on 23 December 2018. It was decided to cover the sheugh due to health and safety risk which posed to his family and when his family decided on a site to live they did not realise the rat infestation and the smell of sewers coming from the open sheugh, with rat droppings all around the play area and the smell of rats urine being unbearable. He said that due to this it was impossible to monitor children playing at all times with the water course only being 7 metres away from the house as the kids play area runs up to the edge of the water and was impossible to enjoy normal family life. In June 2021 NIEA Pollution Officer confirmed that sewage pollution in the water course again coming downstream and the objector alluded to the smell in 2019 in one of his

objections and the culverts do not allow the smell to escape or make contact with the water.

He advised that Rivers Agency had indicated that this was a matter for the planning authority and to quote the Planning Manager from another application that it didn't comply with FLD4 of PPS15 and when this was discussed between Case Officers and the Planning Manager it was agreed to approve it and when he queried why this was approved for a local businessman 30 metres away the reason which was given was it was for access, but it was for 8 metres behind. He referred to 6.53 of PPS15 states that when there are health and safety concerns arising from open access to a watercourse alternatives to piping should be considered and his engineer Dr Andrew McCluskey stated that other means do not provide adequate health and safety.

Councillor McKinney advised that this had been on the cards for a long time and due to the circumstances beyond his control tonight he was unable to make any proposals or vote tonight. He stated that he had been past the site just a week ago and was aware that a lot of things had changed and the application had been brought very close to the mark and was aware of the case officer working towards a few small details at present and felt it would be unwise to remove what had been done. He said that there had been a pipe installed which held up to seven times the amount of water which suggested to take at any one time and this was something that even Roads Service and Water Service didn't even carry out. He said that he wasn't in a position to make a proposal but felt that under the circumstances, which both the objector and applicant had been said that this had been bandied about for quite some time and would be nice to see a conclusion and recommended approval here tonight. He was aware that the application had not completely met the required criteria, but in his opinion it would be unwise to remove any pipework due to the conversation tonight on sewage coming down and both families on either side of the hedge had related to their childrens safety and felt that this would be unwise. He concluded by saying that he was aware of issues between the adults but hoped that this could be resolved for their children living there going forward whether relating to odour, rats urine or sewage and felt that a lot of money had been spent and would be happy to support the recommendation of approval and was unfortunate he couldn't make a proposal here tonight.

The Planning Manager said he wished to clarify an issue and said if he understood correctly, that the applicant indicated that the NIEA had confirmed that there had been pollution in the drain and didn't think he had said sewage and could be different as there were different types of pollution.

Councillor McKinney said that he apologised for making that assumption or picking it up incorrectly but felt that any substance of any kind was still harmful to young people or children.

In response to Councillor Glasgow's query, the Planning Manager said that this related to a filled in sheugh and not a designated water course and not maintained by any statutory agency. He felt that there must have been some issue at some point when a pipe was put in and he had no reason to dispute what the objector had said that the lands became inundated with water and videos presented which provided evidence of that and this had been the key worry and quite understandably so. The applicant has indicated that this was now rectified and the pipe was working and Rivers Agency had said that they didn't

have a reason to dispute this on technical grounds although this could be disputed as no information there to back it up. He said if something was refused on a technical ground, then this would need to be backed up, but the Rivers Agency went on to say that although it went against policy, there was still get out clauses, but this was a matter for the planning authority. He said that this was up to the committee to treat this application as an exception or not, whether to except the safety argument or not and advised that it was difficult relating to the safety argument in the countryside as everyone lives next to ditches and fences etc. He said that this needed to be considered carefully as there was a policy contravention being recommended against the application, but there was also a need to look at the consequences if this was to be refused; there was an enforcement notice against the property and officers have been blocked into a corner to refuse the dwelling whereby the Councillors had said that the dwelling should be demolished and was confident that this wasn't the objector's intention and planning wouldn't be supportive of the demolition either. He said that he felt uneasy outright refusing the application and not 100% comfortable because of that approving it and was up to committee to decide as they had been provided with an argument from the applicant. He advised that there was a third view which deserved thinking about and not one he had seen before and grant planning approval subject to a condition that the drain be reinstated within the next three months and what that means is that it's the right cure and the applicant's content and keeps his dwelling or if he was dissatisfied with that condition, he would equally have a right to planning appeal and could go for planning appeal against that condition and if he justified his position to planning appeals commission he could enjoy it, but if he cannot justify it, then he must put in that ditch otherwise action would be taken against him.

