

**Minutes of Meeting of Planning Committee of Mid Ulster District Council held on Tuesday 1 May 2018 in Council Offices, Ballyronan Road, Magherafelt**

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| <b>Members Present</b>        | Councillor Mallaghan, Chair   |  |
|                               | Councillors Bateson, Bell, Clarke, Cuthbertson, Glasgow, Kearney, McAleer, McEldowney, McKinney, McPeake, Mullen, Reid, Robinson  |  |
| <b>Officers in Attendance</b> | Mr Tohill, Chief Executive<br>Dr Boomer, Planning Manager<br>Mr Bowman, Head of Development Management<br>Mr Browne, Head of Tourism<br>Ms Doyle, Senior Planning Officer<br>Mr Marrion, Senior Planning Officer<br>Mr McCrystal, Senior Planning Officer<br>Ms McNally, Council Solicitor<br>Miss Thompson, Committee Services Officer |  |
| <b>Others in Attendance</b>   | <b>Applicant Speakers</b>   |  |
|                               | LA09/2015/0459/F  | Ms O'Neill<br>Mr Canavan                         |
|                               | LA09/2015/0460/F  | Ms Burke   |
|                               | LA09/2017/0802/F  | Mr Cassidy<br>Councillor B McGuigan              |
|                               | LA09/2017/1284/O  | Mr Cassidy                                       |
|                               | LA09/2017/1349/F  | Mr Cassidy                                       |
|                               | LA09/2017/1725/O  | Mr Cassidy                                       |
|                               | LA09/2018/0124/F  | Mr Maguire<br>Councillor McGinley                |
|                               | LA09/2015/0523/F  | Councillor Wilson<br>Mr Molloy MP<br>Mr Stephens |
|                               | LA09/20170673/O   | Mr Cassidy<br>Councillor B McGuigan              |

The meeting commenced at 7.04 pm

**P065/18      Apologies**

Councillor Gildernew.

**P066/18      Declarations of Interest**

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

Councillor Mullen declared an interest in planning applications LA09/2017/1284/O, LA09/2017/1609/F and LA09/2018/0124/F.

## **P067/18      Chair's Business**

The Chair, Councillor Mallaghan advised he had received an invitation to a Royal Ulster Architectural Society event on 18 May. The Chair stated he was unable to attend this event and would offer the invitation to the Vice Chair on this occasion.

The Planning Manager referred to previously circulated paper in relation to PAC decision on planning application LA09/2017/0272/F in which the appeal was allowed and partial costs were awarded to the applicant. The Planning Manager expressed concern regarding the criticism of planning staff and how they dealt with the appeal and that given this disquiet he advised that the matter would be discussed with Council Solicitor and senior planning staff with the intention of bringing forward a protocol for dealing with appeals, particularly where the case officers report recommendation differs from the Planning Committee decision.

The Planning Manager advised that figures in relation to planning performance show that progress has been made in reducing time taken to deal with major applications since the formation of a majors team, although the target for major applications was not met. The Planning Manager advised that enforcement targets have been met and that the main target for local applications appears to have been achieved however there has been a significant decline in performance since Christmas and an increase in the number of applications yet to be determined. This is due to the development management team being halved due to absences and resignations for the three months around Christmas.

In order to deal with the backlog and growing income fee the Planning Manager advised that an additional permanent planning officer has been appointed and that a two year contract had been offered to another officer to provide cover for a career break. Advertisements have also been placed for two graduate trainees for a two year contract. This is possible through savings from existing resources.

The Planning Manager advised that progress was continuing to be made on the Development Plan and advised of two dates for Special Planning Committee meetings (9 May and 11 June) for Members to consider the work done to date. Due to the size of the documentation Members were advised to download their papers as soon as possible in order to address any potential problems.

The Chair, Councillor Mallaghan expressed some concern regarding the lack of notice with regard to the Special Planning Committee meetings particularly the May meeting.

Councillor Cuthbertson referred to the planning appeal awarded against Council and asked what the award of costs would be and if there was potential for surcharges given the officer recommendation was for approval of the application and this was overturned. In referring to the appeal judgement, Councillor Cuthbertson asked if this had been taken into account for tonight's applications.

The Planning Manager advised that the appeal decision which was for a single wind turbine did not create a precedent with regards a wind farm. The Planning Manager advised of a previous appeal by the same applicant for a wind farm which was refused. The Planning Manager advised that PAC did not take armourage with the reason for refusal as the committee was entitled to refuse the application and there would be no surcharge issue for Members. The Planning Manager advised that costs were awarded against Council in relation to the applicant addressing the additional point made in the rebuttal of the appeal.

The Council Solicitor advised that the PAC has the power to make an award of cost, but it does not specify an amount of costs. The amounts of costs to be paid is up to the two parties to agree and in the absence of agreement it would be subject to a process called taxation.

Councillor Clarke stated that the case went to PAC as the Planning Committee had overturned the officer recommendation and that the Commissioner, in their commentary, reflected on the lack of effort put into the appeal from the Council side. Councillor Clarke also stated that on reading the PAC decision it appeared that the recommendation of the planning officer seemed to have more weight than that of the planning committee and that this needed to be looked at.

The Planning Manager advised that no Commissioner would give more weight to an officers recommendation as the ultimate decision is that of the Committee. The Planning Manager advised of the change in SPPS in relation to wind turbines since the last application had been made but did not feel this was reason enough when it came to appeal stage. The Planning Manager stated that he doubted whether the appeal could have been won but felt that a better argument could have been made which is why further discussion will take place regarding a protocol for appeals and that when options had been identified these will be put to committee.

Councillor Glasgow stated that the entire committee had not been in agreement with the proposal to refuse the application on the night it was brought to committee and that he did not want to be associated with the refusal of the application. The Councillor advised that the Planning Manager had provided reasons for refusal on the night it was discussed and felt this was a difficult way to learn and that the Committee should not get itself into a similar situation again, he again stated that not all Members were in agreement with the proposal to refuse the application but was glad to hear Members cannot be surcharged.

The Planning Manager advised that Members could only be surcharged if they do something wrong and that part of his role on the Committee is to help Members to articulate their reasons why they want to overturn an officer recommendation.

Councillor Reid highlighted that the application went to the Committee with a recommendation to approve and that this recommendation was overturned to a refusal at the meeting.

The Planning Manager stated that Members were advised at the time there was a risk of costs and that if they were minded to refuse it would need to be done on

visual impact on the AONB. On this basis a proposal to refuse was put forward and carried by way of recorded vote.

The Chair, Councillor Mallaghan stated that when discussing the application the Committee gave more weight to the AONB than the officer, he stated that the Committee was entitled to make the decision it did and that in the three years of the Planning Committee this was the first planning appeal that had been lost. Councillor Mallaghan stated a report would be brought before the Committee in relation to protocol for appeals in due course.

## **Matters for Decision**

### **P068/18      Planning Applications for Determination**

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

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| <b>LA09/2015/0459/F</b> | <b>Wind farm comprising 8 wind turbines, all ancillary and associated development and infrastructure including general and excavation works; temporary works along the transport route to facilitate delivery of turbine components including the upgrade of the existing junctions at Slaght Road, Ballynagilly Road, Feegarron and Slaght Road, and realignment of a section of the Feegarran Road, Lisaan at the Stanley Bell and Sons Ltd Quarry, 28 Ballynagilly Road, with the Wind Farm centred at 980m NW of 59 Ballynagilly Road, Lissan, Cookstown for Ballynagilly Wind Energy Ltd</b> |
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The Head of Development Management presented a report on planning application LA09/2015/0459/F advising that it was recommended for refusal.

Since the report was circulated Members were advised that letters of support for the application had been received from TLT Solicitors Ltd and Stanley Bell and Sons Ltd. A further letter of objection was also received.

The Head of Tourism also presented commentary, as previously circulated, on the impact to tourism of the proposed wind farm.

The Chair advised the committee that requests to speak on the application had been received and invited Ms O'Neill to address the committee in the first instance.

Ms O'Neill stated that she was speaking on behalf of local residents who were in objection to the application and highlighted that 1526 objections had been logged in relation to the application on the planning portal.

Ms O'Neill stated that at 126.5m high the turbines will dominate the landscape of which it is proposed to site four of the turbines within the Sperrins AONB. Ms O'Neill

also stated there would be significant visuals of the wind farm from outlying areas and felt that as the area has got special designation the application should not be approved. Ms O'Neill referred to the Sperrins as being a key tourism destination and highlighted funding which had been secured for projects but expressed concern that should the application be approved this funding could be lost. Ms O'Neill referred to similar proposal at Mullghe Turk which was refused and a subsequent appeal upheld and asked the Committee to uphold the recommendation of the case officer.

Mr Canavan stated that the application had been in detailed preparation for seven years and advised that the site is in accordance with relevant policy legislation. Mr Canavan stated that no objections had been received from statutory consultees and referred to the reasons for refusal of the application which highlight visual amenity and environmental quality being affected by the application. Mr Canavan advised that the proposed turbines will be further than 500m from other buildings and that whilst the proposal is on the margin of the AONB, it will not be visible from much of the AONB.

Mr Canavan also felt that refusal reasons 4 and 5 should not carry any material weight and advised that Tourism NI have no objection to the application and that Council have not provided any evidence to the contrary in this regard. Mr Canavan also referred to other examples of Dark Sky initiatives in Mayo and Galloway which had wind farms located nearby. Mr Canavan also spoke in relation to the environmental and community benefits of the application and the rateable income to the Mid Ulster District from the proposal.

The Chair, Councillor Mallaghan thanked officers for their comprehensive report and the speakers for coming forward and stated that a lot of detailed information had been put before Members.

Councillor Cuthbertson referred to evidence taken from another department within Council and asked if this was good practice or if it would compromise the Committee going forward. The Councillor felt that a better option would have been to bring the Head of Tourism in as a speaker on the application.

The Council Solicitor advised there was no issue with the Head of Tourism presenting to the Committee as he was there in his capacity as a consultee to the application.

Councillor Cuthbertson referred to the numerous photographs of critical views shown by officers and stated he would have liked the same effort to have been put into previous applications for wind farms/turbines such as that at Murley.

The Chair, Councillor Mallaghan stated that the photographs shown were of critical views of the AONB, Councillor Mallaghan clarified that Murley does not have AONB designation.

Councillor McPeake stated that Members should not be critical of the work carried out in relation to this application, he referred to the amount of detailed information which had been put before Members and commended officers. Councillor McPeake stated he was happy with the approach being taken.

Councillor McKinney referred to commentary on how tourism would be effected by the proposal and felt that by bringing people to an area for tourism reasons is more likely to have an effect on the area rather than the turbines. The Councillor also stated there seemed to be some ambiguity as to whether the turbines were within the AONB and felt that a site meeting would be beneficial before coming to a decision. Councillor McKinney proposed that the application be deferred pending a site visit taking place.

In response to request seeking clarification on whether Head of Tourism should have been brought to present at the meeting, the Council Solicitor advised that tourism was a consultee within the consultation process of the planning application. She stated that in presenting to the Committee the Head of Tourism provided information relating to how tourism could be effected by the proposal, that he was not there in support of or against the application and that speaking rights were not required.

Councillor Bell stated that having considered all information he would propose the officer recommendation to refuse the application.

The Planning Manager advised that some of the turbines will be located within the AONB and some will be outside. The Planning Manager advised Members not to put all their consideration into a line on a map but rather to consider the cumulative impacts the proposal will have on landscape character in the area.

