

Minutes of Meeting of Planning Committee of Mid Ulster District Council held on Tuesday 3 October 2023 in Council Offices, Circular Road, Dungannon and by virtual means

Members Present

Councillor S McPeake, Chair

Councillors Black (5.10 pm), J Buchanan, Carney, Clarke, Cuthbertson*, Graham, Kerr, Mallaghan, Martin*, McConnell, McFlynn*, D McPeake*, Robinson, Varsani

Officers in Attendance

Dr Boomer, Service Director of Planning (SD: PI)
 Mr Bowman, Head of Strategic Planning (HSP)**
 Ms Donnelly, Council Solicitor
 Ms Doyle, Head of Local Planning (HLP)
 Mr Marrion, Senior Planning Officer (SPO)
 Ms McCullagh, Senior Planning Officer (SPO)**
 Mr McClean, Senior Planning Officer (SPO)
 Ms McKinless, Senior Planning Officer (SPO)
 Ms Mhic Iomhair (Planning Officer) (PO)
 Ms Carson (Trainee Planner) (TP)
 Mr O'Hagan, Head of ICT
 Mrs Grogan, Committee & Member Services Officer

Others in Attendance

Councillor B McGuigan*** Councillor Quinn***

LA09/2022/0525/F	Mr Tom Stokes*** Mrs Emma McIlwaine*** Mr Damien Broderick*** Mr Jason Taggart*** Mr Conor O'Hara
LA09/2022/1243/F	Mr Jim Maneely Mr Eamonn Loughrey
LA09/2022/1268/F	Mr Thomas Bell Mr Ryan Dougan Dr Phil Hull***
LA09/2023/0371/F	Mr Paul Hamill***
LA09/2023/0478/RM	Mr Russell Finlay
LA09/2022/0398/F	Mr Joe Diamond
LA09/2022/1625/F	Mr Ryan Dougan Mr Richard Agus
LA09/2022/1625/F	Mr Danny Quinn
LA09/2022/1359/O	Mr Chris Cassidy
LA09/2020/0992/O	Mr Chris Cassidy
LA09/2022/1367/F	Mr Martin Kearney

* 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 5.01 pm

P101/23 Notice of Recording

Members noted that the meeting would be webcast for live and subsequent broadcast on the Council's You Tube site.

P102/23 Apologies

Councillor McElvogue.

P103/23 Declarations of Interest

The Chair, Councillor S McPeake reminded members of their responsibility with regard to declarations of interest.

None.

P104/23 Chair's Business

The Head of Local Planning (HLP) drew members attention to previously circulated addendum and referred to letter from MUDC to Strategic Planning Directorate seeking response to request for further clarification and advised that if any member had any questions they could liaise with the Head of Strategic Planning (HSP) as this as this was his remit.

The HSP provided members with a quick summary of the letter which was sent to the Department on 22 September 2023 and advised that the letter was issued as a reminder which was still awaiting a response.

The HLP referred to letter addressed to SD: Planning from NIEA advising that a decision had been taken from them to temporarily pause the issuing of ammonia planning advice back in May which has now been lifted. This clarification received from NIEA has asked case officers to look at their case lists to see if there is any outstanding responses from NIEA where there are ongoing cases and received a response to date to issue a reconsultation to NIEA to make sure everything is ok and whether there were any further points they wish to raise in response to any of the applications.

Dr Boomer, Service Director of Planning (SD: PI) entered the meeting at 5.06 pm.

The SD: PI also referred to the below applications which were on the agenda for determination and sought approval to have the following applications deferred/withdrawn from tonight's meeting schedule for an office meeting –

Agenda Item 5.5 – LA09/2022/1359/O - Site for dwelling and domestic garage at approx 105m NW of 25 Brackagh Road, Desertmartin for Seamus Diamond

Agenda Item 5.6 - LA09/2022/1367/F - Two storey dwelling and garage at 10m N of 56 Quarry Road, Knockcloghrim for Gerard Ward

Agenda Item 5.11 – LA09/2023/0622/O – Dwelling and garage (infill site) at 30m NW of 39 Rocktown Road, Bellaghy for Samuel Arrell

Agenda Item 6.2 - LA09/2020/0992/O - Dwelling and domestic garage at Site 150m W of 115 Clonavaddy Road, Aghnagar, Cappagh, Dungannon for Plunkett Nugent

Agenda Item 6.6 - LA09/2022/0398/F - 2 dwellings within existing Mullinderg Housing Development at approx. 20m NE of 8 Moneyneany for Corramore Construction (withdrawn)

Proposed by Councillor S McPeake
Seconded by Councillor Kerr and

Resolved That the planning applications listed above be deferred/withdrawn for an office meeting / further consideration.

Matters for Decision

P105/23 Planning Applications for Determination

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

LA09/2022/0525/F 1 Class B3 Industrial Warehouse to operate as metal fabrication/preparation/coating and galvanising plant. Development to new right-hand turn access provision from Sandholes Road and associated car parking, servicing, infrastructure and site works at lands to the rear of E of 20 Sandholes Road, Cookstown for LCC Group Ltd

Members considered previously circulated report on planning application LA09/2022/0525/F which had a recommendation for approval.