Councillor Glasgow said that he would be in support of option 3 as this application had been brought back and forwards for some time and the planning department has carried out a tremendous amount of work and would be of the mindset would propose to approve the recommendation subject to condition of the drain as this was the best out of a bad situation but the option was still there that we keep everything safe.

The Planning Manager said that other conditions were needed on closing off of the access as there were issues relating to road safety and would be beneficial if members left these conditions to the discretion of himself.

Proposed by Councillor Glasgow  
Seconded by Councillor Colvin and

In response to Councillor Mallaghan's request regarding conditions to be attached to the application, the Planning Manager advised that there were a few key issues relating to this:

- Drain being reinstated and fence erected along it
- Access along Iniscarn Road which shows it being closed off by fencing or planting, condition to be that it would be closed off due to road safety concerns – in exchange there would be an access to the rear, required to be completed within a set amount of time and landscaping done

Councillor Bell advised that before members heard from the objector and the applicant, but during the meeting tonight there has been no come back from either party.

The Planning Manager stated that the objector was very clear that his worry has always been the flooding and the point that these ditches were not filled in for no reason and his thinking was that it was easier to maintain and would help encourage wildlife and biodiversity and everything else that was wonderful in the countryside and this was something that planning was asking for. During his presentation the objector was not asking for this house to be demolished.

Mr Bradley advised that he had an application in from Lisburn Borough Council where it stated that the culvert was for natural health and safety reasons to pipe the boundary and earth of the watercourse and was felt to be acceptable in this instance. He said that there were numerous other applications in this area which had been approved also by this Council and just because there has been an objector to his application it doesn't mean that this should be a reason for refusal.

The Planning Manager stated that the reason for refusal would be that it contravenes the stated policy and this would be the reason for refusal. He said that it was no longer suggested that the application be refused and what was being suggested was that a planning permission be sought subject to a condition and he previously pointed out what the applicant could do if he was dissatisfied with that.

Mr Murray referred to the other work primarily on FLD3 that the applicant has to carry out work and his concern would be who was going to oversee that this work was carried out. He stated that DfI had gave a timeframe of 3 months from planning approval to get that sorted out and did appreciate Dr Boomer's comments about the conditions and timeline, but his concern would be who would monitor this as DfI Rivers advised that this was not up to them but may consider if asked. He asked that this be monitored accordingly.

The Planning Manager advised that there were two issues; firstly if the pipe was to remain then officers would walk away as planning had no obligation as it was on private land and between the two parties as it was not an adopted watercourse. If the applicant was to cause a flooding event then clearly a claim could possibly be made against him in a court of civil law. If the ditch was required to be a condition and not within three months he would be surprised to be not being made aware of this and if inspections were carried out and not done then action could be taken.

The Planning Manager sought members' approval to withdraw enforcement notice against Mr Bradley for his dwelling and wendy house to be removed.

**Resolved** That planning application LA09/2021/0944/O be approved subject to conditions being drawn up at the Planning Manager's discretion.  
Enforcement Notice against the applicant to also be removed.

*Councillor Bell left the meeting at 9.21 pm.*

**LA09/2020/1536/O Dwelling & Garage between 74 & 76 Hillhead Road,  
Toomebridge, for Mr J Nugent**

Members considered previously circulated report on planning application LA09/2020/1536/O which had a recommendation for approval.



Proposed by Councillor D McPeake  
Seconded by Councillor Colvin and

**Resolved** That planning application LA09/2020/1536/O be approved subject to conditions as per the officer's report.

*Councillor Bell returned to the meeting at 9.26 pm.*

**P104/21 Receive report on planning application LA10/2017/1249/F – Dalradian Gold**

The Planning Manager presented previously circulated report to advise members of the planning application that is currently under consideration by the Department for Infrastructure. The report will also advise on the position of MUDC in relation to the issues of concern with the proposed use.