In response to Councillor Clarke's question the Planning Manager advised he was unsure whether the quarry was removed from the AONB when it was redrawn in 2008. In response to earlier comments, the Planning Manager stated that the development of tourism can also have an effect on the landscape of an area.

The Council Solicitor stated that the weight placed on commentary from consultees was a matter for the committee, however, she would have some concerns regarding placing determining weight on the comments made around the potential impact to funding.

Councillor Cuthbertson asked whether there had been any discussion with the applicant on reducing the proposal.

The Head of Development Management stated no such discussions had taken place.

Councillor Cuthbertson asked if this could be explored.

Councillor Bateson seconded Councillor Bell's proposal to refuse the application.

Councillor Kearney stated he was content with the information put forward.

Councillor McKinney asked if the applicant would reconsider their application.

Mr Canavan agreed that the applicant would reconsider the application.

The Chair, Councillor Mallaghan stated that a site meeting had been held in the area of the proposal recently and taking into consideration the information at hand he would be supportive of the proposal to refuse the application.

Councillor Cuthbertson proposed that the application be deferred to allow time for a reassessed proposal to come forward.

Discussion ensued regarding an altered application.

Councillor Clarke stated that he felt the meeting had got into a situation that was out of order and that every application deserved the same attention.

The Chair, Councillor Mallaghan stated that the applicant had been aware for over a week of the recommendation to refuse and no attempt had been made in the intervening time to make an altered proposal.

Councillor McKinney stated he withdrew his earlier proposal for a site meeting but would second Councillor Cuthbertson's proposal for a deferral.

In response to Councillor McPeake's question the Planning Manager advised that if a change in proposal came forward then there would be a requirement to carry out neighbour notification and consultations again.

Members voted on Councillor Bell's proposal to refuse the application –

For – 9

Against – 3

Members voted on Councillor Cuthbertson's proposal to defer the application –

For – 5

Against – 9

**Resolved** That planning application LA09/2015/0459/F be refused on grounds stated in the officer's report.

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| <b>LA09/2015/0460/F</b> | <b>Wind farm comprising of 9 turbines and associated infrastructure (2 turbines located within Fermanagh and Omagh Council area and 7 located within Mid Ulster Council area) at Murley Wind Farm in Townlands of Glengesh Lower Forest, Moysnaght, Killygordon, Tattanafinnell, Edergole and ColeGlen Forest near Fivemiletown for RES</b> |
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Mr Marrion (SPO) presented a report on planning application LA09/2015/0460/F advising that it was recommended for approval.

*Glasgow left the meeting at 8.24 pm and returned at 8.32 pm during the above presentation.*

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

Ms Burke advised that the application consisted of nine turbines over two Council areas and stated that Fermanagh and Omagh Council had approved the two turbines in their area in January 2018. Ms Burke advised that the proposal will generate significant benefits to the community and that rates payable will be £7.2 million over 25 years. Ms Burke stated that the application has been subject to the necessary environmental studies and consultations to which there had been no objections, the application also supports the proposal to achieve low carbon energy.

Councillor Cuthbertson asked why there was not the same amount of aerial photographs shown for this application.

Mr Marrion advised that he had provided a selection of photographs as part of his presentation but stated that further photographs were available to view on the planning portal.

Councillor Cuthbertson queried whether Members now also have to examine what is on the planning portal as well as what is provided in papers.

Councillor McKinney proposed the officer recommendation to approve the application.

The Planning Manager stated that Clogher Valley is a precious area which is worthy of protection, he stated that if the proposal was to be located in a different area of Clogher Valley it would have received a different response however he was satisfied that the impacts of this proposal will be limited. On this basis, he was not surprised that there were no public or consultative objections to the proposal.

Councillor Bateson seconded Councillor McKinney's proposal to approve the application.

**Resolved** That planning application LA09/2015/0460/F be approved subject to conditions as per the officer's report.

*Councillor McKinney left the meeting at 8.42 pm.*

**LA09/2015/0670/F                      Retention of retaining wall and infilling of land adjacent to Lettice Street and Monaghan Road, Aughnacloy, for CNI Northern Ireland Ltd**

Members considered previously circulated report on planning application LA09/2015/0670/F which was recommended for approval.

Proposed by Councillor McAleer  
Seconded by Councillor Glasgow and

**Resolved** That planning application LA09/2015/0670/F be approved subject to conditions as per the officer's report.



**LA09/2016/1131/O**

**Replacement dwelling at 89 File Mile Straight,  
Maghera for Owen McNally**

Mr McCrystal (SPO) presented a report on planning application LA09/2016/1131/O advising that it was recommended for refusal.

Councillor Kearney stated he would have some sympathy for the application.

The Planning Manager stated that the applicant had asked that the application be determined as presented.

Councillor Glasgow stated it was unfortunate the School had got into its present state but felt that replacement would be difficult. Councillor Glasgow proposed the officer recommendation to refuse the application.

Councillor Reid seconded Councillor Glasgow's proposal.

**Resolved** That planning application LA09/2016/1131/O be refused on grounds stated in the officer's report.

**LA09/2017/0332/O**

**2 storey dwelling at lands adjacent to 83 Highfield  
Road, Magherafelt for Janette Duffy**

Members considered previously circulated report on planning application LA09/2017/0332/O which was recommended for approval.

Proposed by Councillor Glasgow  
Seconded by Councillor Clarke and

**Resolved** That planning application LA09/2017/0332/O be approved subject to conditions as per the officer's report.

**LA09/2017/0693/F**

**Re-instatement of dwelling at 12A Drumaspil Road,  
Dungannon for Mrs Dorothy Lawson**

*Councillor Cuthbertson declared an interest in this application.*

Members considered previously circulated report on planning application LA09/2017/0693/F which was recommended for approval.

Proposed by Councillor Reid  
Seconded by Councillor Glasgow and

**Resolved** That planning application LA09/2017/0693/F be approved subject to conditions as per the officer's report.

**LA09/2017/0707/O**

**Dwelling at 20m S of 40 Derrygonigan Road,  
Cookstown for Finbar Crawford**

Members considered previously circulated report on planning application LA09/2017/0707/O which was recommended for approval.

Proposed by Councillor Bell  
Seconded by Councillor Reid and

**Resolved** That planning application LA09/2017/0707/O be approved subject to conditions as per the officer's report.

**LA09/2017/0756/F**

**Retention of replacement dwelling and garage in  
substitution for previously approved  
M/2006/1355//RM at approx. 140m NE of 24  
Findermore Road, Clogher for Mr Gerry McCaughey**

Members considered previously circulated report on planning application LA09/2017/0756/F which was recommended for approval.

Councillor Glasgow asked who the letter of objection came from.

Mr Marrion advised that the objection was received from the landowner stating they would not permit access for visibility splays.

Councillor Glasgow asked how this objection then affected the application.

Mr Marrion advised that as the application was being considered as a replacement dwelling there was no intensification of access and visibility splays are not required to be insisted upon.

Proposed by Councillor McAleer  
Seconded by Councillor Glasgow and

**Resolved** That planning application LA09/2017/0756/F be approved subject to conditions as per the officer's report.

**LA09/2017/0802/F**

**Replacement dwelling at 124 Sixtowns Road, Labby,  
Draperstown for Mr Alistair Clerkin**

Mr McCrystal (SPO) presented a report on planning application LA09/2017/0802/F 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 Council are content that the application is a good replacement opportunity but that issues seemed to be with the proposed hipped roof on the dwelling and that it does not integrate with the local area. Mr Cassidy stated that the dwelling and in particular the hipped roof had been designed to the Building

on Tradition Design Guide and referred to several examples of hipped roofs in the local area and that dwellings on both sides of the application site had hipped roofs. Mr Cassidy stated that a hipped roof on a dwelling was not contrary to the area but requested that the application be deferred to allow for further redesign.

*Councillor McKinney re-entered the meeting at 8.53 pm.*

The Planning Manager stated that the reasons for refusal were not solely related to the hipped roof but also the scale and massing of the dwelling. The Planning Manager stated that if the applicant wanted the application to be deferred why it had been stated that the design would not be changed.

Mr Cassidy advised that the design of the dwelling had already been changed three times.

Councillor Clarke stated that the original house on this site was also a large building but that this proposal is closer to the road. The Councillor stated he was not a personal fan of hipped roofs but there was no doubt there were numerous examples in this area.

The Planning Manager stated that a hipped roof was not an AONB design and would not want to promote such within the AONB. The Planning Manager referred to the examples provided of hipped roofs in the area and reflected that perhaps planning had not been the best custodians of the AONB in the past.

Councillor Reid proposed that the application be deferred pending submission of redesign.

The Planning Manager advised that the applicant wants the application to be determined.

Councillor Reid stated he would withdraw his previous proposal and proposed that the application be refused.

The Chair, Councillor Mallaghan stated that the agent had offered to redesign the proposal at the end of his speaking time.

Councillor McPeake concurred with earlier comment that the original house had been large and stated he did not feel that the proposal was unusually large. Councillor McPeake proposed that the application be deferred.

The Planning Manager asked if the agent was willing to meet to discuss redesign.

Councillor Bell seconded Councillor McPeake's proposal.

Councillor McKinney felt that the meeting was getting out of order.

Councillor B McGuigan stated that the current design was not fitting within the AONB and requested that the application be deferred.

Councillor Cuthbertson seconded Councillor Reid's proposal to refuse the application.

Members voted on Councillor McPeake's proposal to defer the application –

For – 8

Against – 2

Members voted on Councillor Reid's proposal to refuse the application –

For – 4

Against – 8

**Resolved** That planning application LA09/2017/0802/F be deferred for an office meeting.

**LA09/2017/1055/O                      Dwelling and garage approx. 30m S of 77 Gulladuff Hill, Moyagall for Joe Hurley**

As per previously circulated addendum it was advised that additional information had been received in relation to the reasons for the siting of the proposal. It was therefore proposed that this application be deferred for an office meeting to further consider the proposal.

Proposed by Councillor Glasgow  
Seconded by Councillor Bell and

**Resolved** That planning application LA09/2017/1055/O be deferred for an office meeting.

**LA09/2017/1284/O                      Dwelling and garage NW of 35 Mullaghmarget Road, Dungannon for Pdraig Donnelly**

*Councillor Mullen declared an interest in this application and withdrew to the public gallery.*

Mr Marrion (SPO) presented a report on planning application LA09/2017/1284/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 the farm is active and established and provided reasons for the siting of the proposal as follows –

- The farm has no road frontage lands
- Applicant's brother is taking over the farm and has plans to expand
- Mortgage cannot be obtained for dwelling on laneway
- Site provides a suitable degree of integration

Mr Cassidy felt that the application could be considered as exceptional to policy and asked that the application be approved.

Councillor Bell referred to the intensification of use of the laneway if the proposal was to be located at the main farm.

Councillor Clarke asked how many dwellings were on the laneway.

Mr Marrion advised that there are three houses on the laneway.

Councillor Clarke stated that the applicant would definitely be experiencing difficulties obtaining a mortgage.

The Planning Manager stated that Members needed to be careful when setting aside policy and that although arguments had been put forward, there was no verification to support the arguments. The Planning Manager suggested that the application could be deferred to allow the applicant to submit evidence regarding ownership of the laneway and that this could be consulted upon again with DfI Roads.

Councillor Clarke proposed that the application be deferred.

Councillor Bell seconded Councillor Clarke's proposal.

