

**Minutes of Meeting of Planning Committee of Mid Ulster District Council held on Tuesday 6 October 2020 in Council Offices, Ballyronan Road, Magherafelt and by virtual means**

**Members Present**

Councillor S McPeake, Chair

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

**Officers in Attendance**

Dr Boomer, Planning Manager  
Mr Bowman, Head of Development Management  
Ms McCullagh, Senior Planning Officer  
Ms McKearney\*\*, Senior Planning Officer  
Ms McNally, Council Solicitor  
Mr Stewart, Senior Planning Officer  
Miss Thompson, Democratic Services Officer

**Others in Attendance**

**Applicant Speakers**

LA09/2019/0562/F	Councillor Elattar
	Mr McLaughlin*
LA09/2020/0484/O	Mr Ross
LA09/2020/0692/O	Mr Coney
LA09/2019/1540/O	Councillor B McGuigan
	Mr Cassidy*

\* Denotes members and members of the public present in remote attendance

\*\* Denotes Officers present by remote means

The meeting commenced at 7.00 pm

*The Chair, Councillor S McPeake welcomed everyone to the meeting and those watching the meeting through the Live Broadcast. The Chair, in introducing the meeting detailed the operational arrangements for transacting the business of the Committee in the Chamber and by virtual means, by referring to Annex A to this minute.*

The Chair also referred to addendum which had been circulated earlier in the day and asked if those joining remotely had seen this document and had time to read it.

Members joining remotely confirmed that they had seen the addendum and had time to read it.

**P089/20 Apologies**

None.

## **P090/20      Declarations of Interest**

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

The Chair, Councillor S McPeake referred to agenda items 4.23 (LA09/2020/0603/F), 4.24 (LA09/2020/0604/F) and 4.29 (LA09/2020/0979/F) and that as these items are Council applications all Members should declare an interest.

Proposed by Councillor Mallaghan  
Seconded by Councillor Bell and

**Resolved** That all Members present at the Committee both in the room and virtually (Councillors Bell, Black, Brown, Clarke, Colvin, Cuthbertson, Gildernew, Glasgow, Kearney, Mallaghan, McFlynn, McKinney, D McPeake, S McPeake, Quinn, Robinson) declare an interest in agenda items 4.23 (LA09/2020/0603/F), 4.24 (LA09/2020/0604/F) and 4.29 (LA09/2020/0979/F).

Councillor Black declared an interest in agenda item 4.25 – planning application LA09/2020/0630/O.

Councillor Kearney declared an interest in agenda item 4.10 – planning application LA09/2019/16.30/F.

## **P091/20      Chair's Business**

Councillor Quinn referred to the recent demolition of O'Rahilly House in Dublin and asked if the planning department had undertaken an audit of historic buildings within Mid Ulster and if so was this consulted on with the public.

The Planning Manager stated that such an audit would be conducted by Historic Buildings Section within the Department for Communities and that they would consult with Council in relation to historic buildings. The Planning Manager stated that Historic Buildings have compiled a report which details buildings at risk and that there were some buildings within the Mid Ulster area.

Councillor Quinn stated he would raise the issue with the Department for Communities.

The Planning Manager referred to the recent performance statistics issued for the period of April, May and June. The Planning Manager stated that during this time 287 applications were received by Mid Ulster Council and that this was the 3<sup>rd</sup> highest number received by Councils with the highest being around 300 applications. The Planning Manager stated that this number was down on what is normal but should be understandable given this was during the period of lock down. During this time 231 applications were decided these all being approvals, this was the 2<sup>nd</sup> highest rate of decisions. The Planning Manager stated that Mid Ulster is dealing with applications within 14 weeks and any Councils who are quicker are receiving less applications. Members were also advised that during the 3 month period 170

enforcement cases were concluded in time. The Planning Manager stated that during the April, May, June period the department received more applications than it dealt with and that there is currently a large caseload of live applications.

In relation to the Development Plan it was advised that re-consultation ended on 24 September and the aim is to move to having all representations online hopefully before Christmas. The Planning Manager stated it was difficult to foresee what further impact COVID19 will have on delivery of service but that officers will continue to push on as best possible.

Councillor S McPeake stated that the planning department's performance is commendable during the current challenging times.

## **Matters for Decision**

### **P092/20      Planning Applications for Determination**

The Planning Manager referred to the below applications which were on the agenda for determination and sought approval to have the following applications deferred from tonight's meeting schedule for an office meeting –

Agenda item 4.5 – LA09/2019/0060/F – 2 holiday villas to match previously approved (I/2012/0159/F) at 60m E of 62 Loughbracken Road, Pomeroy for Karl Heron.

Agenda item 4.11 – LA09/2020/0034/O – Dwelling at an existing cluster adjacent to and SW of 150a Washingbay Road, Upper Meenagh, Coalisland for Patrick Brady.

Agenda item 4.13 – LA09/2020/0093/O – Dwelling and garage on a farm 60m E of 43 Carnaman Road, Gulladuff for Mr James McErlean.

Agenda item 4.14 – LA09/2020/0213/F – Restructuring and alterations of vehicular access at 18 Cookstown Road, Dungannon for Mr Barry O'Neill.

Agenda Item 4.15 – LA09/2020/0331/O – Site for a dwelling and domestic garage approx. 15m NE of 153 Sixtowns Road, Owenreagh, Draperstown for Ms Lisa Murray.

Agenda item 4.21 – LA09/2020/0550/O – Replacement dwelling at site 100m E of 2 Halfgayne Road, Maghera for Seamus Logue.

Agenda item 4.22 – LA09/2020/0561/F – Unit for valeting and cleaning of cars 15m SE of 82 Corr Road, Dungannon for Dan McNulty.

The Planning Manager further advised that planning applications LA09/2019/1624/F (Agenda item 4.9) and LA09/2019/1376/O (Agenda item 5.2) had been withdrawn.

