

Minutes of Meeting of Planning Committee of Mid Ulster District Council held on Tuesday 3 November 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
Mr McCreesh**, Director of Business & Communities
Ms McAllister, Senior Planning Officer
Ms McCullagh**, Senior Planning Officer
Ms McKearney**, Senior Planning Officer
Ms McNally, Council Solicitor
Ms McNamee, ICT Support
Ms Grogan, Democratic Services Officer

Others in Attendance

Applicant Speakers

LA09/2018/0847/F	Les Ross* Alan Hannigan Hayley Jordan
LA09/2019/0416/F	Gemma Jobling*
LA09/2019/1571/F	Martin Kearney – Architect*
LA09/2018/0176/F	Councillor N McAleer*
LA09/2019/0423/F	Martin Kearney – Architect*
LA09/2019/0423/F	Donal O’Cearnaigh* Councillor Milne*
LA09/2020/0446/F	Toirleach Gourley Bernard Donnelly
LA09/2020/0022/O	Aidan Coney*
Councillor B McGuigan* Chris 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.

P099/20 Apologies

None.

P100/20 Declarations of Interest

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

The Chair, Councillor S McPeake declared an interest in agenda item 4.5 (LA09/2019/1571/F) – Dwelling and garage at site between 20 & 22 Lough Road & 50m S of 14 Lough Road, Ballymaguigan for Patrick McKenna

Councillor McKinney declared an interest in agenda item 5.7 (LA09/2020/0047/O) – Site for dwelling and garage approx. 60m W of 121A Desertmartin Road, Moneymore for Mr Henry and Mark Miller

Councillor Kearney declared an interest in agenda item 5.3 (LA09/2019/0423/F) – Retention of single storey domestic garage, storage and annex building, to be used in association with the existing dwelling house and an increase in the curtilage of the site at 63a Ballymacombs Road, Bellaghy for Donal O’Cearnaigh

P101/20 Chair’s Business

The Planning Manager advised that he had 3 matters to bring to members attention tonight.

He said that members may recall at last month’s meeting (6th October) there was a request brought forward for a change of house type on Ballyhagan Road, Maghera for Mr Kelly which had been agreed for approval. However, following the meeting it was brought to Planning’s attention that a late objection had been received by the Chief Executive at 22.20 pm and they raised that the neighbour notification period did not end until midnight on the 6th October. When checked it was confirmed this was the case and so it would have been unsound to allow this to be decided without considering the valid objection.

Therefore in light of this, the application will be returned to the December committee meeting fully taking into account the objector concerns, in order for a decision to be made.

The Planning Manager referred to the former Maghera High School site and stated that yesterday (2nd November) the Department decided that Council's Outline application for a mixed use Enterprise Centre/Business Units (planning ref LA09/2019/0024/O and accompanying full application for access roads, footpaths and associated site works (LA09/2019/0025/F), shall be referred for its determination. This is what is commonly referred to as "calling in" the applications and is provided for under Section 29 of the Planning (Northern Ireland) 2011. No reason has been stated although it is not unusual for a major application by a Council to be called in, indeed that is what the powers are there for.

He said that currently arrangements are being made for the application to be forwarded to the Department. It was likely that the Department having considered would either call a Public Inquiry to be held by the Planning Appeals Commission or issue a Notice of Opinion from which a public examination may be requested. In either event, the final decision would rest with the Minister.

The Planning Manager drew members attention to the addendum circulated relating to Environmental Statement to support a deforestation proposal at 7 Newline Road, Cookstown. He said that this project proposed to fell and partially replant the plantation at the existing site and would result in the conversion of productive ground from Forestry back into agricultural use and replanting of a small section of broadleaf woodland. The project was not found to be detrimental to the environment over a short or long term period and does not put vulnerable environmental features at risk with the mitigations as proposed. Due to this the proposal is thought to be less than significant and it was important to bring to the attention of members and local people as they need to be informed.

In response to members query regarding how long the process may take in relation to Maghera High School site, the Planning Manager advised that the Department were in the driving seat and the Council had no other option but to wait until they consider the proposal and the possibility of further information being requested, but would anticipate that this wouldn't be a quick process and may take up to a year or more to resolve the issue.

Councillor Mallaghan said that he wanted it on record to thank the Planning Manager and staff who took part in the public hearing in terms of the Doraville Wind Farm with the news coming through last week that the proposal was refused. He said that this was a good decision and goes to show that whenever the community and their local Council work together great things can be achieved, not unlike the Shackleton Resources issue that was dealt with last year as well. He was aware of the Planning Manager and his staff putting quite a number of hours into working on the project and wanted to show members appreciation.

The Chair stated that it was very appropriate of Councillor Mallaghan to raise this issue and concurred with his comments.

Councillor Colvin declared an interest in Historic Monuments.

Councillor Clarke also supported and concurred with what Councillor Mallaghan had said as there was a very strong feeling as far as he understood within the community

that the right decision was reached. He said that this was only reached with the a lot of work being carried out by the people that Councillor Mallaghan had mentioned and work from Fermanagh & Omagh also.

Matters for Decision

P102/20 Planning Applications for Determination

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

LA09/2018/0847/F Conversion of existing dwelling along with rear extension to provide a 5 bed residential care unit and 12 bed dementia care unit; associated support services; staff accommodation and car parking for both staff and visitors at 7 Cookstown Road, Moneymore for Hayley Jordan

Ms McCullagh (SPO) presented previously circulated report on planning application LA09/2017/1279/F which had a recommendation for approval.

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

Mr Ross advised members that he was representing a group of local residents who live around the site and also speaking on behalf Four Seasons Healthcare who own the site beside the existing dwelling. He said he wished to highlight some key issues on objecting to the proposal, namely the overdevelopment of the site, road safety and the fact that the design being non-compliant with healthcare standards.

