

**Minutes of Meeting of Planning Committee of Mid Ulster District Council held on Tuesday 3 September 2019 in Council Offices, Ballyronan Road, Magherafelt**

**Members Present** Councillor Mallaghan, Chair  
  
Councillors Bell, Black, Brown, Clarke, Colvin, Cuthbertson, Gildernew, Glasgow, Kearney, McKinney, D McPeake, S McPeake, Quinn, Robinson

**Officers in Attendance** Mr Tohill, Chief Executive  
Dr Boomer, Planning Manager  
Mr Bowman, Head of Development Management  
Ms Doyle, Senior Planning Officer  
Ms McCullagh, Senior Planning Officer  
Ms McEvoy, Head of Development Plan and Enforcement  
Mr Marrion, Senior Planning Officer  
Ms McNally, Council Solicitor  
Miss Thompson, Democratic Services Officer

**Others in Attendance** Councillor McFlynn  
**Applicant Speakers**  
LA09/2018/1249/F Mr Loughran  
Mr Quinn  
LA09/20190573/F Councillor McGinley  
LA09/2019/0721/O Mr Cassidy  
LA09/2019/0837/O Mr Cassidy  
LA09/2019/0846/O Mr Finlay  
LA09/2019/0849/O Mr Finlay  
LA09/2018/1569/F Mr Hughes  
Mr McPeake  
LA09/2019/0931/F Councillor B McGuigan

The meeting commenced at 7.03 pm

**P098/19 Apologies**

None.

**P099/19 Declarations of Interest**

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

Councillor S McPeake declared an interest in agenda item 4.22 - planning application LA09/2019/0765/O.

## **P100/19 Chair's Business**

The Chair, Councillor Mallaghan advised of a change to the order of the agenda and that agenda item 13 – Receive Notification of Drilling from Shackleton Resources would be heard first in Open Business.

## **P101/19 Receive Notification of Drilling from Shackleton Resources**

The Planning Manager presented previously circulated report which outlined notification from Shackleton Resources Ltd of its intention to use its permitted development rights under licence KOZ1/16 to drill up to 12 boreholes on lands between Orritor and Churchtown to the North West of Cookstown.

The Planning Manager stated that the Committee were not being asked their opinion on whether drilling was right or not but rather whether there was a good reason why permitted development rights should be removed. The Planning Manager advised that the Planning Committee cannot defer this item to Council as a decision is required by 10 September 2019. Members were advised that they can either decide to do nothing or remove permitted development rights and that if the Committee decide that permitted development rights should be removed this will then be sent to the Department for their consideration. The Planning Manager advised that in the short time between receiving the notification and tonight's meeting, officers had consulted with Environmental Health and Shared Environment and asked the Head of Development Management to provide update. The Planning Manager advised that correspondence had also been received by Friends of the Earth which had been circulated to Members.

The Head of Development Management advised that Environmental Health had been asked to determine the potential impact of the drilling and had stated that they had no objection subject to prior notice of any drilling being given to neighbouring residents, the contact details of a Shackleton representative being given to neighbouring residents, noise assessments being taken and additional mitigation measures being taken where possible. It was further advised that if any lighting rigs are required that suitable receptors should be put in place.

The Head of Development Management stated that Shared Environment had responded that they felt that temporary nature of the drilling would not have any significant impact.

Councillor Clarke stated that the proposal did give cause for concern, the Councillor referred to previous permission given for surveying to be done and that over the last weekend both a helicopter and two aeroplanes appeared to be surveying in the area. Councillor Clarke stated he realised this may have had nothing to do with the permission for surveying but if it was it had taken place without the prior notification of residents which was supposed to be the case. The Councillor stated that this did not give residents any confidence going forward. Councillor Clarke stated that given the concerns over the proposal he would propose that the Committee object to the permitted development rights to drill up to 12 boreholes.

The Planning Manager stated that the Committee have to decide whether the proposal would fall under any of the grounds within Article 7(2) of the Order if they want to remove permitted development rights. The Planning Manager stated it was reasonable to say

that the Committee was concerned over the proposal and the fear it creates in the community, he further advised that if the Committee decide to remove permitted development rights this decision is then put to the Department who can take their own decision on it.

The Council Solicitor stated that the Committee can make a direction if it feels expedient to do so but that it should set out its reasons and which of the ground(s) in Article 7(2) were relevant.

The Chair, Councillor Mallaghan stated that the Committee wanted to remove permitted development rights because the drilling could have serious impacts on residential amenity and only by removing permitted development rights could proper scrutiny be given.

The Planning Manager advised that if the Department supports the decision to remove permitted development rights then the applicant can still submit a planning application, the Planning Manager stated that one benefit of a planning application being submitted was that full consideration could be given as to whether considerable harm will be caused by the drilling.

Councillor Colvin stated he had received a phonecall from a person who lives on neighbouring land to where drilling is proposed and who only found out about the proposals today through a Facebook post. The Councillor stated that this was not a good impression of how things may progress in the future and that the neighbour was very concerned.

Councillor Brown questioned what an acceptable distance is between a dwelling and a drilling site as there appeared to be three or four dwellings within 80m of the proposed site. Councillor Brown stated that it would ultimately be the people living in the neighbouring community who would be left to live with the consequences of a decision. Councillor Brown seconded Councillor Clarke's proposal.

Councillor Kearney stated he agreed with the comments made.

The Council Solicitor clarified that it was the opinion of the Committee to remove the Permitted Development Rights of Shackleton Resources Ltd to drill up to 12 boreholes from 2 locations within the licence KOZ1/16 as it did not agree with the consultation response from Environmental Health and that any drilling would have a detrimental effect on the neighbouring community.

