

Minutes of Meeting of Planning Committee of Mid Ulster District Council held on Tuesday 1 February 2022 in Council Offices, Ballyronan Road, Magherafelt and by virtual means

Members Present

Councillor Black, Chair

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

Officers in Attendance

Dr Boomer, Service Director of Planning
Mr Bowman, Head of Development Management
Ms Donnelly, Council Solicitor
Ms Doyle, Senior Planning Officer
Mr Marrion, Senior Planning Officer
Mr McClean, Senior Planning Officer
Miss Thompson, Democratic Services Officer

Others in Attendance

Councillor Gildernew***

LA09/2019/1119/O

Mr Cassidy*

LA09/2021/0307/O

Mr Cassidy*

* 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 7.09 pm

P013/22 Apologies

None.

P014/22 Declarations of Interest

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

All Members present (Councillors Bell, Black, Brown, Clarke, Colvin, Corry, Cuthbertson, Glasgow, Hughes, Mallaghan, McFlynn, McKinney, D McPeake, S McPeake, Quinn, Robinson) declared an interest in agenda item 4.16 - LA09/2021/1380/A and agenda item 4.17 - LA09/2021/1397/LBC.

Councillor D McPeake declared an interest in agenda item 5.2 - LA09/2020/0908/O.

Councillor Corry declared an interest in agenda item 4.8 - LA09/2021/0622/F.

Councillor Cuthbertson declared an interest in agenda item 4.2 - LA09/2020/0025/F.

Councillor S McPeake declared an interest in agenda item 5.7 - LA09/2021/0822/O.

P015/22 Chair's Business

Councillor Clarke referred to PAN submitted in December related to a telecommunications installation at Ballynagilly Road, Lissan, Co Tyrone. Councillor Clarke stated he had studied the information submitted and would be concerned as he felt the information is misleading and that the proposed installation is in the wrong place. Councillor Clarke stated that five sites had been identified for the proposal and that four had been ruled out one of which was Glenviggan Road. Councillor Clarke stated he felt that site was in and around a site which was proposed and agreed approximately 5-6 years ago under a different project and was deemed suitable at that stage.

Councillor Clarke stated that the name of the project was Six Towns and was evidently aimed at the Six Towns area however the only Councillors notified were those within Magherafelt DEA. Councillor Clarke stated the proposal is within Magherafelt DEA but if the proposal is to service the Six Towns area then he felt Councillors in Carntogher and Moyola DEAs along with Cookstown DEA should also have been notified.

Councillor Clarke stated that the site at Glenviggan Road was ruled out because of priority habitat and peatland. The Councillor stated that Fair Mountain had also been ruled out as a site but highlighted that the site identified was on the other side of the mountain. Councillor Clarke stated that there also seemed to be a mix up with the maps and the information submitted and discounted reasons were not applicable to the sites being shown on the maps and that this needed to be looked at.

Councillor Clarke stated that the target area needs to be considered further as it was his belief that the target area would not be served from the site identified. The Councillor stated that there should also be consultation with local representatives as he felt there are a range of other sites which could be used.

The Service Director of Planning commended Councillor Clarke on his research and stated that the matter had only been brought to his attention prior to the meeting and he had not looked into it in great detail. The Service Director of Planning stated this was not a PAN as in a Pre Application Notification but rather is a letter which states that someone intends to exercise their permitted development rights and that, unlike a normal planning application, this will be considered under specific criteria.

Ms Doyle (SPO) stated that the planning department received notification of the proposal in December and that it has been made into a PAD (Pre Application Discussion) file and that consultations are yet to issue on this. Ms Doyle stated that the notification advised that it was a pre planning application phase and does not benefit from permitted development rights as far as she was aware.

The Service Director of Planning asked Councillor Clarke if he had got his information from the planning portal.

Councillor Clarke advised that the information was circulated to Magherafelt DEA Councillors by Cornerstone. The Councillor stated he was content that he had raised the issue for officers to investigate.

The Service Director of Planning advised Councillor Clarke to make contact with the Head of Development Management to discuss the matter further.

The Service Director of Planning referred to the addendum and the NI Audit Office report on Planning in Northern Ireland which was published today and stated he would take issue with some of the headlines stemming from this. The Service Director stated he felt planning is making decisions in Mid Ulster and that the department has dealt with nearly 9,000 applications most of which have been determined within target. The Service Director of Planning acknowledged that the report refers to the whole of Northern Ireland and whilst he felt the report is unfair in some things it is correct in others in that it is taking a long time to deal with major applications across Northern Ireland and that Mid Ulster would be one of the weaker Councils on this. However, of the almost 9,000 applications received by Mid Ulster, major applications only accounted for about 80. The Service Director of Planning stated it was best to see how performance can be improved and that he felt the implementation of the new computer system will be a great benefit going forward. The Service Director stated it was also critical of the Department to provide leadership in putting things right and also highlighted that the Department had not brought forward a change to planning fees. Since planning came to Mid Ulster there had only been a 1% increase but the cost of running the department has increased and this will be unsustainable over time. The Service Director of Planning stated that, prior to the report coming out, the Chief Executive had written to the Audit Office stating that it was felt that the research had been limited in who it had spoken to and the statistics considered and that the views of Planning Committee members should also have been taken into account but that this was ignored by the Audit Office. The Service Director of Planning stated a report on the Audit Office publication would be brought to the next Planning Committee meeting.

