

Minutes of Meeting of Planning Committee of Mid Ulster District Council held on Tuesday 1 September 2020 in Council Offices, Ballyronan Road, Magherafelt and by virtual means

Members Present

Councillor S McPeake, Chair

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

Officers in Attendance

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

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

** Denotes Officers present by remote means

The meeting commenced at 7.00 pm

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

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

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

P073/20 Apologies

Councillor Colvin.

P074/20 Declarations of Interest

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

P075/20 Chair's Business

The Planning Manager highlighted correspondence from Friends of the Earth, circulated to Members as part of addendum, in which the organisation expressed their concern in relation to the NIEA policy on ammonia emitting projects.

Matters for Decision

P076/20 Planning Applications for Determination

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

Agenda Item 4.5 – LA09/2019/1373/O – Dwelling and garage 55m E of 32a Mulnavoo Road, Moneyneany Road, Draperstown for Michael Bradley Esq.

Agenda Item 4.9 – LA09/2020/0024/F – 3 lodges for short term accommodation at 210m SW of 35 Brookend Road, Ardboe for Donal Coney.

Agenda Item 4.10 – LA09/2020/0153/O – Dwelling and domestic garage adjacent and NE of junction with Mullaghmoyle Road on Colliers Lane, Coalisland for Marianne Sturtridge.

Agenda Item 4.12 – LA09/2020/0253/O – Site for dwelling adjacent to and immediately SW of 12 Kilmakardle Road, Dungannon for Catherine Donnelly.

Agenda Item 4.13 – LA09/2020/0315/O – 2 storey dwelling and garage on a farm adjacent to 182 Mountjoy Road, Brockagh, Dungannon for Paul Mulholland.

Agenda Item 4.17 – LA09/2020/0499/O – Site for dwelling and domestic garage at 51m SE of 86 Iniscarn Road, Keenaght, Desertmartin for Emmet O'Hagan.

Agenda Item 4.20 – LA09/2020/0608/O – Dwelling and garage adjacent to 9a Falgortrevy Road, Maghera for Shaun Kelly.

It was further advised that agenda items 4.6 and 4.7 were both deferred at last month's meeting and should not have been added to tonight's agenda for consideration.

Councillor Gildernew requested that agenda item 4.21 – LA09/2020/0657/O – Dwelling between 66 and 66a Derryoghill Road, Dungannon for Eugene Daly be deferred for an office meeting.

Councillor Mallaghan also requested that an office meeting be held in relation to agenda item 4.21 due to the circumstances of the application.

Proposed by Councillor McKinney
Seconded by Councillor Bell and

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

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

LA09/2019/0299/F Additional free range poultry shed with 2 feed bins, storage shed and associated site works at 150m S of 25 Coolmaghery Road, Dungannon, for Mr Gary Watt

Members considered previously circulated report on planning application LA09/2019/0299/F which had a recommendation for approval.

Proposed by Councillor McKinney
Seconded by Councillor Cuthbertson and

Resolved That planning application LA09/2019/0299/F be approved subject to conditions as per the officer's report.

LA09/2019/0612/F Retention of store extension, first floor accommodation to existing supermarket and additional car parking at 243 Derryfubble Road Benburb Dungannon, for Brendan McAnallen

Members considered previously circulated report on planning application LA09/2019/0612/F which had a recommendation for approval.

Proposed by Councillor Clarke
Seconded by Councillor McKinney and

Resolved That planning application LA09/2019/0612/F be approved subject to conditions as per the officer's report.

LA09/2019/0940/F 2 no. 2 storey dwellings, 67 Castlecaulfield Road, Donaghmore, Dungannon for GP Developments Ltd

The Head of Development Management presented a report on planning application LA09/2019/0940/F advising that it was recommended for refusal.

Councillor Bell asked if all avenues had been exhausted in relation to the roads issues.

The Head of Development Management advised that since November 2019 the applicant had been given the opportunity to address the issue of visibility splays and that the maximum visibility splay that the applicant can achieve is 2m x 33m. Roads Service require visibility splays of 2.4m x 50m and 2.4m x 43m. The officer advised that the site is capable of one dwelling and that the applicant could give this consideration.

Councillor Mallaghan stated that given the road safety concerns and that the principle of development has been established for one dwelling there is an opportunity for future development. Councillor Mallaghan proposed that the application be refused.