Councillor Reid stated he did not feel this application would work out.

Councillor McKinney asked who owned the land.

The Planning Manager stated it was not wise to make planning decisions based on the advice of a mortgage adviser.

Mr Marrion advised that the landowner was Mr Padraig Donnelly and the active farm owner was Mr Shane Donnelly.

Council Solicitor urged caution in relation to any weight being attributed to whether a mortgage can be obtained as this is not a material consideration in the planning application.

**Resolved** That planning application LA09/2017/1284/O be deferred to allow evidence in relation to ownership of laneway to be submitted.

*Councillor Mullen rejoined the meeting.*

**LA09/2017/1349/F                      Animal isolation and farm machinery storage shed at approx. 120m SE of 37 Rocktown Lane, Knockloughrim for Robert Edward Scullion**

Mr McCrystal (SPO) presented a report on planning application LA09/2017/1349/F 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 the shed will be used for winter housing and isolation of cattle. Mr Cassidy advised that the applicant has been subjected to a number of TB tests and that two of these tests have proved positive, the applicant is currently being tested four times per year as his neighbours herd is currently down with TB. Mr Cassidy advised that the shed will be used for agricultural purposes, that ventilation of the shed is within the plan and highlighted that there is no need to provide heat for animals. Mr Cassidy advised that the proposal site is not on a plantation but rather a clearing and will not be seen from vantage points. Mr Cassidy also confirmed that he had provided an up to date status of applicant's herd on the day after the information was requested. Mr Cassidy advised that the proposed shed is essential for the smooth running of the farm and asked the Committee to approve the application.

The Planning Manager asked why a site closer to the road had not been chosen.

Mr Cassidy advised the site had been chosen because of the clearing.

Councillor Bell referred to the ambiguity regarding TB status and felt this needed clarification.

Mr McCrystal advised that DARD had confirmed that the farm was not under restriction following two clear tests.

Councillor Bell stated there may have been a more recent positive test.

Councillor McPeake stated that the farm may have no restrictions at the moment but that there was an ongoing threat. The Councillor referred to the need for good animal husbandry and that this proposal was a good way of achieving this. Councillor McPeake stated the applicant kept a well maintained farm and that he could see the rationale for putting the shed at the proposed location which appeared to be a good site.

The Planning Manager questioned if there was an ongoing risk what would happen to the cattle of the neighbouring landowners to the site.

Councillor Reid stated that Mid Ulster has the second highest instances of TB in Northern Ireland however he advised that a separate shed was not required for isolation as per DAERA guidelines.

Councillor Glasgow stated he understood why the applicant would want to keep cattle that are to be isolated away from the main farm buildings and asked if there was a reason why the proposal could not come some way down the lane.

The Planning Manager stated there did not appear to be a reason and that the proposal could be facilitated within the main farm.

Councillor Glasgow reflected that TB testing and restrictions were a vicious cycle.

Councillor Cuthbertson proposed the officer recommendation to refuse the application.

Councillor McPeake proposed that a site meeting be held for this application.

The Planning Manager stated that if planning policy was being set aside then good reason was needed.

Councillor McPeake stated that he requested a site meeting due to the ambiguity of the site and that the officer recommendation may be unduly harsh.

Councillor McKinney seconded Councillor McPeake's proposal for a site meeting.

Councillor Glasgow stated he was the only Member who attended the last site meeting and that if a site meeting was being arranged then Members should attend.

The Chair, Councillor Mallaghan stated it was up to each Member to determine their knowledge of an application and whether they felt the need to attend a site meeting.

Councillor Reid seconded Councillor Cuthbertson's proposal to refuse the application.

Members voted on Councillor McPeake's proposal to defer the application for a site meeting –

For – 8  
Against – 5

Members voted on Councillor Cuthbertson's proposal to refuse the application –

For – 4  
Against – 8

**Resolved** That planning application LA09/2017/1349/F be deferred for a site meeting.

**LA09/2017/1431/F**                      **Small extension to existing commercial yard at 185m W of 66A Kilnacart Road, Dungannon for Niall McCann**

Members considered previously circulated report on planning application LA09/2017/1431/F which was recommended for approval.

Proposed by Councillor Clarke  
Seconded by Councillor Bell and

**Resolved** That planning application LA09/2017/1431/F be approved subject to conditions as per the officer's report.

**LA09/2017/1514/O                      Dwelling and garage/store on a farm at rear and S of  
25 Drumurrer Lane, Dungannon for Mr Henry Brady**

Members considered previously circulated report on planning application LA09/2017/1514/O which was recommended for approval.

Proposed by Councillor McKinney  
Seconded by Councillor Bateson and

**Resolved**     That planning application LA09/2017/1514/O be approved subject to conditions as per the officer's report.

**LA09/2017/1609/F                      Replacement horse stables at lands 70m SE of 9  
Greenagh Road, Corrainy, Coalisland for Daryl Fox**

*Councillor Mullen declared an interest in this application and withdrew to the public gallery.*

Members considered previously circulated report on planning application LA09/2017/1609/F which was recommended for approval.

Proposed by Councillor Bateson  
Seconded by Councillor Clarke and

**Resolved**     That planning application LA09/2017/1609/F be approved subject to conditions as per the officer's report.

*Councillor Mullen rejoined the meeting.*

**LA09/2017/1649/O                      Two storey dwelling and domestic garage at approx.  
150m SE of 69 Gortagammon Road, Tullyhogue,  
Cookstown for Mr & Mrs Sandy Nelson**

As per previously circulated addendum it was advised that additional information had been received in relation to identifying other views of the site. It was therefore proposed that this application be deferred for an office meeting to allow further discussion regarding siting.

Proposed by Councillor Glasgow  
Seconded by Councillor Clarke and

**Resolved**     That planning application LA09/2017/1649/O be deferred for an office meeting.

**LA09/2017/1725/O                      Dwelling and garage at approx. 40m E of 47 Sessiagh  
Scott Road, Dungannon for Kevin Sheehy**

Mr McCrystal (SPO) presented a report on planning application LA09/2017/1725/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 this application was what clustering should be about, he stated that there were currently eight dwellings in a cluster with a staggered crossroads as a focal point nearby. Mr Cassidy stated that the application will round off current development, not extend it and advised that the proposal is for the applicant to build their own home. Mr Cassidy asked that the Committee approve the proposal.

The Planning Manager stated there was no evidence of what gives the proposed site its identity ie. Focal point.

Councillor Clarke felt there was a focal point of eight dwellings and that a further dwelling would round off development.

Councillor Bell did not feel a further dwelling would impact on rural character.

The Council Solicitor advised that according to the wording of CTY2a, the cluster of development must be associated with a focal point and so therefore, the cluster could not be the focal point.

Councillor Bell queried whether this was a peatland area and if that could be used as a focal point.

Councillor Cuthbertson stated he agreed with what had been said but felt that if the application did not meet policy it should be refused.

The Planning Manager felt it was sensible to hold the line in respect of policy as this type of situation arises time and time again.

Councillor Bell stated that another building was not going to impact on rural character.

The Planning Manager stated that Members need to think about how the need for a focal point was being met.

Councillor Clarke felt that the cluster represented a clachan development.

Councillor Cuthbertson proposed the officer recommendation to refuse the application.

The Chair, Councillor Mallaghan seconded Councillor Cuthbertson's proposal.

The Council Solicitor stated that the reasons for refusal should include the fact that the need for a focal point under CTY2a had not been met.

**Resolved** That planning application LA09/2017/1725/O be refused on grounds stated in the officer's report including an additional reason that the need for a focal point had not been met.

**LA09/2017/1758/RM            Off site replacement dwelling and garage at 120m NW of 47 Bancran Road, Draperstown for Paul and Katrina Heron**

Members considered previously circulated report on planning application LA09/2017/1758/RM which was recommended for approval.

Proposed by Councillor McEldowney  
Seconded by Councillor McPeake and

**Resolved** That planning application LA09/2017/1758/RM be approved subject to conditions as per the officer's report.

**LA09/2018/0043/O            Residential development of 6 dwellings and garages and associated works adjacent and to rear of 24 Mullan Road, Ballinderry for Mr George Buick**

Members considered previously circulated report on planning application LA09/2018/0043/O which was recommended for approval.

Proposed by Councillor McKinney  
Seconded by Councillor Bell and

**Resolved** That planning application LA09/2018/0043/O be approved subject to conditions as per the officer's report.

**LA09/2018/0124/F            Change of use from ground floor retail to amusement arcade at 21 Irish Street, Dungannon for Rebekah Bell**

*Councillor Mullen declared an interest in this application and withdrew to the public gallery.*

Mr Marrion (SPO) presented a report on planning application LA09/2018/0124/F advising that it was recommended for approval. Mr Marrion also highlighted the addendum which stated that a late objection had been received and read out the letter. The addendum also advised that policies PPS1 and PPS5 have been cancelled by the SPPS, the SPPS has primacy and advises that Local Development Plans should provide a diverse offer and mix of uses. Main town centre uses should be considered in order of preference with primary retail core followed by town centre. This use is a town centre use and the principles in DCAN1 have been considered in the report. The Preferred Options Paper is not a draft plan and the proposals in it cannot be given significant weight in determining the application.

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

Mr Maguire stated that the issue was not with opening hours or sound proofing of the premises but rather about principle and whether the Council is serious about including Irish Street within the primary retail core for Dungannon. Mr Maguire stated that the application was in conflict with planning policy and does not fit in with the Council's proposal to include Irish Street within the primary retail core.

Mr Maguire stated that of the 54 units on Irish Street, 26 are retail premises and that the retail element of the street should be protected. Mr Maguire stated that Irish Street is an important part of the town centre and would have concern over the impression of locating an amusement arcade at this site as there is an Oratory sited opposite the proposed premises and an objection had also been received from the adjoining property to the proposal. Mr Maguire stated there were further amusement outlets located on Irish Street and nearby in the town.

Mr Maguire stated that by approving this application Council is sending a signal that it is dumping retail, Mr Maguire called upon the Committee not to make the same mistake as other Councils and not to lose this potential retail unit on Irish Street.

The Planning Manager stated that Irish Street was kept out of the primary retail core within Dungannon Area Plan but had managed to regenerate itself in recent years. The Planning Manager stated that the Local Development Plan currently being worked on proposes to extend the retail core to include Irish Street but that weight cannot be given to this in determining the application. The Planning Manager stated that amusement arcades can compliment a retail core and urged Members that when making a decision it should be based on planning and not morality grounds.

Councillor McGinley stated that the building proposed to locate the amusement arcade has been vacant for 18 months and has only been occupied for 10 months in the last four years. Councillor McGinley stated that soundproofing of the premises will be in place and that the applicant has taken a pro active approach in relation to car parking. Councillor McGinley stated that the gaming arcade will not over dominate in its surroundings and highlighted that an objection had been received which included comments regarding the proximity of the Oratory, Councillor McGinley clarified that no objection had been received from the Oratory. Councillor McGinley stated that the application is acceptable in terms of planning policy and that the applicant is part of a responsible business across Northern Ireland who will work to alleviate matters of concern. Councillor McGinley asked the committee to agree with the case officer's recommendation to approve the application.

Councillor Cuthbertson stated that to say Irish Street is not within the primary retail core is out of step with the rest of the Council.

The Planning Manager showed Members the primary retail core for Dungannon as set out in the Dungannon Area Plan.

Councillor Cuthbertson stated that Council has committed money to Irish Street on the basis that it is within the primary retail core.