The Service Director of Planning referred to the addendum and the report on the Review of the Implementation of the Planning Act (NI) 2011 which was published by the Department prior to the publication of the Audit office report and concludes that planning legislation does not need to change bar a few minor items. The Service Director of Planning highlighted that the findings of the report by the Department and the Audit Office do not really tie together.

The Service Director of Planning referred to addendum and notification from DfI in respect of Proposed De-Restriction on sections of A6 Castledawson - Toome Road. The Service Director stated that this notification was not of particular concern and meant that the sections of road highlighted on the maps circulated would switch to the national speed limit.

Mr Marrion (SPO) confirmed that a 30mph speed limit applies where there are three or more street lights on the carriageway, placed not more than 185m apart and that the notification to de-restrict the sections of road highlighted on the maps will allow the national speed limit to apply along the entire A6 route.

The Service Director of Planning advised he had a further item which would be taken in confidential business.

The Service Director of Planning 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—

Agenda Item 4.1 – LA09/2018/0565/F - Housing development of 36 no. dwellings, services and infrastructure at lands N of 7 Lisnastraine Heights, Coalisland for McAvoy Roan Pension Fund – Defer for office meeting.

Agenda Item 4.7 - LA09/2021/0288/O - Site for dwelling and garage within a gap at 30m S of 174A Ardboe Road, Cookstown for James Devlin – Defer for submission of additional information.

Agenda Item 4.9 - LA09/2021/0719/F - Farm dwelling and garage at approx. 25m E of 25 Creagh Hill Road, Toomebridge, for Brendan Mulholland – Defer for office meeting.

Agenda Item 4.11 - LA09/2021/0845/O - Dwelling and garage at lands 50m SE of 13 Magherafelt Road Clooney, Tobermore, for Mark Drennan – Defer for officer 2nd opinion.

Agenda Item 4.15 – LA09/2021/1283/O - Off-site replacement dwelling and garage 50m NW of 26 Annaginney Road, Dungannon, for George McIvor – Defer for office meeting.

Agenda Item 4.18 - LA09/2021/1497/F - Retention of existing access, walls and pillars at 22 Ballynagowan Road, Stewartstown for Enda and Nuala Devlin – Defer for office meeting.

Councillor Brown requested that agenda item 4.5 - LA09/2020/1637/F - be deferred in order for additional information to be provided. The Councillor stated that both of the applicants grandparents had passed away last week and he had not got the necessary information submitted in relation to odour and noise reports.

Councillor McFlynn referred to agenda item 4.7 - LA09/2021/0288/O – and the objections received in respect of this application and that she wanted to ensure that the objectors concerns would be considered when the additional information has been submitted.

The Service Director of Planning advised that when an application is deferred it has to come back to the Planning Committee and the Committee gets to consider the objections and the additional information submitted by the applicant.

Proposed by Councillor Robinson
Seconded by Councillor Corry and

Resolved That the planning applications listed above be deferred as outlined.

Matters for Decision

P016/22 Planning Applications for Determination

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

LA09/2018/0565/F Housing development of 36 no. dwellings, services and infrastructure at lands N of 7 Lisnastraine Heights, Coalisland for McAvoy Roan Pension Fund

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

LA09/2020/0025/F Retention of timber cabin for use as storage, at site at 42 Main Street, Moygashel, Dungannon for Mr Brian Turkington

Members considered previously circulated report on planning application LA09/2020/0025/F which had a recommendation for approval.

Proposed by Councillor McFlynn
Seconded by Councillor Mallaghan and

Resolved That planning application LA09/2020/0025/F be approved subject to conditions as per the officer's report.

LA09/2020/0892/F Dwelling & detached garage at Site 177 adjacent to 1 Brookfield Road, Dungannon for NI031025 Ltd

Members considered previously circulated report on planning application LA09/2020/0892/F which had a recommendation for approval.

Proposed by Councillor Brown
Seconded by Councillor Corry

That planning application LA09/2020/0892/F be approved subject to conditions as per the officer's report.

Councillor Mallaghan stated it was his understanding that a name would have to be associated to a planning application and in this case a company number has been used. The Councillor asked if a name should be advertised along with the application.

The Service Director of Planning asked what was advertised.