Councillor Clarke seconded Councillor Mallaghan's proposal.

Resolved That planning application LA09/2019/0940/F be refused on grounds stated in the officer's report.

LA09/2019/1027/F **Petrol filling station (8 No pumps), underground storage tanks; ancillary services accommodation including retail, storage, cafe facilities, ATM, car parking and all associated site works at lands 80m SE of 100 Coleraine Road, Maghera, for Specialist Joinery Group**

Members considered previously circulated report on planning application LA09/2019/1027/F which had a recommendation for approval.

Proposed by Councillor D McPeake
Seconded by Councillor Kearney and

Resolved That planning application LA09/2019/1027/F be approved subject to conditions as per the officer's report.

LA09/2019/1373/O **Dwelling and garage 55m E of 32a Mulnavoo Road, Moneyneany Road, Draperstown for Michael Bradley Esq**

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

LA09/2019/1432/O **Site for dwelling and garage at 100m NW of 84 Loup Road, Moneymore, for Mr Michael O'Boyle**

Withdrawn from tonight's agenda as was deferred at last month's meeting.

LA09/2019/1484/O **Site for dwelling at 50m E of 91 Aughrim Road, Magherafelt, for Keith Fulton**

Withdrawn from tonight's agenda as was deferred at last month's meeting.

LA09/2019/1587/O **2 dwellings opposite 250 Ballygawley Road, Dungannon, for Jason Kelly**

Members considered previously circulated report on planning application LA09/2019/1587/O which had a recommendation for approval.

Proposed by Councillor Mallaghan
Seconded by Councillor Robinson and

Resolved That planning application LA09/2019/1587/O be approved subject to conditions as per the officer's report.

LA09/2020/0024/F **3 lodges for short term accommodation at 210m SW of 35 Brookend Road, Ardboe for Donal Coney**

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

LA09/2020/0153/O **Dwelling and domestic garage adjacent and NE of junction with Mullaghmoyle Road on Colliers Lane, Coalisland for Marianne Sturtridge**

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

LA09/2020/0169/O **Housing Development at site immediately W and adjacent to Dernagh Cottages, Lisnastrane Road, Coalisland for Malachy McIlvenna**

Members considered previously circulated report on planning application LA09/2020/0169/O which had a recommendation for approval.

Proposed by Councillor Bell
Seconded by Councillor McFlynn and

Resolved That planning application LA09/2020/0169/O be approved subject to conditions as per the officer's report.

LA09/2020/0253/O **Site for dwelling adjacent to and immediately SW of 12 Kilmakardle Road Dungannon, for Catherine Donnelly**

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

LA09/2020/0315/O **2 storey dwelling and garage on a farm adjacent to 182 Mountjoy Road, Brockagh, Dungannon for Paul Mulholland**

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

LA09/2020/0410/F **Dwelling and garage between 88 and 90 Iniscarn Road, Desertmartin, for Mr Mark Madden**

Members considered previously circulated report on planning application LA09/2020/0410/F which had a recommendation for approval.

Proposed by Councillor McKinney
Seconded by Councillor McFlynn and

Resolved That planning application LA09/2020/0410/F be approved subject to conditions as per the officer's report.

LA09/2020/0446/F

**Change of house type (to approved M/2006/1301/RM),
at land opposite and SW of 165 Favour Royal Road,
Augher, for Finbarr McQuaid**

The Head of Development Management advised that officers were checking if the agent was waiting in another part of the building as they had made a request to speak on the application.

Councillor Cuthbertson referred to the addendum that is emailed to the Members joining the meeting remotely and asked if it is possible that this be emailed to everyone at 5pm.

The Planning Manager advised the addendum is to draw Members attention to all relevant material that has been submitted since the agenda was published and that this can be very last minute. The Planning Manager stated that up until the point of Members taking a decision on an application all relevant material has to be considered and he would share that view that it would be easier to email any additional information but it may not be 100% accurate if emailed at 5pm.

The Head of Development Management advised that the agent for the application was not present within the building and asked how Members wanted to proceed.

The Planning Manager asked if the application was valid.

The Head of Development Management stated that this would depend on whether reference is to be made of the commencement issue.

The Planning Manager suggested that the officer proceed with their presentation and then consideration can be given to the validity of the application.

The Council Solicitor stated that as speaking rights had been granted it may be fairer to try to make contact with the agent to ascertain whether they still intend to come to the meeting or if they are running late rather than there being any further discussion on this currently.