The Planning Manager stated it was important to stay within criteria of the legislation and based on what was before the Committee tonight, that it appeared that the proposed development would cause a serious nuisance to those living in nearby residential building(s).

**Resolved** That the Council is satisfied that it is expedient that a direction is made under Article 7 that the development, notified to it by Shackleton Resources Ltd to drill up to 12 boreholes from 2 locations within the licence KOZ1/16, should not be carried out unless permission for it is granted on an application.

## **Matters for Decision**

### **P102/19 Planning Applications for Determination**

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

Agenda Item 4.3 – LA09/2018/0765/O – Dwelling and garage to the rear of 13 Fairhill Road, Cookstown for Mr Paul Quinn.

Agenda Item 4.8 – LA09/2019/0174/F – Dwelling and garage at approx. 40m NNE of 49 Gortahurk Road, Desertmartin for Mr Mark Madden.

Agenda Item 4.10 – LA09/2019/0357/F – Retention of container at 42 Main Road, Moygashel, Dungannon for Mr Bryan Turkington.

Agenda Item 4.11 – LA09/2019/0385/O – Dwelling and garage 20m N of 34 Waterfoot Road, Ballymaguigan for Paul Johnson.

Agenda Item 4.14 – LA09/2019/0423/F – Retention of single storey domestic garage and storage building, including an increase in the curtilage of the site at 63a Ballymacombs Road, Bellaghy for Donal O'Cearnaigh.

The Chair also advised that Agenda Item 4.1 – LA09/2017/1027/F – Demolition of existing porch area, relocation of existing smoking area at 86 Chapel Street, Cookstown for Kilmegan Ltd had been withdrawn.

Proposed by Councillor Robinson  
Seconded by Councillor S McPeake and

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

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

**LA09/2017/1027/F Demolition of existing porch area, relocation of existing smoking area at 86 Chapel Street, Cookstown for Kilmegan Ltd**

Application withdrawn.

**LA09/2018/0248/F Extension to an existing workshop; roof infill to existing yard; additional ventilation stacks and associated equipment at 116 Deerpark Road, Toomebridge for SDC Trailers Ltd**

Members considered previously circulated report on planning application LA09/2018/0248/F which had a recommendation for approval.

Proposed by Councillor S McPeake  
Seconded by Councillor McKinney and

**Resolved** That planning application LA09/2018/0248/F be approved subject to conditions as per the officer's report.

**LA09/2018/0765/O Dwelling and garage to the rear of 13 Fairhill Road, Cookstown for Mr Paul Quinn**

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

**LA09/2018/1249/F Extension to garage to include office, storage and WC including extension to curtilage at 23 Dunamore Road, Cookstown for Mr Michael Quinn**

Ms McCullagh (SPO) presented a report on planning application LA09/2018/1249/F advising that it was recommended for approval.

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

Mr Loughran questioned why the applicant could not site his proposal to the west of 23 Dunamore Road. Mr Loughran stated that the applicant was an architect and that the original application had been for an office and gym but that the gym element of the proposal had now been removed, Mr Loughran also questioned how this had come about as he stated an unauthorised gym continued to operate from this address and this could be confirmed through Facebook posts. Mr Loughran further stated that residents have observed increased activity in the area (traffic, noise) from people coming to use the gym as recently as yesterday. Mr Loughran stated he was aware of the live enforcement case relating to the gym and he wanted to see this pursued, Mr Loughran also asked if any enforcement action had been taken on noise pollution coming from the gym. Mr Loughran referred to consultation with DfI and that they have no concerns regarding road safety or traffic flow and felt that DfI had not considered the extra traffic caused by the gym.

Mr Quinn stated that the application is for an extension to a domestic garage and does not allow for commercial activities, it was advised that the extension is to provide space for an office for his architectural business which he is currently operating from a spare bedroom in his house. Mr Quinn stated that his proposal will not impact on amenity and that an objection relating to obstruction of view is immaterial as no one has a legal entitlement to a view, as stated in the officers report. Mr Quinn stated that a decision on the gym should have no bearing on this application and that endeavours were being made to relocate the gym to a more appropriate area.

The Planning Manager stated that there were clear allegations that a gym was still being operated from the garage and asked Mr Quinn if this was the case.

Mr Quinn confirmed that the garage was still being used as a gym.

The Planning Manager questioned why the Committee should trust Mr Quinn as he has stated an unauthorised gym is being used at the address.

Mr Quinn stated that he was waiting on enforcement notice to be served in relation to the gym and that there was an application lodged to relocate the gym.

The Planning Manager stated that the applicant was an architect who was aware that a gym was unauthorised and questioned whether it was appropriate or good practice to come before Members and state that a business was continuing because an enforcement notice had not been served.

Mr Quinn stated that the gym was 4x5m in size and could only accommodate a maximum of four people at a time.

In response to question from the Planning Manager, Mr Quinn stated that there would be no people coming and going from the architectural office.

The Planning Manager stated that it is the comings and goings from people and traffic that causes a nuisance and that whilst there is clearly an unauthorised gym, this is immaterial to the decision before the Committee now.

The Chair, Councillor Mallaghan asked if it would be reasonable to attach a noise condition if the Committee was minded to approve the application.

The Planning Manager stated that it would not be normal to attach a noise condition to a domestic garage and that the application should be taken at face value.

The Council Solicitor referred to informative attached to approval in that the permission does not allow for the use of a commercial gym or any other commercial purpose and whether this informative should be changed to a condition.

The Planning Manager felt that it was best to leave as an informative.

Councillor Bell asked if a report had been submitted on vehicular movements.