He said that it was a small site with a detached dwelling and narrow garden with the proposal to create a dramatic intensification of the building form and the use of the site, the amount of floor space has greatly increased creating a sprawling development crammed into every available inch of the site. The layout showed the squeezed in carparking and also around the corner and edges of the site and to achieve the access of the scheme, it cuts into the high bank with the building right along the edge of a stream who flows towards the Ballymully River and was confident the Councillors which represent the Moneymore area would be aware of the problems of flooding associated with the river. He said for certain that the rooms inside the building were too small compared to modern healthcare standards and although the Planning Department states that this was not relevant, they feel that there is an onus on the Council to check on what was consented is at least reasonable in terms of healthcare requirements. The space outside was definitely too small, a tiny garden to use for 17 residents and the staff to share which was smaller than what was required for a two bedroom terraced house. In summary Mr Ross advised that the Developer was squeezing the maximum number of people into the smallest possible space, the site was also close to a busy road and fast traffic emerging down the hill from the dual carriageway and local residents are very concerned that there could be a traffic

problem which would lead to road accidents. He said that finally the applicant has confirmed that they don't own all of the site and needed land from the client and the objector to create the cutting and the landscaping and due to everything being so squeezed in he suggested that the Council should not be approving something that would allow the Developer to create the floor space and not do any work outside. He said he was aware that committee doesn't like going against recommendation to approve, but as it stands it's clear to him that this application should be refused and said that at the very least, he would suggest that members visit the site to ensure that they were comfortable with the idea of squeezing such a large group of vulnerable people into such a small site and something that the Council would like to stand over once it was built.

The Chair advised that a request to speak had been received on behalf of the applicant and invited Ms Jordan to address the committee.

Ms Jordan advised that she had a very good knowledge of running such a healthcare facility as she had grown up with her parents running a very successful nursing home for 33 years and was one of the managers. She said that she has been a social worker for 11 years and currently worked within the Northern Health & Social Care Trust in the Mid Ulster Hospital. In relation to the planning of the facility, extensive outlines of what was needed was took on board and also her experience of what was needed within her parents nursing home with an architect being employed that also worked for the Western Trust who went by the minimum standards. She said that her background and passion was dementia and residential care and stated that this proposal wouldn't be impacting on next door healthcare facility as they were a completely different category of care which was nursing which she personally could not go into because she doesn't have the qualifications to be a trained nurse. In referring to the economic factor she advised that she would be employing approximately 16 local staff members and would be caring for very vulnerable and very much in need proportion of elderly population with the home being designed with a sensory garden for the vulnerable residents and hoped that she would have the opportunity to look after them in the future. She concluded by saying that she had done things to the best of their ability to try and work on what means that were there on the site and within the proportion of the population she wished to represent and care for.

The Chair thanked Ms Jordan for her presentation and asked for any member comments or queries relating to both presentations.

The Planning Manager felt there were some mixed messages which clarification may help.

He said that the proposal was for a 5 no. bed residential care and 12 no. bed dementia unit, but there was also mention of accommodation for staff.

Ms Jordan advised that from past experiences that whenever her parents owned their nursing home there was always staff accommodation as it was a rural home and in the event of any emergency like snow or adverse effects of weather, there was always an opportunity for staff to stay at the home safely and not drive home until someone came to lift them or when it was safe to go home.

The Planning Manager enquired if Ms Jordan had an agreement with the Healthcare Trust in terms of meeting standards.

Ms Jordan advised that the design was carried out to the minimum standards, but to put the plans forwards to RQIA it had to be passed by Planning first. She stated that she had been liaising with RQIA regarding other issues regarding the categories of care etc. but until it was passed here, it cannot be brought forward to RQIA for consideration.

The Planning Manager advised that the Planning Department cannot give guidance on what healthcare standards should be within residential care homes and can be a material consideration on such matters and the outline matters are probably correct in that planning permission should be sought first before agreement on certification. He said that it would be his opinion to leave such matters to the relevant authority.

He referred to Mr Ross' concerns around overdevelopment and lack of outdoor space and stated that it was his opinion that dementia patients had to be in a place where it was very well secured and also referred to the agent's comments around the residents' views on traffic concerns but felt there was no mention of any particular harm to the neighbours.

Mr Ross said that he was not suggesting that the residents would be harmed in any way but they were concerned about the overdevelopment, small floor space, visitors and staffing as there would be a lot of movements. He felt there should be adequate outdoor space for dementia patients and that the garden on the site was completely hemmed which was unacceptable.

The Planning Manager said that you cannot refuse an application because it's perceived as an overdevelopment but had to demonstrate that it's harmful to amenity or character of the area and the issue here was provision of open space. Planning satisfied there is adequate space as a whole and asked Ms McCullagh (SPO) if she was satisfied there was adequate open space within the facility.

Ms McCullagh (SPO) stated that it was detailed within the report about the dementia friendly garden and that the agent had sent in a statement which supported this with research being carried out on what types of things would be good for these types of patients and officers had accepted what was considered as sufficient.

Councillor McKinney said that after hearing the details he would be happy to go with the recommendation for approval as there was no family within this room tonight which

hadn't met with the dementia issue and whilst it wasn't a planning issue, 12 more beds in the Mid Ulster area should be welcomed.

Councillor McFlynn referred to comments made by the flooding in Moneymore and said that she knew the area well as she grew up there. She referred to the issue of speeding at that stretch of road with 30 mph restrictions coming in there and advised that she had asked Roads Service about 2 months ago about considering moving the 30 mph up to the top of the hill and extending the 40 mph up towards the dual carriageway and presently waiting on confirmation if this can be completed. She said that growing up in Moneymore there used to be an elderly home at the top of Fairhill but this was now turned into a Doctor's surgery and felt that this would be a welcome addition to the Moneymore area. In referring to the entrance entering the facility she felt that these could be extended to show the visibility splays better and she also referred to the weak bridge where it was previously agreed by Roads Service that improvements would be carried out to make it more structurally sound. She said that she would be happy to second the proposal.

Councillor Colvin referred to Councillor McFlynn's comment about the access and enquired if the officer was satisfied that this access was available over land which is owned by the applicant and as a site he was familiar with, he enquired about the site going over the objectors ground in order to achieve the 90m x 2.4m.