In response to Councillor Clarke's question it was stated by Councillor McGinley that it was his understanding that there is a fire exit to the rear of the building.

Councillor Reid felt that Irish Street will have to provide a link between the proposed development at Ann Street and the town centre. Councillor Reid also stated that in legacy Council other aspects of gaming were also considered such as gambling and drinking.

The Planning Manager stated that there was no current policy in relation to primary retail core however amusement arcades are usually found in town centres.

Councillor Glasgow referred to the businesses currently located on Irish Street and felt there was opportunity for the Street to further regenerate however as there was already an amusement arcade and a bookmakers sited on Irish Street he did not see the need for a further amusement arcade.

The Planning Manager stated that the problem was that there was no policy in place regarding proliferation of premises and that the Preferred Options Paper cannot be relied upon.

Councillor Glasgow stated he could not support the application based on the grounds it would be disrespectful to the adjoining Hospice premises.

Councillor Bateson proposed the officer recommendation to approve the application.

Councillor McPeake seconded Councillor Bateson's proposal on the advice from the Planning Manager. Councillor McPeake also stated that as the site had been vacant for some time Council should not be unduly blocking business.

Councillor Cuthbertson asked if the Licensing Officer was consulted on the number of gaming machines in Dungannon.

Mr Marrion advised that Environmental Health were consulted in relation to noise who advised that the operating hours of the business should be restricted to between 9am and 11pm. The Licensing Officer was not specifically consulted.

Councillor Cuthbertson proposed that the application be deferred in order to consult with the Licensing Officer on the application.

Councillor Solicitor advised Members that Licensing was a separate regulatory regime to planning and that the Committee should only make decisions based on planning considerations.

Councillor Cuthbertson stated that the Head of Tourism had nothing to do with planning but yet he had presented to the Committee earlier in the meeting.

Councillor Glasgow seconded Councillor Cuthbertson's proposal to defer the application.

Members voted on Councillor Bateson's proposal to approve the application –  
For – 8  
Against – 5

Members voted on Councillor Cuthbertson's recommendation to defer the application  
–

For – 5

Against – 7

**Resolved** That planning application LA09/2018/0124/F be approved subject to conditions as per the officer's report.

*Councillor Mullen rejoined the meeting.*

*The meeting recessed at 10.34 pm and recommenced at 10.45 pm.*

**LA09/2015/0523/F                      Retention of car park and pedestrian access via  
under road tunnel in association with the Jungle NI at  
approx. 80m SE of 60 Desertmartin Road for Mr  
Robert Carmichael**

Ms Doyle (SPO) presented a report on planning application LA09/2015/0523/F advising that it was recommended for refusal.

*Councillor Mullen rejoined the meeting at 10.47 pm during the above presentation.*

The Chair, Councillor Mallaghan stated due to the number of requested speaking rights on this application he would break with protocol and proposed that Councillor Wilson and Mr Molloy MP be granted speaking rights of one minute each and that the remaining speakers would have two minutes between them. The Chair stated that all Members were aware of the economic benefits of the business and advised the speakers to focus their presentation on why the application is being refused. The Chair invited Councillor Wilson to address the Committee in the first instance.

Councillor Wilson stated that the Jungle prides itself in health and safety and that there had been no accidents in the past three years of the tunnel being used. Councillor Wilson advised that the business started 13 years ago with 1,200 visitors in a year and in the past year it had attracted 65,000 visitors, the business also provides 46 jobs. Councillor Wilson stated that although there is concern that the tunnel is not high enough by 0.5m it provides safe access to and from the business, the Councillor stated that he supported the application and asked the Committee to do the same.

Mr Molloy MP stated that this business was a good example of farm diversification and highlighted that this type of business can only be sited in a rural location. Mr Molloy went on to say that the tunnel was intended to be used to drive cattle through but that in doing so the farmer also had to use the tunnel and asked what the difference was in one person and several people using the tunnel for access. Mr Molloy MP spoke in relation to the roads issues and stated that another option may be to have a bridge and used the Blackwater Bridge to access the Argory as an example. Mr Molloy MP concluded by stating that the Jungle was one of the major tourism providers in Mid Ulster.

Mr Stephens stated that the proposal currently operates effectively and is of no demonstrable harm, Mr Stephens advised that the tunnel is short and lighted and highlighted that there had been no accidents in the past 3 years of the tunnel being used. Mr Stephens stated that the applicant has indemnity insurance and to date there have been no claims. Mr Stephens advised that the applicant is happy to accept a condition not to use the established access, in addition, it was highlighted that DfI Roads have not provided any evidence to say why a right hand turn lane is required.

Councillor McKinney stated he would be totally opposed to siting a bridge as a means of access and felt the tunnel was a better option. Councillor McKinney stated he had recently spoke with visitors of the Jungle who felt the tunnel was safe. Councillor McKinney commented that visitors to the Jungle have to make a turn no matter what direction they are coming from and stated he would be supportive of the application.

Mr Stephens stated that DfI Roads were seeking a right hand turn lane however the 500 threshold for trips was not being met as there would only be a maximum of 356 trips per day, he therefore stated there was no argument for having a right hand turn lane.

Councillor Clarke felt that the issues in relation to the height of the tunnel could be resolved and referred to cars parked along the roadside when he has been passing the premises.

Ms Doyle advised that DfI Roads will not hand ownership of the tunnel over to the applicant to allow the height of the tunnel to be increased. Ms Doyle commented that she hoped the Councillor had not witnessed cars parked along the road since the car park has been operational.

Councillor Glasgow stated he had used the underpass without difficulty and felt it was bizarre that DfI Roads had such a difficulty with its use. Councillor Glasgow asked how many buses use the car park on a daily basis.

Mr Stephens advised that he did not have figures for buses but on a day in which 350 children visited the premises four cars had used the car park. Mr Stephens advised that the business model is directed towards buses using the premises during the day.

Councillor Reid stated that the Jungle is one of the flagship projects within Mid Ulster and was happy to propose the approval of the application on the grounds that all safety aspects have been taken into consideration.

Councillor Kearney asked if a lease of the tunnel had been discussed between the parties.

The Planning Manager advised he had met with the Roads Manager in relation to this application and stated that DfI Roads felt that use of the tunnel was an accident waiting to happen.

The Council Solicitor stated that if the Committee was minded to approve the application then the wording of the development proposal may need to be reconsidered.

The Planning Manager stated it may not be in the gift of the applicant to say they can use the tunnel as it is not in their ownership.

Councillor Glasgow stated there was a mechanism in place (tunnel) to allow visitors to get to the venue without crossing the road.

Councillor McKinney stated that the tunnel was put in for road safety purposes.

The Planning Manager advised he had explained the view of Dfl Roads and stated that the decision was ultimately that of the Committee however to approve the application Members would be ignoring the concerns of Roads.

Councillor McAleer asked if Dfl Roads have the right to close a Right of Way.

The Planning Manager did not believe Dfl Roads would do this or it would have already happened however he stated that the question could be posed to Roads.

Councillor Reid felt Dfl Roads should have been in attendance at tonight's meeting to raise their objections. Councillor Reid stated that the applicant has land on the other side of the road and can still use the tunnel for agricultural purposes.

The Planning Manager advised that Dfl Roads had been asked their intentions regarding the tunnel however they had not responded.

Councillor Clarke stated that the applicant's farm business straddles both sides of the road and asked if Dfl Roads can stop a legitimate business using the tunnel.

Councillor Bateson questioned where the Council would stand if it approved this application and there was no established Right of Way in place.

The Chair, Councillor Mallaghan stated that as Dfl Roads own the tunnel he questioned whether the Committee can approve planning permission to something that the owner is objecting to.

The Planning Manager advised that the Committee can approve the application if it so desired and used the example of the Committee approving applications in which there have been objections regarding visibility splays.

The Council Solicitor stated that Dfl Roads appeared to be objecting to the application as a consultee for road safety etc. issues and that it wasn't clear whether they were also objecting in their capacity as land owner. Furthermore, whilst there may be a Right of Way to use the tunnel for agricultural purposes for example, a Right of Way for the use of the proposed development was an entirely different matter. As the nature of the ownership/rights are unknown, there would be concerns about the potential for the tunnel not to be available in the future, the consequence of which it would appear would mean all foot traffic would be pushed up over the road.

The Planning Manager stated he understood there was a will to approve the application but felt that there was rationale to defer the application to further discuss issues with Dfl Roads.

Councillor McAleer asked if there was any opportunity to have the car park on the same side of the road as the business.

Ms Doyle advised that this had been discussed and the applicant felt that a car park on the same side of the road would interfere with farm operations and hence this option had not been explored any further.

Councillor Bateson stated that the Committee needed a definitive view from Dfl Roads on what their intentions are for the tunnel.

The Chair, Councillor Mallaghan suggested that Dfl Roads be invited to attend the next Planning Committee.

The Planning Manager suggested that a separate meeting be set up for Members to meet with Dfl Roads.

Councillor Glasgow stated that Dfl Roads have had numerous opportunities to air their views on the application. The Councillor stated that the business was set up under farm diversification and that the tunnel provides safety for users to cross the road safely. Councillor Glasgow seconded Councillor Reid's proposal to approve the application.

Councillor Bell stated that Dfl Roads concerns seemed to have been raised verbally and there was an absence of documentation.

The Chair, Councillor Mallaghan stated that given the concerns of Dfl Roads which he shared he would propose that a further site meeting be held in respect of this application and that Dfl Roads representatives should be invited to this meeting.

Councillor Clarke stated that it would be important that the Dfl Roads representative attending the site meeting should be in a position to answer Member's questions.

Councillor McAleer seconded Councillor Mallaghan's proposal.

Councillor Robinson stated he understood the importance of the business and he would like to be able to approve the application however he felt there was a need to be careful given the concerns of Dfl Roads and agreed that the application be deferred for another site meeting and to discuss issues with Dfl Roads.

Councillor McEldowney stated it would be impossible for the Committee to say there will never be an accident at this location just because there has not been one thus far. Councillor McEldowney stated she would not put her name towards approving the application.



Members voted on Councillor Reid's proposal to approve the application –

For – 3

Against – 9

Members voted on Councillor Mallaghan's proposal to defer the application for a site meeting and meet with DfI Roads officials –

For – 10

Against - 2

**Resolved** That planning application LA09/2017/0523/F be deferred for a site meeting, senior DfI Roads officials to be in attendance at this meeting.

**LA09/2016/0299/O                      Site for infill dwelling and detached double garage  
between 21 Brackaghlistlea Road and 15 Gortahurk  
Road, Draperstown for G Mallon**

Members considered previously circulated report on planning application LA09/2016/0299/O which was recommended for approval.

Proposed by Councillor McKinney  
Seconded by Councillor Clarke and

**Resolved** That planning application LA09/2016/0299/O be approved subject to conditions as per the officer's report.

**LA09/2017/0673/O                      Dwelling and garage 5m S of 38 Craigmole Road,  
Maghera for Patrick McWilliams**

Ms Doyle (SPO) presented a report on planning application LA09/2017/0673/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 he accepted that the application is not within policy but advised that a dwelling cannot be located at the existing farm. Mr Cassidy advised that the site is located beside the Fort Riding Centre and that there are two other dwellings beside the site. Mr Cassidy felt that the application met policy under clustering.

The Planning Manager advised that the requirement for a cluster was not being met and that it would be difficult to provide an exception to policy.

Councillor Reid stated that the application may offer a form of security for the riding centre which has been subject to vandalism in the past.