The Planning Manager stated that the application had been assessed as a domestic garage, as applied for, and not as a gym, therefore a report was not needed.

Councillor Glasgow proposed the approval of the application and commented that Council has a strong enforcement team who will look at the enforcement case.

In response to Councillor Brown, Ms McCullagh stated that an enforcement case had been opened on the matter and that investigations were ongoing.

The Planning Manager stated that any enforcement action will be dealt with separately.

Councillor McKinney seconded Councillor Glasgow's proposal but felt that the matter would come before the Committee again in the future.

**Resolved** That planning application LA09/2018/1249/F be approved subject to conditions as per the officer's report.

**LA09/2018/1435/F 2 farm sheds 55m WSW of 55 Springhill Road, Ballindrum, Money more for Mr Kevin Moran**

Members considered previously circulated report on planning application LA09/2018/1435/F which had a recommendation for approval.

Councillor Clarke proposed the approval of the application.

Councillor McKinney seconded Councillor Clarke's proposal.

Councillor Colvin stated he lived at 54 Springhill Road and that whilst he did not have a difficulty with the application he advised he did not receive any neighbour notification. The Councillor felt that there was something seriously wrong with the neighbour notification process in that someone could live adjacent to a proposed development and not receive notification.

The Planning Manager asked officers to check neighbour notification for this application as the application could not legally go ahead if there were people who should have been notified and were not.

The Chair, Councillor Mallaghan stated that the Committee would return to this application when officers had checked information on file.

**LA09/2018/1481/F Car parking facilities and designated pedestrian crossing at approx. 25m NE of 2 Lisnamuck Road, Tobermore for Tobermore Concrete Ltd**

Members considered previously circulated report on planning application LA09/2018/1481/F which had a recommendation for approval.

Proposed by Councillor McKinney  
Seconded by Councillor Kearney and

**Resolved** That planning application LA09/2018/1481/F be approved subject to conditions as per the officer's report.

**LA09/2019/0018/O Dwelling and garage approx. 18m W of 66 Killycanavan Road, Dungannon for Patsy Ryan**

Members considered previously circulated report on planning application LA09/2019/0018/O which had a recommendation for approval.

Proposed by Councillor Gildernew  
Seconded by Councillor S McPeake and

**Resolved** That planning application LA09/2019/0018/O be approved subject to conditions as per the officer's report.

**LA09/2019/0174/F Dwelling and garage at approx. 40m NNE of 49 Gortahurk Road, Desertmartin for Mr Mark Madden**

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

**LA09/2019/0338/F Retrospective domestic garage (substitution previously approved LA09/2015/0985/F) and extension to existing residential curtilage at lands to the rear of 7 Ballyheifer Road, Magherafelt for Mr Nicky Brown**

Members considered previously circulated report on planning application LA09/2019/0338/F which had a recommendation for approval.

Proposed by Councillor McKinney  
Seconded by Councillor Brown and

**Resolved** That planning application LA09/2019/0338/F be approved subject to conditions as per the officer's report.

**LA09/2019/0357/F Retention of container at 42 Main Road, Moygashel, Dungannon for Mr Bryan Turkington**

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

**LA09/2019/0385/O Dwelling and garage 20m N of 34 Waterfoot Road, Ballymaguigan for Paul Johnson**

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

**LA09/2019/0399/F Extension to existing lorry repair garage at 67 Eskragh Road, Dungannon for Gary Montgomery**

Members considered previously circulated report on planning application LA09/2019/0399/F which had a recommendation for approval.

Proposed by Councillor Robinson  
Seconded by Councillor Gildernew and

**Resolved** That planning application LA09/2019/0399/F be approved subject to conditions as per the officer's report.

**LA09/2019/0419/O Dwelling on a farm 125m E of 76 Rhone Road, Drummond for Emmett Kelly**

Members considered previously circulated report on planning application LA09/2019/0419/O which had a recommendation for approval.

Proposed by Councillor Gildernew  
Seconded by Councillor Quinn and



**Resolved** That planning application LA09/2019/0419/0 be approved subject to conditions as per the officer's report.

**LA09/2019/0423/F Retention of single storey domestic garage and storage building, including an increase in the curtilage of the site at 63a Ballymacombs Road, Bellaghy for Donal O'Cearnaigh**

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

**LA09/2019/0426/F Retention of access, (approved under M/2014/0447/F), as a permanent agricultural access at 37 Killymeal Road, Dungannon for St Patrick's Academy**

Members considered previously circulated report on planning application LA09/2019/0426/F which had a recommendation for approval.

Proposed by Councillor Clarke  
Seconded by Councillor Bell and

**Resolved** That planning application LA09/2019/0426/F be approved subject to conditions as per the officer's report.

**LA09/2019/0438/F 2 storey accommodation block to provide 6 no. 2 bed apartments at 80A Fairhill Road, Cookstown for Care Facilities Ltd**

Members considered previously circulated report on planning application LA09/2019/0438/F which had a recommendation for approval.

Proposed by Councillor Glasgow  
Seconded by Councillor Robinson and

**Resolved** That planning application LA09/2019/0438/F be approved subject to conditions as per the officer's report.

**LA09/2019/0482/F Retention of cattle house; new agricultural feed storage shed at 9 Crubinagh Road, Dungannon for Mr Adrian Daly**

Members considered previously circulated report on planning application LA09/2019/0482/F which had a recommendation for approval.

Proposed by Councillor Gildernew  
Seconded by Councillor Clarke and

**Resolved** That planning application LA09/2019/0482/F be approved subject to conditions as per the officer's report.

*Councillor Glasgow left the meeting*

**LA09/2019/0573/F 2 lodges for short term accommodation adjacent to Lough Shore Nature Area, 210m SW of 35 Brookend Road, Ardboe for Mr Donal Coney**

Mr Marrion (SPO) presented a report on planning application LA09/2019/0573/F advising that it was recommended for refusal.