Mr Marrion (SPO) stated that the advertisement would have been in relation to the proposed development and that the details on the planning portal are the name that has been put forward which is NI031025 Limited along with an address of 64 Hall Street, Maghera which sets out who the applicant is.

The Service Director of Planning stated that in law when a planning application is made it should indicate who the applicant is and a contactable address.

Mr Marrion confirmed that both a name and address have been provided.

The Service Director of Planning stated that an applicant's name is not always put in a press advertisement but rather the proposal and location of development.

Councillor Mallaghan stated he was content with the response but just found the situation unusual.

The Chair, Councillor Black asked if the applicants name is available why the company number had been used.

Mr Marrion clarified that the applicants name is NI031025 Limited as submitted.

The Service Director of Planning stated that the applicant can be a company but it should state who the company is and not just a number.

Councillor McKinney asked for legal opinion on the matter.

The Council Solicitor stated it appears that the number is the company name as it has a 'Ltd' at the end of it but that a Companies House search could clarify.

Mr Marrion stated that he had done a quick Companies House search and that the company name is the company number.

Councillor Colvin stated he was aware from previously working in Building Control that a contact name was required in case of any litigation however he was conscious that this may have changed. Councillor Colvin stated that he felt Councillor Mallaghan had raised an important point and he was not entirely satisfied with what was before Members tonight and that the matter required more investigation.

The Chair, Councillor Black stated that Councillor Colvin's comments were fair and that the Committee needed to satisfy itself that it is making a solid decision.

Councillor Bell stated that that he had done a company search and that this shows a list of Directors names for the company.

The Service Director of Planning stated it was his understanding that the company, provided they are the applicant, can make an application but that the applicant needs to be stated.

Mr Marrion referred to the Planning General Procedural Order Article 3 which states that an application should contain the name and address of the applicant or where an agent is acting on behalf of the applicant then their address should be given. Mr Marrion questioned whether it would be any different if it was Boots the Chemist who submitted an application as Boots is the company name.

The Service Director of Planning felt it was in order to defer the application in order to seek a legal opinion in relation to the application.

Councillor S McPeake stated he was content to defer the application in order to obtain in house legal opinion and that if all is found to be in order then the application should be approved without holding it back for a month. If an issue is found then the application should be brought back to Committee.

The Service Director of Planning felt that was sensible as applications are held for five days before they are issued in any case. The Service Director suggested that the application be approved subject to checking the validity of the application and if all is found to be in order then the approval should be issued following the five day call in period.

Proposed by Councillor S McPeake
Seconded by Councillor Colvin and

Resolved That planning application LA09/2020/0892/F be approved subject to conditions as per the officer's report and checking the validity of the application.

Councillor Colvin stated it would be important to know the outcome for the future.

The Chair, Councillor Black confirmed with the original proposer and seconder that they were content with the way forward.

Councillors Brown and Corry confirmed they were content.

**LA09/2020/1378/F 2 blocks of 5 glamping accommodation at Fishermans Walk
380m E of 23a Ballymacombs Road, Bellaghy for Ryan
McSorley**

Members considered previously circulated report on planning application LA09/2020/1378/F which had a recommendation for approval.

Proposed by Councillor S McPeake
Seconded by Councillor McFlynn and

Resolved That planning application LA09/2020/1378/F be approved subject to conditions as per the officer's report.

**LA09/2020/1637/F Change of use of first floor of unit 12 from storage to two
apartments. Addition of a first floor over unit 11 for use as
two apartments, together with additional floorspace for
access stairs and storage at Units 11 & 12 The Diamond
Centre, Market Street, Magherafelt, for SH Watterson
(Machinery) Ltd**

Agreed that application be deferred earlier in meeting for submission of odour and noise reports.

LA09/2021/0283/F Retrospective change of use from domestic garage/store to offices and storage at rear of 81 Glen Road, Maghera, for H.M Electrics Ltd

Members considered previously circulated report on planning application LA09/2021/0283/F which had a recommendation for approval.

Proposed by Councillor Robinson
Seconded by Councillor S McPeake and

Resolved That planning application LA09/2021/0283/F be approved subject to conditions as per the officer's report.

LA09/2021/0288/O Site for dwelling and garage within a gap at 30m S of 174A Ardboe Road, Cookstown for James Devlin

Agreed that application be deferred for submission of additional information earlier in meeting.

LA09/2021/0622/F Extension and alterations to clubhouse to provide multi-purpose sports hall, associated changing facilities, community gym and associated parking and site works at 10 Corrick Road, Straw, Draperstown, for St Colms GAA Ballinascreen

Members considered previously circulated report on planning application LA09/2021/0622/F which had a recommendation for approval.

Proposed by Councillor Clarke
Seconded by Councillor McFlynn and

Resolved That planning application LA09/2021/0622/F be approved subject to conditions as per the officer's report.