*Solicitor left the meeting at 9.27 pm and returned at 9.30 pm.*

Councillor Quinn said that he would be happy to propose what was on the paper as he had spent the last couple of weeks and months trying to get his head around the different aspects of the whole debate and had spoken at a rally on Saturday in Coalisland against mining in general. He advised that an article had come towards him today and although not the subject of the report he found it interesting that they were claiming that this was going to be carbon neutral but they forgot to add in that they proposed to use 3.3 million litres of diesel, they proposed to take out all the bogland and peatland that was beside the sight line and remove all the water out of the bogland/peatland and felt that there were a lot of things that didn't add up in this. He advised this this was still being pushed on to Fermanagh & Omagh Council over this last few months and this was their issue to deal with but this was an area of natural beauty and this was the land we want to protect and retain for generations to come and we cannot let people come in and destroy it and remove our natural resources and move it on for profit which was the company's incentive. He felt a public enquiry was the way to go and he would agree completely with this as a lot of things will become evident and agreed with the Planning Manager's suggestion of having representation at that table and have a say and although it may not come into our Council area, we can certainly see it and we look at Co. Tyrone and Co. Derry as one Council area and we all embrace taking our trips out on a Sunday to see the mountains and use the walks and would be very happy to propose to object to this mine.

Councillor Glasgow advised that he was a bit uncomfortable with this report tonight and although he did not dispute what was being said, he felt uncomfortable what was going to be seen as a decision and when he looks at the very last line it talks about '*additional or amended information being received*' and didn't feel content and was not saying that this should be ignored but asked if there was not an option for the committee to move this on down and get a bit more breathing space for the information to come forward. He said that at the end of the day there was going to be a public enquiry and proposed to put this issue on hold until these statutory consultees come back.

The Planning Manager stated that this was put in as anyone which had been to a public enquiry or examination will realise that information keeps coming right up until the day

and whilst in the hearing and would like the ability to respond to what's before us. He said what he felt this was fair and correct to do as it reserves the right to have the ability to ask the right questions and challenge any unjustified statements by the QCs.

Councillor Mallaghan said that he would be happy to second the proposal to object to this planning application and stated that the real gold which exists within the Sperrins was its natural beauty and when people visit the Gortin Glens Forest Park or Davagh and see what this Council and Fermanagh & Omagh Council have been doing in order to boost the tourism product which was happening within this area. He said that day by day and particularly under the current circumstances we see visitor numbers grow and grow to potentially what we see now was a global product in terms of selling the Dark Skies and Stones Circles and all those different things. He advised that as long he has been in Council and years before that, people were always very upset that this area didn't get the recognition that it duly deserved and was great to see it getting there with the statutory bodies like Tourism NI and Tourism Ireland etc advertising the Sperrins on a global platform and anything that would jeopardise or do harm to that was definitely not good for this area.

He said that on the same token he would like to include a remark and stated that sometimes proposals like this could muddy the water with traditional quarrying which goes on right across this Council area. Quarry was a traditional industry which had been here for decades and provided thousands of jobs which was done most of the time in a sustainable way and although sometimes there were breaches and encounter different breaches, generally they were world leaders in what they do. He felt the Council needed to be careful in that we may disagree with in this type of extraction as it was not white-washed and not all painted with the same brush and to protect what was there and what was sustainable and what delivers well for this Council area.

The Planning Manager said that it would be useful for members to realise that Fermanagh & Omagh and Mid Ulster Councils had done different things in the Sperrins. Fermanagh & Omagh had put a line around the map indicating that there should be no mineral extraction and totally protected everywhere, whereas Mid Ulster were much less discriminatory in the fact that we protected the most important areas as we recognised a lot of our industries and this continue and if there was some sort of expansion in exchange for some reinstatement of the land once they done that bit which was going to be a good thing. He said that the bottom line was that people need to make money and provide employment and we try to balance and sustainable as there was a need to do this as there was a place for everything. He advised members that the report was balanced and haven't claimed that all the water was going to be taken, rivers were going to be polluted or people were going to get cancer etc and focused on the key issues as we share the area with Fermanagh & Omagh and that joint custodianship was what we were interested in and to make sure things were looked at and dealt with properly.

Councillor Clarke said that he wished to say a few words in support of what was said previously regarding the report. He advised that whilst the proposed site was not within Mid Ulster, the site was interlinking and when the area/development plans were eventually adopted the new ASAI which was a very significant element and will go right to the boundary of where that site was and very important as ASAI was very important to Mid Ulster, but the half of it would be Fermanagh & Omagh which cannot be split as this proposal was right on the edge and overlooking that ASAI.

He referred to quarrying and the fact that Dalradian stated that they were not going to use cyanide, but when you go into the bowels of the earth and going a few miles below sea level and when you get into scenes where gold, silver and copper, you also happen to find other dangerous natural products which would naturally seep out and seep into rivers and waterways. While Dalradian may not be using cyanide, they might release equally as dangerous materials and whilst he agrees with the normal quarrying which happens for rock, sand and gravel, they are basically in the earth products which were clean and no substances seeping out to cause any serious pollution and this was another difference between traditional quarrying and mining.

