

Minutes of Meeting of Planning Committee of Mid Ulster District Council held on Tuesday 4 October 2022 in Council Offices, Ballyronan Road, Magherafelt and by virtual means

Members Present

Councillor Brown, Chair

Councillors Bell, Black*, Brown, Clarke*, Colvin, Corry, Cuthbertson, Glasgow, Mallaghan*, Martin*, McFlynn, McKinney, D McPeake*, S McPeake, Quinn*, Robinson

Officers in Attendance

Dr Boomer, Service Director of Planning (SD: PI)
Mr Bowman, Head of Strategic Planning (HSP)
Ms Doyle, Head of Local Planning (HLP)
Mr Marrion, Senior Planning Officer (SPO)
Mr McClean, Senior Planning Officer (SPO)
Ms McKinless, Senior Planning Officer (SPO)
Ms Scott, Council Solicitor
Mr Stewart, Senior Planning Officer (SPO)
Mr McClean, Senior Planning Officer (SPO)
Ms McNamee, ICT Support**
Mrs Grogan, Democratic Services Officer

Others in Attendance

Councillor Gildernew***

LA09/2020/0903/F	Joe Diamond***
LA09/2021/1773/F	Oonagh Given***
LA09/2021/1779/O	Chris Mullan***
LA09/2019/0179/F	Keith Buchanan MLA***
LA09/2019/0179/F	Martin Grainger***
LA09/2019/0179/F	Daniel McCusker
LA09/2019/0179/F	Chris Cassidy***
LA09/2020/1140/O	Joe McNulty
LA09/2020/1140/O	Eamon Cushnahan***
LA09/2020/1615/F	Christopher Quinn***

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

** Denotes Officers present by remote means

*** Denotes others present by remote means

The meeting commenced at 7.00 pm

In the absence of the Chair, Councillor Mallaghan who was attending virtually, the Deputy Chair, Councillor Brown took the Chair.

P121/22 Notice of Recording

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

P122/22 Apologies

Cllr Mallaghan

P123/22 Declarations of Interest

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

P124/22 Chair's Business

The SD: PI drew members attention to previously circulated addendum and said that there were a few items listed in which they should be aware of.

He referred to first letter which was addressed to the Chief Executive from Dfl in relation to Amendment to the Footway (Prohibition of Waiting) Order which was essential saying that some vehicles were parking next to a bus stand which was causing issues to members of the public, not only those wishing to alight the bus but also pedestrians, particularly those with visual impairments who wish to walk along the footpath.

What Dfl wished to do was amend the Footway (Prohibition of Waiting) Order to prohibit vehicles waiting on the footway adjacent to a bus stand and sought any comments from the Council they may have on the proposal.

He felt that the Planning Committee did not need to respond as this was more about tidying up what the legislation should say.

Councillor Cuthbertson felt that this should be more an issue for the Environment Committee as they receive correspondence regularly and was surprised to see it at this committee.

The SD: PI said that he wanted to bring to members attention but did not strike him that there needed to be an input.

The SD: PI referred to letter from Department for the Economy (Minerals and Petroleum Branch) and advised members that there had been a debate regarding prospecting licences, one currently in diamonds which related to special metals and minerals which raised concerns. Council has been informed that these licences would be granted and at this stage all Planning can do is just note it.

The SD: PI updated members on statistics which are published each quarter and said that he wished to put his own spin on things due to the context.

In the first quarter of this year, planning discarded their computer system and stopped issuing decisions from end April until July and people assumed that the system would totally crash regarding decision making. When this was put into context, 390 applications were received which indicates that people were still investing in Mid Ulster because it was the third largest amongst all the authorities and only slightly behind Belfast City Council. He advised that 238 decisions were issued despite the period having been seriously cut, with a 17.9% average performance which was not seen to be good, but we were still mid table compared to other authorities. He felt that there was a need to be careful with these statistics, when decisions are not issued they are not counted against us. He expected that when moving through the summer period and autumn period processing times would fall as the focus is on trying to get out these older applications determined and reduce our backlog.

The SD: PI advised that there was an issue with enforcement and usually this Council was ranked at the top of the statistics table but due to Covid and the team being down, this was the lowest this Council had ever been, but had no doubt that this would be addressed as we move forward.

He said that one thing that concerned him was that when we went into the summer having 1080 live applications which was a strain on officers and was the largest of all authorities and the highest number of old applications. He stated that he fully expected that there would be a huge push to try and get on top of the number of applications which were being held down and to hit a better performance figure. He hoped by the New Year that this Council would be returning to pre Covid performance.

In referring to the new computer system he stated that two sets of lists were issued to members, Applications Received and Decisions Made and in the past decisions made were quite small and the reason for this was the computer generated lists based on the wrong field as set up by the Department. Under the old computer system he needed all 11 councils and the Department to agree a change and as a result of this minor errors were left unfixed. However, now we were in control of the new system officer were able to make the necessary change to ensure that members get the correct information and they will note that the decision made list is now much larger.

The Chair, Councillor Brown said although he welcomed this, he would like to see the number of applications reduced and felt if there was an opportunity for an extra drive between now and the winter months that this should be investigated.

Councillor Colvin agreed with comments made by the Chair and advised that he finds the new computer system easy to use which was better than the previous iteration of it and congratulated everyone involved.