LA09/2021/0719/F Farm dwelling and garage at approx. 25m E of 25 Creagh Hill Road, Toomebridge, for Brendan Mulholland

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

LA09/2021/0806/O Dwelling at site 100m W of 89 Omagh Road, Ballygawley, for Stephen Canavan

Planning Application Withdrawn.

LA09/2021/0845/O Dwelling and garage at lands 50m SE of 13 Magherafelt Road Clooney, Tobermore, for Mark Drennan

Agreed that application be deferred earlier in meeting for officer 2nd opinion.

LA09/2021/0994/O Infill site for a dwelling adjacent to 21 Tullyveagh Road, Doorless, Cookstown for Mr Patrick Conlon

Members considered previously circulated report on planning application LA09/2021/0994/O which had a recommendation for approval.

Proposed by Councillor Mallaghan
Seconded by Councillor S McPeake and

Resolved That planning application LA09/2021/0994/O be approved subject to conditions as per the officer's report.

LA09/2021/1007/O Dwelling (revised siting on block plan) at site adjacent to 113 Back Lower Road, Brockagh, Dungannon, for Owen Campbell

Members considered previously circulated report on planning application LA09/2021/1007/O which had a recommendation for approval.

Proposed by Councillor S McPeake
Seconded by Councillor Corry and

Resolved That planning application LA09/2021/1007/O be approved subject to conditions as per the officer's report.

LA09/2021/1089/O 2 dwellings (additional plans submitted) at lands to the rear of 41 Millburn Street, Cookstown for William Wilkinson

Members considered previously circulated report on planning application LA09/2021/1089/O which had a recommendation for approval.

Proposed by Councillor Brown
Seconded by Councillor Colvin and

Resolved That planning application LA09/2021/1089/O be approved subject to conditions as per the officer's report.

LA09/2021/1283/O Off-site replacement dwelling and garage 50m NW of 26 Annaginney Road, Dungannon, for George McIvor

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

LA09/2021/1380/A 2 Banner Signs fixed to front elevation on PPC aluminium frames at Ranfurly House Arts & Visitor Centre, 26 Market Square, Dungannon, for Mid Ulster District Council

LA09/2021/1397/LBC 2 Banner Signs fixed to front elevation on PPC aluminium frames at Ranfurly House Arts & Visitor Centre, 26 Market Square, Dungannon, for Mid Ulster District Council

All Members declared interest in these items earlier in meeting.

Members considered previously circulated reports on planning applications LA09/2021/1380/A and LA09/2021/1397/LBC which both had a recommendation for approval.

Proposed by Councillor Brown
Seconded by Councillor Robinson and

Resolved That planning applications LA09/2021/1380/A and LA09/2021/1397/LBC be approved subject to conditions as per the officer's report.

LA09/2021/1497/F Retention of existing access, walls and pillars at 22 Ballynagowan Road, Stewartstown for Enda and Nuala Devlin

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

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

Mr Marrion (SPO) presented a report on planning application LA09/2019/1119/O advising that it was recommended for refusal.

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

Mr Cassidy stated that it is accepted that this application is on a fully working farm and that single farm payments have been claimed in excess of six years. It is also accepted that there have been no dwellings approved under policy in the last ten years and that the applicant has never had a house on the farm approved. Mr Cassidy advised that the site is not prominent, clusters with the farm buildings and provides integration. Mr Cassidy stated that the only issue is that a site was transferred from the farm within the last ten years. The site in question was a derelict house given to a son almost ten years ago and that no money was exchanged in this gift as the son worked alongside his father on the farm. Mr Cassidy stated that the old dwelling has been renovated and in order to generate monies to complete these renovations the house was signed over to the son's wife to allow them to obtain a mortgage. Mr Cassidy stated that as the old house was gifted, the planning department deem it to be sold by the farmer. Mr Cassidy stated that, traditionally, family farms have been passed down to the next generation on death but more recently social and economic changes have meant that farms are now transferred to the next generation during the farmer's lifetime and to this end the son has been added as a full member of the farm business. As a full member, the son is now the person with day to day responsibility for managing the farm and has discretion to buy and sell stock. He is also responsible for accounts and tax and is the main worker on the farm. As previously stated, Mr Cassidy advised that the son resides in the dwelling the planning department deem to have been sold off.

Mr Cassidy stated that the objective of PPS21 is to manage growth in the countryside and to achieve an appropriate and sustainable pattern of development which meets the needs of a vibrant rural community and was not intended to deny houses on a technicality. Mr Cassidy stated that the policy refers to dwellings that are sold off the farm and that the wording suggests that money changes hands. Mr Cassidy stated that the old house was transferred as a gift and not sold and that the policy does not refer to the transfer of property. Mr Cassidy stated that no monies were exchanged and that the dwelling is still lived in by a member of the farm business who works on the farm seven days a week. Mr Cassidy stated that the applicant has also helped out on the farm her entire life and has recently got married. Mr Cassidy stated that it is her elderly father's wish that she build her house on the family land. Mr Cassidy asked Members to review the application in the spirit of the policy and allow the applicant to build her home.