Proposed by Councillor Clarke
Seconded by Councillor Mallaghan and

Resolved That planning application LA09/2022/0525/F be subject to conditions as per the officer's report.

LA09/2022/0667/F Relocation of previously installed flood lighting poles around the racetrack at lands at 48 Cookstown Road, Moneymore for Railway Karting

Members considered previously circulated report on planning application LA09/2022/0667/F which had a recommendation for approval.

Proposed by Councillor McFlynn
Seconded by Councillor Robinson and

Resolved That planning application LA09/2022/0667/F be approved subject to conditions as per the officer's report.

LA09/2022/1243/F **Extension of existing carriageway service area, including demolition of existing supermarket and PFS and construction of new PFS with shop, deli with hot food provision, seated dining area, drive thru facility, stores, sanitary and staff welfare facilities. Redevelopment of existing forecourt to provide new fuel pumps, canopy, underground storage tanks with public carparking, HGV parking, bunkering facilities and carwash area at 31-32 Glenshane Road, Maghera for James Molloy**

Members considered previously circulated report on planning application LA09/2022/1243/F which had a recommendation for approval.

Proposed by Councillor D McPeake
Seconded by Councillor Clarke and

Resolved That planning application LA09/2022/1243/F be approved subject to conditions as per the officer's report.

Councillor Black entered the meeting at 5.10 pm.

LA09/2022/1268/F **Fridge Recycling Plant, associated yard area, landscaping, weighbridge, nitrogen dioxide silo, parking, access (insitu) and ancillary site works (amended description) at lands approx. 39m N of 52 Creagh Road, Toomebridge for Enva Northern Ireland Ltd**

Members considered previously circulated report on planning application LA09/2022/1268/F which had a recommendation for approval.

Proposed by Councillor D McPeake
Seconded by Councillor Clarke and

Resolved That planning application LA09/2022/1268/F be approved subject to conditions as per the officer's report.

LA09/2022/1359/O **Site for dwelling and domestic garage at approx. 105m NW of 25 Brackagh Road, Desertmartin for Mr Seamus Diamond**

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

LA09/2022/1367/F **Two storey dwelling and garage at 10m N of 56 Quarry Road, Knockloughrim for Gerard Ward**

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

LA09/2022/1607/F Upgrade works of existing agricultural access to provide alternative access and egress for commercial vehicles and staff/visitor cars to Agri development hub (LA09/2018/1213/O) at 170m NE of Annaghbeg Road/Tamnamore Road Junction, Tamnamore, Dungannon for Capper Trading Ltd

Members considered previously circulated report on planning application LA09/2022/1607/F which had a recommendation for approval.

Proposed by Councillor Robinson
Seconded by Councillor Varsani and

Resolved That planning application LA09/2022/1607/F be approved subject to conditions as per the officer's report.

LA09/2023/0324/F Two storey dwelling with driveway at 15 Oaks Road, Dungannon for Radius Housing Association

Members considered previously circulated report on planning application LA09/2023/0324/F which had a recommendation for approval.

Proposed by Councillor Varsani
Seconded by Councillor McConnell and

Resolved That planning application LA09/2023/0324/F be approved subject to conditions as per the officer's report.

LA09/2023/0371/F Aggregate bagging facility to include production building, enclosed loading hopper, enclosed storage bins, storage silos, enclosed blending area, aggregate elevator, electrical switch-room and all associated ancillary works (part retrospective) at FP McCann Ltd, Knockloughrim Quarry, Magherafelt for FP McCann Ltd

Members considered previously circulated report on planning application LA09/2023/0371/F which had a recommendation for approval.

Proposed by Councillor D McPeake
Seconded by Councillor McFlynn and

Resolved That planning application LA09/2023/0371/F be approved subject to conditions as per the officer's report.

LA09/2023/0478/RM Dwelling and garage at 60m NW of 55 Annaghmore Road, Castledawson for Alvin McMullan

Members considered previously circulated report on planning application LA09/2023/0478/RM which had a recommendation for approval.

Proposed by Councillor Clarke

Seconded by Councillor D McPeake and

Resolved That planning application LA09/2023/0478/RM be approved subject to conditions as per the officer's report.

LA09/2023/0622/O Dwelling and garage (infill site) at 30m NW of 39 Rocktown Road, Bellaghy for Mr Samuel Arrell

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

LA09/2023/0695/F Portal framed electrical switch room with brick and cladding finishes and a under void for cable access at Moy Park, Dungannon Proteins, 152 Killyman Road, Dungannon for Mr Ian Warnock

Members considered previously circulated report on planning application LA09/2023/0695/F which had a recommendation for approval.

Proposed by Councillor Varsani
Seconded by Councillor McConnell and

Resolved That planning application LA09/2023/0695/F be approved subject to conditions as per the officer's report.

LA09/2023/0801/F Retention of domestic garage and store at 25m W of 76 Gortgonis Road, Coalisland for Mr Tony Canning

Members considered previously circulated report on planning application LA09/2023/0801/F which had a recommendation for approval.