He enquired which authority had the second highest number of applications.

The SD: PI advised that Newry, Mourne & Down were the second highest as they would have significantly more. He said that a lot of neighbouring Councils would have only half of the applications which this Council has and the same number of staff which seemed unfair where resourcing was concerned. ABC Council which is

the biggest Council for the number of residents actually have slightly lower than this Council. The remainder of the Councils would have approximately $\frac{2}{3}$ of what we have and we have substantially more than most other authorities and given we have one of the smallest populations, our ratio of applications per head of population is the highest. What is fascinating is the makeup of the applications as everyone assumes that Mid Ulster has only houses in the countryside which is untrue as we get a higher ratio of applications which are industrial, renewable and civic compared to most other Councils, which actually indicates that Mid Ulster is a place where people want to invest and in turn create employment, resulting in people always looking for houses due to the income generated here.

Councillor McKinney concurred with previous comments and was aware that Mid Ulster was the capital of manufacturing, processing and any other business type and took us longer to get the applications through the system and not just straight forward like a dwelling. When officers go into a manufacturing or industrial site, this takes longer and cuts the response time down, but felt that the number of applications were encouraging, especially in these current times where people wished to advance forward in industry and new dwellings. He said that he was aware that it was a long hard road and everyone wants to progress quicker, but it was important to get it right.

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

Agenda Item 5.2 – LA09/2021/1366/F – 5 No. Glamping Pods and associated external works at 170m SE of 52 Derrycourtney Road, Caledon for Jim Moore

Agenda Item 5.3 – LA09/2021/1449/O – Dwelling and garage within a cluster site at 15m E of 6 Tamnadeese Road, Castledawson for Derek Fulton

Agenda Item 5.4 – LA09/2021/1773/F – Retention of coach yard and ramp for washing own coaches as an extension to established business at lands immediately to rear and NW of 30B Killyneill Road, Dungannon for Stephen Davison

Agenda Item 5.9 – LA09/2022/0388/F – Access road to existing Retail Park at 125m E of UNIT5K Shivers Business Park, 21 Hillhead Road, Toomebridge for Shivers Business Park

Agenda Item 5.10 - LA09/2022/0414/F - Dwelling and domestic garage on infill/gap site at 65m NE of 37 Liskittle Road, Tullagh Beg, Stewartstown for Mr Stephen Rodgers

Agenda Item 5.12 - LA09/2022/0518/O - Farm dwelling & garage at approx 130m W of 59 Glengomna Road, Draperstown for Mr Dermot Bradley

Agenda Item 5.14 - LA09/2022/0602/O - Dwelling and garage at 83m NW of 30 Eden Road, Portglenone for David Patton

Agenda Item 5.15 – LA09/2022/0618/O – Dwelling & garage at lands opposite 33 Lough Road, Ballymaguigan for Martin Doyle

Agenda Item 5.16 – LA09/2022/0619/O – Dwelling & garage at 75m W of 20 Lough Road, Ballymaguigan for Oliver O’Neill

Agenda Item 5.17 – LA09/2022/0645/O – Dwelling and domestic garage at 70m N of 135A Five Mile Straight, Maghera for Patrick McKenna

Agenda Item 5.18 – LA09/2022/0685/O - 2 Storey dwelling and garage to rear of 68 Drumconvis Road, Coagh for Frances Harkness

Proposed by Councillor Bell
Seconded by Councillor Corry and

Resolved That the planning applications listed above be deferred for an office meeting/submission of information as outlined.

Matters for Decision

P125/22 Planning Applications for Determination

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

LA09/2020/0903/F Detached garage to rear of existing dwelling at approximately 11m NE of No 21A Culbane Road, Portglenone for Ger McPeake

Members considered previously circulated report and addendum on planning applications LA09/2020/0903/F which had a recommendation for approval.

Proposed by Councillor S McPeake
Seconded by Councillor McFlynn and

Resolved That planning application LA09/2020/0903/F be approved subject to Conditions as per the officer’s report.

LA09/2021/1366/F 5 No. glamping pods and associated external works at 170M SE of 52 Derrycourtney Road, Caledon for Mr Jim Moore

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

LA09/2021/1449/O Dwelling and garage within a cluster site at 15m E of 6 Tamnadeese Road, Castledawson for Derek Fulton

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

LA09/2021/1773/F Retention of coach yard and ramp as an extension to established business at lands immediately to rear and NW of 30B Killyneill Road, Dungannon for Mr Stephen Davison

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

LA09/2021/1799/O Single dwelling (2 storey) & garage at NE of 128 Old Ballygawley Road, Dungannon for Mr B Conlon

Members considered previously circulated report and addendum on planning applications LA09/2021/1799/O which had a recommendation for approval.

Proposed by Councillor S McPeake
Seconded by Councillor McFlynn and

Resolved That planning application LA09/2021/1799/O be approved subject to Conditions as per the officer's report.

LA09/2022/0066/F Replacement dwelling at 24 Derrychrin Road, Coagh, Cookstown for Paul Mallon

Ms McKinless (SPO) presented a report on planning application LA09/2022/0066/F advising that it was recommended for refusal.

Councillor S McPeake referred to building with the red roof and enquired if there was any evidence to indicate that this was a dwelling as he can see the modern one which had similarities with the garage.