Ms McCullagh (SPO) confirmed that the applicant had served notice on two other properties, but advised that there wasn't much more planning could do as permission was for the lands and was up to them if there was an issue with the visibility splays to sort out if permission was granted and served the correct certificate.

The Planning Manager advised that this was a common situation that planning face and there was nothing to stop anyone from applying for planning permission which would require the use of lands from another third party provided they serve the notice on them. In an instance like this where the land is needed this was where a negative condition would be used to the effect that the visibility splay must be provided before development was started and this means if either of these two parties object they hold the ability to without moving forward and this has been an issue for quite a few enforcement cases and common practice to use a negative condition.

Councillor Bell referred to the comment from Mr Ross regarding floor space and the cramming in and asked for clarification from Ms McCullagh (SPO) on this being investigated in great detail so that moving forward there was enough space for the residents as he would be concerned this would be an issue going forward. He enquired if Best Practice had been explored on the number of patients there may be and the amount of space needed for those patients to get outside.

Ms McCullagh (SPO) advised that this may overlap on what the Planning Manager had advised earlier as there was only a certain amount that planning could do and this would become the remit of other health authorities in terms of the room size. She

referred to the size of 5.2m x 3.4m (16sq) and stated that planning wouldn't be going into that level of detail to see if it was appropriate, but said that they were happy about patients outside space and with the development onsite but beyond that it would be up to the applicant to speak to the health authority.

The Chair agreed with what the applicant had stated in her presentation about planning having to come first with a detailed submission in terms of how this was going to work and numbers which were being proposed before commitment from the RQIA as this was the procedure.

The Planning Manager advised that this was not clear cut as if planning were dealing with residential units, families or one bedroom flats would be clear standards and guidance to follow but when dealing with this incidence for a lot of the patients it's a secured environment where he would be very surprised if they were allowed to go outside by themselves due to them wandering off and felt that the evaluation relating to this should be a matter for the healthcare authorities.

Councillor Bell said that it was important that the elderly and vulnerable were treated with respect.

Councillor Brown advised that he would have slight concerns and took on board what Councillor McFlynn and Councillor Colvin stated regarding access to the site. He referred to the description about the development and felt that if there was no staff accommodation then the description was wrong as the proposal was for a 12 bedroom accommodation for vulnerable patients, surely there needed to be some kind of staff accommodation to look after the patients at night time and to keep an eye on them in the instance that they would get out and wander onto the busy Cookstown-Moneymore Road which could be seen as a health & safety risk.

Ms McCullagh (SPO) said that on the plans there was a staff kitchen, restroom, one staff bedroom and utility room and was confident that has been put in for.

The Chair advised that there had been a lot of discussion around the proposal and stated that there was a proposer and seconder for the application and enquired if there was any counter proposals.

The committee agreed to proceed with the recommendation.

Proposed by Councillor McKinney
Seconded by Councillor McFlynn and

Resolved That planning application LA09/2018/0847/F be approved subject to conditions as per the officer's report.

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

Agenda item 4.2 – LA09/2019/0050/O – Site for a dwelling and garage 37m NE of 9 Annaghmore Lane, Annaghmore, Cookstown for Mr Noel Devlin

Agenda item 4.11 – LA09/2020/0740/F – Sites for 2 infill dwellings and garages between 23 & 29A Cloghog Road, Coalisland for Mr Conor Tennyson

Agenda item 4.13 – LA09/2020/0783/F – Removal of Condition 4 of outline approval LA09/2019/1004/O at approx. 170m S of 71 Back Lower Road, Killycolpy, Dungannon for Mr Plunkett Teague (withdrawn)

Agenda item 4.15 – LA09/2020/0801/O – Dwelling & detached domestic garage at site adjacent to & S of 19 Ballymaguigan Road, Magherafelt for Ms Niamh Young

Agenda item 4.16 – LA09/2020/0804/O – Two storey dwelling & domestic garage at lands 350m S of 293 Pomeroy Road, Lurganeden, Pomeroy for Mr Ben Sinnamon

Agenda item 4.17 – LA09/2020/0841/O – Site for a dwelling and domestic garage at approx. 45m W of No. 59 Lurgaboy Lane, Dungannon for Mr Darren McKenna

Proposed by Councillor Bell
Seconded by Councillor Colvin and

Resolved That the planning applications listed above be deferred for an office meeting or withdrawn.

LA09/2019/0050/O	Site for a dwelling and garage 37m NE of 9 Annaghmore Lane, Annaghmore, Cookstown for Noel Devlin
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Agreed that application be deferred for an office meeting earlier in the meeting.

LA09/2019/0416/F	Retention of commercial development for the repair and sale of agricultural/construction plant and machinery at lands at 67 Glenhoy Road, Ballygawley and approx. 100m SW of 68 Glenhoy Road, Ballygawley for Keith Gladney
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Members considered previously circulated report on planning application LA09/2019/0416/F which had a recommendation for approval.

Proposed by Councillor Gildernew
Seconded by Councillor Robinson and

Resolved That planning application LA09/2019/0416/F be approved subject to conditions as per the officer's report.

LA09/2019/1239/O

Replacement dwelling with retention of existing listed building as general-purpose store at 13 Altadaven Road, Favour Royal Demesne, Augher for Bernard McKenna and & Amy McElhatton

The Head of Development Management presented report on planning application LA09/2019/1239/O which had a recommendation for refusal.

Councillor Quinn left the meeting at 7.49 pm and returned at 7.51 pm.

Proposed by Councillor Cuthbertson
Seconded by Councillor Colvin and

Resolved That planning application LA09/2019/1239/O be refused.

Councillor Mallaghan enquired if any consideration or was it appropriate for the committee to give any consideration within the new Local Development for buildings like this one or the likelihood of being brought back into better use because they are so dilapidated and so expensive to rehabilitate into something useful in the future. He said that in locations like this here where there wasn't an obvious use for the building, there would be a lot of derelict listed buildings.