The Planning Manager advised that no representation had been received from the riding centre.

Councillor McKinney concurred with the remarks in relation to vandalism and anti social behaviour at the riding centre and stated that horses had been stabbed in the past. The Councillor stated he had no issue with the proposal.

The Planning Manager stated he believed the accounts being given but reaffirmed that no representation had been received from the riding centre.

Councillor B McGuigan stated that the riding centre provided a focal point and also concurred with the comments of Councillors Reid and McKinney in relation to vandalism/anti social behaviour.

The Planning Manager accepted that the riding centre could be a focal point but that to achieve clustering four buildings were required of which three needed to be dwellings and this was not the case. The Planning Manager stated that there was no issue with regards integration but that under policy CTY 10 a new building is required to be visually linked to the farm, in this case the proposal is not on a farm.

In response to Councillor Kearney's question it was advised that the riding centre would have been informed of the application.

The Chair, Councillor Mallaghan stated that as the proposal did not meet with policy and that no information had been put forward to the contrary he would propose the officer recommendation to refuse the application.

Councillor Bateson seconded Councillor Mallaghan's proposal.

**Resolved** That planning application LA09/2017/0673/O be refused on grounds stated in the officer's report.

### **Matters for Information**

#### **P069/18 Minutes of Planning Committee held on 9 April 2018**

Members noted minutes of Planning Committee held on 9 April 2018.

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

Proposed by Councillor McEldowney  
Seconded by Councillor Bell 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 P070/18 to P073/18.

### **Matters for Information**

P070/18 Confidential Minutes of Planning Committee held on 9 April 2018

|         |                           |
|---------|---------------------------|
| P071/18 | Enforcement Case Liveload |
| P072/18 | Enforcement Cases Opened  |
| P073/18 | Enforcement Cases Closed  |

**P074/18      Duration of Meeting**

The meeting was called for 7.00 pm and ended at 11.50 pm.

Chair \_\_\_\_\_

Date \_\_\_\_\_

## ADDENDUM TO PLANNING COMMITTEE AGENDA

**FOR PLANNING COMMITTEE MEETING ON: 1 May 2018**

### **Chairs Business:**

Planning Appeals Decision 2017/A0176, appeal against the refusal of planning permission for a wind turbine at Beltonanean Mountain for Mr G Bell. Decision already circulated.

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

| <b>ITEM</b> | <b>INFORMATION RECEIVED</b>  | <b>ACTION REQUIRED</b>  |
|-------------|--|---|
| 4.1         | Letters of support received from TLT Solicitors and Stanley Bell and Sons Ltd.<br>1 further letter of objection received.  | Members to note.  |
| 4.10        | Additional information presented in relation to the reasons for the siting proposed.   | Members to agree to defer for office meeting to further consider the proposal.      |
| 4.16        | Additional information presented identifying other views of the site.  | Members to agree to defer for office meeting to allow further discussion on siting. |
| 4.20        | Late objection received. Policies PPS1 and PPS5 have been cancelled by the SPPS. The SPPS advises that LDP's should provide a diverse offer and mix of uses. Main town centre uses should be considered in order of preference with primary retail core followed by town centre. This use is a town centre use and the principles in DCAN1 have been considered in the report. The POP is not a draft plan and the proposals in it cannot be given significant weight in determining this application. | Members to note the objection and consideration of the SPPS.                        |

|                          |                          |
|--------------------------|--------------------------|
| <b>Report on</b>         | PAC Costs Decision       |
| <b>Date of Meeting</b>   | 1 <sup>st</sup> May 2018 |
| <b>Reporting Officer</b> | Chris Boomer             |
| <b>Contact Officer</b>   | Chris Boomer             |

|   |     |   |
|---|-----|---|
| <b>Is this report restricted for confidential business?</b>         | Yes |   |
| If 'Yes', confirm below the exempt information category relied upon | No  | x |

|            |  |
|------------|--|
| <b>1.0</b> | <b>Purpose of Report</b>   |
| 1.1        | To inform members of a recent Planning Appeal decision and award of costs decision.  |
| <b>2.0</b> | <b>Background</b>  |
| 2.1        | <p>The PAC on the 18<sup>th</sup> April 2018 have allowed the following proposal previously refused by the Planning Committee.</p> <p>Members will recall the Planning Committee decided to refuse the proposal contrary to the officer's recommendation.</p>  |
| <b>3.0</b> | <b>Main Report</b>   |
| 3.1        | <p><b>2017/A0176</b> Appeal against: The refusal of planning permission for a single wind turbine of up to 2.3 megawatt power output with a maximum overall base blade to tip height of 92.5 metres. Ancillary developments which comprise wind turbine transformer; turbine hardstand, site entrance with sight line provisions; 1 no. electrical control kiosk, construction of new access track; communications antenna; underground electrical cables and communication lines connecting wind turbine to electrical control kiosk; on-site drainage works; temporary site compound; and all ancillary and associated works (renewal of I/2010/0211/F)</p> <p>Location: Beltonanean Mountain, Beltonanean TD, Cookstown</p> <p>The main issue in this appeal was whether the proposed development would have a detrimental impact on the visual amenity and landscape character of the AONB and thus be contrary to the 'cautious' approach to wind energy development in the aonb. Other issues raised by an objector were also considered but not afforded determining weight.</p> <p>The Commissioner observed that the appeal site is located on the slopes of Beltonanean Mountain which rises to some 317m above sea level contour. Being located within Landscape Character Area 41, and despite the presence of sand and gravel extraction and Davagh forest, the Commissioner also concluded that this part of the LCA is a sensitive landscape.</p> <p>Consideration was paid to the Councils recent refusal of the Beltonanean Wind farm adjacent and other recently refused single turbines nearby but stated these did not set a compelling precedent.</p> |

|            |  |
|------------|--|
|            | <p>The Commissioner felt that neither party identified specific enough references to where critical views of the turbine were from or provide maps of the precise location of other turbines which it was felt were adding to a proliferation of turbines when looking towards Lough Neagh.</p> <p>Being a renewal of I/2010/0211/F the Commissioner provided some analysis of how that decision was reached by the Department. She stated that the published SPG planning guidance was published in 2010 and it at that time had already promoted a 'caution approach' to renewable energy proposals in AONBs. She also noted that the Dept took into consideration comments from its Landscape Architects Branch which at that time acknowledged that larger turbines had been allowed in more sensitive AONB locations. The Department therefore found the turbines wider environmental, economic and social benefits to be quite significant given the proposals scale.</p> <p>In regard to the SPPS, it is acknowledged that the 'cautious approach' to renewable energy developments in the AONB has been elevated. However the lack of detailed and site specific evidence did not make it clear why the turbine should now be found unacceptable and contrary to Policy.</p> <p>In relation to archaeological heritage, it was noted that objectors had said the turbine would be seen from Beaghmore Stone Circles. In visiting the circles however the Commissioner was satisfied that by virtue of intervening distance and topography that the proposal would not be contrary to their integrity and thus did not offend PPS6 Policy NH1. In addition no persuasive evidence was provided by objectors that the proposal would be at odds with projects or ambitions of Heritage funding to protect this landscape.</p> <p><u>Costs Award</u></p> <p>It was recognised that the Planning Committee attached weight to the SPPS in reaching its decision and that this itself was not unreasonable.</p> <p>As the evidence submitted by the Council did not however clearly define how the proposal was at odds in a clearly 'site specific way' with Policy, the Commissioner awarded costs to the appellant but limited these only to his rebuttal papers. These represent a total of 2 pages of text and it is anticipated costs associate with this part of the appellant's evidence will be minimal.</p> <p>The appeal was subsequently allowed subject to conditions.</p> |
| <b>4.0</b> | <b>Other Considerations</b>  |
| <b>4.1</b> | <b>Financial, Human Resources &amp; Risk Implications</b>  |
|            | Financial:<br>N/A  |
|            | Human:<br><br>N/A  |
|            | Risk Management:<br><br>N/A  |

|     |   |
|-----|---|
| 4.2 | <b>Screening &amp; Impact Assessments</b>               |
|     | Equality & Good Relations Implications:<br><br>N/A      |
|     | Rural Needs Implications:<br><br>N/A                    |
| 5.0 | <b>Recommendation(s)</b>                                |
| 5.1 | That Members note the PAC decision                      |
| 6.0 | <b>Documents Attached &amp; References</b>              |
| 6.1 | PAC decisions on the application and the award of costs |

# Appeal Decision

Park House  
87/91 Great Victoria Street  
BELFAST  
BT2 7AG  
T: 028 9024 4710  
F: 028 9031 2536  
E: info@pacni.gov.uk

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|                               |  |
|-------------------------------|--|
| <b>Appeal Reference:</b>      | 2017/A0176   |
| <b>Appeal by:</b>             | Mr G Bell  |
| <b>Appeal against:</b>        | The refusal of full planning permission  |
| <b>Proposed Development:</b>  | A single wind turbine of up to 2.3 megawatt power output with a maximum overall base blade to tip height of 92.5 metres. Ancillary developments will comprise wind turbine transformer; turbine hardstand, site entrance with sight line provisions; 1 no. electrical control kiosk, construction of new access track; communications antenna; underground electrical cables and communication lines connecting wind turbine to electrical control kiosk; on-site drainage works; temporary site compound; and all ancillary and associated works (renewal of I/2010/0211/F) |
| <b>Location:</b>              | Beltonanean Mountain, Beltonanean TD, Cookstown  |
| <b>Planning Authority:</b>    | Mid-Ulster District Council  |
| <b>Application Reference:</b> | LA09/2017/0272/F   |
| <b>Procedure:</b>             | Written representations and Commissioner's site visit on 13 <sup>th</sup> April 2018   |
| <b>Decision by:</b>           | Commissioner Julie de-Courcey dated 18 <sup>th</sup> April 2018  |

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## Decision

1. The appeal is allowed subject to the conditions set out below.

## Claim for Costs

2. A claim for costs was made by the appellant against Mid-Ulster District Council. This claim is the subject of a separate decision.

## Preliminary Points

3. As required by the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015, the Council carried out a determination as to whether the proposal was for EIA development. It concluded that the planning application subject of this appeal did not require to be accompanied by an Environmental Statement (ES). I am satisfied that the nil determination under the EIA Regulations taken by the planning authority is correct and that an ES is not required.
4. The planning authority's corporate decision is set out in its two reasons for refusal on the decision notice dated 4 October 2017. This supersedes individual officers' advice, comments and recommendations to the Council's Planning Committee in addition to the opinions of individual councillors and political parties. Concerns



about the basis on and manner in which the corporate decision was reached are outwith the remit of this appeal.