The Service Director of Planning stated it is important to proceed with caution based on the facts and that facts should not be manufactured to suit. The Service Director clarified that he was not suggesting that this has occurred but he just wanted to be sure of the facts. The Service Director of Planning asked if the transferred building had been built.

Mr Cassidy advised that the transferred building was an old stone cottage which has been renovated and is now lived in.

The Service Director of Planning asked if a replacement opportunity had been transferred as the case officer had advised him that planning permission had been granted. The Service Director asked what the planning permission was for.

Mr Marrison advised that the planning appeal reference stated that the application was for a dwelling at lands approximately 80m south of 64 Reclain Road, Dungannon. Mr Marrison stated that the Commissioner's report refers to a site for a dwelling and not a replacement.

The Service Director of Planning asked if that house was built.

Mr Marrison advised that there was a house approved in 2012 and that foundations were put in place and a garage was built and has been extended.

The Service Director of Planning stated that the garage has been built and there is the ability to build the house as the planning permission is still live. The Service Director stated that the notion of transfer is if land/property goes to someone else and not whether money has been exchanged. The Service Director of Planning asked was the property transferred from one persons name to another persons name in land registry.

Mr Marrison advised that the change of name on land registry occurred on 28 September 2015.

The Service Director of Planning stated that clearly less than ten years ago a development opportunity left the farm and that planning policy refers to the transfer of property to children.

Mr Marrion stated that the amplification of the policy states that sold off will mean any development opportunity disposed of within the farm holding to any other person including a member of the family.

The Service Director of Planning stated that the policy is clear. The Service Director stated that the claim is that it was sold off but the person is now part of the farm business and asked when this happened.

Mr Marrion stated that DAERA have advised the person was added to the farm business in May 2021.

The Service Director of Planning asked when the planning application was submitted.

Mr Marrion advised the planning application was submitted in 2019.

The Service Director of Planning highlighted that the application was already in the system and had a recommendation for refusal before the person was added to the farm business. The Service Director stated it would appear that the person was added to the farm in order to aid the planning application. The Service Director stated that the property went from the farmer to the son therefore there has been a disposal and therefore the application should be refused. The Service Director stated that technicalities do not come into it and that the question could be raised as to whether a new farm has been created and whether the requisite six years have passed for the owner of the farm.

The Service Director of Planning stated he was conscious of the audit report published today which is critical of planning authorities which it claims are not implementing what it sees as being straightforward applications for houses in the countryside and the overturning of recommendations for no real reason. The Service Director stated he did not feel this applies to Mid Ulster as it has very few overturns, the lowest in Northern Ireland, and that the rationale is always very clearly set out. In this instance the Service Director stated that the agent is asking the Committee to create a precedent for the future in that all a person needs to do is register with a farm business and that he urged Members to be careful. The Service Director of Planning stated that if the Committee refuse the application the applicant can go to planning appeal and if the planning appeal accepted that all a person needs to do is register a farm holding in a son/daughters name then he would be content to implement that practice in the future.

The Chair, Councillor Black stated he would have some concerns regarding the retrospective nature in that the name has been added to the farm business a considerable time after the application was submitted.

Councillor Glasgow asked if there was a legal risk or opinion on the matter or was it just what policy states in the report.

The Council Solicitor stated she could not comment as she had not been involved with the preparation of the report. The only thing the Council Solicitor stated she could comment on was if there was a decision to overturn the officer recommendation.

The Service Director of Planning stated that the issue relates to policy rather than a legal position and that the policy sets out the rules. The Service Director stated that the policy sets out that if property is transferred to a son/daughter then it is considered as a transfer and it does not say unless they become part of the farm holding at a later date. The Service Director stated that the tests for a legal challenge would be has the Committee considered something that it shouldn't have, has the Committee failed to consider something it should have or has the Committee made a decision that no other reasonable person could have made. The Service Director stated you can never guess the outcome of a legal case but his own reading would be it would be very hard to reasonably interpret that it hadn't transferred to the son from the farm holder.

Mr Marrion stated that the person to which the property was transferred is a son in law of the farmer and not the farmers son.

Councillor Colvin stated that the agent had put the case across very well and very persuasively but that unfortunately in this situation the Committee would have to go against policy to do anything other than accept the officer recommendation. Councillor Colvin proposed the officer recommendation to refuse the application.

Councillor Robinson seconded Councillor Colvin's proposal.

Resolved That planning application LA09/2019/1119/O be refused on grounds stated in the officer's report.