Proposed by Councillor Brown  
Seconded by Councillor McFlynn and

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

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

**LA09/2017/1279/F                      2 Broiler Poultry sheds with 4 feed bins, 2 gas tanks and an office changing and standby generator building at Land approx. 50m SW of 40 Edendoit Road Pomeroy for Mr Eric Black**

Members considered previously circulated report on planning application LA09/2017/1279/F which had a recommendation for approval.

Councillor McKinney stated that as agenda items 4.1 to 4.4 were all for approval and there were no requests to speak on these applications that he would propose that they be considered collectively as approvals.

Councillor Colvin seconded Councillor McKinney's proposal.

**Resolved** That planning application LA09/2017/1279/F be approved subject to conditions as per the officer's report.

**LA09/2018/0211/F                      Free range organic poultry shed with 2 feed bins and a standby generator building (poultry shed to contain 6,000 free range organic egg laying hens) at land approx. 200m NE of 72 Sessiagh Scott Road, Dungannon, for Jim Hamilton**

Members considered previously circulated report on planning application LA09/2018/0211/F which had a recommendation for approval.

Proposed by Councillor McKinney  
Seconded by Councillor Colvin and

**Resolved** That planning application LA09/2018/0211/F be approved subject to conditions as per the officer's report.

**LA09/2018/0391/F                      Dwelling adjacent to and 15m S of 3 Park Lane, Dungannon for Arlene Jardine**

Members considered previously circulated report on planning application LA09/2018/0391/F which had a recommendation for approval.

Proposed by Councillor McKinney  
Seconded by Councillor Colvin and

**Resolved** That planning application LA09/2018/0391/F be approved subject to conditions as per the officer's report.

**LA09/2018/0652/F**                      **Housing development for 5 detached units with private access road and 1 no. detached dwelling with separate access from Loves Road at lands S of 1 Loves Road, Magherafelt, for FP McCann Ltd**

Members considered previously circulated report on planning application LA09/2018/0652/F which had a recommendation for approval.

Proposed by Councillor McKinney  
Seconded by Councillor Colvin and

**Resolved**     That planning application LA09/2018/0652/F be approved subject to conditions as per the officer's report.

**LA09/2019/0060/F**                      **2 holiday villas to match previously approved (I/2012/0159/F) at 60m E of 62 Loughbracken Road, Pomeroy for Karl Heron**

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

**LA09/2019/0562/F**                      **Residential Development of 20 dwellings; includes site access, access roads, landscaping, car parking, driveways, garages and all associated site works and the retention of existing dwelling with new front boundary and access at 9a Slieve Gallion Drive, Magherafelt Road, Draperstown, for Viva Bingo Hall Ltd**

The Head of Development Management presented a report on planning application LA09/2019/0562/F advising that it was recommended for approval.

The Chair advised the committee that requests to speak on the application had been received and invited Councillor Elattar to address the committee.

Councillor Elattar stated that the proposal is to be sited on white lands and in the garden of an existing property and none of the residents of Slieve Gallion Drive would ever have imagined a development of 20 houses would be built in the grounds of the existing residence.

Councillor Elattar stated that the objectors recognise the efforts of the planning department and the developer to try to minimise the effects of the development on nos. 5 and 7 Slieve Gallion Drive however the residents of 7 Slieve Gallion Drive still have concerns relating to increased traffic flow and how this will impact their daily lives. The Councillor referred to the extensive health problems the residents of no.7 have and the search they had to find a property which would suit their needs. In finding no.7 Slieve Gallion Drive the residents believed they had found a suitable property but would not have purchased the property had they known a new housing development would mean the traffic flow outside their bedroom would increase substantially.

Councillor Elattar stated that there was also concern from nos. 5 and 7 Slieve Gallion Drive on the safety of access to and from their driveways which are both beside the new access road. Visibility from the new access road into Slieve Gallion Drive is also a concern. Councillor Elattar stated that objectors feel the DfI Roads have not fully considered these concerns.

Councillor Elattar also referred to the use of the road through Slieve Gallion Drive for agricultural vehicles and that it had previously been stated that the developer can provide alternate access for these vehicles but that this has not materialised and DfI Roads have not pursued this option. Councillor Elattar stated that there is a potential alternative access for the proposal onto the Magherafelt Road and objectors would like this taken into consideration.

Councillor Elattar stated that if the proposal is to go ahead then the objectors would like it conditioned that there would be no future access through for any future development beside the current proposed site as there is another site beside the proposal site which is zoned and there is a potential for a loop road which would exacerbate the problems already being faced by nos. 5 and 7 Slieve Gallion Drive.

Councillor Elattar asked that the application be deferred until the points raised have been considered and to give Members a chance to see the problem for themselves. Councillor Elattar stated that the objectors would be keen to have a site meeting with Members and that DfI Roads and Environmental Health be included at such a meeting.

The Planning Manager stated that there appeared to 3 main issues of objection to the application, 2 being roads issues and the other being noise and nuisance. The Planning Manager asked the Head of Development Management if Environmental Health had been consulted on the application.

The Head of Development Management advised that Environmental Health were consulted and were asked to examine the issues raised by one of the residents in relation to personal circumstances. It was advised that Environmental Health responded to say that issues around ease of access to and from no.7 Slieve Gallion Drive and noise impact is a matter for DfI Roads to consider.

The Planning Manager asked if the objectors concerns were highlighted to DfI Roads.

The Head of Development Management stated that following a site meeting with objectors DfI Roads were asked to specifically consider the issues raised at that meeting – primarily access through Slieve Gallion Drive, access in and out of properties in Slieve Gallion Drive and sight lines. It was advised that DfI Roads did respond on these issues and that they considered the layout and access arrangements of the proposal to be consistent with road design guidelines.

The Planning Manager referred to the issue of the road loop and asked if there are any safeguards against this.

The Head of Development Management stated that the layout of the site shows a future access way that can link in to the zoned housing site to the North and therefore provision has been left, if the other site was ever developed, to have 2 means of access to the site via Slieve Gallion Drive and directly from Magherafelt Road.