The SD: PI advised that No. 24 was once a dwelling but what clearly happened was it was demolished and replaced by a garage. The trouble with applications with this nature is the way that policy is addressed as this was a site where there was a building which has the essential characteristics of a dwelling, so its present appears to be a garage from photographic evidence.

Councillor S McPeake enquired if the agent submitted any evidence to support the application.

Ms McKinless (SPO) said that the only evidence in which the agent submitted was the overhead photograph which was taken in 1995 which indicated at one stage that it previously was a dwelling. She said that the case officer had liaised with Building Control department and sought evidence from them and they had confirmed that a certificate was issued authorising that this was a detached garage.

Councillor McFlynn enquired if there was an opportunity for the agent or the applicant to submit further information, but would be supportive of what is agreed tonight.

The SD: PI said that the purpose of putting applications to planning committee was that it alerts people to approach officers and seek an office meeting, which hasn't occurred. As members rightly know Officers always like to give people a chance to have their say, but we cannot automatically defer every refusal as this did not make sense either otherwise what was the point of the process. The problem for him listening here like everyone else was that there used to be a dwelling on the site.

Councillor McKinney enquired if the overhead photographs relating to No. 26 were the same as they looked to be two different buildings.

The SD: PI said that by looking at the overhead photograph No. 24 was once clearly a dwelling and characteristics to demonstrate its existence, but was not there anymore and obvious that there was another building in front of that. This has now been replaced by a garage and the other building has been demolished, resulting in a building no longer being on the site and replaced by a garage in definition because applicants applied for a garage.

Councillor McKinney said that he understood what the SD: PI was saying but from what he could see, it didn't look to be the same site and didn't match up.

The SD: PI agreed that by looking at the overhead photographs it did look like that but they were taken at two different angles which was confusing but was still the same bungalow.

Ms McKinless (SPO) advised that in 1991 there was approval granted for an extension and improvements to No. 26 dwelling which may explain the changes in the photographs.

Councillor McKinney said that although he could understand the update, this was in 1991 and this was taken 1995 which was nearly 5 years later.

The SD: PI said that when you look at the photograph the form of the window seems to be the same and the aerial photo shows the pillars and porch and the other photograph shows a bungalow which seems to be the same.

Councillor Clarke said that when you look at the site location plan, there was a cluster of houses in the area, even if you exclude the building referred to. He said that there was already 3 dwellings there and would it make any difference if it as situated where it was proposed.

The SD: PI said his own view would be that it could classed as a potential infill.

Proposed by Councillor McFlynn
Seconded by Councillor Clarke

Resolved That planning application LA09/2022/0066/F be deferred for an office meeting.

Councillor Glasgow said that when this application comes back to committee it would be useful if ordnance survey aerial view maps were provided to see the layout of the land.

LA09/2022/0089/O Replacement dwelling and retention of existing building to be used as an outbuilding at 375M SE of 103 Moneymore Road, Cookstown for Mr Harold Kane

Members considered previously circulated report and addendum on planning applications LA09/2022/0089/O which had a recommendation for approval.

Proposed by Councillor McKinney
Seconded by Councillor Corry and

Resolved That planning application LA09/2022/0089/O be approved subject to Conditions as per the officer's report.

LA09/2022/0208/F Temporary erection (for 3 years) of modified shipping containers & lightweight structures at Site SW of & Immediately adjacent to 27 Market Square, Dungannon for Dungannon Enterprise Centre

Members considered previously circulated report and addendum on planning applications LA0/2022/0208/F which had a recommendation for approval.

Mr Marrion (SPO) advised that this application was situated on Council property.

All members in attendance declared an interest in the above application.

Proposed by Councillor McKinney
Seconded by Councillor Corry and

Resolved That planning application LA0/2022/0208/F be approved subject to Conditions as per the officer's report.

LA09/2022/0388/F Access road to existing retail park at 125M E of UNIT5K Shivers Business Park, 21 Hillhead Road, Toomebridge for Shivers Business Park

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

LA09/2022/0414/F Dwelling and domestic garage on infill/gap site at 65m NE of 37 Liskittle Road, Tullagh Beg, Stewartstown for Mr Stephen Rodgers

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

LA09/2022/0442/RM Single storey dwelling and garage between 255 & 259 Orritor Road, Orritor, Cookstown (Entering of Church Road) for Mr Serghei & Mrs Tanya Hamchecici

Members considered previously circulated report and addendum on planning applications LA09/2022/0442/RM which had a recommendation for approval.

Councillor Bell said that he would be happy to approve the recommendation.

Councillor Glasgow said that he noted an objection within the report which was a civil matter in regards to a sewer and enquired if it was a common occurrence *that* planning would be over a sewage line. He said that he was aware of the electricity line going to seven houses and assumed that Power NI wouldn't be a consultee as everything was overhead. He was a bit concerned regarding the sewage element

and appreciated that it was a civil matter between the applicant and the objector but enquired if this was a common occurrence.

The SD: PI advised if it was a Water Service sewer, it would always be wise to try and not build over a sewer, but you can get agreement to build over a sewer or a water main. Normally the agreement gives rights to Water Service to dig it all up and this is why we try to avoid it. Sometimes it may be difficult as this may be for a disabled annex or something, but it would be best to avoid if possible. There are lots of septic tanks discharge pipes going through neighbouring lands and in this instance any concerns should basically be addressed between the two affected parties privately.