LA09/2020/0908/O Dwelling and garage 25m NE of 68 Hillhead Road, Toomebridge for Mr Damian Barton

Members considered previously circulated report on planning application LA09/2020/0908/O which had a recommendation for approval.

Proposed by Councillor Corry
Seconded by Councillor S McPeake and

Resolved That planning application LA09/2020/0908/O be approved subject to conditions as per the officer's report.

LA09/2020/1444/O Dwelling and garage adjacent to 76 Moghan Road, Castlecaulfield, Dungannon, for Brigid McElduff

Planning Application Withdrawn.

LA09/2021/0305/F Dwelling with detached garage and loft room at approx. 50m SSW of 31 Sherrigrim Road, Stewartstown for Mr Daryl Morrison and Miss Rachel Mullan

Members considered previously circulated report on planning application LA09/2021/0305/F which had a recommendation for approval.

Proposed by Councillor Brown
Seconded by Councillor Colvin and

Resolved That planning application LA09/2021/0305/F be approved subject to conditions as per the officer's report.

LA09/2021/0317/O Infill dwelling and garage between 23 and 27a Macknagh Lane, Upperlands, for Paddy McEldowney

Ms Doyle (SPO) presented a report on planning application LA09/2021/0317/O advising that it was recommended for refusal.

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

Mr Cassidy stated the proposal is for an infill dwelling between 23 and 27a Macknagh Lane, Upperlands. Mr Cassidy confirmed that the planning officer had visited the site and is clear that no.23, the dwelling and garage to the south east of the site has frontage to the road with the argument being that 27a does not have road frontage as it is the officer opinion that it is only an access point to the road. Mr Cassidy stated that no.27 is a large two storey house which is set back from the road and that its garden space is defined by two distinct areas, one being a formal lawn and the other being kept as a natural habitat by the owner, it was advised that there are no physical features to separate these two areas. Mr Cassidy stated that a post and wire fence separates no.27 from the application site and that this is defined on the drone images submitted. On the ground, there is no boundary feature to the front or side of no.27 that physically separates it from the road and there is no evidence that the natural habitat to the side of the dwelling has ever been used as an agricultural field and that this area has been enjoyed by the occupants of the house since construction. Mr Cassidy stated that no.27 has a road frontage of 30m. Mr Cassidy stated he felt the proposal is practically identical to another application previously recommended for approval following a site visit by Members and that these details had been circulated to Members. In that application it was felt that the buildings situated on the corner gave the appearance of a continuous built up development allowing the proposal to be considered more favourably as a gap site. Mr Cassidy stated he appreciated that each application should be determined on its own merits however he felt there are striking similarities between these two applications which should strike the balance in approving the application tonight and asked Members to reconsider the recommendation.

Councillor Brown, in referring to the previous application mentioned by Mr Cassidy, asked was that proposal considered as a gap site or a farm dwelling on a farm. The Councillor stated that the house in question in the previous approval does not front onto the Roshure Road but rather Mullaghboy Hill Road and therefore he did not see the two applications as being similar.

Mr Cassidy stated that the previous application was originally submitted as a farm dwelling but it was deemed there was no farm case and the application was subsequently considered as an infill dwelling and that's what Members went to see at the site visit and what the decision was based on.

The Service Director of Planning stated that the situation on infill is clearly set out in policy and the way it is interpreted is that a site should have road frontage with at

least three buildings. The Service Director stated that decisions are not taken based on what happened with a previous application but rather they are made based on policy. The Service Director stated that each infill development is never exactly the same because of two tests – one being road frontage and the number of buildings as stated and the other being that it does not change rural character.

Councillor S McPeake stated he had went on the site visit to the previous application and it was not a farm dwelling that was being dealt with at that time. Councillor McPeake felt there were similarities between the two applications and if agreement could not be reached tonight he would suggest a site visit as it would be helpful for Members to see the site before making a decision.

The Service Director of Planning stated that if Members felt they would benefit from seeing the site then a site visit can be arranged as it is important not to make decisions based on a previous decision but rather how they see this application. The Service Director stated that if Members are unsure of the officer recommendation it is reasonable to ask for a site visit.

Councillor Brown stated he was fairly sure that the site on the Roshure Road was a PPS21 site for a farm dwelling on a farm and that the person who applied for the site has a farm dwelling in Magherafelt town. Councillor Brown stated that the previous application is in the countryside and was to exit onto the Mullaghboy Hill Road rather than the Roshure Road. Councillor Brown stated that the previous application cannot be classed as an infill site as it was not an infill application but rather a PPS21 application so therefore infill should not be considered.

The Service Director of Planning advised that PPS21 is the whole policy for the countryside and that a house on a farm is within PPS21 along with infill dwellings. The Service Director advised that policy CTY10 deals with dwellings on a farm and policy CTY8 deals with infill. The Service Director stated that an application for a house on a farm is different to an infill dwelling as each would be considered according to its policy. The Service Director of Planning asked if the previous application had been granted as an infill or dwelling on a farm.