The Planning Manager advised that there was obviously provision as it sits as the building would be classed as dangerous, but there was the question was the building so beyond usable for a useful purpose and this would need to be answered by the applicant themselves providing the relevant evidence like a survey from a qualified engineer. He said that there was no starting point where you could use listed buildings, but there was a position where a listed building could no longer be acceptable and be delisted, but given that we are not the body with lists or delists the buildings as this sits with Historic Buildings. He said that this building was part of the Favour Royal Estate and would find it difficult to see why it couldn't revitalise the building for a useful purpose which would require its future. He stated that in the past there was a similar situation regarding 2 attached farm dwellings which allowed one of the buildings to be replaced and converted into one complete dwelling and felt in light of that, this could be done with this and going back to the question asked, there could always be the possibility of a building being delisted.

Councillor Clarke said unless it was overlooked he couldn't remember seeing what the proposal was or the drawings as asked in future that these be issued to members in advance so they could familiarise themselves with proposals being brought before committee.

The Head of Development Management shared an overhead image on how the possible new dwelling would look like and felt that it over-dominates the existing dwelling.

The Planning Manager said that the only information coming forward was that the proposal was for a new dwelling and existing building used for storage and this would concern him because it was allowing for a new dwelling and allowing the listed building to decay. He said that the applicant must have land elsewhere and should

consider building a dwelling in its own right on the farm or elsewhere and advised that the Planning department was always open to discuss possible ways forward.

Councillor Clarke said that information before members didn't actually make things clear and felt that in future information should be issued to give members time to read all the details before a decision is made at the committee meeting.

LA09/2019/1571/F Dwelling and garage at site between 20 & 22 Lough Road & 50m S of 14 Lough Road, Ballymaguigan for Patrick McKenna

The Chair, Councillor S McPeake withdrew from the meeting and the Vice Chair, Councillor Glasgow took the Chair.

The Council Solicitor stated that on the Addendum there was an additional objection received from the agent which should have been emailed through to members and asked if members had read that and if not to let the Chair know so that time can be taken to study before the application is considered.

Members confirmed that they had received the relevant information relating to the additional objection.

Ms McCullagh (SPO) presented previously circulated report on planning application LA09/2019/1571/F which had a recommendation for approval. She reiterated from earlier that a late objection had been received late this evening from a property which had already objected.

Mr Kearney advised that speaking rights had been withdrawn on the basis that there were no objections prior to this meeting and wanted to state the application does not require third party lands and does not overstep. He said that amendments had been made and no way impacting the objector's building and in fact are away back from it which was all within the update pack which was issued. He confirmed that the client had very diligently took on board all the concerns of the objector and had affected the building to suit the objector and was a little bit shocked that the late objection had been received.

The Chair, Councillor Glasgow advised that a request to speak had been received from Councillor S McPeake and invited him to address the committee.

Councillor S McPeake said that he was fully aware that the principle of the building had already been established at this site and that for the right of a dwelling to be built on it. In the designing of a building in this size and the orienting in a way that meets the requirements of the applicant and that of the neighbouring amenities can be quite challenging. He said that he also recognised the changes to the amendments being made to the application since its original submission in terms of a window being removed, obscure glass being fitted, privacy gates being provided and the dwelling being moved back from the neighbouring property all of which were totally commendable and recognised by himself, but would ask respectfully if there was

anything further which could be done to position the site a little bit further back from the neighbouring property.

Mr Kearney advised that the site wasn't massive and the client had moved what would be potentially their living space and decreased the size to a bare minimum of 5 to 6m with a strip of grass to the side of it and has increased everything between them and the objector to which is acceptable for the client. He said his client have tried as much as they can to accommodate the objectors on what was an approved site.

Ms McCullagh (SPO) displayed the overhead site plan for member's attention.

Councillor Clarke reiterated the importance of having images in advance to the committee so members can be kept up to date and be knowledgeable when these issues arise.

The Planning Manager said that No.22 was facing the road and the opposite side was facing the garden and that the main part of the new dwelling would be looking towards the road

Ms McCullagh (SPO) agreed with the Planning Manager's comment about the positioning of the house and advised that the overhead drawing was the same one which was circulated to members previously.

The Planning Manager said that by looking at the map he felt that it was a generous separation.

Proposed by Councillor Cuthbertson
Seconded by Councillor Gildernew and

Resolved That planning application LA09/2019/1571/F be approved subject to conditions as per the officer's report.

Councillor S McPeake returned to the meeting and took the Chair.

LA09/2020/0307/O Replacement dwelling at 12 Drumroll Road, Upper lands, Maghera for Mr A Campbell

Members considered previously circulated report on planning application LA09/2020/0307/O which had a recommendation for approval.

Proposed by Councillor McKinney
Seconded by Councillor Black and

Resolved That planning application LA09/2020/0307/O be approved subject to conditions as per the officer's report.

**LA09/2020/0318/RM Domestic bungalow and garage at site S of 63
Anneeter, Coagh for Oliver Conlon**

Members considered previously circulated report on planning application
LA09/2020/0318/RM which had a recommendation for approval.

Proposed by Councillor Bell
Seconded by Councillor McFlynn and

Resolved That planning application LA09/2020/0318/RM be approved subject to
conditions as per the officer's report.

**LA09/2020/0656/O Replacement dwelling & detached domestic garage at
120m SE of 47 Annaghmakeown Road, Dungannon for
Simon Duggan**

Members considered previously circulated report on planning application
LA09/2020/0656/O which had a recommendation for approval.

Proposed by Councillor Gildernew
Seconded by Councillor Clarke and

Resolved That planning application LA09/2020/0656/O be approved subject to
conditions as per the officer's report.

**LA09/2020/0674/F Two storey dwelling and detached garage at site
adjacent to 82 Annagher Road, Coalisland for Kevin
McCluskey**

Members considered previously circulated report on planning application
LA09/2020/0674/F which had a recommendation for approval.

Proposed by Councillor Quinn
Seconded by Councillor McFlynn and

Resolved That planning application LA09/2020/0674/F be approved subject to
conditions as per the officer's report.

**LA09/2020/0687/O Off-site replacement dwelling & detached garage 110m
NW of 25 Annaghnahee Road, Coalisland for Dominic
Ryan**

The Head of Development Plan presented previously circulated report on planning
application LA09/2020/0687/O which had a recommendation for refusal.