Councillor McKinney enquired if NI Water were content with this as usually this was a leeway agreement.

Ms McKinless (SPO) advised that as this was a reserved matter application on the back of an outline, NI Water were not consulted, Roads Service were the only consultee. The case officer within the report referred to the fact that the sewer issue was raised at outline and was advised to be a civil matter which would be resolved between the parties concerned, also electric cable was also deemed a civil matter.

Councillor Clarke said that he was aware of the layout of the site but was hard to know as the land strokes in two or three different directions as there would be a sewage system on down past the church and school. He said if this was within the remit of NI Water and Electricity then they would have a leeway. He felt that this committee could make a decision but then any disputes would be between the applicant and the objector and would be happy to support the recommendation.

Councillor Glasgow said that he appreciated the information and when he looked up the information on the block plan on the portal and the words sewer line caught his eye on the plan running diagonal. House no. 259 the footpath runs in front of that which comes out onto the main Orritor Road which give him cause for concern as it seemed to be leaning towards the road and could be quite weird having that next to a main road. If NI Water wasn't consulted, they wouldn't have any business to look into it and that was why he raised the issue to double check there was no mains connection.

The SD: PI said that it would be his view if someone raised an issue, that this would be a civil matter and we are not judicators, but it would be right and proper for this Council to defer this until contact was made with the landowner and advise that we have had that representation and enquire how this was catered for.

The Chair enquired if Councillor Bell was still in support of approving the recommendation.

Councillor Bell said that he had listened to the debate and it looked like things had taken a turn. Dr Boomer's input outlined the fact of being more prudent and making sure that everything was being looked at and no comeback. He felt that although he would have been happy to support the recommendation, it would be more sensible to go away and look at this to make sure there was no repercussions and suggested that this application be deferred for one month until everything was looked at.

The SD: PI said that officers were not in a position to refuse the application but a deferral would be about making sure that both parties are aware and any disagreement is resolved by the two parties themselves.

Councillor Clarke concurred with what Councillor Bell had said.

Councillor McKinney felt that one month was a very tight timeline for officers and this may be the case in an ideal world but people may have other commitments and may not respond until the day before and may not happen.

The SD: PI agreed with the member that due to other work commitments it may not be feasible for officers to commit to speak to someone in a short timeframe. He said that in his opinion it wasn't a huge issue and anticipated it moving along quite quickly.

Proposed by Councillor Bell
Seconded by Councillor Clarke and

Resolved That planning application LA09/2022/0442/RM be deferred for clarification from applicant re objection letter.

**LA09/2022/0518/O Farm dwelling & garage at approx. 130m W of 59
Glengomna Road, Draperstown for Mr Dermot Bradley**

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

**LA09/2022/0573/O Site for dwelling and garage adjacent and S of 35B Kilrea
Road, Upperlands, Maghera for Mr & Mrs P Caskey**

Members considered previously circulated report and addendum on planning applications LA09/2022/0573/O which had a recommendation for approval.

Proposed by Councillor S McPeake
Seconded by Councillor McKinney and

Resolved That planning application LA09/2022/0573/O be approved subject to Conditions as per the officer's report.

**LA09/2022/0602/O Dwelling and garage at 83m NW of 30 Eden Road,
Portglenone for David Patton**

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

**LA09/2022/0618/O Dwelling and garage at lands opposite 33 Lough Road,
Ballymaguigan for Martin Doyle**

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

**LA09/2022/0619/O Dwelling and garage at 75m W of 20 Lough Road,
Ballymaguigan for Oliver O'Neill**

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

LA09/2022/0645/O Dwelling and domestic garage at 70m N of 135A Five Mile Straight, Maghera for Patrick McKenna

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

LA09/2022/0685/O 2 storey dwelling and garage to rear of 68 Drumconvis Road, Coagh for Frances Harkness

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

LA09/2022/0719/RM Single storey dwelling and garage at site 80M NE of 130 Creagh Road, Castledawson for Paddy Henry

Members considered previously circulated report and addendum on planning applications LA09/2022/0719/RM which had a recommendation for approval.

Proposed by Councillor McKinney
Seconded by Councillor S McPeake and

Resolved That planning application LA09/2022/0719/RM be approved subject to Conditions as per the officer's report.

LA09/2022/1085/F Single storey rear extension at 46 Davison Villas, Castledawson for Mr Noel McMullan

Members considered previously circulated report and addendum on planning applications LA09/2022/1085/F which had a recommendation for approval.

Proposed by Councillor McKinney
Seconded by Councillor S McPeake

Resolved That planning application LA09/2022/1085/F be approved subject to Conditions as per the officer's report.

LA09/2019/0179/F To continue use of the land and factory without complying with condition 12 of M/2011/0126/F seeking variation of opening hours condition Monday – Friday from 6am – 8pm (amended noise report) at lands 70M S of 177 Annagher Road, Coalisland for Dmac Engineering

Mr Marrion (SPO) presented a report on planning application LA09/2019/0179/F advising that it was recommended for refusal.

He drew members attention to statement within the addendum from the agent, Chris Cassidy in relation to the above application.

Councillor McKinney enquired how much over 40 dB was the noise reading.

Mr Marrion (SPO) advised that the Environmental Health Officer (EHO) said that it well exceeded the 40 dB limit.