Councillor Colvin said that he was all for the environment like everyone here present and felt that some traditional quarrying can destroy the environment which he can see everytime he drives from Moneymore to Magherafelt. He enquired if the Council had defined a policy here and in the instance of Dalradian submitting an application then there wouldn't be the competency assessment as a prior decision had already been made and could undermine this committee like some sort of legal thing and enquired if this committee were typing their hands here for any future things.

The Planning Manager advised that a policy was proposed but policies with the public domain to make sense of the draft Area Plan which has been submitted to the Department and awaiting the outcome. He said that this was not on the back of our policy as Mid Ulster did not cover Fermanagh & Omagh, but they have their own policy and only a few months away from a public enquiry and waiting on a date. He stated that Mid Ulster's policy does not oppose as a mining blanket but opposes mining in particular places like the Sperrins where they could be carving away things of natural beauty. He stated that this was more to do with the scale and intent and the potential for possible damage to the environment and due to the changing matters to the application he feels that there were issues here that needed addressing and the best place for this was the public domain and the only way he could guarantee that they were asked was to table some items for the agenda. He clarified that no applications would be refused in Mid Ulster because they were contrary to the Fermanagh & Omagh Area Plan, it would be the Mid Ulster Plan if they were.

Councillor Mallaghan wanted to apologise to Councillor Quinn in advance of his next statement, but wished to make sure that this Council's objection if approved here tonight was sound and referred to Councillor Quinn's comments regarding speaking at a rally on Saturday in Coalisland against gold mining and was now wondering if a QC was looking into this would this cause a difficulty for this Council down the line.

The Planning Manager advised that if a person had already given their position it could be an assumption that this person didn't look at this application unbiasedly as they already set out their position before proceeding and this could be considered as an interest.

Councillor Quinn said that under the circumstances that he would be happy for another member to propose the recommendation to keep everything above board.

Councillor McKinney said he wished to make a few observations regarding this and stated that in previous Council meetings there were a number of parties who always said that they were opposed to gold mining and if a party made that statement at a Council

meeting from a party representation, said he didn't know how this would fare out coming to a planning committee. He said that he would be concerned regarding the legal aspect regarding the comments which were made and Councillor Clarke's comment indicating that the goldmining was not even in Mid Ulster Council area which was correct regarding the one which was talked about. He stated that he had been contacted during the week about large sums of money being offered to landowners within his own area for drilling and wasn't talking about a few hundred pounds but more like thousands of pounds. In felt that in the future there could representation by some mining companies and was careful not to mention any particular names and as previously stated, a lot of people were tying themselves up with pre-decisions and pre-statements of planning committee and when members had been well taught on what to say and how to conduct themselves. He said that he would be concerned about the legal aspect and when it runs its course and the possibly of this Council falling down a legal loophole as the ball was already rolling within our area as was the case in his area and although the application may not be submitted it was only a matter of time before one was received. He stated that he was very concerned regarding comments and statements made all along and throughout in previous meetings and also a Councillor addressing a rally making a determination before it has already come and would also be concerned as it seemed that things were being rushed and would like everything to be right and concurred with Councillor Mallaghan's comment regarding tarring everyone with the one brush as there was a lot of industry involved with mineral extraction and although it was known as quarrying, it all came under the mineral policy and felt there was a need to go slow and get this one right.

Councillor Cuthbertson said within his lifetime within the Council there was one if not two motions brought to Council relating to topics such as this, although he could not recall the wording or date and may be worthwhile looking into. He remembered on one occasion highlighting the fact that this could compromise Mid Ulster Council or Councillors proposing and seconding supporting this going forward if an issue was brought to Mid Ulster District Council and felt that this needed to be looked at. He advised that he wasn't an expert on mining and presumed that members which spoke earlier were not experts either and also comments made by the Planning Manager regarding removing a top of a mountain and took this as a literal comment, but he has seen no evidence of what they were going to do and would be confident that they were not going to destroy a mountain like that and felt that the committee should hold off as it wasn't within our Council area and seconded Councillor Glasgow's proposal earlier in the meeting.

The Planning Manager advised that his comments relating to the mountain was about the general protection of the Sperrins. He stated that this was not a planning decision and was only setting out comments for consideration and all that was being brought forward was an argument to be considered.