Proposed by Councillor Kerr
Seconded by Councillor McFlynn and

Resolved That planning application LA09/2023/0801/F be approved subject to conditions as per the officer's report.

LA09/2020/0729/F Site for 5 detached dwellings and garages at 40m W of 16 Annaghmore Road, Coalisland for Mr Conor Tennyson

Members considered previously circulated report on planning application LA09/2020/0729/F which had a recommendation for approval.

Proposed by Councillor McFlynn
Seconded by Councillor Robinson and

Resolved That planning application LA09/2020/0729/F be approved subject to conditions as per the officer's report.

LA09/2020/0992/O Dwelling and domestic garage at Site 150m W of 115 Clonavaddy Road, Aghnagar, Cappagh, Dungannon for Plunkett Nugent

Agreed that application be deferred for one month.

LA09/2020/1098/F Retention of existing structure to outdoor drinks area at Regans Bar, 19 Hall Street, Maghera for Bernard Regan

Members considered previously circulated report on planning application LA09/2020/1098/F which had a recommendation for approval.

Proposed by Councillor D McPeake
Seconded by Councillor Clarke and

Resolved That planning application LA09/2020/1098/F be approved subject to conditions as per the officer's report.

LA09/2021/1653/F Extension of facilities, provision of workshop, access to public road to replace existing substandard access, adequate parking, associated site works and landscaping at immediately E of 19 Annagh Road, Lungs, Clogher for Malcolm Keys

Members considered previously circulated report on planning application LA09/2021/1653/F which had a recommendation for approval.

Proposed by Councillor Robinson
Seconded by Councillor Graham and

Resolved That planning application LA09/2021/1653/F be approved subject to conditions as per the officer's report.

LA09/2021/1772/O Dwelling, domestic garage and associated works at lands approx. 30m S of 29 Tullyglush Road, Ballygawley for Mr Liam Farrell

Members considered previously circulated report on planning application LA09/2021/1772/O which had a recommendation for approval.

Proposed by Councillor McConnell
Seconded by Councillor Clarke and

Resolved That planning application LA09/2021/1772/O be approved subject to conditions as per the officer's report.

LA09/2022/0398/F 2 dwellings within existing Mullinderg Housing Development at approx. 20m NE of 8 Moneyneany for Corramore Construction

Agreed that application be withdrawn earlier in the meeting.

LA09/2022/1625/F Alteration to approved egress point (LA09/2018/0777/F) to include for access to existing factory at 116 Deerpark Road, Toomebridge for Neil Savage

Members considered previously circulated report on planning application LA09/2022/1625/F which had a recommendation for approval.

The Chair advised the committee that requests to speak on the application had been received and invited Mr Quinn to address the committee in the first instance.

Mr Quinn thanked the committee for allowing him to address the meeting this evening. He advised that the school community appreciated the opportunity to highlight their ongoing concerns relating to the implementation to access the existing SDC factory adjacent to the school as outlined within the deferred consultation report on 2 March 2023. The Board of Governors of the school request that due consideration is given to the school's unique situation and the negative impact it will have on environment for pupils, parents, grandparents and the wider community who use the Deerpark Road frequently. Recognition is given to SDC wanting to maximise their productivity and therefore the movement of HGV's on and off the site as rapidly as possible. It is regrettable that the school did not object to the planning application in 2018, but this was done in good faith which has now enabled SDC to adjust the scope of their work. Other concerns have been raised continually and are documented contrary to MRA Transport Planning Report dated 27 June 2023. The school has been explicit in the evidence in the SW survey dated 29 March 2023, currently the majority of the vehicles pass Anahorish Primary School. While MRA claim the new A6 has enabled a reduction in traffic passing the school, this is neither enforceable or realistic as HGV traffic is unchanged. The school community has already cited the need for joined up thinking and collaboration in the interest for all including the footpath outside the school that has been approved by DfI and future involvement in the safer route to schools and programmes involving walking and cycling. Mr Quinn said as Principal of the school, he had a duty of care to the children, parents, grandparents, staff and all other personnel who access his school, the reason for his presence at this meeting here tonight was primarily safety. On behalf of the pupils at Anahorish Primary School he implored the planning committee to make a site visit during peak times of the school day to ensure a huge picture of the reality of this application so any decision reached can be done so on first-hand experience and local knowledge. Looking forward the school community wishes to work collaboratively with SDC, their neighbours to ensure the safety and well-being of the children, their families and the wider community.

The Chair invited Mr Dougan and Mr Agus to address the committee.

Mr Dougan advised that he welcomed the recommendation summary by the case officer and was keen not to duplicate the summary what was already alluded to but had a few salient points to highlight. This application was presented to committee with a recommendation to approve in March this year, the application was deferred

for an office meeting after which the applicant had volunteered proposals to elevate concerns raised by the adjacent school regarding the perceived vehicle movements. Notably the amended proposals and incorporated change to create a 'left in, right out' only vehicle movement which represented betterment for the school. DfI responded to the initial application submission with no objections on the 14 February and upon receipt of amended proposals, were reconsulted on two further occasions and responded to both on 9 May and 5 September 2023 with no objection. Mr Dougan concluded by saying that the key consultee DfI Roads having robustly assessed the amended proposals on behalf of the school, remain with no objections to the proposal and would respectfully request that members support the recommendation to approve the application this evening.