The Planning Manager stated that if a change of house type is to be considered you need to have a permission in the first instance.

The Chair, Councillor S McPeake stated that consideration of the planning application would be held in the interim in order to try and make contact with the agent and that the meeting would continue with the other items of business as per the agenda.

**LA09/2020/0479/F Change of house design / location as previously approved
under M/2008/1007/F at 200m SW of 28 Aghaloo Road (26
Aghaloo Road) Aughnacloy, for Con Carey**

Members considered previously circulated report on planning application LA09/2020/0479/F which had a recommendation for approval.

Proposed by Councillor McKinney
Seconded by Councillor Robinson and

Resolved That planning application LA09/2020/0479/F be approved subject to conditions as per the officer's report.

LA09/2020/0499/O **Site for dwelling and domestic garage at 51m SE of 86 Iniscarn Road, Keenaght, Desertmartin, for Emmet O'Hagan**

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

LA09/2020/0501/O **Site for dwelling and garage approx. 80m SW of 110 Mullaghboy Road, Bellaghy, for Robert Milne**

Members considered previously circulated report on planning application LA09/2020/0501/O which had a recommendation for approval.

Proposed by Councillor D McPeake
Seconded by Councillor Bell and

Resolved That planning application LA09/2020/0501/O be approved subject to conditions as per the officer's report.

LA09/2020/0509/O **Site for dwelling at lands approx. 40m W of 32 Rehaghy Road, Aughnacloy for Liam Mc Killion**

Members considered previously circulated report on planning application LA09/2020/0509/O which had a recommendation for approval.

Proposed by Councillor Robinson
Seconded by Councillor Gildernew and

Resolved That planning application LA09/2020/0509/O be approved subject to conditions as per the officer's report.

LA09/2020/0608/O **Dwelling and garage adjacent to 9a Falgortrevy Road, Maghera, for Shaun Kelly**

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

LA09/2020/0657/O **Dwelling between 66 and 66a Derryoghill Road, Dungannon for Eugene Daly**

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

LA09/2020/0696/F Retention of the existing general purpose / storage shed for machinery and vehicles and the extension of the existing site curtilage at 55m S of No 39C Gortahurk Road, Draperstown, for Mr Fergal McGuigan

Members considered previously circulated report on planning application LA09/2020/0696/F which had a recommendation for approval.

Proposed by Councillor Clarke
Seconded by Councillor McFlynn and

Resolved That planning application LA09/2020/0696/F be approved subject to conditions as per the officer's report.

LA09/2020/0749/F Single storey extension to side at 5 Ashwood Heights, Cookstown, for Mr A McCreesh

Members considered previously circulated report on planning application LA09/2020/0749/F which had a recommendation for approval.

Proposed by Councillor McFlynn
Seconded by Councillor McKinney and

Resolved That planning application LA09/2020/0749/F be approved subject to conditions as per the officer's report.

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

The Head of Development Management advised that the agent for the application had still not arrived.

The Planning Manager stated that he believed there was an issue of whether the application was in time or not and if it was not in time then it was not a change of house type. The Planning Manager suggested that the application be deferred to explore this issue with the agent.

Proposed by Councillor Gildernew
Seconded by Councillor Bell and

Resolved That planning application LA09/2020/0446/F be deferred to explore the validity of the application.

LA09/2018/0420/F **10 dwellings immediately to the rear of and adjacent to 12, 14, 18 and 20 Mullaghteige Road Bush, Dungannon, for BOA Island Developments**

Members considered previously circulated report on planning application LA09/2018/0420/F which had a recommendation for approval.

Proposed by Councillor Clarke
Seconded by Councillor McFlynn and

Resolved That planning application LA09/2018/0420/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**

The Head of Development Management presented a report on planning application LA09/2018/0765/O advising that it was recommended for refusal.

Councillor McFlynn asked if access to the site is via the grounds of the front house.

The Head of Development Management advised that there is an existing access however demolition of a garage would be required and highlighted that the existing garden is elevated meaning the proposal would sit higher than adjoining property. The officer also referred to the noise and nuisance of vehicles coming and going from the proposed property on a daily basis.

Proposed by Councillor Glasgow
Seconded by Councillor Robinson and

Resolved That planning application LA09/2018/0765/O be refused on grounds stated in the officer's report.