The Planning Manager stated that planning permission would be required to create the link and asked if there was any other way into the land.

The Head of Development Management stated that the only way directly onto the Magherafelt Road is from the narrow strip of land.

The Planning Manager stated that as the land is zoned it is a reasonable expectation that the narrow strip of land can be used for access. He stated however that Members cannot determine the application before them tonight on what may happen in the future but at the same time consideration needs to be given to the Development Plan and what is proposed within that document.

The Planning Manager referred to the earlier request for deferral and stated that as all objections have been forwarded to the relevant consultees and considered thoroughly he did not believe there was anything to add by deferring the application.

The Council Solicitor referred to email submitted by Councillor Elattar which was emailed to Councillors as part of the addendum and that Members should take the time to consider this document.

The Chair, Councillor S McPeake asked if all Members had been able to access the addendum which was emailed to them.

Councillor Gildernew indicated that he did not receive the addendum which was emailed and confirmed that he would therefore not speak/vote on the application.

The Council Solicitor stated that if the Head of Development Management went through the points raised in the email for Members now then Councillor Gildernew can take part in discussion/ voting on the application should he wish to do so.

Councillor Cuthbertson stated that the Chair had asked at the beginning of the meeting if everyone had received the addendum and no one had said they had not received it. Councillor Cuthbertson stated that if planning officers are content that all concerns have been taken into account, including those raised in the email as part of the addendum then he would propose the recommendation to approve the application.

The Planning Manager stated that as there appeared to be some ambiguity as to Members having received the email with the addendum it would be better to take some time to go through the points raised in the email.

Councillor McKinney stated that it was his belief under the Code of Conduct that if Councillor Gildernew has not received the information then the Committee were not in a position to move forward.

The Planning Manager stated that the addendum had been emailed to all Members, however as Councillor Gildernew has stated that he did not receive this information he would not take part in any discussion/vote on the application. The Planning Manager stated that there was still more than enough of the Committee who could take a decision on the application.

Councillor Gildernew stated that he had put his hand up at the beginning of the meeting when it was asked if everyone had received the addendum however this did not appear to have been acknowledged.

Councillor Glasgow stated that he did not feel it would take that long to go through the points within the email and that this would allow Councillor Gildernew to take part in any discussion/voting on the application.

The Chair, Councillor S McPeake asked the Head of Development Management to go through the points raised in the email submitted by Councillor Elattar.

The Head of Development Management took Members through the points raised in the email from Councillor Elattar as follows –

*Breach of original neighbour notification. Despite being within the designated 90m from the proposed development, some residents were not included in the process. They view this as a major concern. Does this have an impact on the process and effectively flaws the original submission?*

The Head of Development Management advised that at the outset there was an issue regarding what was neighbouring property or adjoining property and there were errors made at that time however those have since been corrected and that he was satisfied that all parties which should have been notified have now been notified.

*Unsatisfactory reporting from Roads Enniskillen throughout the process with limited substantiation. The objectors are 100% sure there is a sight line issue between the main Slieve Gallion Drive route and the proposed turn off into 9A Slieve Gallion Drive. On both sides of the entrance whilst trying to look right and left. There are obvious dangers on access/egress. They wish to meet Roads to discuss this*

The Head of Development Management advised that DfI Roads were specifically asked to look at these concerns. It was advised that DfI Roads have indicated there is no issue to justify refusing access to this site however there may be some vegetation growth which has exceeded the footpath which may be dealt with under a different control. The Head of Development Management stated that DfI Roads have not presented anything to state that entry/exit to any property in Slieve Gallion Drive will be made unsafe due to this proposal going ahead.

*Unsatisfactory reporting from the Environmental Health. If they have properly studied the objection from number 7 Slieve Gallion Drive a more sympathetic approach may have been taken. The objectors wish to meet Environmental Health. It seems the emotional pleas with very strong and genuine human rights issues have been completely ignored and fallen on 'deafened ears'. This has to be a serious flaw.*



The Head of Development Management stated that Environmental Health were asked to comment on issues raised by no.7 Slieve Gallion Drive but that they and DfI Roads were satisfied that the means of entry both in and out of no.7 is not prejudiced by this application.

*Multiple issue of identical notification letters and in some cases up to 6 to any 1 objecting household. Objectors wonder does this relate to the ratio of notifications versus the number of objections? It certainly has presented misleading statistic when one simply review the quantum of notification versus objection.*

The Head of Development Management advised that this point relates to multiple objections from the one address and that when the application is re-notified each of the named objectors receives a letter as opposed to one per household and explains why some households may have received 4 or 5 letters and others only 1.

*Despite being a very strong link between the owners of 9A grounds and adjacent development lands there is an insistence that there is no link- meaning that they will not consider access through these lands and direct to the Magherafelt Road. If this is the position why did the council recommend the provision of an open space areas in this proposed development to safeguard the future development of the adjacent lands?*

The Head of Development Management stated that this particular application site does not have any particular key site requirement and it is reasonable for access to be considered as it has been. It was advised that the adjacent zoned site does provide future connectivity and that this along with the need to ensure future open space is not a burden on the adjacent site in its entirety, open space within this application was requested.

*Number 9A is now occupied once again as a dwelling. How can that continue safely if their grounds are to be eventually a building site?*

The Head of Development Management stated that as the applicant is the owner of the property in question then they should in all likelihood ensure that the ground at the property will be left safe and that this should not be a deterrent to the application proceeding.

*If planning approves this application, local residents would like to see both a copy of the Construction Management Plan and the Construction Environmental Management Plan which should be submitted as part of the planning process and which should form part of the approval process.*

The Head of Development Management referred to the additional note on the addendum and that NIEA Water Management Unit have sought a Construction Method statement and that this should be submitted 8 weeks prior to the commencement of construction.

*Removal of the Planning Portal. How are existing residents supposed to track updates? They have experienced considerable difficulty in accessing the planning portal.*

The Head of Development Management stated that he was not aware of any issues regarding public access to the planning portal.