The Chair advised that a request to speak in favour of the application and invited Mr Grainger to address the committee.

Mr Grainger referred to the noise report in which he had read and said that there may be times where noise from Dmac could impact on residential amenity, which may be a speculative conclusion, far too ambiguous and really turns a planning decisions into a potential lottery depending on what things might or might not happen. That same paragraph refers to their report in 2021 which has a BS 4142 reading of +7 Db which under no circumstances is a condition for refusal, it would need to be at least 10 or more.

Mr Grainger said that there was a joint measurement carried out in March and it was agreed that sound from Dmac was not significant on the comments that morning and if was like that, then there would be no problem. He also wished to point out that the guidelines pointed out that noise standards are set so that the majority of people are not annoyed by noise and no defining standards which says that nobody would be affected by noise. He said that he would be interested to figure out where that 40 dB came from as that does not make any sense to him as being part of a relevant standard and the dB needed revaluation.

Mr Cassidy advised that Dmac had a stringent management plan to ensure that noise does not omit from their factory. This plan ensures that all the exterior doors are enclosed with no outdoor activity taking place prior to 7am, additionally all extractor fans are on timers and do not operate before 8am and managers employed by the company to ensure that all these actions are complied with. Following the implementation of this policy a site visit was carried out by Environmental Health and consultation indicating that the noise environment was dominated by bird song during the duration of the visit. We are advising tonight that certain measurements were taken and it was stated that it exceeded the limit, our experts have not the chance to examine these. He said as Councillors, they would be irresponsible to go against Environmental Health recommendations and in this application they haven't made any, in essence they are sitting on the fence and have not seen any of their evidence. Many of the members of planning committee have visited the site themselves, it is a well-managed factory where noise outside the building cannot be heard and if this decision was rectified tonight, it has the potential to seriously affect 150 jobs. Environmental Health have confirmed that the sound levels are low and a solution here is achievable, but it requires co-operation within Environmental Health. The company believe that a future deferral for one month would be beneficial and are willing to sit down with planning staff, Environmental Health and their own acoustic expert. At the next meeting a full concise report can be presented where a recommendation from Environmental Health can be put in front of members to enable a fully informed decision.

The SD: PI said that he felt the need to intervene as there was a requirement to correct some things to make sure members were not mistakenly misled. Environmental Health does not tell planning to approve or refuse decisions and only advise if something causes harm to residential amenity. The starting point of this application was that it was the first decision the new Mid Ulster Council ever made to

approve this and this was approved with conditions which were agreeable at the time and when these conditions are put on it because they are necessary and without them the planning application would be refused. We have an application before us tonight because complaints have been raised regarding operating hours outside of pre agreed conditions. Officers have visited the site on a number of occasions and there was an impression tonight by Mr Cassidy that the building always operated with its doors being closed, however our visits have shown that this is not always the case. In The issue of noise is not about an absolute noise level but more about whether a significant change in noise levels to the deterioration to residential amenities has occurred. If it was based on public safety, noise levels could be much higher i.e. perforation of eardrums etc. This is where it gets tricky with Dmac as it is situated on the edge of Coalisland but was in the rural area and surrounded by properties within the rural area and noise levels in rural areas are much lower than suburban areas.

The SD advised that members will recall Creagh Concrete where a change to opening hours was permitted but only to allow workers to go into the site to clean machinery but not operate the machinery which struck him as a sensible approach as it did not cause significant noise and this was suggested to Dmac. They also have machines which need maintaining and he had suggested this but it appears they did not take him up on that offer. He said that the case officer reminded the business of this suggestion and nothing came back to address that. He reminded members the hours of operation had been the subject of a prosecution and that he did not wish to take further action. The bottom line is why would you be deferring it to him if he has already given a sensible way forward. He enquired if Mr Cassidy would now be prepared to change the application around on what he had suggested.

Mr Cassidy said that they would have happily worked with Dr Boomer on his suggestion made, but no-one had made this suggestion to them.

The SD: PI refuted Mr Cassidy's comments and said that this was witnessed by Dmac themselves and Environmental Health.

The SD: PI enquired if Mr Cassidy was prepared to submit information to show that no machinery would be operating and no lorries being loaded outside the core hours and then he could ask Environmental Health to assess that.

Mr Cassidy agreed and said that if this had been offered to him previously he would have jumped at the opportunity.

Councillor S McPeake felt that this was a sensible way forward proposed by Dr Boomer. He said that prior to this he was confused by listening to Mr Grainger and what was in his report and what was in our report, and still was unsure where the whole thing sits. He said that he was one of the members to visit the site that day and to him the way the area was bounded and what members saw and heard, went a long way in satisfying him that it was a good set up. He felt that this would be a sensible way forward as he was confused by listening to Mr Grainger and querying Environmental Health and agreed with Mr Cassidy in saying that Environmental Health didn't come down hard and saying that you shouldn't be doing this. Dr Boomer said that Environmental Health don't necessarily do that but still the different readings and his observations on the day tended for him to think that it was a good

operation and felt if the agent is happy with a meeting to trash out the hours and the working conditions, then he would be fully supportive of it.

Councillor Black said that he would be of the similar view to Councillor S McPeake and some clarity given around the figures and noise assessment would be useful as there seems to be some willingness from the agent on a way forward. He said that he would be happy to second proposal for a deferral.