Proposed by Councillor McKinney
Seconded by Councillor Brown and

Resolved That planning application LA09/2020/0687/O be refused.

LA09/2020/0740/F **Sites for 2 infill dwellings and garages between 23 & 29A Cloghog Road, Coalisland for Conor Tennyson**

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

LA09/2020/0775/O **Dwelling and detached garage on gap site West of 16 Drumnacannon Road, Upperlands, Maghera for Mr K McKinley**

Members considered previously circulated report on planning application LA09/2020/0775/O which had a recommendation for approval.

Proposed by Councillor McKinney
Seconded by Councillor Brown and

Resolved That planning application LA09/2020/0775/O be approved subject to conditions as per the officer's report.

LA09/2020/0783/F **Removal of Condition 4 of outline approval LA09/2019/1004/O at approx. 170m S of 71 Back Lower Road, Killycolpy, Dungannon for Plunkett Teague**

Planning Application LA09/2020/0783/F withdrawn.

LA09/2020/0790/O **Dwelling and detached double garage with storage above at approx. 50m SW of 50 Cadian Road, Eglish, Dungannon for Ryan Muldoon**

The Head of Development Management presented previously circulated report on planning application LA09/2020/0790/O which had a recommendation for refusal.

Councillor Colvin left the meeting at 8.16 pm.

Councillor Gildernew said he knew where the site was and was very close to Eglish Village and enquired if there was any merit in seeking a deferral as he found it confusing why there was no request for speaking rights sought.

Councillor Colvin returned to the meeting at 8.18 pm.

The Planning Manager said that going through information it was evident that the applicant had liaised with the planning office and he assumed that he was asked for the additional information requested. He said that in the instance there was another case and it was refused the applicant could always come back and have a discussion and given that the other cases were refused it would be strange to defer this application.

The Head of Development Management said there didn't seem to be a request to Mr Muldoon.

The Planning Manager said that he had changed his view as the case officer had presented their opinion without asking the applicant for the relevant information.

Councillor Gildernew felt that the applicant should be given a chance to put his case forward as they were a very large family in English village and felt something had went wrong tonight due to no representation being made.

Proposed by Councillor Gildernew
Seconded by Councillor Bell and

Resolved That planning application LA09/2020/0790/O be deferred for an office meeting

LA09/2020/0801/O **Dwelling & detached domestic garage at site adjacent to & S of 19 Ballymaguigan Road, Magherafelt for Niamh Young**

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

LA09/2020/0804/O **Two storey dwelling & domestic garage at lands 350m S of 293 Pomeroy Road, Lurganeden, Pomeroy for Ben Sinnamon**

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

LA09/2020/0841/O **Site for a dwelling and domestic garage at approx. 45m W of No. 59 Lurgaboy Lane, Dungannon for Darren McKenna**

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

LA09/2020/0849/F **Dwelling and garage approx. 80m SW of 60a Ballygittle Road, Stewartstown for Grace Campbell and Henry Heron**

Members considered previously circulated report on planning application LA09/2020/0849/F which had a recommendation for approval.

Proposed by Councillor Colvin
Seconded by Councillor Clarke and

Resolved That planning application LA09/2020/0849/F be approved subject to conditions as per the officer's report.

LA09/2020/0933/RM **Dwelling and detached garage 500m SE of 19 Drumimerick Road, Kilrea for T Kelso**

Members considered previously circulated report on planning application LA09/2020/0933/RM which had a recommendation for approval.

Proposed by Councillor Kearney
Seconded by Councillor McKinney and

Resolved That planning application LA09/2020/0933/RM be approved subject to conditions as per the officer's report.

LA09/2018/0176/F Retrospective shed for the storage of boats and working nets to the rear of 140 Kilmascally Road, Dungannon for Mr M O'Neill

To be taken in Confidential Business.

LA09/2018/1458/O Dwelling 50m SW of 55 Kanes Rampart, Derrylaughan, Coalisland for Owen Campbell

Members considered previously circulated report on planning application LA09/2018/1458/O which had a recommendation for approval.

Proposed by Councillor Gildernew
Seconded by Councillor Clarke and

Resolved That planning application LA09/2018/1458/O be approved subject to conditions as per the officer's report.

LA09/2019/0423/F Retention of single storey domestic garage, storage and annex building, to be used in association with the existing dwelling house and an increase in the curtilage of the site at 63a Ballymacombs Road, Bellaghy for Donal O'Cearnaigh

To be taken in Confidential Business.

LA09/2019/0539/F Site for a dwelling and garage, 35m S of 98 Desertmartin Road, Magherafelt for John Tohill

Members considered previously circulated report on planning application LA09/2019/0539/F which had a recommendation for approval.

Proposed by Councillor McFlynn
Seconded by Councillor D McPeake and

Resolved That planning application LA09/2019/0539/F be approved subject to conditions as per the officer's report.

LA09/2019/1418/F

Site for dwelling & domestic garage at approx. 60m NW of 124 Lurgylea Road, Dungannon for Christopher Kelly

Members considered previously circulated report on planning application LA09/2019/1418/F which had a recommendation for approval.

Proposed by Councillor Gildernew
Seconded by Councillor Colvin and

Resolved That planning application LA09/2019/1418/F be approved subject to conditions as per the officer's report.

LA09/2020/0022/O

Dwelling in an infill site at land adjacent to and S of 14 Drumkee Road, Dungannon for Noel Stephenson

The Head of Development Plan presented previously circulated report on planning application LA09/2020/0022/O which had a recommendation for refusal.

The Chair advised that a request to speak in support of the application had been received and invited Mr Coney to address the committee.