Mr Agus from MRA Partnership advised that he had been assisting Mr Dougan on the application, specifically advising and assisting on road safety matters. Mr Agus advised that this proposal was not generating any more traffic at SDC, the application is responding to the changes in the public road. To access the current access from the A6, HGV's currently have to drive onto oncoming traffic and indeed such a difficult manoeuvre, that many registered HGV drivers continue to approach from the Hillhead Road as before, passing the school and this new access addressed this issue enabling more vehicles to avoid passing the school. To address the concerns of the school, this has been reorientated to left in, right out, a line for A6 traffic and further reduce traffic passing the school and all the traffic that doesn't currently pass the school has been done so because of the A6 and this would reduce it further, but cannot remove it completely as SDC has plants on both sides of the school. DfI has given this application considerable attention and scrutiny prior to offering no objection.

Dr Boomer, Service Director of Planning (SD: PI) said that obviously that this was an alteration to improve an egress point and advised that there was an existing access point here. In terms of movement there would be nothing to stop traffic coming out of that access point and whilst he appreciated the site to some degree, is divided by buildings, it still could be re-orientated to change its traffic movement without necessarily needing a planning permission. The SD: PI said that we were not talking about adding a new risk but changing an existing access. He appreciated that road safety issues when next to a school could be quite emotive and it was reasonable for the Principal to try to do everything he could in order to ensure that it was as safe as possible. He cautioned members on attending a site visit to determine whether the access was safe as it is wisest to follow the advice which we are being given from the roads authority who consider that it is safe access. For the committee to disagree something else without clear evidence, could result in a planning appeal, which the permission may consider as unnecessary because we did not actually have evidence that it was dangerous or worsening the situation. Whilst he appreciated the concerns of the parents, discussions had taken place at length to establish whether it was safe. The committee should also note that Roads Service is telling Council the access is safe, the applicant is agreeable to putting signage to encourage traffic leaving the site to travel away from the school. The SD: PI's advice to members would be that whilst he appreciated the very emotive issue which has been given, we do need to have full regard to the technical expertise in which we are being provided with by the road engineers.

The Chair referred to comment regarding "right turn out, left turn in" and enquired if this was going to be signposted.

Mr Dougan agreed that this would be the case and would be happy as it was his understanding that there has been a suggested condition applied to the permission.

Councillor McFlynn enquired if it was known what times Roads Service officials visited the site and whether they were there during peak times of the school day.

The SD: PI stated that this information was not known but felt that as this was a factory why would SDC be moving vehicles when officials arrived. Roads Service has assumed the movements of vehicles during these peak times and they were saying that in their opinion everything was up to standard.

Councillor McFlynn enquired from Mr Quinn (Principal) where parents park when they are dropping off and lifting children, do they lift the children at the carpark inside the school or park on the roadside.

Mr Quinn advised that a number come to the carpark and some out on the road as the carpark inside the school is not large enough to deal with the capacity but were currently looking to address this issue.

The SD: PI said that it was his understanding that Mr Quinn was looking to address the parking issue with an application for layby parking facilities.

Councillor Graham enquired what more Mr Quinn wanted SDC to do to make the school happy.

Mr Quinn said that the school community would like SDC to use their existing entrance going in and had liaised with SDC regarding the new adjustments they made. He referred to site splays up at the school and said that he wished to have these moved further from the school and had asked many times for this to be done but it has never happened. He felt that things were hard to control when the signs were not always followed.

Councillor Mallaghan said that given the fact that Roads Service had no concerns, the committee was left in a difficult position as this was two neighbours who were in dispute over this situation, but as a planning authority we would have to follow the advice from the statutory authority on this and proposed to proceed with the recommendation.

Proposed by Councillor Mallaghan
Seconded by Councillor Carney and

Resolved That planning application LA09/2022/1625/F be approved subject to conditions as per the officer's report.

P106/23 Receive Report on Dfl Notice of Opinion – Lough Neagh

The Head of Strategic Planning (HSP) presented previously circulated report to advise members of further correspondence received from Dfl on the 29 August 2023 relating to its recent Notice of Opinion to approve an application which seeks the non-compliance with conditions number 07 and condition number 12 of planning approval LA03/2017/0310/F.

Dfl had previously invited requests for an opportunity to appear before and be heard by the Planning Appeals Commission, or a person appointed by the Department for the purpose of a hearing, in writing, within 8 weeks from the date of service of the Notice.

The HSP referred to item on addendum in relating to correspondence received today advising that Friends of the Earth wish to participate in a PAC hearing regarding this development (LA03/2021/0940/F).

The HSP went through the points that Planning has raised with Dfl.

