



**MINUTES OF THE PROCEEDINGS OF THE MEETING OF THE PLANNING COMMITTEE
HELD IN MOSSLEY MILL ON MONDAY 21 NOVEMBER 2022 AT 6.00 PM**

- In the Chair** : Councillor J Archibald-Brown
- Committee Members Present (In Person)** : Alderman J Smyth
Councillors – A Bennington, H Cushinan, S Flanagan, R Lynch and B Webb
- Committee Members Present (Remotely)** : Alderman F Agnew
Councillors - M Magill and R Swann
- Non-Committee Members Present (Remotely)** : Alderman S Ross
Councillors – M Cosgrove, P Dunlop, R Foster, J Gilmour, N McClelland, N Ramsay and M Stewart
- Public Speakers** :
- | | |
|----------------------|-----------------------------------|
| Alderman S Ross | In Objection (Item 3.1) |
| Karl Rainey | In Objection (Item 3.1) |
| Michael Rainey | In Objection (item 3.1) |
| Jennifer Rainey | In Objection (Item 3.1) |
| Tom Stokes | In Support (Agent, Item 3.1) |
| Andrew McKelvey | In Support (Applicant, Item 3.1) |
| Ashley McBride | In Objection (Item 3.2) |
| Kelly McBride | In Objection (Item 3.2) |
| Gemma Jobling | In Support (Consultant, Item 3.2) |
| Shelly Taylor | In Support (Item 3.2) |
| Councillor P Dunlop | In Objection (Item 3.3) |
| Eamonn Loughery | In Support (Agent, Item 3.3) |
| Peter Fleming | In Support (Agent, Item 3.4) |
| David McElrea | In Support (Applicant, Item 3.6) |
| Chris Cassidy | In Support (Agent, Item 3.7) |
| Councillor M Stewart | In Support (Item 3.8) |
| Robin Park | In Support (Agent, Item 3.8) |
| Simon Wells | In Support (Applicant, Item 3.9) |
- Officers Present** : Deputy Director of Planning – S Mossman
Borough Lawyer & Head of Legal Services – P Casey
Head of Planning Development Management (Interim)
– B Diamond
Senior Planning Officer – K O'Connell
Senior Planning Officer – J McKendry
System Support Officer – C Bell

ICT Helpdesk Officer – J Wilson
Member Services Manager – A Duffy
Member Services Officer – L Irwin

CHAIRPERSON'S REMARKS

The Chairperson welcomed Committee Members to the November Planning Committee Meeting. The Chairperson reminded all present of the protocol for speaking, timeframes accorded and of the audio recording procedures.

Although COVID restrictions had been relaxed, to manage numbers and minimise risk, members of the public and press could continue to access those parts of the Council meetings which they are entitled to attend through the livestream on the Council's website.

The Chairperson advised Members that Addendum reports relating to Items 3.1, and 3.9 along with the Site Visit report had been circulated electronically to Members in advance of the meeting, with hard copies being made available in the Chamber.

The Chairperson further advised Members that Item 3.10 had been withdrawn by the applicant.

The Borough Lawyer and Head of Legal Services reminded Members about a number of issues in relation to their role as Members of the Planning Committee and their obligations under the Code of Conduct.

1 APOLOGIES

Alderman Campbell
Chief Executive J Dixon
Director of Economic Development and Planning M McAllister

2 DECLARATIONS OF INTEREST

Item 3.8 – Councillor Archibald-Brown

PART ONE PLANNING APPLICATIONS

ITEM 3.1 APPLICATION NO: LA03/2022/0726/F

PROPOSAL:	Proposed erection of 1 no. storage and distribution centre and 3no. light industrial units (Variation of condition 13 and removal of condition 14 from planning approval LA03/2018/0917/F relating to Heavy Goods Vehicles)
SITE/LOCATION:	Lands situated approx. 350m SE of 632 Doagh Road and 150m south of 618 Doagh Road, Newtownabbey
APPLICANT:	Kemark No 2 Ltd

Kieran O'Connell, Senior Planning Officer, introduced the Planning Report and associated addendum report to the Committee and made a recommendation to grant planning permission.