## Reasons

5. The main issue in this appeal is the impact of the proposal on the visual amenity and landscape character of the Sperrins Area of Outstanding Natural Beauty (AONB) in general and of the particular locality, balanced against the environmental, economic and social benefits it offers.
6. The site is located on the slopes of Beltonanean Mountain that rises to 317m. The centre of the base of the turbine would be approximately located on the 290m contour. Access to the site would be taken from a point almost opposite the junction of Beltonanean Road with Beltonanean Lane in proximity to a dutch barn, two smaller, seemingly derelict buildings and several wall steads or former animal pens. Topography generally rises to the north and west of the site. Within 0.5km to the north-north-east of the appeal site is a lattice anemometer mast that is a notable feature in the local landscape. This appears to be the temporary 80m high meteorological mast (granted under I/2012/414/F) that is shown on the site location map for a proposed windfarm to the north of the appeal site (I/2014/0413/F).
7. The Cookstown Area Plan 2010 (CAP) currently serves as the local development plan for the area within which the appeal site lies. It shows that the site lies within the Sperrins AONB. However, it contains no material provisions in respect of the site or wind energy development. Therefore, the plan provides limited assistance in dealing with the appeal.
8. The provisions of the Strategic Planning Policy Statement for Northern Ireland (SPPS) are material in all decisions on individual planning applications and appeals. The SPPS sets out the transitional arrangements that will operate until a local authority has adopted a Plan Strategy for the whole of the council area. During this transitional period planning authorities will apply the SPPS and retained planning policy statements. Planning Policy Statement 21: "*Sustainable Development in the Countryside*" (PPS 21) is a retained policy document and provides the appropriate policy context. Policy CTY1 thereof sets out the types of development that are considered to be acceptable in the countryside. One of these is renewable energy projects in accordance with Planning Policy Statement 18: "*Renewable Energy*" (PPS 18). PPS 18 is supported by a Best Practice Guide (BPG) and a supplementary planning guidance document "*Wind Energy Development in Northern Ireland Landscapes*" (SPG). Planning Policy Statement 2: "*Natural Heritage*" (PPS 2) and Planning Policy Statement 6: "*Planning, Archaeology and the Built Heritage*" (PPS 6) are also pertinent to consideration of this proposal.
9. Paragraph 3.8 of the SPPS says that the guiding principle for planning authorities in determining planning applications is that sustainable development should be permitted, having regard to the provisions of the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance.
10. The aim of PPS 18 is consistent with that of the SPPS to site renewable energy generating facilities in appropriate locations in order to achieve Northern Ireland's (NI's) renewable energy targets and to realise the potential benefits of renewable

energy without compromising other environmental assets of acknowledged importance. This is to some extent tempered by the objectives set out in Paragraph 3.2, which include ensuring that the environmental, landscape, visual and amenity impacts of renewable energy developments are adequately addressed and ensuring that adequate protection is given to the Region's built, natural, and cultural heritage features. The overall thrust of the document, though, is supportive of renewable energy development.

11. Both reasons for refusal make reference to the detrimental impact that the proposal would have on the Sperrins AONB; the first reason relying on Policy RE 1 of PPS 18 and the second on Policy NH6 of PPS 2. Paragraph 6.223 of the SPSS states that a cautious approach for renewable energy development proposals will apply within designated landscapes that are of significant value, such as AONBs and their wider settings. It adds that in such sensitive landscapes it may (*my emphasis*) be difficult to accommodate renewable energy proposals, including wind turbines, without detriment to the region's cultural and natural heritage assets. This reflects the wording previously set out in the BPG at paragraph 1.3.22 thereof. The continued adoption of the word "*may*" indicates that the SPPS policy does not preclude such development within AONBs. Although the BPG is guidance and not policy, it is to be taken into account in assessing proposals, as set out in the headnote to Policy RE 1 of PPS 18. Given its location within the Sperrins AONB, a cautious approach to the appeal proposal is merited in policy terms. That said, the proposal still stands to be considered on its own merits and in the context of its wider environmental, economic and social benefits.
12. Both the SPPS and Policy RE 1 of PPS 18 set out a qualified presumption in favour of renewable energy development unless it would have unacceptable adverse effects that are not outweighed by the local and wider environmental, economic and social benefits of the development. In relation to such benefits, Policy RE1 of PPS 18 states that the wider environmental, economic and social benefits of all proposals for renewable energy projects are material considerations that will be given "*significant*" weight in determining whether planning permission should be granted. However, paragraph 6.225 of the SPPS states that these material considerations will be given "*appropriate*" weight in determining whether planning permission should be granted. Paragraph 1.12 of the SPPS indicates that any conflict between it and any retained policy must be resolved in favour of the SPPS"
13. Mid Ulster District Council's Economic Development Plan "*Our Plan for Growth*" covers the period 2015-2020. One of its stated aims, at Section 1.4, is to promote sustainable development, including renewable energy initiatives.

### **Environmental, Economic and Social Benefits**

14. Despite providing no corroborative evidence, the appellant said that there is a definite and viable plan to connect the proposed turbine to the electricity grid and that to do so would be economically worthwhile in isolation from his proposed second turbine that was recently refused on appeal (2016/A0221). The objectors consider that the unimplemented approval (I/2010/0211/F) proved unviable by virtue of the "*many strict conditions*" attached to it. The conditions to which it is subject are common to such development in terms of scope and requirements. There is no persuasive evidence to support their contention that the previous planning permission was not implemented due to them being restrictive.

15. The appellant identified a number of benefits likely to arise from the granting of permission for the proposed turbine. Some of those benefits are self evident and generally applicable to wind energy development such as reducing pollution, addressing climate change and providing “clean” electricity. The proposed development would also assist NI in reducing its fossil fuel dependency, achieving its renewable energy obligations and enhancing the diversity and security of its energy supply. The appellant estimated that the proposed turbine would offset CO2 omissions by at least 56,000 tonnes over its operational life-time (previously approved for 25 years). The turbine would have up to a 2.3 megawatt generating capacity. On the basis of it being located on what the appellant characterises as a “*very windy site*”, allowing it to operate at 30% capacity as opposed to 250 kilovolt turbines that would normally operate at approximately 17% capacity, he considers that this would off-set the need for 15 no. smaller turbines with the “*visual and other impacts associated with multiple developments*”. The claim that the proposed would supply the annual electricity needs of some 1,677 households was not disputed. While the proposal would provide revenue to the appellant and his farm business, he estimates that the annual business rates payable would equate to £25,000 a year and business taxes would yield a further £25,000. Even if these sums were not fully realised due to the application of what objectors refer to as the many rate reliefs that can be attached to businesses, it would yield revenue to the Council and Exchequer.
16. All of the above factors represent positive benefits favouring the appeal proposal. What remains to be determined is whether those benefits justify allowing the appeal and in so doing override the visual amenity and landscape character concerns expressed by the other parties to the appeal.

### **Visual Amenity, Landscape Character and impact on the AONB**

17. Policy RE1 of PPS18 indicates that renewable energy development will be permitted provided it would not result in an unacceptable adverse impact on 5 criteria. Criterion (b) relates to visual amenity and landscape character. The policy goes on to say that wind energy development proposals as required to comply with a further 7 stipulations. Criterion (i) requires demonstration that the development will not have an unacceptable impact on visual amenity or landscape character through: the number, scale, size and siting of turbines. Criterion (ii) requires that the development has taken into consideration the cumulative impact of existing wind turbines, those which have permissions and those that are currently the subject of valid but undetermined applications. In all, the overall wording and thrust of the policy suggests that some degree of adverse impact may be acceptable.
18. Policy NH 6 of PPS 2 states that planning permission for new development within an AONB will only be granted where it is of an appropriate design, size and scale for the locality and where 3 criteria are met. The wording of the Council’s second reason for refusal indicates that it is concerned only with criterion (a) whereby the siting and scale of the proposal is sympathetic to the special character of the AONB in general and the particular locality.
19. The Northern Ireland Environment Agency (NIEA) published ‘*Wind Energy Development in Northern Ireland’s Landscapes*’ as SPG to PPS 18. The guidance is based on the sensitivity of landscapes to wind energy development and contains an assessment of each of the identified 130 Landscape Character Areas (LCA) in NI by

referencing the values and characteristics associated with each. Paragraph 1.1 of the SPG states that it shares the aim of PPS 18 to facilitate the siting of renewable energy generating facilities in appropriate locations within the built and natural environment in order to achieve NI's renewable energy targets and to realise the benefits of renewable energy. The purpose and scope of the SPG is indicated as being to provide broad, strategic guidance in relation to the landscape and visual impacts of wind energy developments. The SPG shows the appeal site lies within LCA 41 Slieve Gallion.

20. The SPG describes the LCA as having an overall sensitivity of high to medium and says that most of it has visual prominence and a role as an important landmark. However, it acknowledges that the LCA is of varied sensitivity, reflecting its varied character. The appeal site lies within the south-western part of LCA 41. The SPG says that the south-western outlier hills, although adversely affected by sand and gravel extraction and forestry, are visually prominent thus increasing the sensitivity of this area to wind energy development. Beltonanean Mountain is one of these outlier hills and, despite the presence of two quarries and Davagh Forest in the vicinity, I consider that this part of the LCA is a sensitive landscape.
21. Paragraph 6.229 of the SPPS says that the factors to be considered on a case-by-case basis when dealing with renewable energy proposals will depend on the scale of the development and its local context. Each proposal must be considered on its own merits taking account of prevailing planning law and policy at that time. Accordingly, the fact that the Council refused a wind farm consisting of 5 no. x 126.5m turbines and ancillary development at Beltonanean, Ballynasolus, Beleevna-More and Ballynagilly townlands (I/2014/0413/F) to the north of the appeal site, together with two other applications by the appellant for individual turbines that were subsequently dismissed on appeal (2014/A0234 & 2016/A0221) does not set a compelling precedent in respect of the current proposal.
22. The appellant referred to the approval of 6 no. wind turbines at Crockandun that he describes as some 9km north-east of the appeal site, relatively close to the prominent summit of Slieve Gallion and also within LCA 41 and the Sperrins AONB (H/2011/0212/F). He considers this a more sensitive location by comparison to the appeal site that he says is of a “*remarkably lower sensitivity*”. Although no evidence was provided as to whether this approval preceded publication of the SPPS, as each proposal must be considered in its local context and on its own merits in light of prevailing policy, that previous grant of planning permission for a windfarm in the same LCA and AONB does not set a precedent for this proposal.
23. Other than refer to the provisions of the SPG, the Council did not specify what is considered to constitute the “*special character of the AONB in general and the particular locality*”. Generalised references were made to the proposed development being: viewable from Davagh; in full view of Cookstown; views from within the AONB (i.e. from the north-west and west); and appearing clearly above the mountain. However, other than Beaghmore Stone Circles, neither party identified specific vantages from which they consider the proposed turbine would have an unacceptable adverse impact on the visual amenity and landscape character of the AONB. The Council also referred to significant public views particularly from a south-east approach but did not specify whether this was from one, some or all of Beltonanean Lane, Ballynasolus Road, Doons Road, Tulnacross Road or further afield. Mindful of what paragraph 1.3.25 of the BPG says about general perception

of a wind farm in an open landscape, it would be inappropriate for me to speculate on what vantage or vantages concern the Council.