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

Councillor McGinley stated that the applicant realises that there are gaps in the information he submitted and asked that the application be deferred to allow the applicant to put forward the additional information.

The Planning Manager stated that, as it stands, an argument would need to be made to keep the application to 2 units as the policy is quite odd in that consideration can be given to 3 units but not 2.

Councillor McGinley stated that it was his understanding that the applicant had looked at a precedent in Pomeroy and that there were things the applicant was willing to give further consideration to.

Proposed by Councillor Quinn  
Seconded by Councillor Gildernew and

**Resolved** That planning application LA09/2019/0573/F be deferred to allow for additional information to be submitted.

**LA09/2019/0609/O Dwelling and domestic garage at lands between 9a and 11a Loughans Road, Aughnacloy for Brendan Treanor**

Members considered previously circulated report on planning application LA09/2019/0609/O which had a recommendation for approval.

Proposed by Councillor Gildernew  
Seconded by Councillor Robinson and

**Resolved** That planning application LA09/2019/0609/O be approved subject to conditions as per the officer's report.

**LA09/2019/0673/F Temporary storage facility at 48 Coalisland Road, Dungannon for Maximus Crushing and Screening**

Members considered previously circulated report on planning application LA09/2019/0673/F which had a recommendation for approval.

Proposed by Councillor Quinn  
Seconded by Councillor Bell and

**Resolved** That planning application LA09/2019/0673/F be approved subject to conditions as per the officer's report.

**LA09/2019/0721/O Dwelling and garage 25m NE of 162 Ballynease Road, Portglenone for Mr Adrian McErlean**

Ms McCullagh (SPO) presented a report on planning application LA09/2019/0721/O advising that it was recommended for refusal.

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

Mr Cassidy stated that the site is 250m from the main road, up a private lane and hidden from view in a cluster of 6 buildings and that all buildings either front or edge the laneway. Mr Cassidy referred to photograph and that the dwelling outlined in red adjacent to the site was the family home who were supportive of the application. Mr Cassidy stated that the dwelling outlined in blue on the other side of the site had submitted an objection on the basis of amenity and ground issues, which Mr Cassidy felt was immaterial, it was advised that it is proposed to retain existing vegetation. Mr Cassidy stated that as the application met with policy he would request that it be approved.

The Planning Manager stated that when a deferral is requested and a policy reason is given then it will usually be granted. In this case, there has been a previous application which has been refused, the Planning Manager stated that the proposal will alter the amenity of the area and urged caution to Members as an objection had been received. The Planning Manager stated that if the application should be approved then recourse for the objector is Judicial Review, if the application is refused then the applicant can go to planning appeal.

The Council Solicitor asked for clarification on the reasons for refusal.

The Planning Manager felt the reasons for refusal were that the application was contrary to Policy CTY1 – no reasonable need for development, Policy CTY2a – the development is not considered to be within a cluster, Policy CTY8 – the development does not represent a gap/infill site. The Planning Manager stated that the fundamental issue relating to this application was neighbouring amenity owing to the objection received.

In response to question from Councillor S McPeake, Ms McCullagh advised that there was a post and wire fence setting out the boundary of the second field.

Councillor S McPeake stated he felt that the proposal did appear to represent an infill opportunity and if the dwelling was sited further back in the field then amenity impact may be lessened.

The Planning Manager stated that if the Committee decide to approve this application in light of the previous refusal then the reasons need to be set out. The Planning Manager stated that if the dwelling is sited in the middle of the field then it will obviously effect neighbouring amenity and morning light at certain times of the year. If moved to the back

of the field then the effect on amenity would be lessened but the application would then fail to meet infill.

Councillor Gildernew stated he agreed with Councillor S McPeake and that the site was ideal only for the objector.

Councillor Bell asked if the house to the southwest of the objector was a new property and does it not also impact on amenity.

The Planning Manager stated that the property probably was newer and did not feel it was impacting on amenity, furthermore, this was not the decision before Members tonight. The Planning Manager stated it was a simple decision and that if minded to approve the application then it needed to be conditioned.

Councillor McKinney stated that very often developments within towns do not have the same level of amenity. Councillor McKinney proposed that the application be approved.

Councillor Gildernew seconded Councillor McKinney's proposal.

Members discussed conditions to be attached to the approval.

The Council Solicitor asked for clarification on the reasons for objection and whether it was broad or specific to the current proposed site.

Ms McCullagh read the letter of objection and the Planning Manager stated that the objection was based on neighbouring amenity in the broadest terms.

The Planning Manager referred to advice from DfI in that, if the Committee are minded to approve the application that the laneway needs to be brought up to an adoptable standard as there are over 5 dwellings sited on the lane. The Planning Manager advised that it was normal practice to require laneways in urban situations to be brought up to adoptable standards, however in rural situations such as this it is often not achievable to meet these standards, in recognition of this DfI have advised that conditions may be applied and this in within the officer report.

**Resolved** That planning application LA09/2019/0721/O be approved subject to standard conditions and a dwelling ridge height of 5.5m.

*Councillor S McPeake withdrew from the meeting*

**LA09/2019/0765/O Dwelling and garage 50m NE of 28 Broagh Road,  
Knockloughrim for Sean McPeake**

Members considered previously circulated report on planning application LA09/2019/0765/O which had a recommendation for approval.

