

**Minutes of Meeting of Planning Committee of Mid Ulster District Council held on Tuesday 4 September 2018 in Council Offices, Ballyronan Road, Magherafelt**

<b>Members Present</b>	Councillor Mallaghan, Chair  Councillors Bateson, Clarke, Cuthbertson, Gildernew, Glasgow, McAleer, McEldowney, McKinney, McPeake, Mullen
<b>Officers in Attendance</b>	Dr Boomer, Planning Manager Mr Bowman, Head of Development Management Ms Doyle, Senior Planning Officer Ms McKearney, Senior Planning Officer Mr Marrion, Senior Planning Officer Ms McNally, Council Solicitor Miss Thompson, Democratic Services Officer
<b>Others in Attendance</b>	<b>Applicant Speakers</b> LA09/2018/0754/O Councillor B McGuigan LA09/2017/0899/F Councillor B McGuigan

The meeting commenced at 7.03 pm

**P112/18 Apologies**

Councillors Bell, Kearney, Reid and Robinson.

**P113/18 Declarations of Interest**

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

**P114/18 Chair's Business**

The Planning Manager advised of three new planning officers who have commenced or are due to commence employment within the department in the coming weeks.

The Chair, Councillor Mallaghan referred to the below applications which were on the agenda for determination. The Chair sought approval to have these applications deferred /withdrawn from tonight's meeting schedule –

Agenda item 4.4 – LA09/2017/1685/O – Site for infill dwelling and domestic garage 60m SW of 72 Deerpark Road, Castledawson for Mr P Keenan – Defer for office meeting.

Agenda item 4.5 – LA09/2017/1775/O – Dwelling and garage 30m S of 11 Motalee Road, Magherafelt for Gillian Montgomery – Application has been withdrawn.

Agenda item 4.8 - LA09/2018/0469/O – Site for infill dwelling and garage 70m NW of 81 Ballymacombs Road, Bellaghy for William Mulholland – Defer for office meeting.

Agenda item 4.15 – LA09/2018/0746/O – Infill dwelling and garage 50m NE of 49 Fivemile Straight, Carnamoney, Draperstown for Connor McPeake – Defer for office meeting.

Proposed by Councillor McKinney  
Seconded by Councillor McAleer and

**Resolved** That the planning applications listed above be deferred for an office meeting/ withdrawn from tonight's list for consideration.

### **Matters for Decision**

#### **P115/18 Planning Applications for Determination**

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

**LA09/2017/0542/F Lateral extensions in a Westerly and Southerly direction to existing quarry development site and holistic restoration of previous and proposed mineral extraction areas at Brackagh sand and gravel quarry, 29 Disert Road, Draperstown, Magherafelt for Creagh Concrete Products Ltd.**

Members considered previously circulated report on planning application LA09/2017/0542/F which had a recommendation for approval.

Proposed by Councillor McKinney  
Seconded by Councillor Bateson and

**Resolved** That planning application LA09/2017/0542/F be approved subject to conditions as per the officer's report.

**LA09/2017/0766/F Conversion of waste land into a car park at land adjacent to 25 High Street, Moneymore for Weir & Co.**

Members considered previously circulated report on planning application LA09/2017/0766/F which had a recommendation for approval.

Proposed by Councillor Clarke  
Seconded by Councillor Bateson and

**Resolved** That planning application LA09/2017/0766/F be approved subject to conditions as per the officer's report.

**LA09/2017/1208/F Housing development, associated access and site works at land to N of 15 Killyfaddy Road, Magherafelt for Choice Housing Ireland Ltd**

Members considered previously circulated report on planning application LA09/2017/1208/F which had a recommendation for approval.

Proposed by Councillor McKinney  
Seconded by Councillor Gildernew and

**Resolved** That planning application LA09/2017/1208/F be approved subject to conditions as per the officer's report.

**LA09/2017/1685/O Site for infill dwelling and domestic garage 60m SW of 72 Deerpark Road, Castledawson for Mr P Keenan**

Application agreed to be deferred for office meeting earlier in meeting.

**LA09/2017/1775/O Dwelling and garage 30m S of 11 Motalee Road, Magherafelt for Gillian Montgomery**

Application withdrawn.

**LA09/2017/1788/F Expansion of existing facilities to include Truss units, associated wood store and 2 light industrial units at site adjacent to and S of Ardboe Business Park, Kilmascally Road, Ardboe for Quinn Building Supplies Ltd**

Members considered previously circulated report on planning application LA09/2017/1788/F which had a recommendation for approval.