The Head of Development Management advised that the previous application whilst initially being submitted as a farm dwelling was considered and granted as an infill dwelling. It was argued that the house in question had two frontages – one onto Mullaghboy Hill Road and the other onto Roshure Road.

The Service Director of Planning stated that it can happen that an application is made under one policy but when it is considered it could be found that the application fits another policy under PPS.

Councillor S McPeake proposed a site visit be undertaken.

Councillor D McPeake seconded Councillor S McPeake's proposal as he stated he had been to the site visit for the previous application being referred to and it had been helpful.

Councillor McKinney stated that in relation to the previous application the decision recommended by the planning officer in their initial report was correct however by

the time the site visit was made a wall had been built along Mullaghboy Hill Road and Roshure Road. As outlined by the officer, Councillor McKinney stated that there was only slight frontage onto the Roshure Road and that the application only got through “by the skin of its teeth”.

The Chair, Councillor Black asked if Councillor McKinney had any difficulty in a site visit being undertaken for this application.

Councillor McKinney stated he did not see the circumstances as the same between the two applications but that people may want to try to manipulate the argument.

Councillor McFlynn stated that she has found since she has come onto the Planning Committee that each application is judged on its own merit, irrespective of what has happened with previous applications. The Councillor stated she agreed with Councillor S McPeake’s proposal and that a site visit should be taken.

Councillor Corry stated she also felt a site visit would be worthwhile.

Councillor S McPeake referred to Councillor McKinney’s comment in relation to potential manipulation on how this application is determined. Councillor S McPeake stated that he did not say the two applications were exactly the same but that he felt there were similarities between this application and the previous application. Councillor S McPeake stated he was not manipulating anything when he said that and made no apology.

The Service Director of Planning stated that when the Committee undertake the site visit they will be able to judge the application against policy.

Councillor McKinney stated his comments were made to the person who is representing the applicant and that it was they who were making the comments on the similarities between the applications and not him or Councillor S McPeake. Councillor McKinney stated it was the person representing the applicant who made the similarities and that Councillor S McPeake did not make any comments but stated that if he felt he had that was ok.

Councillor S McPeake stated that his comments were in relation to the request for a site visit and there was no manipulation being made.

Resolved That planning application LA09/2021/0317/O be deferred for a site visit.

**LA09/2021/0690/O Dwelling, adjoining and NE of 100 Trewmount Road,
Killyman for Briege O'Donnell**

Members considered previously circulated report on planning application LA09/2021/0690/O which had a recommendation for approval.

Proposed by Councillor S McPeake
Seconded by Councillor McFlynn and

Resolved That planning application LA09/2021/0690/O be approved subject to conditions as per the officer’s report.

LA09/2021/0822/O Site for farm dwelling and garage, 60m South of 88 Gulladuff Hill, Magherafelt for Dan McCrystal

Members considered previously circulated report on planning application LA09/2021/0822/O which had a recommendation for approval.

Proposed by Councillor D McPeake
Seconded by Councillor Corry and

Resolved That planning application LA09/2021/0822/O be approved subject to conditions as per the officer's report.

LA09/2021/1313/O Dwelling and garage, between 55c and 59 Cadian Road, Dungannon (site 1) for Mr R P Reid

LA09/2021/1314/O Dwelling and garage between 55c and 59 Cadian Road, Dungannon (site 2) for Mr R P Reid

Members considered previously circulated reports on planning applications LA09/2021/1313/O and LA09/2021/1314/O which both had a recommendation for approval.

Proposed by Councillor S McPeake
Seconded by Councillor Corry and

Resolved That planning applications LA09/2021/1313/O and LA09/2021/1314/O be approved subject to conditions as per the officer's report.

P017/22 Receive update to Planning Officer Authorisation List

The Service Director of Planning presented previously circulated report which sought approval for Mrs Karla McKinless to be authorised to sign decisions and Orders on behalf of the Council in accordance with its Schemes of Delegation.

Proposed by Councillor Clarke
Seconded by Councillor Bell and

Resolved That Mrs Karla McKinless is nominated as an authorised officer to sign decisions and Orders on behalf of the Council in accordance with its Schemes of Delegation.

The Chair, Councillor Black stated that agenda item 7 - Minutes of Planning Committee held on 10 January 2022 would be moved into matters for decision.

P018/22 Minutes of Planning Committee held on 10 January 2022

The Chair, Councillor Black referred to discussion at the Council meeting on 27 January 2022 at which it was decided to refer this item back to the Planning Committee.