The undernoted Elected Member and public speakers addressed the Committee and responded to enquiries from Members as requested –

Alderman Stephen Ross	In Objection
Karl Rainey	In Objection
Michael Rainey	In Objection
Jennifer Rainey	In Objection
Tom Stokes	In Support/ Agent
Andrew McKelvey	In Support/ Applicant

Proposed by Alderman Agnew
Seconded by Councillor Webb that planning permission be granted.

On the proposal being put to the meeting, 6 Members voted in favour, 4 against and 0 abstentions, it was agreed

that planning permission be granted for the retention of Condition 14 and the variation of Condition 13 along with the Conditions set out in the Addendum report.

ACTION BY: Sharon Mossman, Deputy Director of Planning

Alderman Agnew experienced technical issues and was unable to vote on Item 3.2.

ITEM 3.2 APPLICATION NO: LA03/2021/0809/F

PROPOSAL:	Extension to existing commercial yard/depot, containing precast concrete material storage bunkers, a storage shed, HGV and car parking
SITE/LOCATION:	Lands 85m North of 386A Ballyclare Road, Newtownabbey, BT36 4TQ
APPLICANT:	EJC Contracts Ltd

Kieran O'Connell, Senior Planning Officer, introduced the Planning Report to the Committee and made a recommendation to grant planning permission.

The undernoted public speakers addressed the Committee and responded to enquiries from Members as requested –

Ashley McBride	In Objection
Kelly McBride	In Objection
Gemma Jobling	In Support/ Consultant
Paul Marley	In Support/ Applicant (for questions)
Shelly Taylor	In Support

Proposed by Alderman Smyth

Seconded by Councillor Webb that planning permission be refused.

on the proposal being put to the meeting 6 Members voted in favour, 3 against and 0 abstentions, it was agreed

that planning permission be refused for the application, the detail of which being delegated to Officers due to the detrimental impact on the visual integration, residential amenity, and character of the area.

The reason for the decision contrary to Officer recommendation was that Members considered that there would be a detrimental impact on the visual integration, residential amenity, and character of the area.

ACTION BY: Sharon Mossman, Deputy Director of Planning

Alderman Agnew left the meeting.

Councillor Flanagan left the Chamber during Item 3.3 and was therefore unable to vote.

ITEM 3.3 APPLICATION NO: LA03/2018/0888/RM

PROPOSAL: 525 residential units (comprising 200 detached, 164 semi-detached, 77 townhouses and 84 apartments) and associated site works, 6 retail units (local shops), public open space and an equipped play park.

SITE/LOCATION: Lands/fields to the north east and south of 14 Niblock Road, Antrim (fields bounded by rail line to west and Dunsilly/Holywell Burn to north). Land situated between Durnish Road/Mull Road and railway line east and NE of meadow Lands north of Arran Street and Tiree Street north of Orkney Street and west of Niblock Oaks.

APPLICANT: D.R. Mitchell Ltd

Kieran O'Connell, Senior Planning Officer, introduced the Planning Report to the Committee and made a recommendation to grant planning permission.

The undernoted Elected Member and public speakers addressed the Committee and responded to enquiries from Members as requested –

Councillor Paul Dunlop	In Objection
Eamonn Loughery	In Support/ Agent
David Ferguson	In Support/ Architect (for questions)
Simon Wells	In Support/ Consultant (for questions)
Gary McGhee	In Support/ Solicitor (for questions)
David Mitchell	In Support/ Applicant (for questions)

Proposed by Councillor Webb

Seconded by Councillor Cushman that planning permission be granted

On the proposal being put to the meeting 8 Members voted in favour, 0 against and 0 abstentions, it was unanimously agreed

that planning permission be granted for the application subject to the conditions set out in the Planning Report.

ACTION BY: Sharon Mossman, Deputy Director of Planning

Proposed by Councillor Archibald-Brown

Seconded by Councillor Webb that the meeting be adjourned for ten (10) minutes

The meeting reconvened at 8.30pm.

Councillors Magill and Swann left the meeting.

Councillor Flanagan returned to the Chamber.

ITEM 3.4 APPLICATION NO: LA03/2021/0520/F

PROPOSAL:	Development of 43 dwellings (34 semi-detached and 9 detached), new access from the Mill Road, landscaping with central open space and associated operational development.
SITE/LOCATION:	Fronting Mill Road Doagh to the north east of the Mill Green housing development and 30m south east of 1 Carson Terrace Mill Road Doagh.
APPLICANT:	Kenny Homes

Kieran O'Connell, Senior Planning Officer, introduced the Planning Report to the Committee and made a recommendation to grant planning permission.