Proposed by Councillor Clarke  
Seconded by Councillor Gildernew and

**Resolved** That planning application LA09/2017/1788/F be approved subject to conditions as per the officer's report.

**LA09/2018/0236/F Retention of re-use of redundant agricultural/rural building as a car mechanic business to the rear of 275 Mountjoy Road, Carnan, Stewartstown for Mr Kevin McElhennon**

Members considered previously circulated report on planning application LA09/2018/0236/F which had a recommendation for approval. As per addendum circulated Members noted that page 5 of the officer's report refers to PPS4 however it should read CTY4.

Proposed by Councillor McKinney  
Seconded by Councillor Bateson and

**Resolved** That planning application LA09/2018/0236/F be approved subject to conditions as per the officer's report.

**LA09/2018/0469/O Site for infill dwelling and garage 70m NW of 81 Ballymacombs Road, Bellaghy for William Mulholland**

Application agreed to be deferred for office meeting earlier in meeting.

**LA09/2018/0481/O Dwelling and garage on land adjacent and N of 2 Glenarny Road, Cookstown for Mr P and Mrs U Rogers**

Members considered previously circulated report on planning application LA09/2018/0481/O which had a recommendation for approval.

Proposed by Councillor McKinney  
Seconded by Councillor McAleer and

**Resolved** That planning application LA09/2018/0481/O be approved subject to conditions as per the officer's report.

**LA09/2018/0501/O Site for new 2 storey attached town house adjacent to 6 Fireside Close, Knockloughrim for Mr Aubrey Shiels**

The Head of Development Management presented a report on planning application LA09/2018/0501/O advising that it was recommended for refusal.

Proposed by Councillor Gildernew  
Seconded by Councillor Bateson and

**Resolved** That planning application LA09/2018/0501/O be refused on grounds stated in the officer's report.

**LA09/2018/0511/LBC Replacing two single glazed windows (sash) at the front of property facing Main Street with double glazing at 53 Main Street, Benburb for Mr Bob Toner**

Mr Marrion (SPO) presented a report on planning application LA09/2018/0511/LBC advising that it was recommended for refusal.

Councillor Gildernew stated that he did not understand why Historic Environment Division were objecting to the application if the windows were replaced like for like as proposed. The Councillor stated he did not foresee how the application would change the character of the building.

Councillor Cuthbertson referred to the advances in upvc glazing and stated that it was important to ensure that properties remain liveable.

The Planning Manager stated that planning had not been draconian with these type of cases in the past and that he would be agreeable to an office meeting for this application.

Proposed by Councillor Gildernew  
Seconded by Councillor Clarke and

**Resolved** That planning application LA09/2018/0511/LBC be deferred for an office meeting.

**LA09/2018/0542/F General purpose store for the storage of equipment for approved hard standing and storage compound at and 50m S of 136 Ballynakilly Road, Coalisland for General Cabins Ltd**

Members considered previously circulated report on planning application LA09/2018/0542/F which had a recommendation for approval.

Proposed by Councillor McKinney  
Seconded by Councillor McPeake and

**Resolved** That planning application LA09/2018/0542/F be approved subject to conditions as per the officer's report.

**LA09/2018/0610/F First floor conversion of existing garage to provide two additional bedrooms, shower room and living area at 54 Kilnacart Road, Dungannon for Mr Gary McCann**

Members considered previously circulated report on planning application LA09/2018/0610/F which had a recommendation for approval.

Proposed by Councillor McAleer  
Seconded by Councillor Gildernew and

**Resolved** That planning application LA09/2018/0610/F be approved subject to conditions as per the officer's report.

**LA09/2018/0654/O Site for dwelling at land between 36 and 40 Frenchmans Lane, Castlecaulfield for Mr Gary McConville**

Members considered previously circulated report on planning application LA09/2018/0654/O which had a recommendation for approval.

Proposed by Councillor Gildernew  
Seconded by Councillor McAleer and

**Resolved** That planning application LA09/2018/0654/O be approved subject to conditions as per the officer's report.

**LA09/2018/0746/O Infill dwelling and garage 50m NE of 49 Fivemile Straight, Carnamone, Draperstown for Mr Connor McPeake**

Application agreed to be deferred for office meeting earlier in meeting.

**LA09/2018/0754/O Dwelling and garage 20m W of 35 Moss Road, Ballymaguigan for Christopher Cassidy**

The Head of Development Management presented a report on planning application LA09/2018/0754/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 referred to the planning officer's report which stated that the garage associated with 35 Moss Road did not read as part of the road frontage given its setback position. Mr Cassidy stated he wanted to be treated the same as everyone else and provided three examples in which the Planning Committee had found that buildings sited behind a dwelling also have road frontage and could constitute a second building.