LA09/2018/1569/F **35 two storey houses, landscaping, access and associated site works at lands to the SW of 12, 14, 15, 16 and 18 Woodland Grove with access through Woodland Heights on to Derrynoyd Road, Draperstown, for Mr Boyle**

Councillor McKinney referred to the late objection received and circulated as part of the addendum. The Councillor stated that he recalled previous discussion on the application and asked how the previous issues had been overcome since the last time the application was presented.

Ms McCullagh (SPO) presented a report on planning application LA09/2018/1569/F advising that it was recommended for approval which included how previous issues had been overcome.

Councillor Bell stated he had listened to what had been said tonight and that this was the third time the application had been brought with an approval. Councillor Bell

stated that a lot of hard work had gone into addressing concerns and proposed the officer recommendation.

Councillor Mallaghan stated he noted the reduction in objections and referred to the late objection received in relation to greenbelt maintenance issues however he did not feel that it was a material consideration in terms of permission for the site. Councillor Mallaghan seconded Councillor Bell's proposal.

The Planning Manager referred to the reduced number of houses coming off the road and that this has led to the reduction in objections. The Planning Manager reminded Members however that it is not the number of objections but the validity of the concerns being put forward.

Councillor McKinney stated he still had some concerns in relation to the application but he was glad to hear there was not going to be a through road through the existing development. Councillor McKinney stated he voted against the proposal to approve the application.

Resolved That planning application LA09/2018/1569/F be approved subject to conditions as per the officer's report.

LA09/2019/0633/O **Site for a dwelling and garage (amended access),
25m NE of 59 Ferry Road Coalisland, for Mr Patrick
McNeice**

Members considered previously circulated report on planning application LA09/2019/0633/O which had a recommendation for approval.

Proposed by Councillor Quinn
Seconded by Councillor Mallaghan and

Resolved That planning application LA09/2019/0633/O be approved subject to conditions as per the officer's report.

LA09/2019/1045/O **Dwelling and domestic garage / store at 130m W of 27
Tirnaskea Road, Pomeroy, for Mr Mallon**

Members considered previously circulated report on planning application LA09/2019/1045/O which had a recommendation for approval.

Proposed by Councillor Mallaghan
Seconded by Councillor Clarke and

Resolved That planning application LA09/2019/1045/O be approved subject to conditions as per the officer's report.

P077/20 **Receive LDP Draft Revised Timetable**

The Planning Manager presented previously circulated report which provided a revised timetable for the production of the new Local Development Plan (LDP) for

the Mid Ulster District Council Area. The timetable details the key stages, actions and timescales in the plan preparation process.

Councillor Clarke stated that this was not the timeframe Members had expected at the beginning of the process. Councillor Clarke proposed the revised timetable as the best option available.

The Planning Manager stated that what was supposed to be a quicker and easier to understand process has become the opposite and that it is government departments which are making it this way.

Councillor Bell seconded Councillor Clarke's proposal.

Resolved That it be recommended to Council to agree the revised Local Development Plan Timetable as set out at appendix to report following which the Timetable will then be submitted to the Department for its agreement.

The Planning Manager advised that the timetable would be sent to the Department and when approved it would be put on the Council website.

P078/20 Receive report on Fermanagh and Omagh District Council Draft Plan Strategy – Notification of Proposed Changes

The Planning Manager presented previously circulated report which advised of some changes to Fermanagh and Omagh District Council's Draft Plan Strategy. The report further advised of Mid Ulster Council's position in relation to the various changes.

Proposed by Councillor D McPeake
Seconded by Councillor Clarke and

Resolved To agree the content of the letter as set out at appendix to report which will then be sent to Fermanagh and Omagh District Council in response to the consultation on the Schedule of Proposed Changes to the Draft Plan Strategy 2030.

P079/20 Receive Planning Department Service Improvement Plan 2020/21

The Planning Manager presented previously circulated report which provided the Planning Department's Service Improvement Plan for 2020/21.

The Chair, Councillor S McPeake stated there was a lot of uncertainty for the future and that there would be challenges in a new planning computer system and new development plan. The Chair stated that it was a time to take stock and be resilient for what was ahead.

Councillor McKinney thanked planning staff for their efforts during lockdown and the speed at which planning applications were processed during this time. The

Councillor stated that everyone was in unchartered waters but that Mid Ulster planning had shown that they are open for business and staff were always available.