Councillor Glasgow felt that there was only so much Dr Boomer could do and now was down to the willingness from the agent. He advised members that he had looked up the Environmental Health report on the portal which was very good and felt the interesting bit regarding decibels (dB) and hopes to hear back to a future meeting. He said that he was more interested in hearing an update regarding the site visit on the 5th May where it talked about occasional and impulsive noises and should be relayed back to Environmental Health. He enquired if Environmental Health were out doing a survey and if someone drops a lump of steel which would put it above the recommendation, it would be horrible to think that this would automatically bring a decision that you can't have it and also the comments dominated by bird song and traffic. He commended the report and said that it was very good and felt that this was something which should be taken back and looked at.

The Planning Manager said if someone was living next door to a business which operated with steel girders, clanking of machines and loading of lorries at 6 am in the morning and not a great night's sleep, which would most certainly annoy you and felt that respect should be shown here. It was a good decision at the time for Dmac, but the bottom line here is that these companies needs to abide by the decisions and conditions as set out. Noise at 6 am in the morning is very different to noise at midday.

Proposed by Councillor S McPeake
Seconded by Councillor Black and

Resolved That planning application LA09/2019/0179/F be deferred for one month for submission of additional information.

LA09/2020/1140/O Dwelling on a farm with a detached garage between 104 Ballygawley Road and an agricultural building 100m NE of 104 Ballygawley Road, Glenadush for Mr Bernard McAleer

Mr Marrion (SPO) presented a report on planning application LA09/2020/1140/O advising that it was recommended for refusal.

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

Mr McNulty stated that a dwelling in this site was refused for a Mrs Gillen in 1999, a proposal for two dwellings on the same site was also refused by planners in 2010 for six different reasons including 13 and 14 of CTY10 for this same applicant Mr McAleer. Mr McClean (SPO) came and examined the site and had a very detailed

and comprehensive report on the portal and the report should be read in full. The case officer stated “that there should never have been a dwelling in this site in any circumstances” he also stated for the same reason the planners’ refusal in 2010. Mr Marrion (SPO) visited the site in September 2021 and took a photograph of 8 sheep in a field and within his report he states that he had seen 8 sheep on the site, therefore he deemed the site as an active farm with this visual information. Since that visit it had transpired that an examination of herd books belonging to the applicant and grid plan references, the applicant did not have one animal of any description on this site ever. We contend that the applicant does not have the 6 year active farmer stipulation on proposed site which Mr Marrion (SPO) is aware of. The herd book location is at Killymeal Road, Dungannon where details are evident on the portal. He felt that this was a deceitful act by the applicant to fool senior planners that the sheep on the site were his and on his flock book when planners visited the site. On 14 December the applicant’s architect made the following written statement “we concede that the client is not an active farmer nor the field in an active farm” which is also evident on the portal. The applicant was not an active farmer all his life and went for farming when field was refused and he is not a small farmer refused a dwelling who has farmed for generations or for his family. The applicant bought this site in 2007/08 for £70k at the top of the boom and failed to sell it recently. The Lamont, Re Judicial Review speaks for itself, it must be an established group of buildings on the farm. This rule and the 6 year rule was passed to deter speculators who bought a small piece of ground and use farming as a means to achieve dwellings in the countryside, these rules are there to protect farmers and the landscape also. The published advice does not state that a single dwelling such as a stable even large, can be considered as an established group of buildings on a farm. The Judge in the highest court of Northern Ireland is very clearly stating that a single building no matter how large does not fit the policy and felt that it would be very prudent and sensible to accept the ruling from a High Court Judge of Northern Ireland and not to overthrow his opinion.

Councillor McFlynn left the meeting at 8.17 pm and returned at 8.19 pm.

Councillor Bell left the meeting at 8.17 pm and returned at 8.19 pm.

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

Mr Cushnahan advised that DfI Roads had no objections subject to conditions which were achievable and the case officer has addressed all concerns in meticulous detail. The case officer has established that this application was an active farm business for more than 6 years and we accept that there is only one building on the holding and as such the application does not comply with CTY10 as any new building could not be sited to visually within a cluster with a group of farm buildings. It’s our understanding that policy calls for an established group of buildings on a farm which will integrate with its surroundings. It should be noted that there is an agricultural building on the other side of the western boundary hedge which is adjacent to the applicant’s shed and a number of detached dwellings, garages and large sheds lining the applicant’s eastern boundary. Although these buildings are not within the applicant’s site, they do provide a context of a cluster, with this proposal will be site within. The case officer indicates that the site characteristics is such that conditions are applied to the outline permission to restrict the ridge height

from floor level and retain mature hedging etc. then the house could integrate and be acceptable. It is our hope that the committee members that a stringent interpretation of this policy isn't duly harsh and in this instance we humbly request the committee exercise their power to approve this application as an exception to policy. The applicant accepts conditions indicated in an earlier deferral report.

In response to a member's query, Mr Marrion (SPO) advised that figure 3 shows the site as it was in 2020. He said that there was a building to the right hand corner but that it was not the applicant's field.