In respect of the Portacabin, Mr Cassidy stated that this structure is lawful and that policy does not define what a building type has to be. Mr Cassidy went on to provide examples of case law which supports a portable structure as being a building. Mr Cassidy stated the proposal did not interfere with the separation between the settlement limit of Ballymaguigan and the countryside and that as the requirements for a small gap site were being met refusal under policy CTY14 (build up) could not be sustained.

The Planning Manager stated he believed the die had already been cast in respect of how previous applications had been determined at this location and that rather than rehearse proceedings the applicant should be allowed to put their arguments to the Planning Appeals Commission.

In response to Councillor McPeake's question the Planning Manager stated that PAC determinations had been made under most recent policy.

Councillor McPeake stated that in terms of the dwelling and garage being counted as two buildings he remembered approving other applications similar to this proposal.

The Planning Manager stated that in the case of other applications there would have tended to have been a further dwelling to be considered as well. The Planning Manager stated that if Members were minded to approve the application then he could not guarantee they would not be surcharged.

Councillor McPeake asked what the merits of the house and garage were in this application.

The Planning Manager advised there had been cases when the garage had been behind the dwelling and that this had not been accepted as a second building. The Planning Manager stated he did not know what PAC would make of this application but that they were unlikely to go against their previous determinations. The Planning Manager also stated that Mr Cassidy would have a grievance against Council if the Committee allowed this application as it did not allow his previous application for an office at this site as infill development.

The Council Solicitor referred to the fact that the circumstances of this application are that PAC had made a decision in relation to the subject site and specifically addressed the issue of the adjacent house/garage. She also noted that the previous decisions taken by the Planning Committee and highlighted by the applicant, may have been made in advance of this PAC decision regarding this site. The Council Solicitor stated that whilst the Planning Committee would want to ensure consistency in decision making, if it was of the opinion that their previous decision(s) was a poor decision, then the Committee should not be bound by that in relation to any future applications.

Councillor Bateson stated that the Committee should not be hampered now just because it previously refused the office building application. Councillor Bateson stated that anyone driving down Moss Road would be able to envisage a dwelling on the proposed site and that this dwelling would not change the character of the area. Councillor Bateson stated that the proposal would have no detrimental impact to the character of the road, he further referred to the Portacabin and that this is permitted development.

The Planning Manager stated that he felt this application should not be treated differently to the previous office building proposal in respect to infill.

Councillor Bateson stated he had argued then that the office building proposal would not have had detrimental impact.

The Head of Development Management referred to officer report in which it was stated that the site acted as a visual break between the settlement of Ballymaguigan and existing properties at 35 and 37 Moss Road. A dwelling on the proposed site would consolidate this visual break.

The Planning Manager asked Members to consider what would happen should the application be approved and someone then made a complaint with reference to the previous application which was refused with enforcement action being taken. The Planning Manager stated Council would be in an awkward position and would have to prove what had changed in the interim.

Councillor Gildernew stated he would like to know the consequences of approving or refusing the application.

The Council Solicitor stated that if the application is refused the applicant has a right of appeal to the PAC. In relation to potential for an award of costs against the Council, based on the information provided she could not see where the unreasonable behaviour could be and so did not envisage a risk in this respect. If the application is approved then, based on the information provided, she was of the opinion that there could be grounds for a judicial review. However, that would depend on there being someone willing to challenge an approval for the permission sought by way of judicial review.

Councillor Gildernew questioned that if the Committee approve the application whether it was leaving itself open.

The Council Solicitor referred to her previous comments in relation to judicial review challenge.

The Planning Manager stated that Council would cease to be at risk if it made a reasonable argument as to how it came to its decision. The Planning Manager highlighted the point referred to in the officer's report that the proposal constituted an important visual break.

Councillor Bateson stated he would challenge this point and did not feel there was a distinction between settlement and countryside for the full length of Moss road.

Councillor B McGuigan stated he would like clarification on the Portacabin and whether this was classed as a building or not.

The Planning Manager advised that portable structures such as caravans were not considered to be buildings in most instances. However for the purposes of the definition of the Planning Act a building was any structure although this did not mean that that was automatically applicable for policy purposes. The Planning Manager stated that a further critical test in this application was whether the Portacabin would act as a bookend to development. The Planning Manager stated that if the application went to Planning Appeals then there would be determination on whether the Portacabin was a building for the purposes of the policy.