24. Objectors are concerned about the proposal's cumulative impact when viewed in conjunction with "*multiple single turbines in the area*" in addition to wind farms at Crockandun, Cregganconroe, Crockagarron and Brackagh. The Council also referred to "*wind turbines in the area*" and said that when looking towards Lough Neagh, a proliferation of wind turbines can be seen. However, they did not include: maps showing the location of the wind energy development that they are concerned with; specify the number of turbines involved; nor provide details of the planning history to enable me to determine whether planning permission for these installations post-dated the grant of planning permission I/2010/0211/F.
25. The SPG was published in August 2010 and cautious approach to renewable energy developments in AONBs that it advocated was a material consideration when the previous proposal for this turbine was being assessed before permission was granted in May 2012 (I/2010/0211/F). In reaching its decision to approve that proposal, the Department took into consideration comments from its Landscape Architects Branch (LAB) whereby concern was raised regarding its impact on the landscape and AONB. However, LAB acknowledged that larger turbines had been allowed in more sensitive AONB locations. The Department found the proposal's wider environmental, economic and social benefits to be quite significant given the proposal's scale. However, the wording of its case officer's report does not suggest that this consideration was weighed into the overall decision. As the appellant contends, the report when read in the round, suggests that the proposal was found acceptable in terms of visual amenity, landscape character and effect on the AONB.
26. Nevertheless, in the intervening period, the cautious approach to renewable energy developments in AONBs has been elevated to policy and this change in status represents a material change in circumstances. However, in light of the identified evidential void, there is no persuasive evidence that the proposal would be at odds with criteria (b), (i) or (ii) of Policy RE 1 of PPS 18, the SPG to PPS 18 or criterion (a) of Policy NH 6 of PPS 2. As the proposal is consistent with PPS 18 it also complies with Policy CTY 1 of PPS 21.
27. The objectors said that the proposed development would be seen from Beaghmore Stone Circles, which are approximately 3.5km to the north-west of the appeal site (as the crow flies) and an Archaeological Site and Monument in State Care. Paragraph 6.8 of the SPPS says that development that would adversely affect such sites or the integrity of their settings must only be permitted in exceptional circumstances. Policy BH 1 of PPS 6 says that a presumption in favour will be operated in respect of the physical preservation in situ of archaeological remains of regional importance and their settings. These include monuments in State Care. Development that would adversely affect such sites of regional importance or the integrity of their settings will not be permitted unless there are exceptional circumstances. Having visited Beaghmore Stone Circles, I am satisfied that by virtue of intervening distance and topography, the proposed development would not adversely affect the Circles or the integrity of their setting. As the proposal is consistent with both the relevant provisions of the SPPS and Policy NH 1 of PPS 6, objectors concerns in this respect are not determining.
28. Objectors cited the grant of £2 million Heritage Lottery funding to Mid Ulster District Council as a material change in circumstances since the previous grant of

permission. However, they did not specify how the proposal would be at odds with approved funding activities that include: the protection and promotion of the landscape's archaeology; restoring and maintaining over 25,000 hectares of blanket and raised bog; reducing carbon emissions from the peatland; recruiting volunteers to help plant 100,000 native trees and increasing access to the landscape by installing over 10km of new trails and walks. Save for the need for a warning light on top of the turbine in order to address Ministry of Defence (MoD) concerns about air safety, there was no specific evidence as to how the proposal would prejudice designation of the first Dark Sky Reserve in NI to the north-east of the site since the 2012 approval was granted. A condition on any forthcoming planning permission requiring that an infrared obstruction light be installed on top of the turbine would safeguard MoD interests without compromise to the designation. Whilst a Councillor said that rotation of the turbine's blades would cause a visual disturbance in the night sky, there was no more detailed explanation of how this might prejudice the designation. Therefore, there is no persuasive evidence that the proposal would be at odds with these environmental and access projects or with the ambitions of Heritage funding to protect "*this extraordinary rural and isolated landscape*".

29. Subsequent proposals for wind energy development would have to be assessed against prevailing planning law and policy. As the current proposal is consistent with existing planning policy, it would not set an undesirable precedent for wind energy development proposals that are at odds with it.
30. Accordingly, the Council's two reasons for refusal are not sustained and the objectors' additional concerns do not attract determining weight. As I have concluded that the proposed development is acceptable in visual and landscape terms, its other environmental, economic and social benefits are not deciding factors.
31. The Case Officer's report to the Council's Planning Committee recommended conditions to be attached to any forthcoming planning permission. These largely replicate those attached to the planning permission granted in 2012. Albeit that the appellant is seeking to renew this approval, I have to be satisfied that those conditions comply with the requirements of paragraph 5.65 of the SPPS.
32. In the interests of road users' convenience and safety it is necessary to attach a condition requiring that the proposed access be constructed in a timely fashion, retained during the turbine's operational and decommissioning phases and to require the submission and implementation of traffic management measures during the construction phase. A condition regarding management of the area within the visibility splays is unnecessary as that detail is already shown on Drawing No: 08.
33. In order to minimise the risk of pollution during the construction phase a construction method statement, addressing specific concerns, is necessary.
34. The recommended conditions relating to the management, monitoring and review of the proposed turbine's noise impact are well-founded in "*The Assessment and Rating of Noise from Wind Farms*" (ETSU-R-97) that describes a framework for the measurement of noise from wind energy developments and gives indicative noise levels calculated to offer a reasonable degree of protection to neighbours, without placing unreasonable restrictions on generators. The BPG for PPS 18 advocates their use. Such conditions are necessary and reasonable in the interests of

safeguarding the amenity of sensitive receptors.

35. The BPG provides guidance on the phenomenon known as “shadow flicker”. It says that shadow flicker generally only occurs in relative proximity to sites and only properties within 130 degrees either side of north relative to turbines are affected (paragraph 1.3.73). It adds that at distances greater than 10 times rotor diameter, in this case 710m, the potential for shadow flicker is very low (paragraph 1.3.76). The appellant’s Drawing No: 01a indicates that there are dwellings within both these zones. Accordingly, a condition is needed to identify mitigation measures should the phenomenon affect sensitive receptors’ amenity as a result of the turbine hereby approved.
36. The BPG (paragraphs 1.3.58 – 1.3.60) acknowledges that turbines can interfere with domestic television reception but says that such interference is predictable in nature and capable of alleviation. On this basis, it is reasonable and necessary to attach a condition requiring submission of a remediation scheme for dealing with the issue should it arise as a result of this development.
37. The Case Officers recommended that conditions be attached requiring the appellant to submit a scheme for the assessment of amplitude/aerodynamic modulation (AM). Account cannot reasonably be taken of the future publication of associated guidance in respect of managing/regulating this phenomenon. Without persuasive evidence that it would be likely to have an unacceptable adverse impact on residential amenity in this particular instance, it is unreasonable and unnecessary to impose such conditions in this instance. In reaching this conclusion account has been taken of the fact that the recommended conditions were attached to the previous permission.
38. Paragraph 6.179 of the SPSS says that the presence or potential presence of a legally protected species (PS) is an important consideration in decision-making. It adds that if there is evidence to suggest that a PS is present on site or may be affected by the proposed development, steps must be taken to establish whether it is present, the requirements of the species must be factored into the planning and design of the development and any likely impact on the species must be fully considered prior to any determination. Paragraph 6.180 adds that planning permission will only be granted for a development proposal that is not likely to harm a European PS. Bats are such a species. Policy NH 2 of PPS 2 mirrors the provisions of the SPSS in this respect. The Natural Heritage Division of the Department of Agriculture, Environment and Rural Affairs (NH) said that the proposal is unlikely to have a significant impact on bat populations. There is no evidence that the buildings and trees adjoining, but outside, the appeal site are suitable for bat roosts or that any associated activity has been detected or recorded in the vicinity. Removal of these buildings, trees and aforementioned structures are not part of the proposal. Whilst cognisant of the fact that such a condition was attached to the previous permission, in this evidential context I am not persuaded of the need for the recommended condition relating to further inspection for any evidence of bat activity of mature trees and buildings/structures to be removed.
39. A condition limiting construction to outwith the bird breeding season is necessary for ecological reasons. Otherwise, NH said that they have no overall concerns as no priority habitats would be affected and they consider it very unlikely that the proposal would significantly increase risk to the local bird population. In that

evidential context I am not persuaded that it is necessary to attach a condition requiring ornithological monitoring. The suggested condition requiring a Habitat Management Plan refers to mitigation measures included in environmental information that the Department received in May 2010 as part of the previous planning application. Not only was this information not provided to me but, in light of NH's comments about the proposal not affecting PS, priority Habitats or bird species, there is no evidential basis for attaching it. I am mindful that the permission issued in 2012 was subject to such conditions.

40. A condition requiring that the Council be informed of the date of commencement of works on site and of the date when the turbine has become operational in terms of supplying energy to the national grid is necessary in order to provide a trigger for monitoring compliance with other conditions.
41. Taking account possible technological changes in the next 25 years, a condition needs be attached to limit the development's life-span accordingly. Provision also needs to be made for a scheme of decommissioning and restoration so the development's impact is not permanent. A condition requiring that power lines within the site are laid underground is necessary to minimise its visual impact within the AONB.
42. Subject to imposition of these conditions, the appeal is allowed.

### **Conditions**

1. The development shall be begun before the expiration of five years from the date of this permission.
2. No development or site works of any nature shall take place until a construction method statement has been submitted to and agreed in writing by the planning authority. The statement shall include the following matters:
  - Measures for managing groundworks;
  - Site investigations to assess site stability;
  - Procedures for storage of any fuels and/or chemicals;
  - Routine plant inspections;
  - Reporting of pollution incidents;
  - Measures for the storage, removal and disposal of materials and machinery; and
  - Traffic management measures to be implemented during the construction phase of the development hereby approved;

All construction activities shall be carried out in accordance with the approved method statement unless otherwise agreed in writing with the planning authority.

3. No part of the development hereby permitted shall be commenced until the site access, including visibility splays, has been constructed in accordance with Drawing No: 08. These access arrangements shall be retained until the turbine has been decommissioned and removed from site.
4. The turbine hereby approved shall not be erected until a Ministry of Defence-compatible infrared obstruction/warning light has been fitted to the top of its hub in



accordance with specifications that have been submitted to and approved in writing by the planning authority. This light shall be operational through the hours of darkness and maintained in a serviceable condition throughout the lifetime of the turbine.

5. The turbine hereby approved shall not be erected until a scheme for the remediation of any interference with domestic television reception that may be caused by the operation of the turbine (including reception of services emanating from the Republic of Ireland) has been submitted to and approved by the planning authority. The scheme shall be carried out as approved.
6. Prior to the commencement of development, a report detailing measures to mitigate the effects of shadow flicker on nearby residential properties, should such problems arise within 5 years of the turbine hereby approved being commissioned, shall be submitted to and agreed in writing by the planning authority. The report and mitigation measures shall include timescales within which resolution of any justified complaint shall take place.
7. All construction activity shall take place outside the bird breeding season (1<sup>st</sup> March – 31<sup>st</sup> August in any year).
8. The noise immissions from the wind turbine hereby approved (including any tonal penalty) when determined in accordance with the procedures described in Paragraphs 2.0 and 2.1 on Pages 102 to 109 of ETSU-R-97, shall not exceed the values set out in the table below. Noise limits for dwellings that lawfully exist or have planning permission for construction at the date of this permission but are not listed in the table shall be those of the physically closest location listed in the table, unless otherwise agreed by the planning authority.