The Chair enquired if members had an opportunity to read in its entirety the Friends of the Earth correspondence.

The Chair referred to Item 7 where the group has indicated that they have already received a formal request for a hearing and felt if there was to be any change in that there may be legal implications.

The SD: PI advised that this was an interesting email which arrived this morning which he did not see until 3.30 pm. Obviously, Friends of the Earth became aware that Councillors had raised a whole series of issues and asking for reassurance at the last meeting and as he was not an ecologist, he could not provide that assurance. What Friends of the Earth are clearly trying to do by sending an email this morning was to get a chance to speak at the public enquiry on the basis of this Council asking for one and clearly if it was felt that we didn't have satisfactory answers to our questions, then we can stick with that position. The SD: PI felt that it was interesting that the Department had declined an invitation to attend the meeting which in his opinion was not good practice in terms of engagement or appropriate respect towards members of the Council who were clearly looking to engage in dialogue in a meaningful way. In referring to the end of the letter felt it wasn't as simple as Friends of the Earth saying that by extending it the Department will be doing something illegal, they sent us the consultation, they sent us a date for the consultation, we responded and because of the nature of our response, the Department extended the consultation period. The SD: PI said that he would be somewhat shocked that any court concluded that it was time bound because Council had written in there couldn't be further discussion to avoid a public enquiry. Friends of the Earth go through a lot more detail on what he would have answers to and clearly looked at the letter Council had sent and clearly picked up on the things in which members were questioning i.e. what's the impact of the huge barges, what's the impact of disturbance if more is taken out, impact on bird life, ornithology. He said that it didn't take a genius at this moment in time to realise Lough Neagh was very emotive in terms of the green algae and Friends of the Earth are raising other issues regarding the Lough as a whole, governance of the Lough, whether there were ever proper ecology baselines, contamination, bacteria, was habitat properly met, issues like that where lawyers could argue about and try to attempt to give members a definite answer on that, a lot of issues has been raised which they wish to raise themselves at the public enquiry. The SD: PI felt that it was useful to bring to members attention but equally felt that some of the local industries in the area like sand extraction and concrete operators also get their opportunity to speak on the matter.

The Chair advised that a request from Lough Neagh Sand Traders had been received and invited the representatives to address the committee.

Mr Andrew Scurfield advised that he was an agent for Lough Neagh Sand Traders and his submission seeks to provide clarification as appropriate to the points raised by the Council to the Department for Infrastructure (“DFI”) in its letter of 10th August 2023. He hoped that the Planning Committee will consider these helpful and remove any concerns they had expressed at the previous meeting on 1st August 2023. He advised that he has been the agent for the Applicant since the grant of the original planning permission (“the OPP”) which permits the extraction of sand from Lough Neagh until 2032 and also for this present Section 54 Application (“the S54”) before the DFI, to seek modification of 2 (only) conditions pertaining to the ability to replace barges with a modern equivalent and to allow the standard working day for the barges to be the same throughout the whole year. It is important to set out at the outset that the present S54 before the Planning Committee does not seek to amend in any way the extant OPP in relation to:

- the actual act of extraction,
- the volume of sand permitted per annum,
- the total amount of sand permitted to be extracted over the life of the planning permission or,
- the location from which it is extracted or the life of the planning permission itself.

Mr Scurfield stated that these remain the same and governed by the main planning permission and was tested at public enquiry and was assessed not to have a reason to not grant planning permission. This is not a fresh planning application looking to revisit all that, only seeking an amendment on 2 conditions:

1. To provide flexibility to allow barges to be changed as a lot of the fleet has been aging in the terms of Lough Neagh and in order to replace those barges the condition as outlined would only allow you to provide like for like. Some of these barges is 50 years old and just not possible so basically the revised condition allows flexibility but end up with a newer vessel with lesser emissions and lesser noise emissions;
2. DFI are not proposing that unrestricted nighttime working and wished to make that clear and for most of the year operations are provided/permitted to work from 6 am to 6 pm. There was insufficient information in the original statement and environmental assessment to allow hours of darkness working. The revised NIEA and revised appropriate assessment that was tested by NIEA and Shared Environment Services (SES) determined that there was sufficient information to allow operations to occur within what would be normal operating hours throughout the entirety of the year so that November, December, January and February would be added to that list. In order for them to reach that finding there would have to be no adverse effect on the integrity of the European side and could not reach that conclusion and recommendation if that were not the case.

Mr Scurfield advised that one of the other matters that has been raised and touched upon was the enforceability of how do we know where the barges are during the night, he said that GPS trackers are attached to each and every vessel, they live report every minute of their movement, if there is extraction outside the area, DFI receive an email directly from the software operator so they are made aware immediately. On top of this INST provide fortnightly summary reports and monthly tonnages so everyone can be sure that everything is being operated accordingly. He

suggested that this was the most regulated form of extraction in the island of Ireland. The Council's Chief Executive provided a no objection response to this application subject to all the appropriate assessments and the natural environment being carried out, he would agree this is the case as NIEA and SES both found no reason to refuse the application.