Councillor Cuthbertson proposed the officer recommendation to refuse the application.

Councillor McPeake referred to one of the examples put forward by Mr Cassidy which relied on buildings on the opposite side of the road and stated that there would be buildings on the opposite side of the road in respect of this application. Councillor McPeake stated that there also needed to be some determination on the legitimacy of the Portacabin and whether it acted as a bookend to development and on these basis he proposed that the application be deferred for an office meeting.

The Planning Manager stated that the Committee needed to be clear on why it was accepting a proposal for a dwelling on this site when it refused a smaller proposal in the past.

Councillor Bateson stated he did not believe the proposal would change the character of the area.

Councillor McKinney asked if the existing house and garage was one building.

The Head of Development Management stated that he believed that the house and garage was one building.

Councillor McAleer asked if this application was for a farm whether it would be considered differently.

In response to the Planning Manager asking Mr Cassidy whether he wanted his application considered under another reason, Mr Cassidy responded that he did not.

Councillor McKinney seconded Councillor Cuthbertson's proposal to refuse the application. The Councillor wished the applicant well with their planning appeal but stated that Council were in a legal minefield with regard to this application.



The Chair, Councillor Mallaghan reminded Members that there was a possibility of a legal challenge being taken and that Members could be surcharged but it was in the Committee's hands how they wanted to proceed.

Councillor Bateson seconded Councillor McPeake's proposal to defer the application for an office meeting.

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

For – 5

Members voted on Councillor McPeake's proposal to defer the application for an office meeting –

For – 5

The Chair used his casting vote to vote in favour of Councillor McPeake's proposal and declared the proposal to defer the application for an office meeting carried.

The Planning Manager asked what Members wanted to be discussed at the office meeting.

The Chair, Councillor Mallaghan asked that consideration be given to other policy that may apply to the application.

Councillor McKinney also asked that legal opinion be provided on what does and does not constitute a portable building.

**Resolved** That planning application LA09/2018/0754/O be deferred for an office meeting.

**LA09/2018/0983/F Single storey extension to rear of dwelling at 26 Whitetown Road, Newmills, Dungannon for Mrs Muriel Magee**

Members considered previously circulated report on planning application LA09/2018/0983/F which had a recommendation for approval.

Proposed by Councillor McKinney  
Seconded by Councillor Gildernew and

**Resolved** That planning application LA09/2018/0983/F be approved subject to conditions as per the officer's report.

**LA09/2018/1022/O Site for dwelling at lands approximately 45m SW of 24 Cranlonme Road, Galbally, Dungannon for R McElvogue**

Members considered previously circulated report on planning application LA09/2018/1022/O which had a recommendation for approval.

Proposed by Councillor Gildernew  
Seconded by Councillor McAleer and

**Resolved** That planning application LA09/2018/1022/O be approved subject to conditions as per the officer's report.

**LA09/2016/1686/F New seating area and changing facilities building within existing fishery at land approximately 80m NE of 41 Gorestown Road, Dungannon for Gorestown Lough Fishery Ltd**

Members considered previously circulated report on planning application LA09/2016/1686/F which had a recommendation for approval.

Proposed by Councillor Gildernew  
Seconded by Councillor Cuthbertson and

**Resolved** That planning application LA09/2016/1686/F be approved subject to conditions as per the officer's report.

**LA09/2017/0899/F Cattle shed, force pen, cattle crush, collecting pen and hard standing area at lands to the front of and NE of 102 and 104 Ballygawley Road and S of 101 Ballygawley Road, Glenadush for Mr Bernard McAleer**

Mr Marrion (SPO) presented a report on planning application LA09/2017/0899/F advising that it was recommended for refusal. Members were also advised as per addendum circulated of email in support of the application from Lord Morrow.

Councillor Cuthbertson stated he would have some sympathy for the applicant who he felt was being penalised because he was siting his proposal in a corner of a field.

In response to Councillor Gildernew's question Mr Marrion confirmed that the separation distance between the siting of the proposal and the patio area at the rear of 102 Ballygawley Road was 20 metres.

Councillor B McGuigan stated he was speaking on behalf of the applicant and clarified that the application related to a hobby farm and not a petting farm. Councillor McGuigan advised that hobby farm status allowed the applicant to keep nine cattle and five sheep, and stated that only two cattle would be kept during the winter months with the remainder of stock being sold off before winter. Councillor B McGuigan stated that the purpose of the application is to house machinery and to isolate cattle for testing. The shed would also be used to house the two remaining cattle during the winter months.