Councillor Glasgow stated he did not intend to go over the debate in relation to item P006/22 – Receive Report on Planning Performance but that there were two points he had stated at the meeting which he wanted to be included in the minute which he felt were important namely –

- 1 At the end of paragraph 5 - “I just want to make sure the infrastructure is there for them to fulfil their duties as they work from home.”
- 2 Paragraph 7, sentence 2 – “I propose a report is carried out to look into this matter to see what staff need to fulfil their duties from home”

Councillor Glasgow stated that during the previous debate of the item the Council Solicitor had put forward advice and asked as a point of clarification if this had been legal advice or procedural advice.

The Chair, Councillor Black asked Councillor Glasgow if he was content with the minute subject to the two comments being included.

Councillor Glasgow stated he was content.

The Council Solicitor stated she had offered procedural advice with regards to the forum for discussing such matters and that it was not legal advice.

Councillor Glasgow asked for confirmation that it was not legal advice that had been given.

The Council Solicitor stated she had provided Council procedural advice in relation to dealing with such matters as on the night of the meeting she had interpreted Councillor Glasgow was making a complaint and that it was not the correct forum to do so.

Councillor Glasgow clarified that he had not made a complaint but rather a request for a report to ensure that the structure was there to enable people to continue working from home on a rota basis.

The Council Solicitor stated that the Councillors comments were clear now but that on the night if it had been a complaint that was being made she wanted to ensure that it was addressed in the correct forum.

Councillor Glasgow reiterated that he had never been making a complaint.

The Service Director of Planning stated that the clarification had been helpful and that what Councillor Glasgow was asking was do officers have the facilities in order to work from home. The Service Director advised that at the introduction of lock down the planning department invested heavily and all officers got laptops which are internet linked in that when an officer is working from home they can link into the office and can open files, write reports etc. The Service Director stated that team meetings are conducted virtually and that there is a Citrix system in place whereby phonecalls can be taken on an officers laptop. It was advised that if a member of staff does not have an internet connection then they would be expected to work in the office however all staff have their own internet connections. The Service Director also highlighted that officers do not work from home all the time but rather on

alternate days. The Service Director of Planning stated that Councillor Glasgow had asked for an assurance that Council has invested in its staff to enable working from home for staff and he confirmed that this has happened. The Service Director stated that if Members have an issue and it is brought to his attention then it will be dealt with.

Councillor Glasgow stated that the comments of the Service Director were reassuring and that he was content that the issues that he had raised had all been addressed within the verbal report provided tonight and thanked the Service Director for taking the time to do so.

The Service Director of Planning stated that if he had misinterpreted what Councillor Glasgow had been asking at the Planning Committee in January then it was his fault and he apologised for that.

The Chair, Councillor Black stated that there had been some misinterpretations at the last meeting and there were aims to stop the conversation entering into areas which causes difficulties in open business. The Chair stated that everyone was now clear on what had been said and that Councillor Glasgow had received a response in relation to his question.

The Council Solicitor also offered her apologies for misinterpreting what had been presented during last month's debate and her attempt to try to steer the conversation and that no offence had been meant by this.

Councillor Colvin stated that the conversation tonight had been helpful and was appreciated.

Proposed by Councillor S McPeake
Seconded by Councillor Brown and

Resolved That it be recommended to Council that the Minutes of the Planning Committee held on 10 January 2022 (P001/22 – P012/22) transacted in Open Business having been printed and circulated, be considered and adopted subject to the following comments made by Councillor Glasgow being included within item P006/22 –

- 1 At the end of paragraph 5 - "I just want to make sure the infrastructure is there for them to fulfil their duties as they work from home."
- 2 Paragraph 7, sentence 2 – "I propose a report is carried out to look into this matter to see what staff need to fulfil their duties from home"

Matters for Information

None

Live broadcast ended at 8.40 pm.

Local Government (NI) Act 2014 – Confidential Business

Proposed by Councillor Brown
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 P019/22 to P023/22.

Matters for Decision

P019/22 Receive Enforcement Report

Matters for Information

P020/22 Confidential Minutes of Planning Committee held on 10 January 2022

P021/22 Enforcement Live Case List

P022/22 Enforcement Cases Opened

P023/22 Enforcement Cases Closed

P024/22 Duration of Meeting

The meeting was called for 7 pm and concluded at 8.47 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: 1 February 2022

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

Chairs Business –

Receive details of NIAO Report into Planning in Northern Ireland

Receive report on the Review of the Implementation of the Planning Act (NI) 2011

Notification from DFI in respect of Proposed De-Restriction on sections of A6 Castledawson - Toome Road.

ITEM	INFORMATION RECEIVED	ACTION REQUIRED
4.10	Agent has written to withdraw the planning application	Members to note
5.3	Agent has written to withdraw the planning application	Members to note.

Confidential business:

- Receive response to DFI request for Clarification in relation to The Councils submission of the Draft Plan Strategy 2030.