Mr Scurfield asked members to support DfI's recommendation to allow this to pass without a need for a public hearing. He advised that he was not aware of Friends of the Earth's response as it came at the very last minute and was a little blindsided by that but would say that most of the matters from what he could understand are outside of the planning application and the parameters of what was being looked at and said that as everyone accepts the algae is a substantive issue and the anthropogenic matters which were being referenced was all outside of the bounds of the planning application put forward and simply limited to hours of operation and changes of barges.

The SD: PI said that it got quite complex when there is a change of condition, legally if it went to public enquiry, planning appeals commission does have the opportunity to reassess the application afresh. There has been notes where someone challenged a planning appeal on a condition on a notion that it's unreasonable and the PAC concluded that if it was unreasonable that it cannot be imposed and no longer the means to grant that planning permission. He said that theoretically shocked if PAC took that view in this instance but would equally wrong of him to advise members that it was absolutely limited to the conditions. The SD: PI referred to what was in front of members tonight despite that wider legal interpretation, is that can bigger boats be put on the Lough and hours of operation at different times and not the whole effect. He said that it was important to ask why this was felt necessary in the first place and was obviously imposed by the Planning Appeals Commission when dealing with the public enquiry with agreement with the parties.

In response to SD: PI, Mr Scurfield advised that with the initial submission and predominantly the bird analysis this was undertaken in exclusively daylight hours for the original environmental statement, there was a gap given that in the winter months there is usually 1½ to 2 hours which were normal operating hours when the barges would have been returning to the quays. The commissioner felt that there was a gap in that analysis and he recommended the restricted hours in daylight working in November, December, January and February which was the normal operating hours in which Lough Neagh Sand Traders accepted and operated those conditions with a view to the fact they had to go away and plug that information gap in order that either NIEA or SES could arrive at a position where they could say that there would be no harm done to the designated site so this was why it was imposed in the first instance. This has been revisited all for ostensibly commercial reasons because the normal operating hours of a business throughout the rest of the year is 6am to 6pm. In response to comment relating to the barges, Mr Scurfield advised that the Department was alerted before the issue of the planning consent and unfortunately to ask someone to replace a vessel with a like for like when a vessel is 50 years old was going to be unworkable, but they stuck to their guns and this is why this is requested as well.

The SD: PI said that his staff would be interested in the issue of enforcement and enquired could it not be the case that someone could switch of a tracker and also for third party sand traders who do not operate with trackers but still extract. The SD: PI

felt that the representatives were asking the committee to trust them and dispute what the Department alluded to in their correspondence, his experience is that they intend to push all the enforcement matters to this Council and when we contact them, they tend not to respond to us. He enquired how do you stop barges going out over night and extracting in areas where they shouldn't be permitted.

Councillor McConnell left meeting at 8.06 pm and returned at 8.08 pm.

Mr Scurfield advised that there are trackers built into the system in a very sophisticated way and if these were tampered with or the device goes down, it would alert Seatrack or the relevant sea company responsible and also the Department that a particular tracker on one of the vessels has gone down which is instantaneous. Mr Scurfield stated that protocol within Lough Neagh Sand Traders which has the overarching Section 76 above it, basically says that the operator will stand down the vessel until the tracker has been repaired and operational again. Section 76 relates to a legal agreement which brings in the 5 operators and if one of those operators is in breach of the operations, then consideration is that all the operators are in breach and therefore the potential for infighting amongst the parties where one party could be potentially be suing the other for loss of earnings and was beyond the pilots of the barges to disarm a tracker unit without alerting someone. In relation to pirates of the Lough, Mr Scurfield advised that these were third party operators and could not speak on that matter, but most definitely do not have trackers and could not benefit from planning permission either as the planning permission was specific to routes which enable the sand only to be landed at the 8 controlled quays which was deliberately structured by the Department to ensure that any third party operators could not wilfully operate.

The SD: PI said as the committee know it's not against the law to do something without planning permission, but against the law to break an enforcement notice and whilst there may be activities which do not benefit from planning permission, it doesn't necessarily mean that the enforcement notice has been breached as this is fairly clear in regards to the areas and asked what level of governance exists to deal with that. As this area is under private ownership of Lord Shaftsbury Estates, Lough Neagh Sand Traders were extracting under licence and enquired what governance exists to deal with extraction by other parties If there is other extraction activity taking place on the Lough under private control why is there not proper governance to sort this out and why are such matters left to the planning authority. The SD: PI stated that if he was a licenced trader, he would like to see an injunction served when other people were operating without a licence.

Mr Scurfield said that he wasn't entirely sure that this was pertinent to this application but agreed that the bed of the Lough was in private ownership but would dispute whether the Lough is not open to all and would understand that private matters has been taken in little or no success in similar vein to other enforcement action.