The undernoted public speaker addressed the Committee and responded to enquiries from Members as requested –

Peter Fleming

In Support/ Agent

Proposed by Councillor Flanagan

Seconded by Alderman Smyth that planning permission be granted.

On the proposal being put to the meeting 7 Members voted in favour, 0 against and 0 abstentions, it was unanimously agreed

that planning permission be granted for the application subject to the conditions set out in the Planning Report.

ACTION BY: Sharon Mossman, Deputy Director of Planning

ITEM 3.5 APPLICATION NO: LA03/2021/1013/F

PROPOSAL:	Renewal of planning approval LA03/2015/0286/F (Proposed single wind turbine with 40m hub height and 30m rotor diameter)
SITE/LOCATION:	Lands approximately 287m South of 133 Ballyhill Road, Ballyutoag, Belfast
APPLICANT:	Mr C Fleming

Johanne McKendry, Senior Planning Officer, introduced the Planning Report to the Committee and made a recommendation to refuse planning permission.

There were no public speakers to address this item.

Proposed by Councillor Flanagan

Seconded by Councillor Lynch that planning permission be refused.

on the proposal being put to the meeting 6 Members voted in favour, 0 against and 1 abstention, it was agreed

that planning permission be refused for the following reason:

- 1. The proposal is contrary to the SPPS and Policy NH 5 of PPS 2 in that insufficient information has been submitted by the applicant to demonstrate that there will be no adverse impact on bats and the groundwater environment.**

ACTION BY: Sharon Mossman, Deputy Director of Planning

ITEM 3.6 APPLICATION NO: LA03/2022/0731/F

PROPOSAL:	5 wind turbines, up to a maximum of 92.5m base to blade tip height, up to 57m hub height and up 71m blade diameter (Removal of Condition 21 from planning approval T/2014/0478/F regarding implementation of Radar Mitigation Scheme)
SITE/LOCATION:	Land approximately 1km North of No. 71 Ballyutoag Road, Belfast, BT14 8SS
APPLICANT:	Ballyutoag WF Ltd

Johanne McKendry, Senior Planning Officer, introduced the Planning Report to the Committee and made a recommendation to refuse planning permission.

The undernoted public speaker addressed the Committee and responded to enquiries from Members as requested –

David McElrea

In Support/ Applicant

Proposed by Councillor Flanagan

Seconded by Councillor Bennington that planning permission be refused, and that, a report be brought back to a future Planning Committee by Officers on options when there is an ongoing external commercial dispute.

On the proposal being put to the meeting 7 Members voted in favour, 0 against and 0 abstentions, it was unanimously agreed

that planning permission be refused for the following reason:

- 1. The proposed removal of condition 21 is contrary to the policy provisions of the SPPS and Policy RE 1 of PPS 18 in that it would, if permitted, have an unacceptable adverse impact on aviation safety.**

ACTION BY: Sharon Mossman, Deputy Director of Planning/ Paul Casey, Borough Lawyer & Head of Legal Services

ITEM 3.7 APPLICATION NO: LA03/2022/0326/F

PROPOSAL: Retention of building for use as embroidery workshop and office

SITE/LOCATION: 22 Hollybrook Road, Randalstown

APPLICANT: Mr James Gray

Johanne McKendry, Senior Planning Officer, introduced the Planning Report to the Committee and made a recommendation to refuse planning permission.

The undernoted public speaker addressed the Committee and responded to enquiries from Members as requested –

Chris Cassidy

In Support/ Agent

Proposed by Councillor Flanagan

Seconded by Councillor Bennington that planning permission be refused.

On the proposal being put to the meeting 4 Members voted in favour, 2 against and 1 abstention, it was agreed

that planning permission be refused for the following reason:

- 1. The proposal is contrary to the policy provisions of the Strategic Planning Policy Statement and Policies CTY 1 and CTY 11 of PPS 21: Sustainable Development in the Countryside, in that the use of the building does not merit being considered as an exceptional case as the farm business is not shown to be established for 6 years.**

ACTION BY: Sharon Mossman, Deputy Director of Planning

Having declared an interest in Item 3.8 Councillor Archibald-Brown left the Chamber and Councillor Webb took the Chair.