The Council Solicitor stated that there was one of the points raised in the email regarding unsafe movement of agricultural traffic which had not been dealt with. The Council Solicitor also referred to the vegetation growth mentioned and whether this requires a condition. The Council Solicitor also referred to point raised in which it was stated that genuine human rights issues have been completely ignored and asked if this has been considered as part of the report.

The Head of Development Management referred to the additional point within the email as follows -

*Unsafe movement of agricultural traffic through Slievegallion Drive and the proposed new development (as recent as last week with slurry tanks and associated equipment utilising Slieve Gallion Drive and the grounds of 9A to access adjacent agricultural lands). Certainly a contradiction when we consider the minutes confirming that the Developer could access agricultural lands through alternative routes (minuted by the council) but latest reports suggest that the Developer did not make this offer. The objectors wish to know why the developers offer to provide alternative agricultural access has not been taken up.*

The Head of Development Management stated this was not an ideal situation and that the current arrangement facilitates the occasional access of agricultural vehicles through Slieve Gallion Drive. It was advised that when officers met with the agent there appeared to be a willingness to get agricultural vehicles to access the land via a different means but that when the amended plans were submitted no alternative access was put forward. DfI Roads do not feel that the occasional use of the road through the development was a road safety issue given the limited/seasonal use.

The Planning Manager stated that the issue of overgrown vegetation was a common one and can relate to visibility splays in which DfI Roads could write to a property owners asking them to cut back such vegetation. Such matters are dealt with under other legislation.

In relation to human rights, the Planning Manager stated that in planning terms this is considered under the term neighbouring amenity and the right for a person to enjoy their home. The Planning Manager stated that it was not a pre requisite for planning to go through each of the points of the Human Rights Act but in this instance officers have considered the objections in relation to noise, road safety and access and have also consulted on these matters.

Councillor Clarke stated that the situation regarding agricultural vehicles was not ideal and it would be better if such vehicles did not travel through the housing development.

The Chair, Councillor S McPeake invited Mr McLaughlin to address the Committee.

Mr McLaughlin stated that the proposal was for 20 dwellings with the retention of 9a Slieve Gallion Drive. The site is accessed off Magherafelt Road via Slieve Gallion

Drive and is located within the development limits of Draperstown. Mr McLaughlin stated that it is entirely appropriate to consider the proposal to develop the lands in question for housing and this is the predominant surrounding land use. Mr McLaughlin stated that the original application was for 23 dwellings however this was reduced to 20 following consultation with the planning department following concerns from objectors. Mr McLaughlin stated that the application conforms with planning policy and that the original PAD application was submitted in January 2019 with the full application being submitted in April 2019 – Mr McLaughlin did not believe the planning recommendation has been made in haste and that all matters raised by objectors and again tonight have been considered with no issues raised by statutory consultees. Mr McLaughlin requested that the Committee endorse the recommendation of the planning officer.

The Chair, Councillor S McPeake referred to the concerns in relation to agricultural vehicles and asked Mr McLaughlin to comment on this.

Mr McLaughlin stated that concerns in relation to agricultural vehicles travelling through the development have not been raised with any other body other than through this application. Mr McLaughlin stated that this issue was discussed previously with planning officers and it was advised that the use of agricultural vehicles through Slieve Gallion Drive is very limited. DfI Roads have assessed the matter as part of the consultation process and also have no issues. Mr McLaughlin stated that whilst there is an alternative access which may be explored at a later date, the existing access needs to remain at the moment. Mr McLaughlin also explained that there is a requirement of DfI Rivers to access a watercourse for maintenance purposes and that this is included in their consultation response and conditions.

Councillor Colvin stated that one would not expect agricultural vehicles to be travelling through a residential development and felt that as there is an alternative access available that the developer should have included this in their proposal in order to avoid any further agricultural vehicles going through Slieve Gallion Drive.

The Planning Manager asked if this application prejudices the use of the alternative access.

Mr McLaughlin stated it did not.

The Planning Manager asked if Mr McLaughlin would be agreeable to a condition being applied which would not allow through access to neighbouring fields.

Mr McLaughlin stated he could not answer that question without speaking to the applicant.

The Planning Manager stated that the proposal was for a residential development and that it would be reasonable to put a condition such as the one suggested on the application.

The Planning Manager stated that access from the North can be taken from an existing road and that there is currently existing access for agricultural vehicles for

the other land. The Planning Manager suggested that the one single boundary which is causing concern be fenced off but allowing for access as shown on the plans because as it appears to be an existing agricultural access anyway.

Councillor Colvin stated that the proposal will site a number of houses around the existing access and that there needs to be change in relation to agricultural vehicles travelling through a development.

The Planning Manager stated that a right of access cannot be altered and that it was not uncommon for a housing development to allow access to lands to the rear. With regard to concerns regarding potential occupiers of the new houses the Planning Manager stated it is up to individuals if they wish to purchase a property with the knowledge of what the planning approval shows.

Councillor Robinson stated that having listened to all the discussion tonight and that all objections have been answered he would second Councillor Cuthbertson's proposal to approve the application.

**Resolved** That planning application LA09/2019/0562/F be approved subject to conditions as per the officer's report.

**LA09/2019/0966/F**                      **Access for goods vehicles to enter and exit onto the B34 Dungannon Road from Sandvik site, at Sandvik Mining and Rock Technology, Tullyvannon, Ballygawley for Sandvik Ltd**

Members considered previously circulated report on planning application LA09/2019/0966/F which had a recommendation for approval.

Proposed by Councillor McKinney  
Seconded by Councillor Brown and

**Resolved** That planning application LA09/2019/0966/F be approved subject to conditions as per the officer's report.

**LA09/2019/1567/F**                      **Retention of extension to work shop, store, mobile office, canteen and welfare facilities at 67A Farlough Road, Newmills Dungannon, for Mr Kenny Archer**

Members considered previously circulated report on planning application LA09/2019/1567/F which had a recommendation for approval.