The SD: PI said that it was evident that there was a building there, but you cannot say buildings when they belong to someone else. When a judge makes a ruling, he is not making up a policy or a decision on the planning application of the case site and what he has said is that the officers has misinterpreted the policy and in that instance he was flagging up the policy and whether there was buildings on the farm. He said whether you like a policy or not an exception can be made if there is good planning reason for it and this was obviously a matter for the decision makers. In reference to comments made by an officer stating that there should never be a building on the site, would be careful on citing anything like that as no-one knows what happens in the world overtime and policies and rules change and if it was prior to 2010 it would have been a different policy. He referred to comment made about deception and would have to distance officers and members of the committee on any comments made because that is the view of the person who is against this application. The farm was registered for a business number in 2019 and has been registered for 3 years and it's his understanding that the business number relates to cattle.

Mr Marrion (SPO) confirmed that the business number related to cattle and sheep.

The SD: PI said that officers spent a lot of time determining whether this shed would get approval in the first place and a lot of views given. There were some views that this building was going to be used for other purposes, but he recalled that there would be farm activity relating to special type of cattle and sheep from Scotland and keeping cattle on the land meets criteria. He said that he could understand the objector's point of view, but we actually know from decisions which were previously made that a business is where a transaction takes place and this could also be related to selling hay and not as simple as having livestock which has to occur over a 6 year period. The notion of active isn't even clear and could be the keeping of livestock, growing of food stuff and plants or just be keeping land in good agricultural condition which we decided before that these tests were met.

He stated that if it was decided that things were not going to be met, then why was this decision made previously and does not mean to say that we don't get it wrong, but there was a need to get it sorted out.

In relation to the buildings we would have to give a good reason why it would be turned down and can see that it may be a bit harsh as it was a huge building and could be seen as 2 small buildings and need to see if it could be treated as an exception. This could be done as you would need to determine if the spirit of the policy was being met and what was there was a farm and a building was clearly used

as a farm, the position of the dwelling was going to be clustering to give it an impression of a farm group.

Mr Marrion (SPO) said there was a suggestion the shed was being used as a cattle store and advised that he was liaising with enforcement officers as there was an enforcement on this which was not closed, but there is nothing to suggest that it was being used for anything untoward.

Councillor Cuthbertson agreed that it was a little complicated but evidence did show that there was an active farm business and referred to suggestion of a site meeting, he asked if the case officer would explain the site again to members and where the shed was located that was approved in 2018. He said that from memory it was his understanding that the applicant had to move the building to the other side of the field to accommodate objectors. He advised that the committee did not hear about the impact of this proposed dwelling would have on the neighbouring properties and would be keen to hear views and possibly a site meeting to trash that out.

The SD: PI confirmed that the shed was moved to an alternative site and felt that it was the right thing to do as no-one wanted a huge shed at their back door.

Mr Marrion (SPO) advised that previous objections lodged were with regard to nuisance from the agricultural building. There is two lanes which run to property at the back with a high hedge along the laneway.

The SD: PI said if the case was that it could be better sited, would the applicant be prepared to consider this and stated that the siting was easily sorted which could be looked at. He said that this was not about siting and more about the principle and about moving to that stage and members saying that they were really going to make an exception to the policy. If members had sympathy to make an exception he would feel very strongly in instances like this to go out and look at it and then come back and tell us whether it should be classed as an exception.

Councillor S McPeake said that the issue he had was around the principle opposed to the siting. We heard from the objector that his clear view was that it was not an entitled business, then the case officer advising that it was current and active business for 6 years and if that was the factual way of it, then the other tests fall into place. He believed that we were dealing with a small bit of semantics here as there was already one shed in-situ, with quite a big curtilage around the shed and if there had of been another smaller shed or building beside it, then this would have been classed as two buildings and wouldn't have this issue. He referred to the recommendation which did not stand out in terms of undue integration, it integrates well with a low level house wouldn't unduly impact on the landscape. He said that although he was sympathetic to the objector, if it meets the requirement of the business as there was already one shed there he would be happy to second proposal for a site visit.

The SD: PI said that his feeling of the policy is that you really have to look at what the purpose of the policy is and this is about clustering buildings together and that rural houses in the rural area keep what the characteristics of what is a traditional farm house in the grouping. He felt that if members had seen this on site and their view that it was put in the appropriate place, it would read what you would expect it

to read for that reason that it was a building on a farm and this would be making an exception. On that basis he felt that this should be a reasonable way to make a decision and the only reason he was suggesting to look at it was because he was conscious there was an objection and felt for both parties they deserve that.

Councillor McKinney said that he didn't believe that it was a farm business as it has been active for 3 years which overlooks the 6 year rule. If a person owned a goat and owned a piece of land the size of this room, it would need to be registered to be a flock number as goats and sheep are known as one animal on a flock record book and a requirement to have a business ID number. He said if he remembered correctly, the site was under 7.5 acres which may be a hobby farm and cannot determine if it was a farm business or not and would like that clarified by Department of Agriculture. He recollected that this shed was approved for the benefit for the welfare of sheep to rest in the winter months and said that although he doesn't know a great deal about sheep, he felt the size of the shed and the number of sheep referred to within the report did not match up. It was previously stated that the farm number referred to in 2011, but this is a new number applied in 2019 and there were applicants before who were short of 1 or 2 months from the 6 year rule and they were turned down and felt there was a need to be consistent as one rule should be for all.

Mr McNulty advised that it was out of the applicant's name for a number of years until 2015 and was previously in his son's name who resided in England in terms of Land Registry.