Councillor B McGuigan stated that statutory requirements in relation to the application had been met and that the acoustic report was also found to be within requirements. Councillor McGuigan stated that as only two breeding stock would be housed over winter months he did not feel this would adversely affect the property at 102 Ballygawley Road. Councillor B McGuigan also referred to previous planning permission granted at the rear of 102 Ballygawley Road.

Councillor B McGuigan explained the difficulty in getting a herd number or business id without having adequate facilities which need to be constructed and inspected prior to any cattle being purchased. Councillor McGuigan felt it would be more relevant to assess the application under CTY1 instead of CTY12.

Councillor Glasgow stated that 20 metres did seem to be close proximity between proposal and patio area at rear of dwelling at 102 Ballygawley Road.

The Planning Manager stated that the two elements for refusing the application related to the farm not being established for the required six years and neighbouring amenity. The Planning Manager stated that as the application stood at the moment it would be difficult to approve, the Planning Manager asked if other locations had been discussed with the applicant.

Mr Marrion stated that other locations had not been discussed because of the red line of the site.

Councillor Gildernew asked if the proposal was located at the opposite side of the site whether this would be acceptable.

The Planning Manager stated that the application would still fail test of farm being established for six years.

In response to Councillor McKinney's question Mr Marrion advised that the applicant owned approximately 1.1 hectares of land.

The Chair, Councillor Mallaghan stated that the applicant owned land and wanted a hobby farm but that policy does not allow for this however he would have some concern in relation to the proximity of the proposal to the rear of an existing dwelling.

The Planning Manager shared the concern in relation to proximity and stated that if the applicant wanted to submit another application in the future then discussions could take place in relation to location.

Councillor McKinney stated that if the applicant wanted to obtain a herd number they could rent a shed in the interim until the business was established for six years.

Proposed by Councillor Mallaghan  
Seconded by Councillor McKinney and

**Resolved** That planning application LA09/2017/0899/F be refused on grounds stated in the officer's report.

**LA09/2017/0936/F** 2 additional broiler poultry sheds, 4 feed bins, 2 gas tanks, biomass boiler shed and pellet bin, ancillary building and cattle shed with underground slurry tank, new covered silage pit, covered yard area and general farm storage building at land approximately 300m NW and 100m SW of 27 Terryscollop Road, Annagh, Dungannon for CAP Farms Ltd

Members considered previously circulated report on planning application LA09/2017/0936/F which had a recommendation for approval.

Proposed by Councillor Cuthbertson  
Seconded by Councillor Gildernew and

**Resolved** That planning application LA09/2017/0936/F be approved subject to conditions as per the officer's report.

In response to Councillor McKinney's question the Planning Manager stated that the Department of Communities had indicated that this planning application should be determined at a Full Council meeting. The Planning Manager explained that this was later found not to be a state of law and that as he outlined at the August Council meeting the Planning Committee has devolved powers in relation to planning applications and that this application should be referred back to Committee for determination.

### **Matters for Information**

#### **P116/18 Minutes of Planning Committee held on Tuesday 7 August 2018**

Members noted minutes of Planning Committee held on Tuesday 7 August 2018.

#### **P117/18 Receive Appeal Decisions**

Members noted previously circulated report which provided update on recent appeal decisions made by the Planning Appeals Commission.

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

Proposed by Councillor Clarke  
Seconded by Councillor Gildernew 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 P118/18 to P125/18.

#### **Matters for Decision**

- P118/18 Receive report of confirmation of TPO (i)
- P119/18 Receive report on TPO confirmation (ii)
- P120/18 Receive response to CC&G Council POP Consultation

P121/18     Receive Enforcement Report

**Matters for Information**

P122/18     Confidential Minutes of Planning Committee held on 7 August 2018

P123/18     Enforcement Live Case List

P124/18     Enforcement Cases Opened

P125/18     Enforcement Cases Closed

**P126/18        Duration of Meeting**

The meeting was called for 7 pm and concluded at 8.49 pm.

Chair \_\_\_\_\_

Date \_\_\_\_\_



Comhairle Ceantair  
**Lár Uladh**  
**Mid Ulster**  
District Council

## **ADDENDUM TO PLANNING COMMITTEE AGENDA**

**FOR PLANNING COMMITTEE MEETING ON: 4<sup>th</sup> September 2018**  
**Chairs Business:**

**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>
4.5	Application has been withdrawn	Members to note
4.7	Page 5 of report refers to PPS4, it should read CTY4.	Members to note
5.2	Email from Lord Morrow in support of the application.	Members to note support.