Proposed by Councillor Mallaghan  
Seconded by Councillor Robinson and

**Resolved** That planning application LA09/2019/1567/F be approved subject to conditions as per the officer's report.

**LA09/2019/1624/F**                      **5 Self-catering tourist accommodation units at lands 250m NE of 5 Old Loughry Road, Cookstown, for Jason Currie**

Application Withdrawn.

**LA09/2019/1630/F**                      **Section 54 application regarding a proposed conversion of a redundant building to form one dwelling house approved under LA09/2016/0889/F. Application seeks to vary condition 3 of the approval - removing the need for a forward sight distance at 40m SW of 38 Lisnamuck Road Tobermore for Mr Hopper**

Members considered report on planning application LA09/2019/1630/F which had a recommendation for refusal.

Proposed by Councillor Mallaghan  
Seconded by Councillor Glasgow and

**Resolved**     That planning application LA09/2019/1630/F be refused on grounds stated in the officer's report.

**LA09/2020/0034/O**                      **Dwelling at an existing cluster adjacent to and SW of 150a Washingbay Road, Upper Meenagh, Coalisland for Patrick Brady**

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

**LA09/2020/0089/F**                      **Conversion of existing natural stone barn to dwelling at 20m W of former Ulster Bank premises 26-27 The Square Stewartstown for Ryan Smith Properties Ltd**

Members considered previously circulated report on planning application LA09/2020/0089/F which had a recommendation for approval.

Proposed by Councillor Colvin  
Seconded by Councillor Brown and

**Resolved**     That planning application LA09/2020/0089/F be approved subject to conditions as per the officer's report.

**LA09/2020/0093/O**                      **Dwelling and garage on a farm 60m E of 43 Carnaman Road, Gulladuff, for Mr James Mc Erlean**

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

**LA09/2020/0213/F                      Restructuring and alterations of vehicular access, at  
18 Cookstown Road, Dungannon for Mr Barry O'Neill**

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

**LA09/2020/0331/O                      Site for a dwelling and domestic garage approx. 15m  
NE of 153 Sixtowns Road, Owenreagh, Draperstown  
for Ms Lisa Murray**

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

**LA09/2020/0415/F                      Change of use from domestic garage to beauty salon  
at 17 Lurgaboy Lane, Dungannon for Paul Lavery**

Members considered previously circulated report on planning application  
LA09/2020/0415/F which had a recommendation for approval.

Proposed by Councillor Mallaghan  
Seconded by Councillor Robinson and

**Resolved**     That planning application LA09/2020/0415/F be approved subject to  
conditions as per the officer's report.

**LA09/2020/0433/F                      Single storey extension to existing suspended  
ground floor of the bakery at 169 Ballagh Road  
Fivemiletown for Scotts Bakery Ltd**

Members considered previously circulated report on planning application  
LA09/2020/0433/F which had a recommendation for approval.

Proposed by Councillor Gildernew  
Seconded by Councillor Brown and

**Resolved**     That planning application LA09/2020/0433/F be approved subject to  
conditions as per the officer's report.

**LA09/2020/0449/F                      Extension of existing residential care home facility  
with 7 no. individual care units, communal building,  
staff area with associated car parking and  
landscaping at 19 Rocktown Lane, Knockloughrim,  
Magherafelt for Inspire 2 Care Ltd**

The Chair, Councillor S McPeake declared an interest in the application and vacated  
the Chair.

Councillor Glasgow took the Chair.

Members considered previously circulated report on planning application  
LA09/2020/0449/F which had a recommendation for approval.

Proposed by Councillor McKinney  
Seconded by Councillor McFlynn and

**Resolved** That planning application LA09/2020/0449/F be approved subject to conditions as per the officer's report.

Councillor S McPeake took the Chair.

**LA09/2020/0461/F Extensions to existing office and factory buildings at 26b Station Road, Magherafelt for Bloc Blinds Ltd**

Members considered previously circulated report on planning application LA09/2020/0461/F which had a recommendation for approval.

Proposed by Councillor D McPeake  
Seconded by Councillor McFlynn and

**Resolved** That planning application LA09/2020/0461/F be approved subject to conditions as per the officer's report.

**LA09/2020/0484/O Offsite replacement dwelling garage at approx. 60m N of 18 Ballynakilly Road, Cookstown for Seamus Nugent**

The Head of Development Management presented a report on planning application LA09/2020/0484/O advising that it was recommended for approval.

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

Mr Ross stated he was representing neighbouring residents to the site, the Costello family. Mr Ross stated that when considering a replacement the basic principle should be that the new dwelling should be within the curtilage of the existing site although there can be a small minority of cases in which exceptional circumstances can be put forward in which a dwelling can be moved to a better location. In this case the applicant wants to move the new dwelling quite a distance from the original structure with the key concern being that the new dwelling will be right beside the objector's property and it is felt that there is an alternative site within the applicant's farm where the dwelling can be located. Mr Ross stated that just because the proposal may be the most desirable site to the applicant the question should be asked as to whether this is the most integrated site and that there is a better site available to the applicant in landscape and visual terms and is also well distanced from the poultry houses. Mr Ross stated that alternative sites have not been investigated at any stage and it was his feeling that a review of alternatives is an essential component of any off site replacement proposal. Mr Ross stated that if the proposal was moved to a different location then his clients would be happy to withdraw their objections. Mr Ross asked that alternative sites be considered.

The Chair, Councillor S McPeake asked if there were amenity issues with regards to the objections raised.

Mr Ross stated that the objectors concerns are that the new house will invade their privacy and that it seems strange in that when there is a large area of land and alternative sites available that the applicants have chosen to locate their new dwelling right beside an existing dwelling.

The Planning Manager asked where in the policy it states that an off site replacement needs to assess all the other alternatives.

Mr Ross stated that this is not stated with policy CTY3 but that the thrust of policies CTY13 and CTY14 is about finding the best integrated site.

In response to the Planning Manager, Mr Ross stated that the argument was that the proposal site did not integrate and was obtrusive and would lead to build up.