Councillor Kerr wished to share his disappointment that the Department declined the invitation and felt that they must be living under a rock because Lough Neagh is very prominent in the local and national media at present and was aware that Al Jazeera was visiting Lough Neagh this week. The member was also aware of Chinese State Media sending a team over as it has a huge significant interest, not only to Ireland but to whole of the world. The member said that his opinion would be to strongly

oppose to the amendments to the relaxation of the applications and when reading through the letter there seems to be hugely contradictory statements coming from NIEA regarding survey work. The member said that he was aware that himself, Sinn Fein and SDLP had taken a motion last week to Council to try and address what was happening on the Lough but due to contradictory work on the survey regarding the environmental impact assessment, he would be very reluctant and had huge reservations regarding the relaxation and amendments to the conditions.

Councillor Varsani said that we are all cognisant of the fact that sand is such an important aspect of industry, an important ingredient and there was a need to separate issues and we will endeavour to do our best on that. The member reminded everyone that issues had been raised on these particular variations on planning before all the media had got interested in the Lough and felt that it was important that we are all cognisant and not mixing up our passion for the Lough in which we all have and what our remit is in terms of what we are being asked to do in considering these variations. The member stated that reassurance was given that everything was very high tech and all kinds of monitoring was being carried out and yet there has apparently been approximately 46 planning breaches within the space of 2 years. The member referred to letter from Council dated 15 September 2023 to the Department advising that the Council is off the view that the Department has been unwilling to work with Council in proactively investigating alleged breaches in relation to extraction from the Lough demonstrated by the fact that the Council is currently investigating such alleged breaches itself. The member referred to the letter from Friends of the Earth which arrived quite late but had touched on an issue which Council had raised in their initial questioning in that we don't think there has been robust research carried out on the impact of on birds and wildlife as does not still see enough evidence of that. The member said that it was her understanding that there would be a condition on bats and otters in relation to this as well, but did not see any information particularly to nocturnal species, but if there was some information she would be happy to look at that. In conclusion, Councillor Varsani felt that there were still a lot of unknowns here and although happy to read over the knowns, would be very interested in the unknowns at this point.

Councillor Black concurred with Councillor Varsani's comments and said there was a need to separate the issues which were in front of members here and as a committee we did write down the queries and concerns which we had which were fed back to the Department, who had an opportunity to address them in which they had. The member did feel however that the Department's response has gone some way to deal with the concerns and addressed quite a number of them. He referred to SD: PI previous comments and advised that there were two points in front of members tonight to consider and if we look at them in turn. Firstly, the issue in relation to the barges and what he was picking up from what he had read and presentation given tonight was that being asked to replace barges with like for like barges which is 50 years old, this is not practical and impossible to actually do and in addition to the new barges being replaced, this could actually be more environmentally friendly which could be an improvement on what the current position is. The member felt that there was a need for this to be noted and something that the committee needed to be paying attention to as in the long run it could be something that could improve the situation. Secondly, in regard to the hours of trading, there was some mention of trading during the night and felt that this was not something that was before us extending the trading hours from 6am to 6pm, it was his understanding that this was through the winter months because of darkness

setting in to provide more leeway to do that because of restriction in daylight during that time of year. However, whilst there is an extension of time that this can be done, there is an overall restriction that remains in place with the overall regard to the amount of sand that can actually be extracted from the Lough during any year. Whilst there are concerns regarding the intensification of the process here, the overall restriction remains unchanged and there can't actually be any more sand pulled out from the Lough even with the extension of time, should that be granted which also has to be considered as a committee with any decision that is made. It was his understanding that these extended hours has been considered by NIEA and SES and they have not presented any concern with regard to this direction of travel and was cognisant of the comments made regarding a previous application that was before us tonight that we need to bear heed to the specialist bodies with Road Service being the example on that occasion. He said that there are other bodies which are before us on this occasion and as a committee should we being going against the advice in which we were receiving from the external consultees which we also need to bear in mind. In regard to enforcement and whilst there will be no set of circumstances that are infallible, he felt what was said tonight goes some way in trying to address the concerns and in some way making enforcement easier should there be breaches and if trackers are not in play, it actually demonstrates the breaches of a condition and therefore easier to take enforcement action should it be required. The member felt that Lough Neagh Sand Traders could only do what was actually practically possible for them and were trying to put something in front of committee to make it easier to monitor the situation. In conclusion, the member felt that these were some points the committee needed to bear in mind in regards to what the committee decides here tonight.

Councillor Clarke advised that concerns were raised at the last meeting with a lot of things emerging into the public domain in the meantime and felt that this should not be used as a pressure on Council to make a decision in certain ways because we should proceed on what we are concerned about, and our concern was about the removal of two conditions. The member felt that nothing has been added here tonight to convince him otherwise and bodies that have been involved and have responsibility for the Lough have probably been seen to be not that efficient at doing what they are supposed to be doing and felt that there was a need to be careful where Council take their direction and information from. The member referred to this current stage and the debate that has taken place, he had noted that the application to remove the conditions had not been made, we would not be in the position we are in now and only reacting to an application, but this was no justification to let this go as Council has set out on a course which has to be continued with. The member said at the time Council did not know that this would open things up and it was his understanding that this has be progressed on from what was proposed to do initially.