ITEM 3.8 APPLICATION NO: LA03/2022/0776/F

PROPOSAL: Retention of building as hairdressing salon
SITE/LOCATION: 3 Brookfield Road, Burnside, Doagh, Ballyclare
APPLICANT: Jennifer Christie

Johanne McKendry, Senior Planning Officer, introduced the Planning Report to the Committee and made a recommendation to refuse planning permission.

The undernoted public speakers addressed the Committee and responded to enquiries from Members as requested –

Councillor Michael Stewart	In Support
Robin Park	In Support/ Agent

Proposed by Councillor Lynch

Seconded by Alderman Smyth that planning permission be granted and the issue relating to vehicular access be delegated to Officers.

On the proposal being put to the meeting 6 Members voted in favour, 0 against and 0 abstention, it was unanimously agreed

that planning permission be granted with the issue relating to vehicular access being delegated to Officers.

The reason for the decision contrary to Officer recommendation is that the application was an exception to the Policy due to the lack of a retailing area in Burnside, lack of impact on neighbours, personal circumstances of the applicant, local needs, and the scale and nature of the proposal.

ACTION BY: Sharon Mossman, Deputy Director of Planning

Councillor Archibald Brown returned to the meeting and resumed as Chair.

ITEM 3.9 APPLICATION NO: LA03/2022/0609/F

PROPOSAL: Retrospective application for retention of existing farm shed
SITE/LOCATION: 100m SW of 12a Irish Hill Road, Ballyclare, BT39 9NQ
APPLICANT: Mr William Wells

Barry Diamond, Head of Planning Development Management (Interim) introduced the Planning Report and associated addendum report to the Committee and made a recommendation to refuse planning permission.

The undernoted public speaker addressed the Committee and responded to enquiries from Members as requested –

Simon Wells In Support/ Applicant

Proposed by Alderman Smyth
Seconded by Councillor Archibald-Brown that the application be deferred for a period of one (1) month to enable further information relating to the applicant's other premises be presented.

On the proposal being put to the meeting 7 Members voted in favour, 0 against and 0 abstentions, it was unanimously agreed

that the application be deferred for a period of one (1) month to enable further information relating to the applicant's other premises be presented.

ACTION BY: Sharon Mossman, Deputy Director of Planning

ITEM 3.10 APPLICATION NO: LA03/2022/0610/O

PROPOSAL:	Site of dwelling and garage on a farm
SITE/LOCATION:	30m Approx. South East of 76 Crosskennan Road, Antrim
APPLICANT:	Mr William Hurst

The Chairperson advised Members that this application had been withdrawn by the applicant.

PART TWO GENERAL PLANNING MATTERS

ITEM 3.11

P/PLAN/1 DELEGATED PLANNING DECISIONS AND APPEALS

A list of planning decisions issued by Officers during October 2022 under delegated powers together with information relating to planning appeals was circulated for Members information.

One (1) appeal was upheld during October by the Planning Appeals Commission (PAC) in relation to LA03/2020/0410/O (PAC 2020/A0135) proposed site for a dwelling and attached domestic garage approximately 200m southeast of 178 Staffordstown Road, a copy of this decision was circulated. One (1) further appeal was dismissed during October by the PAC in relation to LA03/2020/0007/F (2020/A0133) an agricultural building southwest of 17 Whitehill Drive, Randalstown, and a copy of this decision was also circulated.

Proposed by Alderman Smyth
Seconded by Councillor Flanagan and unanimously agreed that

the report be noted.

NO ACTION

ITEM 3.12

P/PLAN/1 PROPOSAL OF APPLICATION NOTICES FOR MAJOR DEVELOPMENT

Prospective applicants for all development proposals which fell into the Major development category under the 2011 Planning Act were required to give at least 12 weeks' notice to the Council that an application for planning permission is to be submitted. This is referred to as a Proposal of Application Notice (PAN). Three (3) PANs were registered during October 2022 the details of which are set out below.