The Planning Manager asked if the tests had been applied in terms of integration and build up.

The Head of Development Management referred to the case officer report which states that there are no critical views of the dwelling along both directions of the Ballynakilly Road and that there will be some views of the dwelling along the Rockdale Road but only from a distance. In terms of rural character the case officer report states that they are content that the dwelling will not be a prominent feature and will not impact on rural character of the area.

The Planning Manager stated that there needed to be consideration given to the existing residents and in terms of protecting their amenity and privacy he asked what had been considered.

The Head of Development Management referred to the quality of vegetation between the two sites and that a condition of approval is the retention of natural screenings.

Councillor McKinney asked if all planning procedures have been exhausted as whether there are alternative sites or not it is not up to Councillors to pick a site but rather to judge the site before them for what it is.

The Planning Manager stated that the map shows an indicative site for the dwelling and asked if the distance could be increased from the neighbouring dwelling.

The Head of Development Management stated that a siting condition has been applied and there is the possibility of moving the new dwelling away from the existing dwelling if it continues to be acceptable in visual terms.

Councillor Black referred to the concerns of objectors and that they feel their amenity is not being protected. Councillor Black asked if it would be worthwhile to defer this application in order to find a solution to which both parties can agree.

The Planning Manager stated he felt siting conditions should be imposed and that in imposing such a condition officers are mindful of increasing the separation distance between the two dwellings and also ensuring a condition which requires the boundaries to be retained but also augmented.



Councillor Brown asked why the access to the dwelling has to come down the middle of the field rather than to the side where the existing dwelling is located.

The Head of Development Management advised that the officer report states the new access runs across the middle of an agricultural field but follows a row of established trees and it is felt that this is a suitable route to follow.

The Planning Manager referred to the suggestion of deferring the application and if an agreement between both parties can be reached then this would benefit everyone. The Planning Manager suggested that the application be deferred for officers to look at the laneway and if there can be any increased separation between the proposal and the neighbouring property.

Councillor Black proposed that the application be deferred.

Councillor Brown seconded Councillor Black's proposal.

**Resolved** That planning application LA09/2020/0484/O be deferred for officers to further consider siting and access.

Councillor Bell requested that these matters be considered expediently.

The Planning Manager stated that the application should be ready to come back before the Committee next month.

Councillor Mallaghan stated that the applicant would have expected this application to be approved tonight and therefore any changes to the application should be done in consultation with the applicant.

The Planning Manager stated this will happen.

**LA09/2020/0550/O                      Replacement Dwelling at site 100m E of 2 Halfgayne Road, Maghera, for Seamus Logue**

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

**LA09/2020/0561/F                      Unit for valeting and cleaning of cars, 15m SE of 82 Corr Road, Dungannon for Dan McNulty**

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

**LA09/2020/0603/F                      Upgrade to existing parking area and path from carpark to Forest Road. New path within Forest towards the River. Trail furniture and timber Play Equipment. Walking trail extending from Rath Dubh Community Centre towards the River at Moydamlaght Forest, Moydamlagh Road, (Approx. 5 miles NW of Draperstown). Agricultural land to the NE of Rath Dubh community Centre, Moneyneaney Road for Mid Ulster District Council**

Members considered previously circulated report on planning application LA09/2020/0603/F which had a recommendation for approval.

Proposed by Councillor D McPeake  
Seconded by Councillor Kearney and

**Resolved** That planning application LA09/2020/0603/F be approved subject to conditions as per the officer's report.

**LA09/2020/0604/F**                      **Mountain bike trail to include: New blue and red grade mountain trails, all necessary crossings, bridge structure and boardwalk, Gravity bike trail, Jump track and Trail signage/waymarker posts at Davagh Forest, Davagh Road, Omagh, for Mid Ulster District Council**

Members considered previously circulated report on planning application LA09/2020/0604/F which had a recommendation for approval.

Proposed by Councillor Mallaghan  
Seconded by Councillor Bell and

**Resolved** That planning application LA09/2020/0604/F be approved subject to conditions as per the officer's report.

**LA09/2020/0630/O**                      **Site for 2 storey dwelling and garage opposite and S of 23 Tulnacross Road, Cookstown for Mr Black & Miss Bradley**

Councillor Black withdrew to the public gallery.

Members considered previously circulated report on planning application LA09/2020/0630/O which had a recommendation for approval.

Proposed by Councillor McKinney  
Seconded by Councillor Brown and

**Resolved** That planning application LA09/2020/0630/O be approved subject to conditions as per the officer's report.

Councillor Black rejoined the meeting.

**LA09/2020/0634/F**                      **2 storey extension to side and single storey rear extension with disabled adaptations at 98 Drumbolg Road, Maghera, for Carla Kennedy / Ciaran Bennett**

Members considered previously circulated report on planning application LA09/2020/0634/F which had a recommendation for approval.

Proposed by Councillor McKinney  
Seconded by Councillor Kearney and

**Resolved** That planning application LA09/2020/0634/F be approved subject to conditions as per the officer's report.

**LA09/2020/0677/F**                      **Change of house type and garage (to approval LA09/2016/1557/F) at 40m SW of 9 Ballyhagan Road, Maghera, for Mr E Kelly**

Members considered previously circulated report on planning application LA09/2020/0677/F which had a recommendation for approval.

Councillor McKinney stated that there were floods in this area recently and asked if Rivers Agency had any issues with the application.

Councillor Mallaghan stated that this was a change of house type therefore approval had already been given for a dwelling.

The Chair, Councillor S McPeake stated that the officer was currently looking for the file for this application to establish if Rivers Agency had made any comment in relation to flooding and in the meantime the Committee would continue with the next item on the agenda and come back to this item later.

**LA09/2020/0692/O**                      **Dwelling in an infill site at land adjoining 57 Kinturk Road, Moortown, for Adrian McNally**

The Head of Development Management presented a report on planning application LA09/2020/0692/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 Coney to address the committee.