The SD: PI advised that the applicant was in ownership of the land from 2015 which was 7 years. He said that Mr McNulty was correct in what he was saying but planning and Department of Agriculture's rules were for different purposes and this was where it got tricky especially when rules were changed regarding farm payments etc. Policy does not make any differential what type of farm business it was and all it asked for is evidence that there has been a business which involved transactions, which may include many things including selling of products like hay, produce etc. and also that land is kept in good agricultural condition or environmental condition and then this is deemed to be active.

Councillor Robinson left the meeting at 8.52 pm and returned at 8.54 pm.

Councillor Colvin said that he had listened to Dr Boomer very carefully who was our resident expert on these matters. He said that it was his understanding that essentially what was being said here was that this application ticks a lot of boxes and one little area of policy which it doesn't meet which was the whole clustering situation. He said that it has already been proposed and seconded by other members that it would be beneficial to go out and look at the site on the ground which would provide all the relevant information. He agreed with the suggestion of a site meeting.

Mr Marrion (SPO) in response to members query advised that he could not confirm what the other sheds were used for, but could say that planning permission was granted for the large grey shed.

Councillor Bell sought clarity in relation to the spirit of the policy as there was already a building there and did recall in the past where there were conversations around if someone genuinely wanted to farm land but did not have a farm building, that they were being disadvantaged to go ahead and build a dwelling on that particular piece of farming land. He said therefore it would prevent an aspiring farmer from actually going into farming.

The SD: PI advised that approval was granted even though there hadn't been a building as it was quite feasible to have a farm but not have a building and a classical example could be that it was a family holding and land given to one son within the last 7 or 8 years which he may be farming a few times a year which could be classed as an exception as it has been through careful consideration of the known facts. He said that his interpretation was that the policy was about visual matters and that this was the only reason why it should be looked at.

Councillor Clarke concurred with Councillor Bell and said that he had always concerns around this as there was a huge disadvantage within the rural countryside as there could be 100 acres of land but no buildings or trees. He enquired why the policy specifies buildings, with approximately 10,000 farmers within this region who were farming land without buildings. He said that there was more to farms than a building and really needs to be investigated in the future as this policy does not suite all active farms.

The Chair said that this was a point well-made but this was a debate for another night.

Proposed by Councillor Cuthbertson
Seconded by Councillor S McPeake and

Resolved That planning application LA09/2020/1140/O be deferred for a site visit.

LA09/2020/1615/F Dwelling with integrated annex and garages at site adjacent to 18 Lowertown Road, Dungannon for Brian Wilson

Members considered previously circulated report and addendum on planning applications LA09/2020/1615/F which had a recommendation for approval.

Proposed by Councillor Colvin
Seconded by Councillor Robinson and

Resolved That planning application LA09/2020/1615/F be approved subject to Conditions as per the officer's report.

LA09/2021/0860/O Dwelling and garage at site adjacent to 27 Waterfoot Road, Ballymaguigan, Magherafelt for Jim O'Neill

Members considered previously circulated report and addendum on planning applications LA09/2021/0860/O which had a recommendation for approval.

Proposed by Councillor Colvin
Seconded by Councillor Robinson and

Resolved That planning application LA09/2021/0860/O be approved subject to Conditions as per the officer's report.

LA09/2021/0952/F Extension to existing curtilage & domestic storage shed at 45m S of 211A Washingbay Road, Coalisland for Mr Tony McCuskey

Members considered previously circulated report and addendum on planning applications LA09/2021/0952/F which had a recommendation for approval.

Proposed by Councillor Colvin
Seconded by Councillor Robinson and

Resolved That planning application LA09/2021/0952/F be approved subject to Conditions as per the officer's report.

LA09/2021/1497/F Retention of existing access, walls and pillars (amended plans) at 22 Ballynagowan Road, Stewartstown, Dungannon for Enda & Nuala Devlin

Members considered previously circulated report and addendum on planning applications LA09/2021/1497/F which had a recommendation for approval.

Proposed by Councillor
Seconded by Councillor

Resolved That planning application LA09/2021/1497/F be approved subject to Conditions as per the officer's report.

Matters for Information

P126/22 Minutes of Planning Committee held on 6 September 2022

Members noted minutes of Planning Committee held on 6 September 2022.

P127/22 Receive Report on Invitation from Caledon Regeneration Partnership

Members noted report on Caledon Regeneration Partnership Invite to co-design new Village Community Plan and Conservation Area Design Guidance.

Councillor Cuthbertson left the meeting at 9.02 pm

Live broadcast ended at 9.02 pm.

Local Government (NI) Act 2014 – Confidential Business

Proposed by Councillor Robinson
Seconded by Councillor S McPeake 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 P128/22 to P131/22.

Matters for Decision

P128/22 Local Development Plan

Matters for Information

P129/22 Planning Committee Confidential Minutes of Meeting held on 6 September 2022

P130/22 Enforcement Cases Opened

P131/22 Enforcement Cases Closed

P132/22 Duration of Meeting

The meeting was called for 7 pm and concluded at 9.15 pm.

Chair _____

Date _____

Annex A – Introductory Remarks from the Chairperson

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

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

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

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

proceedings (whether now or later), or making a contemporaneous oral report of any of the proceedings are all prohibited acts.

Thank you and we will now move to the first item on the agenda - apologies and then roll call of all other Members in attendance.