Councillor Kearney stated that he concurred with Councillor McKinney's remarks and that in the words of Seamus Heaney keeping going is the secret and that Mid Ulster planning kept going and this has to be acknowledged.

Members noted the Planning Department Service Improvement Plan for 2020/21.

Matters for Information

P080/20 Minutes of Planning Committee held on 4 August 2020

Members noted minutes of Planning Committee held on 4 August 2020.

Live broadcast ended at 7.55 pm.

Local Government (NI) Act 2014 – Confidential Business

Proposed by Councillor Mallaghan
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 P081/20 to P087/20.

Matters for Decision

P081/20 Receive Revocation Report
P082/20 Receive Enforcement Report

Matters for Information

P083/20 Confidential Minutes of Planning Committee held on
4 August 2020
P084/20 Enforcement Live Case List
P085/20 Enforcement Cases Opened
P086/20 Enforcement Cases Closed
P087/20 Local Development Plan Revised Timetable

P088/20 Duration of Meeting

The meeting was called for 7 pm and concluded at 8.30 pm.

Chair _____

Date _____

Annex A – Introductory Remarks from the Chairperson

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

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

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

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

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

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



ADDENDUM TO PLANNING COMMITTEE AGENDA

FOR PLANNING COMMITTEE MEETING ON: 1st September 2020

Additional information has been received on the following items since the agenda was issued.

ITEM	INFORMATION RECEIVED	ACTION REQUIRED
Chairs Business	Friends of Earth correspondence	Members to note
4.6	Item added in error – was on last month's agenda	Members to note
4.7	Item added in error – was on last month's agenda	Members to note
4.10	Late objection received	Members to note, this has been deferred for office meeting.
4.20	Late request for deferral. Area Manager recommends deferral is granted for office meeting.	To be granted as deferral at discretion of chair
5.3	Late correspondence from objector received	Members to note

FAO – Dr Chris Boomer
Head of Planning
Mid Ulster District Council
Council Offices
Ballyronan Road
Magherafelt
BT45 6EN



14 August 2020

BY EMAIL – URGENT

Dear Sirs,

NIEA OPERATIONAL POLICY ON AMMONIA EMITTING PROJECTS

We refer to the above matter recently discussed at the Mid and East Antrim Council Meeting on 3 August 2020.

You will of course be aware that a discrepancy about the appropriate policy to apply to planning decisions concerning ammonia emitting projects arose when Shared Environmental Services adjusted its policy to reflect a much lower threshold of permitted ammonia emissions. This revised policy was subsequently withdrawn subject to legal challenge.

In an effort to clarify what policy now prevails, Mid and East Antrim wrote to the Department of Agriculture, Environment and Rural Affairs seeking clarification on the appropriate protocol to apply when assessing the impact of ammonia emitting developments on protected sites.

Friends of the Earth have concerns over the implications of the response received by DAERA (attached for ease of reference) for local government as a competent authority in making planning decisions concerning this specific type of ammonia emitting development.

As such, this letter has been sent to all Councils in Northern Ireland.

THE NORTHERN IRELAND AMMONIA CRISIS AND ITS EFFECT ON PUBLIC HEALTH

Ammonia (NH₃) is an air pollutant largely emitted from agriculture which is known to have a damaging impact on biodiversity, including sensitive habitats and ecosystem resilience as well as human health. It is produced by many common farming activities such as the housing of livestock, the storage and spreading of manure and slurries and the application of fertiliser. Ammonia emitted into the air is subsequently deposited as nitrogen onto land and water surfaces. These nitrogen deposits can travel many miles from the original ammonia source.

Excessive ammonia emissions can also lead to increases in particulate matter which is associated with human health impacts.

Most of Northern Ireland, including our designated sites and other priority habitats are receiving levels of nitrogen which are significantly above their critical load, the concentration at which significant ecological damage occurs.

STATUTORY CONSULTEES POLICY REVIEW AND RESULTING UNCERTAINTY

In his correspondence addressed to the Chief Executive of Mid and East Antrim Borough Council dated 22 July 2020 (attached), Minister Poots confirmed that the current NIEA operational policy on ammonia emitting projects is subject to ongoing review and a new protocol would not be in place until the Autumn.

In the absence of a new policy, determinations made under this old policy have been termed by NIEA officials at a number of Planning Appeals Commission hearings as “vulnerable to legal challenge”.