Mr Coney advised that this proposal for a dwelling infill site

Mr Coney said that this proposal was for dwelling in an infill site, and when he first looked at the site he was confident in taking this on as he had already a benchmark case which he had based it on H/2010/0303 which was also for an infill site. He said that this application bears striking similarities to application H/2010/0303 which was previously approved and felt that this should be also approved. He stated that he doesn't do any applications where he wasn't confident of obtaining a positive result as he cares too much for people's money and fees and doesn't want them throwing their money around them. He felt that this applicant was hard done by as previously there as a building here and a new building would not be detrimental to the rural character of the area due to considerable cluster, although not all made up with all housing but with some agricultural sheds and garages which meets the criteria of an infill opportunity. He felt that if his client had built in 1988 the building would be there now and there would be no conversion about it tonight.

Mr Coney advised that this dwelling was for his client's daughter who wished to come back home to live as she currently resides in England and requested that the map of H/2010/0303 be produced to members of the Council.

In response to a query, the Head of Development Management advised that there was no specific reference to the permission but he had the file in front of him in which Mr Coney was referring to and was aware of that permission was received for a renewal. He said that the key difference he could see here was in 2010 when permission was granted, planning was allowing for a building which hadn't been built but had committed themselves in the way of permissions to be counted and interpretation did not pay much regard to the set back or the lack of a frontage and that was one of the

reasons why the Ballymaguigan Road was approved. He advised that he couldn't see direct parallels with the current case as it was relying on the buildings which didn't seem to appear to have direct frontage with the road.

The Planning Manager enquired if there were any permissions neighbouring this site.

The Head of Development Management advised that he was not aware of any.

The Planning Manager stated that there was a need to work with what was there currently and what policy states. In terms of infill this was between two buildings with road frontages so wouldn't be classed as an infill, but would have some sympathy for these types of applications but went through the tests in terms of rounding off clustering 2A but doesn't meet due to the number and nature of buildings within the cluster apart from having a development on two sides. He said that officers wished to bring forward a policy which was more sympathetic within the Draft Plan but this was not the case yet. In terms of replacement the policy it was quite clear that it needs to be substantially intact and clearly it wasn't because it has been demolished.

The Chair said that both the Planning Manager and the Head of Development Plan had provided an in-depth discussion on the differences and asked if Mr Coney had he anything further to add.

Mr Coney referred to the overhead map and advised that the shaded area behind the red line was just a site which was approved and construction hadn't even began at that time but Planning considered it to be a dwelling in the future. He said that site had permission and formed the basis of an infill, but on the current application the dwelling that he believes forms the infill was also set back just like this site here with a fence and vegetation and although not on top of the hill but as the crow flies, both sites were pretty much the same.

The Planning Manager advised that the site wasn't taken up and therefore Mid Ulster was not obliged to reissue that approval and if a planning application was submitted that would be considered at the current time, but what was presented was based on an argument on an access to a dwelling and a building based on a permission, but it was now understood that there was no permission. He said although the committee would have great sympathy for this application, policy cannot be rewritten and it does not meet policy.

Councillor Gildernew said that by looking at the map it seemed like a cluster to him and was not too far away from another small cluster. He enquired if there was a crossroads to the right of the site and asked if there was any merit for going towards a cluster rather than refusing the application and felt that another house would not make any difference.

The Planning Manager stated that policy could not be rewritten to make something fit as there would be always reasons why something could be classed as an exception.

Councillor Bell sought referred to the existing crossroads and one field in between the proposed site and the crossroads and asked if there was anything in the policy which states that it has to be 50m or so.

The Planning Manager advised that it required four buildings in this instance and asked that members not to go by the premise of trying to make a policy fit but this shouldn't stop members from coming to a conclusion.

The Council Solicitor referred to the planning history and the fact that if the original had been implemented or commenced that this application wouldn't be before committee tonight. It is a material consideration but shouldn't be given determinative weight.

In referring to Chris' comments about not meeting policy, the Council Solicitor advised that the report was clear about the policy tests not being met of which there was a number of criteria within that and would suggest that members exercise caution if considering there was any exception to policy because the exceptions would have to be truly exceptional.

Councillor Gildernew agreed that there was a need to be careful, but felt there was an exception by the way the overhead map portrays the crossroads and the amount of buildings that around the proposed site. He said that he would have some sympathy for this person as they wished to return home to live and felt that this application should be considered.

The Planning Manager suggested that a site meeting be arranged so that members can see for themselves before making a definite decision.

Councillor Bell agreed that a site visit would be the most appropriate way forward.

The Chair also agreed that a site visit would be the best option in this instance.

Proposed by Councillor Bell
Seconded by Councillor Mallaghan and

Resolved That planning application LA09/2020/0022/O be approved for a site visit.

LA09/2020/0047/O **Site for dwelling and garage approx. 60m W of 121A Desertmartin Road, Moneymore for Henry and Mark Miller**

Members considered previously circulated report on planning application LA09/2020/0047/O which had a recommendation for approval.

Councillor McKinney withdrew from the meeting during the discussion.

Proposed by Councillor Colvin
Seconded by Councillor Brown and

Resolved That planning application LA09/2020/0047/O be approved subject to conditions as per the officer's report.

Councillor McKinney returned to the meeting.

**LA09/2020/0446/F Change of house type to previous approval
(M/2006/1301/RM) at land opposite and SW of 165
Favour Royal Road, Augher for Finbar McQuaid**

The Head of Development Management presented previously circulated report on planning application LA09/2020/0446/F which had a recommendation for refusal.

The Chair advised that a request to speak in favour of the application had been received and invited Mr Gourley to address the committee.

Mr Gourley agreed with the Head of Development Management's comments regarding the development having to be completed before the 14 November 2008 and advised that the applicant's father had purchased the site at a cost of £50,000 for his son to live beside the family home and the family business. He advised that the applicant's father was fully aware of the expiry date and employed a contractor to carry out the development but due to the economic crisis, the father had been working in Dublin at the time and the contractor which carried out the entrance works had cleared the site for the works in September 2008 but as the recession took hold no further works had proceeded. The applicant's father had a clear intention to develop the site, with receipts and invoices being retained for the excavation works etc., with the applicant's father being confident there was enough done to secure the permission. Receipts and invoices for works carried out in September 2008 were submitted with the application although there doesn't seem to be any mention of them within the planning report, but Mr Gourley advised he had them on his possession tonight detailing works which were carried out by a local contractor on works to the entrance and clearance of the site.