**Night-Time (11pm – 7am) Noise levels dB<sub>LA90</sub>, 10 minutes**

|                 | <b>Standardised wind speed in metres per second at of 10 metres above the site</b> |      |      |      |      |      |      |
|-----------------|--|------|------|------|------|------|------|
| <b>Property</b> | 4  | 5    | 6    | 7    | 8    | 9    | 10   |
| H4              | 43.0   | 43.0 | 43.0 | 43.0 | 43.0 | 43.0 | 43.0 |
| H64             | 43.0   | 43.0 | 43.0 | 43.0 | 43.0 | 43.0 | 43.0 |
| H67             | 43.0   | 43.0 | 43.0 | 43.0 | 43.0 | 43.0 | 43.0 |
| H89             | 43.0   | 43.0 | 43.0 | 43.0 | 43.0 | 43.0 | 43.0 |

**Day-Time Noise levels dB<sub>LA90</sub>, 10 minutes**

|                 | <b>Standardised wind speed in metres per second at of 10 metres above the site</b> |      |      |      |      |      |      |
|-----------------|--|------|------|------|------|------|------|
| <b>Property</b> | 4  | 5    | 6    | 7    | 8    | 9    | 10   |
| H4              | 35.0   | 35.0 | 35.0 | 36.0 | 38.0 | 40.5 | 43.0 |
| H64             | 35.0   | 35.0 | 35.0 | 36.0 | 37.5 | 39.5 | 41.5 |
| H67             | 35.0   | 35.0 | 35.0 | 35.5 | 38.0 | 40.5 | 43.0 |
| H89             | 35.0   | 35.0 | 35.0 | 36.0 | 38.0 | 40.5 | 43.0 |

9. The approved turbine shall not become operational until a scheme submitted by its operator, providing for the measurement of associated noise imissions, at locations to be agreed wiith the Council, has been submitted to and approved by the planning authority. The duration of such monitoring shall be sufficient to provide comprehensive information on noise levels in a representative range of wind speeds and directions. Monitoring shall be carried out within 6 months of the wind turbine first becoming fully operational and at the operator's expense. The scheme shall be carried out as approved and the results provided to the planning authority within 3 months of its completion unless otherwise extended in writing by the Council. The planning authority shall be notified in writing of the date of commencement of the noise survey at least 2 weeks in advance.
10. Wind speed, wind direction and power generation data shall be continuously logged throughout the period of operation of the wind turbine hereby approved. This data shall be retained for a period of not less than 12 months. At the request of the Council, the recorded wind data, measured or converted to 10m height above ground level and relating to any periods during which noise monitoring took place or any periods when there was a specific noise compliant, shall be made available to them.
11. Within 28 days of the receipt of a written request from the Council following a complaint which it judges to be reasonable from an occupant of a dwelling that lawfully exists or has planning permission for construction at the date of this consent, relating to noise from the turbine, the turbine operator shall, at his or her expense, employ a suitably qualified and competent person to undertake a noise test at the complainant's property to assess the level of noise immissions from the wind turbine. The consultant's assessment and conclusions regarding the complaint, including all calculations, audio recordings and the raw data upon which that assessment and conclusions were based, shall be submitted to the planning authority within three months of the date of the written request, unless otherwise agreed in writing with it. Approved mitigation measures shall be implemented within the agreed time-scale.
12. All power lines within the site shall be located underground.
13. The developer shall notify the Council in writing of the date of commencement of works on site and of the date when the turbine has become operational in terms of supplying energy to the national grid.
14. The permission shall be for a limited period of 25 years from the date on which electricity from the turbine is first connected to the grid. Within 12 months of the cessation of electricity generation at the site, or upon the expiration of this permission, whichever is sooner, all above ground structures and access tracks shall be removed and all land affected by the development restored in accordance with a decommissioning and restoration scheme that has been approved in writing by the planning authority or in accordance with any variation to the scheme that the planning authority has agreed in writing. The scheme shall be submitted to the planning authority at least one year prior to the commencement of any decommissioning works. It shall include details of all works and measures to restore the site, the timeframe within which they shall be carried out along with proposals for aftercare for a period of 3 years after completion of the restoration works.

This decision is based on the following drawings:

- Drawing No: 01a – Site Location Map;
- Drawing No: 02a – Site Location Map 1:2500;
- Drawing No: 03a – Site Layout Map;
- Drawing No: 04 – Proposed Wind Turbine;
- Drawing No: 05 – Wind Turbine Plan;
- Drawing No: 06 – Proposed NIE Kiosk Drawings;
- Drawing No: 07 – Road Construction Details;
- Drawing No: 08 – Site Entrance Details and
- Drawing No: 09a – Proposed Drainage Details.

**COMMISSIONER JULIE DE-COURCEY**

### **List of Documents**

|                     |                    |   |
|---------------------|--------------------|---|
| Planning Authority: | "PA 1"             | Statement of Case   |
| Appellant:          | "APP 1"<br>"APP 2" | Statement of Case<br>Rebuttal                                       |
| Objector:           | "OBJ 1"<br>"OBJ 1" | Statement of case from McRory family<br>Rebuttal from McRory family |

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|--------------------------|---|
| <b>Appeal Reference:</b> | 2017/A0176  |
| <b>Appeal against:</b>   | The refusal of planning permission for a single wind turbine of up to 2.3 megawatt power output with a maximum overall base blade to tip height of 92.5 metres. Ancillary developments will comprise wind turbine transformer; turbine hardstand, site entrance with sight line provisions; 1 no. electrical control kiosk, construction of new access track; communications antenna; underground electrical cables and communication lines connecting wind turbine to electrical control kiosk; on-site drainage works; temporary site compound; and all ancillary and associated works (renewal of I/2010/0211/F) |
| <b>Location:</b>         | Beltonanean Mountain, Beltonanean TD, Cookstown   |
| <b>Claim by:</b>         | Mr Graham Bell for a full award of costs  |
| <b>Claim against:</b>    | Mid Ulster District Council   |
| <b>Decision by:</b>      | Commissioner Julie de-Courcey dated 18 <sup>th</sup> April 2018   |

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## Decision

1. A partial award of costs is made.

## Reasons

2. In accordance with the Commission's publication "Costs Awards Guidance" costs will normally only be awarded where all four of the following conditions are met:
  - The claim relates to a relevant type of appeal;
  - The claim is timely;
  - The party against whom the award is sought has acted unreasonably; and
  - The unreasonable behaviour has caused the party claiming costs to incur unnecessary or wasted expense.

## Eligibility

3. The planning application to which the appeal relates was determined under the Planning Act (Northern Ireland) 2011. An appeal was made in accordance with Section 58 thereof against the refusal of planning permission to develop land. The Commission therefore has power to make an order as to the costs of parties in accordance with Section 205 of the Act.

## Timeliness

4. Paragraph 20 of the Commission's aforementioned publication states that where an appeal is proceeding by exchange of written representations, any costs claim must accompany the claiming party's final written submission. As the appellant's claim was submitted with his rebuttal evidence, the claim was timely.

## Unreasonable Behaviour

5. The claimant (Mr Bell) considers that the respondent (Mid Ulster District Council) acted unreasonably in two respects as follows:
  - Refusing the application and forcing submission of an appeal; and
  - Failing to present credible evidence in support of their case.
6. Reference is made to comments attributed to the Council's Planning Manager at the Planning Committee Meeting on 3 October 2017 that are not recorded in its minutes of proceedings. In his statement of case relating to planning appeal that has given rise to this claim, the appellant said that Mid Ulster Council does not record a comprehensive minute of the Planning Committee meetings and does not take an audio recording of them. Whilst not calling into question the integrity of the appellant's planning consultant or the veracity of his account of what was said at the meeting, it would be unfair of me to prefer his account of the discussion to that of the recorded minutes. The latter are a matter of public record even if not a word-for-word account. Similarly, the parties provide conflicting accounts of the Committee members' approach to wind energy development in principle. Without a full transcript of the debate I cannot fairly and reasonably conclude that undue weight was given to general concerns about wind turbines as opposed to that subject of the specific application under consideration.
7. The Strategic Planning Policy Statement for Northern Ireland (SPPS) was published in September 2015. The "*cautious approach*" that it advocated within designated landscapes that are of significant value such as Areas of Outstanding Natural Beauty (AONBs) represented a material change circumstances between May 2012 when planning permission was previously granted for the erection of a turbine and ancillary development on the appeal site (I/2010/0211/F) and the summer/autumn of 2017 when the Planning Committee considered the application for its renewal. The Council's officers assessed this consideration against other issues material to the proposal and concluded that the change in policy did not merit determining weight. The minutes of the meeting suggest that this material change in circumstances was influential in the Committee's decision to depart from its officers' recommendations.
8. The respondent provided a copy of the "*Protocol for the operation of Mid Ulster District Council Planning Committee*" as part of their response to this claim and asked that particular attention be paid to paragraphs 19 and 24-26 inclusive thereof. Mindful of my conclusions in paragraph 6 of this letter, there is no persuasive evidence that these were breached. Without prejudice to those conclusions, I note that the final sentence of paragraph 26 states that where the Committee is minded to overturn a recommendation to approve that the Planning Manager may also comment on whether a refusal on the proposed grounds is defensible, particularly at planning appeal.

9. In allowing the appeal giving rise to this claim, that I did not attach the same weight to the associated change in policy in the SPPS as the Council's Planning Committee did does not equate to refusal of the planning application being unreasonable and prompting an unnecessary appeal.
10. Paragraph 32 of the Commission's "*Appeal Procedures*" says that the submission of written evidence in the form of a statement of case is required for all types of procedure. This does not preclude a Council from submitting its officer's report to the Planning Committee as its statement of case. In this instance the respondent submitted the officer's initial report, the deferred consideration report that succeeded councillors' site visit, an extract from the Council's minutes of the Planning Committee meeting and planning history that it considered relevant to consideration of the appeal. This course of action is acceptable and expedient provided that the submitted information gives an adequate and cogent explanation of the Council's decision and enables the appointed Commissioner to fully appreciate what demonstrable harm it considers would be caused to interests of acknowledged importance if the appeal were allowed.
11. The shortcomings in the scope and level of detail in the Councils' evidence to substantiate its two reasons for refusal are fully set out in the associated appeal decision. Whilst the change in policy set out in paragraph 7 of this letter was influential in members rejecting their officers' recommendations and they were entitled to do so, the Council's submitted papers do not fully explain the ramifications of the change in policy in site-specific terms.
12. As the Council acknowledges in response to the costs claim, "*it might have been more appropriate to have provided to the Commission a clear summary of the content of the members decision to refuse*". Whilst the submitted evidence established the Council's policy-based concerns, it did not clearly define how the proposal was considered to be at odds with those policies. Therefore, I agree with the Council's comment. Had this evidential gap been bridged in its statement of case, the appellant would have had the opportunity to address those site-specific concerns in his rebuttal evidence. It was his choice to submit a rebuttal statement notwithstanding this evidential void. However, that the claimant chose to address points that he considered to arise from the Council's decision not to submit any further evidence other than that with which he was already familiar, does not prejudice the second element of his claim.

### **Unnecessary or Wasted Expenses**

13. In claiming for a full award of costs covering "*the entire appeal process*", the claimant said the expenses incurred included:
  - a. Preparation of a statement of case; and
  - b. Review of and response to papers submitted by the Council and third party objector.
14. For the above reasons, I concur with the claimant that the Council did not present persuasive evidence in support of their case. This does not render the appeal unnecessary or the expense he incurred in preparing a statement of case nugatory as claimed at point a above. However, the matters identified at point b represented

unnecessary and wasted expense. Accordingly a partial award of costs to the claimant should be made in that respect

### **Order**

**It is hereby ordered** that Mid Ulster District Council shall pay to Mr Graham Bell the costs of the appeal proceedings limited to those costs incurred in the review of and response to papers submitted by the Council and third party objector.

On receipt of this order Mr Graham Bell may submit details of those costs to Mid Ulster District Council with a view to reaching agreement on the amount. If the parties are unable to agree, the claimant may refer the matter to the Taxing Master of the High Court for a detailed assessment.

**COMMISSIONER JULIE DE-COURCEY**



### **List of Documents**

Claimant: "C1" Cost Claim from Mr Graham Bell by Ross Planning

Respondent: "C2" Response to Cost Claim by Mid-Ulster District Council