Mr Coney stated that the application was submitted as infill and that the map submitted is typical of the type of development in the area. Mr Coney stated that he believed that the site is suitable as infill from the lane access and long frontage which is indicated on the map. Mr Coney stated that the site is accessed from the Kinturk Road and there is no intention to alter this access and should remain as an existing access. Mr Coney advised that the owner of no.57 does not drive and never will drive therefore there will be no increased vehicular use. Mr Coney stated there is the potential to screen the new dwelling which will protect from the appearance of backed on development with emphasis put on the dwelling from the laneway as the gap site as opposed to from the Kinturk Road.

Councillor Mallaghan stated that the proposal demonstrates how development has occurred in the surrounding area for a long period of time and that he did not feel the proposal would look out of place given what is already there.

Councillor Bell stated he agreed with Councillor Mallaghan's comments as he lived in the area and this is how development had transpired over the years. Councillor Bell

also referred to a recent application considered by the Committee which he felt was a similar scenario to this in which a house was set back from the road.

The Planning Manager asked if there were any road safety concerns in relation to the application.

The Head of Development Management stated more information has been requested to demonstrate that a safe access can be achieved.

The Planning Manager suggested that the application be deferred for an office meeting to further consider access issues.

The Council Solicitor stated that there were three reasons for refusal the third being CTY1 and that all reasons needed to be considered.

Proposed by Councillor Bell  
Seconded by Councillor Mallaghan and

**Resolved** That planning application LA09/2020/0692/O be deferred for an office meeting.

**Continuation of  
LA09/2020/0677/F**

**Change of house type and garage (to approval  
LA09/2016/1557/F) at 40m SW of 9 Ballyhagan Road,  
Maghera, for Mr E Kelly**

Ms McCullagh (SPO) stated that the rivers maps do show that the southern corner of the site is within the flood plain but that there will be no dwelling or development within this area.

Proposed by Councillor Mallaghan  
Seconded by Councillor Robinson and

**Resolved** That planning application LA09/2020/0677/F be approved subject to conditions as per the officer's report.

Councillor McKinney questioned that if part of the site is within the flood plain whether it is still passable.

The Chair, Councillor S McPeake stated that the application is for a change of house type and that permission has already been granted on that site.

The Planning Manager stated that the issue of flood plains is intensifying as a result of global warming and that Rivers Agency are currently conducting a review of flood plains. The Planning Manager stated that when assessing applications in relation to flood plains this consideration is proportionate ie. A dwelling may not be in a flood plain but the access to it is and in such cases officers will liaise with the relevant agencies to tease out issues.

*Councillor Cuthbertson left the meeting at 8.45 pm.*

**LA09/2020/0979/F**                      **Installation of play park with play equipment, picnic bench, bins, seating bench, accompanying wet pour 1.2m high bow top fence to be installed around the perimeter of park and an asphalt concrete path at lands off Barrack Road, and adjacent to O'Neill Park, Ballymaguigan, for Mid Ulster District Council**

Members considered previously circulated report on planning application LA09/2020/0979/F which had a recommendation for approval.

Proposed by Councillor D McPeake  
Seconded by Councillor McFlynn and

**Resolved**     That planning application LA09/2020/0979/F be approved subject to conditions as per the officer's report.

**LA09/2018/1153/F**                      **General purpose farm/storage shed and animal welfare unit associated with existing established farm business, 55m N of 3 Killycolpy Road, Carnan, Stewartstown for Mr Francis Gallagher**

Members considered previously circulated report on planning application LA09/2018/1153/F which had a recommendation for approval.

Proposed by Councillor McKinney  
Seconded by Councillor Colvin and

**Resolved**     That planning application LA09/2018/1153/F be approved subject to conditions as per the officer's report.

**LA09/2019/1376/O**                      **Site for dwelling and garage within a gap site 50m South of 39 Baladoogh Lane, Cookstown for Patrick McAleer**

Application Withdrawn.

**LA09/2019/1394/O**                      **Dwelling and detached garage 40m East of 12 Newline Road, Cookstown for Laura Rafferty**

Members considered previously circulated report on planning application LA09/2019/1394/O which had a recommendation for approval.

Proposed by Councillor Clarke  
Seconded by Councillor Robinson and

**Resolved**     That planning application LA09/2019/1394/O be approved subject to conditions as per the officer's report.

Ms McCullagh (SPO) presented a report on planning application LA09/2019/1540/O advising that it was recommended for refusal.

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

Councillor B McGuigan stated he had attended the site meeting for this application and that the issue at that meeting related to frontage at no.29. Councillor B McGuigan stated he did not believe this was a laneway but rather a driveway to the dwelling at no.29. Councillor B McGuigan stated that the driveway has a well kept frontage and will have gates in the future and be tarmacked. Councillor B McGuigan stated he did not believe a dwelling on this site would impact the rural character of the area.

Councillor D McPeake that he had also attended the site meeting and it was his belief on leaving the meeting that day that the application could be approved. Councillor D McPeake referred to the well kept frontage onto the road and that there were wires in place for electric gates.

The Planning Manager stated that a road or access is not treated that same as a building and in this case the building is set a distance up a laneway and is not reading as a book end and therefore does not meet policy. The Planning Manager stated he was advising the Committee to prevent it from getting into difficulties because if an interpretation is made on something which no reasonable person would then the Committee can be found liable. The Planning Manager stated that exceptions to policy can be considered but that valid reasoning has to be provided.

The Chair, Councillor S McPeake stated that the first discussion relating to this application related to the frontage and ambiguity regarding same. During previous discussion the frontage was being interpreted as a field and the Chair stated that that is not what it is.

The Planning Manager stated that policy refers to buildings not frontages with access. The Planning Manager stated that just because there is an access with a piece of kept ground with a dwelling set back the Committee would be on dodgy ground if they were tested on this due to the fact there is no policy provision. The Planning Manager stated that the Committee as decision makers are not bound by what policy says but if policy is not being followed then clear reasoning has to be provided as to what the exception is. The Planning Manager advised the Committee not to try to make a policy fit if it doesn't fit.