Mr Gourley stated that there was a clear intention for the development to be commenced due to the amount of money given to purchase the site and did agree that there may be issues around compliance relating to the entrance, but the critical issue here was that development had commenced and if there were issues with compliance regarding the entrance then this should be seen as a compliance matter rather than a commencement matter. He advised that the street view photographs relate to March 2009 which clearly indicate that works were done in the previous growing season due to the evidence of grass growing on the piles of soil and around the disturbed earth. The entrance itself demonstrates that it wasn't a fielded access as it was a wide bell-mouth which shows a clear intent of being a development site and to set out the visibility splays at the bell-mouth to the entrance. He referred to an example from a previous planning approval K/2010/0354/F a change of house type was permitted even though access was constructed differently to the permission which shows precedent there in terms of compliance.

The Chair enquired how often google earth updated these photographs as a previous year could've told a different story.

The Council Solicitor sought clarification on why the applicant wasn't asked to prove commencement by way of a CLUD application as this was critical to keep the permission alive on a planning history or as a fall-back and felt that this was important

to get this right. She said that she did not entirely agree with the Agent's suggestion that with something that has been carried out but not in compliance with the permission should be a compliance issue rather than a commencement issue as in case-law this in itself may not be sufficient. She referred to the issue around a pre-commencement condition around access not being developed and said that this would need to be teased out and also the suggestion that the site was cleared as sufficient to constitute commencement of the permission and wasn't fully convinced that this has been fully explored.

The Planning Manager said that if a certificate of development had been obtained then this would be make this decision easy but the fact that no certificate has been obtained then it would be reasonable for the committee to refuse the application. However, if members were content that sufficient evidence that works had commenced the absence of a CLUD is not a reason to refuse an application, but this doesn't help the application in any shape or form if there was a dispute which we currently have.

The Head of Development Plan confirmed that receipts were on file, 1st receipt dated 18th September 2008 indicated the supply of hard-core and fill for the entrance for new private house at Gallagher paid in full, 2nd receipt dated 18th September 2008 indicated clearing top spill from site at Gallagher for new private house, preparing entrance and levelling.

The Planning Manager stated that these receipts indicated works were carried out in September 2008. In terms of probability the proof and receipts and google earth photos indicate that works had been done.

Councillor Clarke stated that the first thing to do with a development would be to put sightlines in place, so quite clearly the sightlines have been put in place and from the evidence presented the work was done prior to November 2008 with evidence of a large gated entrance approx. 25ft in width.

Councillor Gildernew said that by looking at the dates and the work carried out, who in their right mind would think that this work was going to be carried out without building a house. The applicant's father paid £50,000 for a house and the only intention was to build a house and felt that this was a case of splitting hairs and proposed to agree to approve the application.

Councillor McFlynn referred to earlier discussion regarding by the Planning Manager in regards to English law on development and Councillor Clarke's comment regarding the commencement of development and advised when you open your gates, clear your entrance and open your site that she would agree with Councillor Gildernew and would be happy to second his proposal.

The Planning Manager advised that English Law basically states that if a development has commenced within 5 years and the creation of an access, that planning approval would commence development and there was case law to state that access was suffice. He said that Northern Irish law was written differently and was written to say that where a development consists of works in the course of erection of a building. The contention here is that no work on the building had taken place. Where it comes to

visibility splays, this in itself may not be development and advice is that work relating to pre-commencement conditions does not in itself constitute a start. He said that his take on this was that the creation of the access needed more than cutting a hole in the hedge and placing a bit of gravel, it would need to be demonstrated that it was in connection with the erection of the building. Based on the probability that this access had started he would be prepared to allow this, but cannot guarantee that this was correct and a decision purely based on this could be subject to legal challenge.

The Council Solicitor said that to keep the committee right even not by way of a CLUD application, a full and proper assessment should be carried out on the information discussed and consideration taken back to committee with an overall view on the balance of whether development had commenced or not. She would have some concerns around the consideration of adhoc and in her view it would be more appropriate if a full assessment was carried out with a view to advising the committee one way or the other.

The Chair enquired from the Council Solicitor what more information was needed in terms of a full assessment as there was photographs and heard from the agent who was there for the actual build and commence, evidence of dates, receipts and photographs and asked what additional would be required for the full assessment.

The Council Solicitor advised that it would include matters such as evidence as to what has been suggested and what is evidenced as to having been carried out and what constitutes a development, the latter being a legal consideration. She said that she would concerns around the pre-commencement condition about access, in her view, that in itself wouldn't be development that would commence that permission and the clearing of the site needs to be teased out more to see if this was an act of development to commence it. She said that until all the relevant information was presented as a full package then in her view it was difficult to give a definitive view this evening. The lawfulness aspect was a legal query unlike planning applications which were all about planning merits and wouldn't be comfortable advising the committee based on information provided or the time given to actually consider it until a full and proper assessment is carried out.

Councillor Colvin stated that he felt really uncomfortable around the uncertainty around this as he hoped that it was legal and trying to make a very significant decision on the hoof and that the proposed application be deferred until a full legal opinion be sought to inform the committee going forward so members were not in the same position again.

Councillor Gildernew thanked the Council Solicitor for her advice and stated that he had anticipated seeking a deferral at the start of the meeting but didn't proceed as it was already a deferral and thought there would be no possibility. He agreed with Councillor Colvin that the application be deferred and come back when there was a better understanding and then a decision can be made due to a the frank discussion taking place tonight and just tidying up the loose ends.

Councillor McFlynn confirmed that she was happy to agree to a deferral.

Councillor Cuthbertson felt there was no need for anymore legal advice but to hold the application until the applicant sought a CLUD application and once that was dealt with the application would still be sitting as a way forward.

The Planning Manager advised that he wasn't convinced that a CLUD was necessary and broke the issue down into two parts, first was what the works were and did they relate to the planning permission. Secondly when were they carried out and was this sufficient to constitute a start. He said that his inclination is to go with the English case-law, but this is not the view taken across the board and therefore to take this legal advice.