Proposed by Councillor D McPeake  
Seconded by Councillor Gildernew and

**Resolved** That planning application LA09/2019/0765/O be approved subject to conditions as per the officer's report.

*Councillor S McPeake rejoined the meeting*

**LA09/2019/0794/RM Dwelling and domestic garage at lands between 103 Killymeal Road and 7 Edendork Road, Dungannon for Moreno Landi**

Members considered previously circulated report on planning application LA09/2019/0794/RM which had a recommendation for approval.

Proposed by Councillor Bell  
Seconded by Councillor Colvin and

**Resolved** That planning application LA09/2019/0794/RM be approved subject to conditions as per the officer's report.

**LA09/2019/0818/RM Replacement dwelling at 160m SE of 35 Mullybrannon Road, Dungannon for Syerla Enterprises Ltd**

Members considered previously circulated report on planning application LA09/2019/0818/RM which had a recommendation for approval.

Proposed by Councillor Gildernew  
Seconded by Councillor Colvin and

**Resolved** That planning application LA09/2019/0818/RM be approved subject to conditions as per the officer's report.

**LA09/2019/0837/O Site for a dwelling and garage 40m NW of 13 Brookemount Road, Cookstown for Mr Terry Devlin**

Ms McCullagh (SPO) presented a report on planning application LA09/2019/0837/O advising that it was recommended for refusal.

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

Mr Cassidy stated that in relation to this application there are five dwellings which can all be seen together as an entity. Mr Cassidy advised that the site was bounded on two sides and that vegetation on all boundaries will be retained. In relation to focal point, Mr Cassidy stated that policy does not define what a focal point is and that he would contest that there are two focal points in the vicinity (I) A listed monument located opposite the site which attracts visitors all year round (II) The Church of Ireland Manse located 20m away and visible from the development site. Mr Cassidy did not feel that the development would have any adverse impact and asked that the application either be deferred for an office meeting or approved.

Councillor S McPeake asked if the boundary constitutes proper separation.

The Planning Manager stated that a site should provide a suitable degree of enclosure and be bounded on two sides. In this instance the Planning Manager stated that there were good boundary hedges and that there is a dwelling to one side of the site and one opposite. The Planning Manager stated there was a Manse located nearby, the question was whether this is a focal point. The Planning Manager stated that the Committee had to operate under policy and that in some circumstances discretion can be given but this needs to be worked through.

Councillor Brown stated he had checked Google maps and that the focal points being used were not viewable from the development site, furthermore, there appeared to be a septic tank and telegraph pole in the middle of the site.

The Planning Manager stated that Councillor Brown's comments were in line with what was in the officers report.

The Council Solicitor stated that whether or not there is a septic tank/telegraph pole on the site was not a material consideration. The Council Solicitor directed Members to the policy requirements and to consider whether the application site is within a cluster which is associated with a focal point.

Councillor Bell stated he knew the area and felt the application would fit in and not make any difference.

Councillor Clarke also felt the development would make no difference to the area and would round off existing development.

The Planning Manager stated it was reasonable to see the proposal as being an ending point to development.

Councillor Clarke proposed that the application be approved.

Councillor Bell seconded Councillor Clarke's proposal.

The Council Solicitor asked for the reasons to approve the application.

The Planning Manager stated that there was a cluster of 4 or more buildings of which 3 are dwellings, whether there is a focal point is a matter of judgement but the development is not a significant distance from the Church of Ireland Manse. The Planning Manager stated that the site is not bounded on both sides but is bounded on one side with another dwelling on the opposite side of the road and that the development can be absorbed by rounding off. The Planning Manager stated that a single storey condition should be attached (ridge height of 5.5m).

**Resolved** That planning application LA09/2019/0837/O be approved subject to single storey ridge height of 5.5m and hedgerows being retained.

**LA09/2019/0846/O Dwelling and garage 30m E of 32a Mulnavoo Road,  
Draperstown for N Bradley Esq.**

**LA09/2019/0849/O Dwelling and garage 55m E of 32a Mulnavoo Road,  
Draperstown for N Bradley Esq.**

Ms McCullagh (SPO) presented a report on planning applications LA09/2019/0846/O and LA09/2019/0849/O advising they were recommended for refusal.

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

Mr Finlay stated that policy CTY1 allows a gap site within a built up frontage, policy CTY8 allows up to 2 units and policy CTY14 relates to prominence in rural character. Mr Finlay stated that as these were infill sites there was no need to justify need however the 2 dwellings were for 2 sons who work in the family business. Mr Finlay stated that the dwellings would not be prominent and that the applicant owns the site and the lane. Mr Finlay stated that the gap site can be seen along a continuous building line and that the applications meet policy under PPS21 and should be granted

The Planning Manager stated that the definition of built up frontage refers to three or more dwellings without development to the rear with road frontage. The Planning Manager highlighted that none of the dwellings front onto a road and therefore the applications do not meet policy and asked if there was any reason why an exception should be given.

Mr Finlay advised that an alternative plan was submitted however this was not accepted.

The Planning Manager stated that whilst it was good to tease everything out, it remained that none of the dwellings had road frontage.

Councillor McKinney stated that those living in the area did not have large lawns/gardens because as much land as possible is utilised for grazing.

The Planning Manager stated that whilst Members may disagree with policy, the guidance is clear and in this instance there is no gap to be infilled.

Councillor Gildernew stated that if the applications were approved the Committee would be setting a precedent as there was no road frontage. Councillor Gildernew proposed the refusal of the applications.

Councillor Mallaghan seconded Councillor Gildernew's proposal.

Members voted on Councillor Gildernew's proposal –

For – 6

Against - 5

**Resolved** That planning applications LA09/2019/0846/O and LA09/2019/0849/O be refused on grounds stated in the officer's reports.