The Chair, Councillor S McPeake stated that during the first discussion on the application there was some discussion regarding a temporary building and that building was then discounted. Further discussion during the site meeting related to frontage and the building at the rear and whether that constituted a building or not.

The Chair stated that following the site meeting he was a lot more informed on the application and he still felt that the application meets the test for infill.

The Planning Manager advised the Committee that there are a number of refusals where there is an agricultural field in between a site and the road and if the Committee came to a similar conclusion in this instance then he believed the Committee would be putting itself at risk. The Planning Manager stated that an exception can be made but that reasoning for doing so needs to be set out.

The Chair, Councillor S McPeake stated that the grounds at the frontage and along the laneway are well taken care of and maintained and this was not an agricultural field.

The Planning Manager repeated that if the Committee want to make an exception then reasoning needs to be provided. The Planning Manager stated that to say the application meets policy would be difficult to defend.

Councillor Bell asked where in the policy it states that the building that is one of the bookends has to be at the roadside.

The Planning Manager stated the policy refers to a gap between buildings therefore manicured grass and a laneway cannot be considered.

Councillor McKinney stated that the farm building as indicated on the map is not a farm building but rather a portable feeder which can be moved about from field to field.

The Planning Manager stated that the Councillor was correct and that such a structure would not constitute a building. The Planning Manager stated that exceptions have been made on numerous other applications previously and clear reasoning had been provided as to why an exception was being made.

The Chair, Councillor S McPeake invited Mr Cassidy to address the Committee.

Mr Cassidy stated that point 5.3.3 of infill policy is clear and does not require buildings to be visually linked. In this case the building under dispute is no.29 which has a garden area of some 400sqm of which 41m abuts the road, at the entrance to the house there are pillars under construction with wiring for electric gates already in situ. Mr Cassidy stated that in a review to infill dwellings a greater need for flexibility in how sites are defined was identified. Mr Cassidy stated that most entrances into dwellings are 5 to 6 metres, in this case there is an entrance of over 40 metres which he felt would be difficult to replicate elsewhere and that the Committee would therefore not be setting a precedent.

The Council Solicitor stated she felt it would be worthwhile for Members to hear the policy relating to frontage and also to get confirmation of what frontages are to be included as part of the consideration of this application.

The Planning Manager stated that the map showed 3 blue houses in a row which would ordinarily be taken as a building with a frontage to the road and that the

proposal is not a building with a frontage but rather an access with a dwelling set back from the road. The Planning Manager stated that the building to the other side of the access was not a permanent building and did not have a certificate of lawfulness. The Planning Manager stated that the application is hard to justify if policy is not being applied and that there are numerous examples within policy which outline what an infill is. The Planning Manager asked the Head of Development Management to read the policy to Members.

The Head of Development Management read from policy CTY8 which states that planning will be permitted for the development of a small gap sufficient only to accommodate up to a maximum of two houses within an otherwise substantial and continuously built up frontage and provided this respects the existing development pattern along the frontage in terms of size, scale, siting, plot size and meets other planning and environmental requirements. The definition of a substantial and built up frontage includes a line of 3 or more buildings along a road frontage without accompanying development to the rear.

Councillor Colvin stated he had also visited the site and felt it was a stretch to call this an infill site. Councillor Colvin stated he had listened to the discussion on both sides tonight and felt that the arguments put forward by officers were much more robust and that on this basis he would propose that the application be refused.

Councillor Robinson seconded Councillor Colvin's proposal.

Councillor Clarke stated he had not heard all of the Planning Manager's last comments.

The Planning Manager reiterated his last comments and referred to guidance document on sustainable rural development which clearly gives different examples of infill development. The Planning Manager stated that this application would go against a lot of practice and has not been accepted before and that there are previous PAC decisions to support this. The Planning Manager stated that if there is a reason why the application should be treated as an exception then the reasoning should be set out but that he was uncomfortable with an attempt to twist policy to make it fit.

**Resolved** That planning application LA09/2019/1540/O be refused on grounds stated in the officer's report.

*Councillor Bell left the meeting at 9.14 pm*

<b>LA09/2019/1553/F</b>	<b>Retention of a two storey seminar/ training room, office and store associated with the expansion of an established emergency medical supplies (EMS) business (amended plan) at 12 Ballynahone Road, Maghera 12 Ballynahone Road, Maghera for Emergency Medical Services (N.I) Ltd</b>
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Members considered previously circulated report on planning application LA09/2019/1553/F which had a recommendation for approval.



Councillor Glasgow referred to the officer report which stated that Dfl had been reconsulted on the application but had not come back.

Ms McCullagh (SPO) stated that a response from Dfl Roads was within the addendum.

Proposed by Councillor Brown  
Seconded by Councillor McFlynn and

**Resolved** That planning application LA09/2019/1553/F be approved subject to conditions as per the officer's report.

### **Matters for Information**

#### **P093/20 Minutes of Planning Committee held on 1 September 2020**

Members noted minutes of Planning Committee held on 1 September 2020.

*Councillor Robinson left the meeting at 9.15 pm.*

Live broadcast ended at 9.15 pm.

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

Proposed by Councillor Mallaghan  
Seconded by Councillor Colvin 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 P094/20 to P097/20.

#### **Matters for Decision**

P094/20 Receive Enforcement Report

#### **Matters for Information**

P095/20 Confidential Minutes of Planning Committee held on 1 September 2020

P096/20 Enforcement Cases Opened

P097/20 Enforcement Cases Closed

#### **P098/20 Duration of Meeting**

The meeting was called for 7 pm and concluded at 9.36 pm.

Chair \_\_\_\_\_

Date \_\_\_\_\_

## **Annex A – Introductory Remarks from the Chairperson**

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

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

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

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

- Can I remind the public and press that taking photographs of proceedings or the use of any other means to enable persons not present to see or hear any proceedings (whether now or later), or making a contemporaneous oral report of any of the proceedings are all prohibited acts.

Thank you and we will now move to the first item on the agenda.