Proposed by Councillor Colvin
Seconded by Councillor Gildernew and

Resolved That planning application LA09/2020/0446/F be deferred for further clarification.

Matters for Information

P103/20 Minutes of Planning Committee held on 6 October 2020

Members noted minutes of Planning Committee held on 6 October 2020.

P104/20 The Department's Agreement of Mid Ulster Council's LDP – Revised Timetable (August 2020)

Members noted update on the Department's Agreement of Mid Ulster Council's LDP – Revised Timetable (August 2020).

Live broadcast ended at 9.30 pm.

Local Government (NI) Act 2014 – Confidential Business

Proposed by Councillor Quinn
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 P105/20 to P109/20.

Councillor Cuthbertson left the meeting at 9.30pm.

Councillor Quinn left the meeting at 9.30 pm and returned at 9.31 pm.

Councillor Mallaghan left the meeting at 9.30 pm and returned at 9.31 pm.

Matters for Decision

P105/20 Planning Applications for Determination – (Continued)
P106/20 Miscellaneous Matters

Matters for Information

P107/20 Confidential Minutes of Planning Committee held on
6 October 2020
P108/20 Enforcement Cases Opened
P109/20 Enforcement Cases Closed

P110/20 Duration of Meeting

The meeting was called for 7 pm and concluded at 11.10 pm.

Chair _____

Date _____

Speaking Notes for Chairperson

Meeting Type: Committee (Planning)

From 6.45pm before meeting Commences

A good evening to members and officers joining us this evening I will take a few minutes to go through some housekeeping to help with the running of our meeting.

- You are reminded that the meeting is being transmitted as a live broadcast with the public and press watching and listening into our proceedings either remotely and/or in the public gallery
- I want to keep how we do business broadly the same as how we have been transacting our meetings to date. To help with this can you please observe the following when we start the meeting:
 - At the start of the meeting I will be taking a roll call of members in attendance to ensure that any member attending remotely is correctly marked present. Please ensure that when your name is called you turn on your audio to confirm that you are present and that you put your audio to mute immediately thereafter.
 - Raise your hand in the meeting or on screen if you wish to speak and keep raised until observed by an Officer or myself. If you are on the screen, please ensure that your hand can be seen on your video feed and I will verbally let you know when I have seen you so you can lower your hand
 - If you have joined us remotely, please leave your audio on mute unless invited to speak and have your camera on. Remember to put it back onto mute when finished speaking
 - If you are having problems with bandwidth or good quality internet connection, please turn your video off as this may assist
 - Only speak when invited to do so by the Chair
 - Should we have to take a vote, whether you are in the room or have joined remotely, I will ask each member to confirm whether you are for or against the proposal or abstaining from voting. If you are joining remotely, please ensure that when your name is called you turn on your audio to indicate your voting preference and that you put your audio to mute immediately thereafter. Unless, specifically called for, this will not constitute a recorded vote.
 - When invited to speak please start by saying your name to help those who have joined the meeting remotely and the public watching the Live Broadcast

- Lastly, when we move into Confidential Business, can I remind those who have joined the meeting remotely that it is your responsibility to ensure that no other person can hear or see any confidential matters being transacted

I will recap on these points at the start of the meeting but we will pause there and come back at 7pm.

Commencement of Meeting at 7pm

Good evening and welcome to the Councils meeting of its Planning Committee in the Chamber, Magherafelt and virtually.

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

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

- If you have joined the meeting remotely please keep your audio on mute unless invited to speak and then turn it off when finished speaking
- Keep your video on at all times, unless you have bandwidth or internet connection issues, where you are advised to try turning your video off
- If you wish to speak please raise your hand in the meeting or on screen and keep raised until observed by an Officer or myself
- Should we need to take a vote this evening, I will ask each member to confirm whether you are for or against the proposal or abstaining from voting
- For members attending remotely, note that by voting on any application, that you are confirming that you were in attendance for the duration of, and 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 any 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 earlier today. If any member has not received the Addendum or has not had sufficient time to review it, please let me know now or as soon as the application is called this evening.
- If referring to a specific report, page, slide etc., mention and clearly reference the report, page, slide etc. so that all members have a clear understanding of what is being discussed at all times

- For members of the public that are exercising a right to speak by remote means, please ensure that you are able to hear and be heard by councillors, officers and any others requesting speaking rights on the particular application. If this isn't the case you must advise the Chair immediately. Please note that once your application has been decided, you will be removed from the meeting. If you wish to view the rest of the meeting, please join the live link.
- Can I remind the public and press that taking photographs of proceedings or the use of any other means to enable persons not present to see or hear any proceedings (whether now or later), or making a contemporaneous oral report of any of the proceedings are all prohibited acts.

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

Apologies and then roll call of all other Members in attendance.

Notes to the Chair to assist in running the meeting:

- **The Agenda:** please read out the Agenda Item Number and the item itself to assist those who have joined remotely and the public listening
- **Members Speaking:** When calling upon Members and Officers to speak please introduce them by their full name to assist those who have joined remotely and the public listening
- **The Addendum:** When calling out an Agenda Item Number that has corresponding information/documentation on the Addendum, please advise members of this and ask that they advise you immediately if they require any time to read that additional information
- **Member of the public speaking remotely:** At the start of each item where someone has requested remote speaking rights, please confirm the points above highlighted yellow to those members of the public that are exercising speaking rights remotely
- **Visual Aids:** When officers are using visual aids, they will be sharing their screen. Please ensure that members on Webex as well as members in the Chamber can clearly see the visual aids
- **Voting:** If a vote is taken please declare the result to the meeting provided by the Planning Manager/Senior Officer attending before moving to the next item to assist those listening and the committee clerk for accuracy of the minute
- **Moving to Confidential Business:** When we conclude Open Business and before we take a Proposer and Seconder to go into Confidential Business, thank the public for listening in and advise that the Live Broadcast will now end. It may take a few seconds for this to end so please wait until it is confirmed to you that the Live Broadcast has ended. Note that we might have some in the Public Gallery at the back of the Chamber and thank them for attending