Councillor McFlynn advised that a lot of questions, queries and discussion has taken place since the summertime when the blue algae appeared on Lough Neagh and whilst listening carefully to all the comments from the committee here tonight, her major issue is that the planning application originally approved was done so with these conditions on it to protect the Lough. The member said that industry could still continue on but she could not support the conditions be removed at this stage and a lot more discussion needed to take place on what was actually happening on our Lough and the effects all this industry is having. The member said that members and officers here tonight had spoken openheartedly on the issue and her opinion

would be that there was a whole lot more discussion needed before those conditions were taken off.

The SD: PI said that it was really important for members to remind themselves on what the decision that was being made, whether as a Council we will call for hearing looking into issues raised by the application. He said that we are not the authority which will be deciding on the outcome of the application as this was the remit of the Department. The SD: PI referred to similar matter which related to Upperlands and our experience was that the Department evaded our questions and felt that this will be the same scenario. The Department will request we demonstrate the harm caused by the application. The SD: PI stated that extraction on the Lough will carry on regardless of the proposed alterations the conditions. His main concern was that more intensive extraction will impact on sediment in lake which could lead on to further impacts. The traders had indicated the permission was time limited, which meant there would be opportunity for further research on impacts before a further permission would be granted. The SD: PI felt that there was a need for further research and a more joined up government around the lake to ensure that proper dialogue takes place with DfI, DAERA and Shaftbury's Estate etc. as this was not just about the lake but about future of the basin. The SD: PI concluded by saying that this was not a healthy time in government as currently there was a culture of continuously passing the buck and from a planning professional viewpoint this was not helping to resolve issues.

Councillor Varsani said it may be useful to re-read a little paragraph from Council's letter from 10th August when we talk about evidence, it was also the absence of evidence that we need to concern ourselves with especially in regard to one of the most important habitats in Europe, if not the world – *"In requesting a Hearing the Council reserve the right to add to its concerns and to bring in expertise to question the adequacy of the environmental appraisal and appropriate assessment of this change to the conditions and it should be born in mind that because the precautionary principal applies the burden will rest with the Department to demonstrate that no harm will occur"*. The member felt that the Department may have given us an opinion but they have not given us the evidence that no harm will occur and advised that an opinion is not the same as research and felt that the committee needed to bear this in mind also.

The Chair advised that members had heard a good lengthy discussion and also presentation including questions and answers from representatives from Lough Neagh Sand Traders. He wished to say that it was unacceptable that the Department has not come forthwith to answer some of the very pertinent questions and felt that as government body to fail in its duty to do that is totally wrong and may have went some way to what Councillor Varsani asked for to alleviate some of the precautionary issues.

Proposed by Councillor Clarke
Seconded by Councillor Varsani and

Resolved That having considered the correspondence from DfI, that a hearing by the PAC is still being sought.

P107/23 Receive Report on Net Zero

The Head of Strategic Planning (HSP) presented previously circulated report to agree a Council response to DAERA's current consultation on the related Carbon Budgets and the CCC advice report (appendix). The consultation closes on the 11 October 2023.

The Chair agreed that this was a very high tech, detailed, scientific document and commended the HSP on the delivery of his presentation and felt that it has been captured well and in terms on the needs to be an economic feasibility and considerations as well as protecting the environment and matters relating to agriculture.

Councillor Varsani enquired if the reduction livestock was almost a third or 18%.

The HSP advised that Item 3.2 specifically states that “*A reduction in Northern Irish livestock numbers of almost a third and the widespread adoption of low-carbon farming practices*” which relates to this particular point. He stated that one reflects the balance pathway and the other is the stretch ambition pathway which was an even more ambitious target which explains the reference to 18% and almost a third.

Proposed by Councillor Kerr
Seconded by Councillor Mallaghan and

Resolved To agree the suggested response to this consultation as set out in the report and that the Service Director is delegated to finalise the response.

Matters for Information

P108/23 Minutes of Planning Committee held on 5 September 2023

Members noted minutes of Planning Committee held on 5 September 2023.

Live broadcast ended at 6.52 pm.

Local Government (NI) Act 2014 – Confidential Business

Proposed by Councillor Kerr
Seconded by Varsani 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 P109/23 to P113/23.

Matters for Decision

P109/23 Receive Report on Advanced Notice of Listing – Pomeroy
P110/23 Receive Enforcement Report

Matters for Information

- P111/23 Confidential Minutes of Planning Committee held on 5 September 2023
- P112/23 Enforcement Cases Opened
- P113/23 Enforcement Cases Closed

P101/23 Duration of Meeting

The meeting was called for 5 pm and concluded at 7.10 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 October 2023

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

Chairs Business –

Letter to DFI Re Draft Development Plan

Letter to Head of Planning from DAERA

ITEM	INFORMATION RECEIVED	ACTION REQUIRED
5.3	Natural Environment Division replied on 26-09-23 and has considered the impacts of the proposal on designated sites and other natural heritage interests and, on the basis of the information provided, has no concerns.	To be noted by members
5.4	A further condition is included to address the waste codes allowed	To be noted by Members
7	Correspondence from Friends of the Earth	To be noted by Members