**LA09/2019/0853/F Dwelling and domestic garage (Change of house type from M/2008/0793/RM) at 100m E of 10 Glendavagh Road, Aughnacloy for Robert Bell**

Members considered previously circulated report on planning application LA09/2019/0853/F which had a recommendation for approval.

Proposed by Councillor Gildernew  
Seconded by Councillor Robinson and

**Resolved** That planning application LA09/2019/0853/F be approved subject to conditions as per the officer's report.

**LA09/2019/0931/F Retention of dwelling, garage, garden room, gym, retaining walls, hard landscaping and site curtilage at 10B Fallylea Road, Maghera for James Hughes**

Ms McCullagh (SPO) presented a report on planning application LA09/2019/0931/F advising that it was recommended for refusal.

Councillor Quinn asked if the gym was relocated if it would make a difference.

*Councillor D McPeake left the meeting at 9.06 pm.*

The Planning Manager stated that he thought it was unneighbourly of the applicant to locate the gym/garden room where it is, that it would make a difference if it was relocated and that planning could offer advice on this.

Councillor B McGuigan stated that he had been contacted by the objector and had been on site to see the impact the building has on the objector's home. Councillor B McGuigan stated that the impact is clear to see and that the objector's kitchen looks straight onto the gym/garden room. Councillor B McGuigan stated that the applicant has plenty of other lands and it was madness to continue to build without planning permission.

*Councillor D McPeake returned to the meeting at 9.08 pm.*

The Planning Manager stated it was easy to see the impact of the building when it had been built, that the applicant had chosen not to go through the planning process and that if the Committee were minded to refuse the application then the applicant can go to planning appeal.

Councillor Brown stated that if the Committee were to refuse the application what would they actually be refusing.

The Chair, Councillor Mallaghan stated it would be the gym/garden room that would be refused.

The Planning Manager stated that the application would be refused on the grounds of the gym and that it was detrimental to neighbouring amenity.



Proposed by Councillor Brown  
Seconded by Councillor S McPeake and

**Resolved** That planning application LA09/2019/0931/F be refused on grounds stated in the officer's report.

**Continuation of  
LA09/2018/1435/F 2 farm sheds 55m WSW of 55 Springhill Road, Ballindrum,  
Moneymore for Mr Kevin Moran**

The Chair, Councillor Mallaghan asked Councillor Colvin if he was content with the neighbour notification process for this application.

Councillor Colvin stated that he had now viewed maps and was content with the reasoning for the neighbour notification process for this application.

Proposed by Councillor Clarke  
Seconded by Councillor McKinney and

**Resolved** That planning application LA09/2018/1435/F be approved subject to conditions as per the officer's report.

**LA09/2017/1004/O Replacement dwelling and domestic garage at land approx.  
320m NW of 180 Caledon Road, Aughnacloy for Mr Adrian  
Robinson**

Mr Marrion (SPO) presented a report on planning application LA09/2017/1004/O advising that it was recommended for refusal. Members were also directed to addendum in which there was a request for deferral and further information submitted which included maps and ledger from Public Records Office which advises that a Mr Henry Hagan paid a rent paid for a house, office and lands within the fields that are the subject of the application.

The Chair, Councillor Mallaghan stated that whilst this was the third time this application had been brought before Committee it may be better to defer the application for a month to consider the additional information submitted.

The Planning Manager stated that the application seeks access onto a protected route and that if the Committee permits things that do not meet policy onto protected routes it would be difficult to lobby DfI Roads in relation to provision of roads in the future.

Councillor Clarke stated that there was evidence to show a rent had been paid on a farm and dwelling and that looking at the census from the time may also be helpful.

Councillor Gildernew stated that whilst he had issue with access onto a protected route he had no concern that the building in question was at one time a dwelling.

The Planning Manager suggested that a site meeting be organised in relation to the application.

Councillor Colvin stated there needed to be some connection between the application and what was being presented tonight. Councillor Colvin proposed that a site meeting be held.

Councillor Robinson seconded Colvin's proposal.

**Resolved** That planning application LA09/2017/1004/O be deferred for a site meeting.

**LA09/2017/1384/O Dwelling on a farm at land approximately 110m E of 208 Carnteel Road, Lisgallon, Dungannon for Augustine McMullan**

The Chair, Councillor Mallaghan referred to addendum in which there had been a late request for deferral due to personal circumstances. The Chair stated that the applicant's intentions should be taken at face value and suggested that the application be deferred for one month.

Proposed by Councillor Gildernew  
Seconded by Councillor Robinson and

**Resolved** That planning application LA09/2017/1384/O be deferred for one month.

**LA09/2018/0522/O Dwelling and garage approx. 40m NE of 18 Mulnavoo Road, Derrynoyd, Draperstown for Teresa Bradley**

Members considered previously circulated report on planning application LA09/2018/0522/O which had a recommendation for approval.

Proposed by Councillor S McPeake  
Seconded by Councillor Robinson and

**Resolved** That planning application LA09/2018/0522/O be approved subject to conditions as per the officer's report.

**LA09/2018/1569/F 40 houses (6 detached and 34 semi-detached) landscaping and associated site works (Amendment to that approved under H/2006/0494/F and H/2013/0066/F) at lands to the SW of 12, 14, 15, 16 and 18 Woodland Grove, Derrynoyd Road, Draperstown for Augusta Homes Ltd**

Ms McCullagh (SPO) presented a report on planning application LA09/2018/1569/F advising that it was recommended for approval.