As a result, the ongoing review of this policy renders NIEA’s existing policy on ammonia emitting projects incapable of providing scientific certainty to competent authorities.

THE PRECAUTIONARY PRINCIPLE

The law is clear about what stance competent authorities should adopt under these circumstances.

The precautionary principle states that a competent authority must establish beyond scientific doubt that there will be no significant harm caused by a development on protected sites before it is given approval. This approach is confirmed at paragraph 57 of the “Waddenzee” Judgement (ECJ C127/02) and was discussed in a Northern Ireland context in Friends of the Earth’s Lough Neagh case heard in the Court of Appeal (2017 NICA 41).

The Orleans v Vlaams Gewest Case 2017 (Case C-187/15 Env LR 12 at [48]-[52]) states that a statutory authority must not grant planning permission unless it is “certain” on the basis of the “best scientific knowledge in the field” that the proposed development would not adversely affect the integrity of the designated site within the meaning of the habitats regulations.

Furthermore, an appropriate assessment will be unlawful if “it contains gaps and lacks complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effect of the works proposed (Case C404-09 Commission v Spain [2011] ECR I-11853).

Effectively, for a development of this nature to attain approval from a statutory authority, there cannot be “lacunae” in the scientific evidence (C323/17) People Over Wind v Coillte Teoranta [2018] Env LR 31 at par[38].

The vulnerability of NIEA’s current operating policy coupled with the fact that it is under review represents significant scientific doubt or “lacunae” in the evidence over the effects of ammonia emitting developments on sensitive receptor sites within the meaning of the habitats regulations. Moreover, a policy under review does not represent the “best scientific knowledge in the field” within the meaning of the Orleans v Vlaams Gewest caselaw.

When a statutory authority is faced with such obvious scientific doubt the precautionary principle must apply. To quote the European Court of Justice in Waddenzee, “***...where doubt remains as to the absence of adverse effects on the integrity of the site linked to the plan or project being considered, the competent authority will have to refuse authorisation***”.

STATUTORY DUTY OF PUBLIC AUTHORITIES

Under the Wildlife and Natural Environment Act (Northern Ireland) 2011 all public authorities in Northern Ireland have a statutory duty to protect designated sites and priority habitats. You will also be aware that to permit the carrying out of operations which damages any of the flora, fauna or geological or physiographical features of an Area of Special Scientific Interest may be found guilty of a criminal offence.

Given the scientific doubt and lacunae in evidence as a result of NIEA's policy review, there is no certainty that such sensitive sites will not be adversely affected by these developments and the precautionary principle must apply.

In light of the foregoing, the approval of such applications would be unlawful.

Please note that we intend to send correspondence to the Department outlining this position.

Yours faithfully,



Laura Neal
Solicitor
Friends of the Earth
Northern Ireland

Sent: 01 September 2020 11:20

To: Melvin Bowman <Melvin.Bowman@midulstercouncil.org>

Subject: The woodlands

Dear Mr Bowman

I speak on behalf of the Woodland Heights and Woodland grove residents.

We have spoke'n with Brian Mcguigan and have heard all the new out line guidance for this new development that's to use the woodlands road through which we are more happer about, but as you know we always would of preferred the site entrance from the Sixtowns road. We believe that all is up for approval tonight and that we can't attend.

We ask that the Boundary hedge from the woodlands not to be removed until the site is well near completion, so that the site traffic cannot use the Woodlands road in.

Our Concerns now are that we find it very on fair that we still have to pay for the up keeping of the green areas and the Surrounding boundaries at our cost for this new development to use the road through.

These greens do not belong to the woodland residence as they still are in ownership of the Henrys / PRH construction.

We the residents where paying up to £354 per house to the greenbelt maintenance company and after many years to get out of there contract PRH where to sign the greens and boundaries over to the woodland residence which did not happen as you know why !! So we are maintaining someone else's property all these years.

We are now facing the cost separately from what we are already paying for the keeping of the greens, to cut / top the large trees around the woodland as these trees are getting to high and starting to block the light to many homes and over growing into gardens this is going to cost us around £3000 + to have this job done thought the woodlands.

We the residents would like the new developer to share our cost's as it's to there advantage for selling the new development and driving through our well maintained green areas.

We hope the Council committee will see that this is only fair that the developer helps out.