Councillor Corry proposed to the recommendation in place of Councillor Quinn.

Councillor Corry's proposal was put to the vote:

For	8
Against	5

The Chair advised that Councillor Corry's proposal was carried.

Proposed by Councillor Corry  
Seconded by Councillor Mallaghan

**Resolved** That it be agreed –

- 1) Based on the information currently available and without the advice of all consultees, to object to the planning application as proposed based on both the long term visual impact and issues of concern relating to volumes of traffic both during the construction stage of the proposal and the operational phase of the proposal as these will have a significantly detrimental impact on the amenity of the residents in the area.
- 2) As the application is premature to the Fermanagh and Omagh Draft Plan Strategy public examination by reason of its scale that it would prejudice future decision making.
- 3) To reserve the right to raise further issues of concern at the public inquiry or at any time preceding the date of the inquiry should additional or amended information be received.

### **Matters for Information**

#### **P105/21 Minutes of Planning Committee held on 6 July 2021**

Members noted minutes of Planning Committee held on 6 July 2021.

*Live broadcast ended at 9.55 pm.*

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

Proposed by Councillor Corry  
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 P106/21 to P110/21.

#### **Matters for Decision**

- P106/21 Receive report on commencement of preparatory work for Local Policies Plan  
P107/21 Receive Enforcement Report

#### **Matters for Information**

- P108/21 Confidential Minutes of Planning Committee held on 6 July 2021  
P109/21 Enforcement Cases Opened  
P110/21 Enforcement Cases Closed

**P111/21      Duration of Meeting**

The meeting was called for 7 pm and concluded at 10.30 pm.

Chair \_\_\_\_\_

Date \_\_\_\_\_

## Annex A – Introductory Remarks from the Chairperson

Good evening and welcome to the meeting of Mid Ulster District Council's Planning Committee in the Chamber, Magherafelt and virtually.

I specifically welcome the public watching us through the Live Broadcast feed. The Live Broadcast will run for the period of our Open Business but will end just before we move into Confidential Business. I will let you know before this happens.

Just some housekeeping before we commence. Can I remind you:-

- If you have joined the meeting remotely please keep your audio on mute unless invited to speak and then turn it off when finished speaking
- Keep your video on at all times, unless you have bandwidth or internet connection issues, where you are advised to try turning your video off
- If you wish to speak please raise your hand in the meeting or on screen and keep raised until observed by an Officer or myself
- Should we need to take a vote this evening, I will ask each member to confirm whether you are for or against the proposal or abstaining from voting
- For members attending remotely, note that by voting on any application, you are confirming that you were in attendance for the duration of, and that you heard and saw all relevant information in connection with the application you vote on
- When invited to speak please introduce yourself by name to the meeting. When finished please put your audio to mute
- For any member attending remotely, if you declare an interest in an item, please turn off your video and keep your audio on mute for the duration of the item
- An Addendum was emailed to all Committee Members at 5pm today. There is also a hard copy on each desk in the Chamber. Can all members attending remotely please confirm that they received the Addendum and that have had sufficient time to review it?
- If referring to a specific report please reference the report, page or slide being referred to so everyone has a clear understanding
- For members of the public that are exercising a right to speak by remote means, please ensure that you are able to hear and be heard by councillors, officers and any others requesting speaking rights on the particular application. If this isn't the case you must advise the Chair immediately. Please note that once your application has been decided, you will be removed from the meeting. If you wish to view the rest of the meeting, please join the live link.
- Can I remind the public and press that taking photographs of proceedings or the use of any other means to enable persons not present to see or hear any proceedings

(whether now or later), or making a contemporaneous oral report of any of the proceedings are all prohibited acts.

Thank you and we will now move to the first item on the agenda - apologies and then roll call of all other Members in attendance.





## ADDENDUM TO PLANNING COMMITTEE AGENDA

### FOR PLANNING COMMITTEE MEETING ON: 3<sup>rd</sup> August 2021

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

#### Chairs Business – Appeal decision 2020/E0038

ITEM	INFORMATION RECEIVED	ACTION REQUIRED
4.4	Consultation response from DfI Roads.	Members to note the response and the 3 <sup>rd</sup> reason for refusal pertaining to PPS 3 is hereby withdrawn.
4.6	Further objection letter	Members to note and consider
4.8	Agent has advised they would like hours of operation from 7 am to 11pm, EHO consulted and offer no objections to this.	Members to note and consider