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

Mr Hughes stated that the application will have an impact on local character and amenity in that the proposed increase in traffic would be of detriment to current users. Mr Hughes highlighted that residents were not objecting to the new development as such but the access to it through an existing development which they felt was inappropriate and that the Creating Places document supported their objection. Mr Hughes stated that a 9m

sight line is not achievable as the road was not built for the increased volume in traffic and asked for an office meeting to further discuss the potential adverse effect on citizens of the existing development.

Mr McPeake stated this was a revised application from 54 dwellings down to 40, he advised that all consultees had returned positively and, in particular, DfI Roads had no concerns on the application. Mr McPeake highlighted that the road design was suitable for up to 200 houses and that lands were currently zoned for housing and asked the Committee to approve the application as per officer recommendation.

Councillor McKinney stated that the road through the existing development was not big and he did not believe it could handle the increased traffic volume.

Mr McPeake stated that this application and previous applications always intended to go through the Woodlands development.

Councillor McKinney stated that if it was the intention to approve the application that it should be conditioned that the access road from Sixtowns Road is constructed.

Councillor Black stated he agreed with Councillor McKinney in that the development should be supported by suitable access and roads construction.

The Planning Manager stated that the scheme under consideration now was reduced from what had been previously approved which would be the fallback position.

The Council Solicitor referred to the concerns relating to increased traffic circulation in the existing development and the access on to the main road and asked what exactly the fallback position is in this regard. The Council Solicitor also queried when the extant permission had been approved and if relevant, whether that permission had commenced or been implemented.

Ms McCullagh advised that the previous approval had been kept alive with the erection of two dwellings on the Sixtowns Road.

*Councillor Gildernew left the meeting at 9.39 pm.*

The Planning Manager stated he was unclear on the fallback position and what could be built anyway and suggested that the application be deferred to allow for further consideration in this regard. In doing so, the Planning Manager stated he did not want to give Woodlands residents undue hope as it still may be feasible to conclude that what is being applied for is a quality development.

Councillor McKinney proposed that the application be deferred for further clarification of the fallback position. Councillor McKinney also requested further information in relation to ownership and access off the Sixtowns Road.

Councillor Brown seconded Councillor McKinney's proposal.

**Resolved** That planning application LA09/2018/1569/F be deferred for further clarification of fallback position. Further information in relation to ownership and access off the Sixtowns Road to also be provided.

**LA09/2018/1609/F Farm building, 100m NW of 44 Cullenramer Road, Dungannon for Mr Barry Small**

Members considered previously circulated report on planning application LA09/2018/1609/F which had a recommendation for approval.

Proposed by Councillor Clarke  
Seconded by Councillor Colvin and

**Resolved** That planning application LA09/2018/1609/F be approved subject to conditions as per the officer's report.

**LA09/2019/0300/O Site for dwelling and garage between 34 and 36 Coagh Road, Cookstown for William and Heather Hutchinson**

Members considered previously circulated report on planning application LA09/2019/0300/O which had a recommendation for approval.

Proposed by Councillor Brown  
Seconded by Councillor Robinson and

**Resolved** That planning application LA09/2019/0300/O be approved subject to conditions as per the officer's report.

**P103/19 Receive report on Department for Infrastructure's decision to issue 3 Notice of Opinions to approve development at the former Clark's Linen Mill, Upperlands**

The Planning Manager presented previously circulated report which provided decision from the Department for Infrastructure to issue Notices of Opinion to approve development of the former Clark's Linen Mill in Upperlands. The Planning Manager stated that an opportunity now exists for the Council to make representations to the Planning Appeals Commission who will shortly facilitate a hearing relating to the proposals.

Councillor S McPeake stated that whilst there was a need for housing and he would like to see as much development as possible he would be against this proposal as he felt the housing spread needed to be more equal and not up to 200 houses in a small area. Councillor S McPeake proposed the way forward as set out in the report.

Councillor Kearney seconded Councillor S McPeake's proposal.

**Resolved** That it be recommended to welcome the Notices of Opinion but that Council demands an examination unless the Department for Infrastructure can give reassurance that the number of homes approved will not affect our HGI or designations adversely in relation to other settlements.

*Meeting adjourned at 9.48 pm and recommenced at 10.13 pm.*

**P104/19      Guidance for the assessment of ammonia emitting projects**

The Head of Development Management referred to information tabled in relation to assessment of ammonia levels and advised that there appeared to be some difference of opinion between Shared Environment Service and NIEA on the matter and that new guidance would be brought forward in due course. The Head of Development Management advised that staff would be attending a training course the next day which offered a way forward and some hope of solution for the approx. dozen cases waiting on assessment.

**P105/19      Receive response to consultation from Department for Communities on the 'Definition of Affordable Housing'**

The Head of Development Plan and Enforcement presented previously circulated report which provided details of a consultation from the Department for Communities in relation to the 'Definition of Affordable Housing' and Council response to the consultation.

*Councillor Black returned to the meeting at 10.17 pm and Councillor Colvin returned to the meeting at 10.19 pm during the above presentation.*

Councillor McPeake stated he was happy to propose the response set out, that there had been good discussion at the meeting held regarding affordable housing and that opinions raised at that meeting were catered for within the response.

Councillor Brown seconded Councillor S McPeake's proposal.

**Resolved**      That it be recommended to agree the response to the consultation on the definition of affordable housing as set out at appendix 1 to report, subject to agreement by full Council.

**Matters for Information**

**P106/19      Minutes of Planning Committee held on 6 August 2019**

Members noted minutes of Planning Committee held on 6 August 2019.

Councillor Cuthbertson referred to discussion at August meeting in relation to telephone box at Dergenagh Road. The Councillor stated that since that meeting a petition had been submitted asking Council to serve a Building Preservation Notice (BPN) on the telephone box at Dergenagh Road and asked when the matter could be revisited by the Planning Committee.

The Planning Manager stated that the Committee can revisit the matter when it chooses, that the matter has previously been discussed at Committee and Council and it was decided not to proceed with serving the BPN however if views had changed then it is up to the Members.

The Chair, Councillor Mallaghan queried whether this was the rescinding of a decision.

The Council Solicitor stated that a decision had been taken by the Committee and that unless there were compelling reasons or changes since the decision was taken, that the matter could not be revisited.

Councillor Cuthbertson stated that the decision taken at the August Planning Committee had not yet been ratified by Council. In relation to the Council motion, this was to remove the telephone from the telephone box which was a slightly different matter.

The Council Solicitor stated that the Committee made a decision on the matter and that the Planning Committee is quasi judicial. If the matter was to come back for further consideration it needs to be for a significant and compelling planning reasons or changes. The Council Solicitor stated that to bring the matter back to rescind a decision of this Committee would be to usurp the decision making power of the Committee and that Judicial Review would be the means to challenge a decision of a quasi judicial body. The Council Solicitor also referred back to the previous planning meeting where she pointed out that there were a number of decisions being discussed and that the Planning Committee's remit was specific to planning considerations.

The Planning Manager stated that Members received a report which recommended that a BPN be served and Members did not agree with this. The Planning Manager stated that petitions were an indicator of public opinion but not the sole reason for making decisions. The Committee had decided against a BPN because it meant any change to the phone box such as removing the phone and placing in a defibrillator would require a listed building consent which may or may not be forthcoming and was a level of control unnecessary for the preservation of the telephone box.

Councillor Cuthbertson stated that the Committee and Council were led to believe that the community wanted the phone box relocated to a nearby Orange Hall however residents have said they were not consulted on this and a subsequent petition has now been submitted. Councillor Cuthbertson stated that the phone box is at immediate risk as BT have walked away from it and it is in community ownership meaning it could be moved at any time.

The Council Solicitor stated that the only way to test the previous decision was by legal challenge and that as she was Council Solicitor, it would not be appropriate for her to discuss potential grounds or the merits of any such challenge.

The Planning Manager stated that the community could go directly to the Department to seek a Building Preservation Notice for the phone box.

#### **P107/19      Receive report on consultation from NI Water on Draft Water Resource and Supply Resilience Plan**

Members noted previously circulated report which provided detail of a consultation from NI Water on a Draft Water Resource and Supply Resilience Plan. Members were advised that whilst it is important to be aware of the proposals, findings and recommendations of the draft plan, it does not raise issues that require a specific response on behalf of Council.

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

Proposed by Councillor Robinson  
Seconded by Councillor Brown 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 P108/19 to P114/19.

### **Matters for Decision**

- P108/19 Receive response to consultation from Antrim and Newtownabbey Council on their Local Development Plan 2030 – Draft Plan Strategy
- P109/19 Receive response to Department for Infrastructure on Draft Development Plan Practice Note 10
- P110/19 Receive tender evaluation for Retail and Leisure Study

### **Matters for Information**

- P111/19 Confidential Minutes of Planning Committee held on 6 August 2019
- P112/19 Enforcement Report and Live Case List
- P113/19 Enforcement Cases Opened
- P114/19 Enforcement Cases Closed

### **Return to item**

**P103/19 Receive report on Department for Infrastructure’s decision to issue 3 Notice of Opinions to approve development at the former Clark’s Linen Mill, Upperlands**

Councillor Brown stated that he had checked the description of the proposal which included 18 apartments and 2 houses, not 200 houses as had been discussed earlier in the meeting. Councillor Brown stated he felt the need for assessment by the Department arose out of the Art Deco character of some of the buildings within the mill complex.

Councillor S McPeake stated he thought there was a bigger masterplan for the site which included a lot more housing.

The Planning Manager stated he was unsure why there would be issue with 18 apartments and 2 dwellings and asked Members to leave the matter with him and if the proposal was not significant then there was no need for Council to respond.

The Chair, Councillor Mallaghan asked that Members be informed on whether Council would be responding to the Notice of Opinion.

### **P115/19 Duration of Meeting**

The meeting was called for 7 pm and concluded at 10.50 pm.

Chair \_\_\_\_\_

Date \_\_\_\_\_





## ADDENDUM TO PLANNING COMMITTEE AGENDA

**FOR PLANNING COMMITTEE MEETING ON: 3<sup>rd</sup> September 2019**

<b>ITEM</b>	<b>INFORMATION RECEIVED</b>	<b>ACTION REQUIRED</b>
4.1	Application has been withdrawn.	Members to note.
4.10	Late Objection received, uploaded to the planning portal	Members to note, no new issues raised.
5.1	Cllr Burton has requested deferral as unable to attend the meeting tonight. Agent has requested Committee Members are made aware of information from Public Records Office.	Members to note, attached consideration of the information.
5.2	Late request for deferral due to personal circumstances	Members to note and decide if application should be deferred to allow further information to be submitted.
5.4	Late Objection received, uploaded to the planning portal	Members to note. DFI Roads re-consulted and have no objection.
13	Letter from Friends of the Earth	Members to Note

### **Item 5.1 - LA09/2017/1004/O**

Members are advised that an extract from a ledger from the Public Records Office and maps were received at the office meeting with the Planning Manager in March 2019. This advises that a Mr Henry Hagan paid rent for a house, office and lands within the fields that are the subject of the application. The Planning Committee Report for the meeting in March 2019 clearly set out there may have been a dwelling on this site at one time, however the photographs of the building that remains on the site did not provide any features that prove it was a dwelling. The information from PRONI is not helpful to establish that the building that is to be replaced was a dwelling.