LA03/2022/0862/PAN

Proposed erection of 2no distribution warehouse buildings with ancillary facilities, including parking and landscaping

Land approx. 80m south of 3 Ballyearl, Newtownabbey, BT36 5SW

Montgomery Developments, 607 Antrim Road, Newtownabbey, BT36 4RF

4 October 2022

12 week expiry: 27 December 2022

LA03/2022/0863/PAN

Proposed storage and distribution facility comprising: warehousing, research and development building, officers, steel storage yard, ancillary plant equipment, parking, loading; unloading areas, landscaping and all associated site works. Relocation of existing builders' storage and farm machinery sales yard. Newt right turn land access provided via Nutts Corner Road.

50 Nutts Corner Road, Nutts Corner, Crumlin.

Hannon Group, 21 Brankinstown Road, Aghalee, BT67 0DF.

4 October 2022

12 week expiry: 27 December 2022

LA03/2022/0923/PAN

Development of 2 no. modular bed wards with link corridor to existing hospital; new 2 storey car park containing approx. 210 spaces; modular office building and electrical sub-station

Lands at Antrim Area Hospital, Bush Road, Antrim, BT41 2RL

NHSCT Antrim Area Hospital, Bush Road, Antrim, BT41 2RL

25 October 2022

12 week expiry: 17 January 2023

Under Section 27 of the 2011 Planning Act obligations were placed on the prospective developer to consult the community in advance of submitting a Major development planning application. Where, following the 12-week period set down

in statute, an application is submitted this must be accompanied by a Pre-Application Community consultation report outlining the consultation that has been undertaken regarding the application and detailing how this has influenced the proposal submitted.

Proposed by Alderman Smyth
Seconded by Councillor Flanagan and unanimously agreed that

the report be noted.

NO ACTION

ITEM 3.13

P/PLAN/012/VOL2 PLANNING PORTAL GOVERNANCE BOARD

As advised previously work was ongoing on the delivery and implementation of the new Northern Ireland Planning Portal which would replace the current Northern Ireland Public Access.

The Department advised at a meeting held on 11 November that the system was ready for 'go live'. The date was scheduled for 5 December 2022.

As previously reported there would be system downtime to facilitate the transition from the current system to the Planning Portal. The Portal closed on 18 November with read only access for both Planning Staff and the public. Training was being rolled out for staff and Members on the new Portal.

In order to ensure a consistent approach to the publication and availability of planning information for all citizens in NI the Planning Senior Administrative Officer Group, which includes representation from Mid Ulster District Council, have now reviewed the position and are proposing a Planning Publication Policy (copy circulated) which is consistent across all Councils.

Additionally, the Planning Section has reviewed its Privacy Notice to ensure that all persons using the Planning Service are aware of our policy. A copy had been circulated.

Proposed by Alderman Smyth
Seconded by Councillor Flanagan and unanimously agreed that

the report be noted.

NO ACTION

ITEM 3.14

P/PLAN/1 DEPARTMENT FOR INFRASTRUCTURE (DfI) PUBLIC CONSULTATION ON VALIDATION CHECKLISTS FOR PLANNING APPLICATIONS

Correspondence (circulated) had been received from the Department for Infrastructure regarding the announcement of a public consultation on the

introduction of a statutory power for Councils and the Department to provide validation checklists for planning applications. The consultation closes on 6 January 2023 and a copy of the consultation was circulated for information.

Validation checklists will aim to improve the quality of applications being submitted and speed up the overall processing times for applications.

It has been well recognised by the Northern Ireland Audit Office and the Public Accounts Committee that there is a need to review the current validation system, which has a low bar in terms of information to be submitted to progress an application. In addition, it is the experience of Officers that a stronger validation system supported by legislation would be beneficial in relation to progressing applications.

The proposal includes amending The Planning (General Development Procedure) Order (NI) 2015 to allow a planning authority to prepare and publish checklists above the current minimum statutory requirements which would remain unchanged, setting out the additional supporting information/evidence which would be required to accompany different types of planning application. There will be some flexibility for individual Councils to take an approach that suits their local area and planning issues. In addition, the consultation raised the issue of validation disputes. This is where the applicant disputes whether the application is valid. Similar provision is made in England and Wales and the Department recommends a similar procedure in Northern Ireland to reduce the risk of Judicial Review. Further details on the options available is set out in the enclosed consultation report.

Officers consider that the introduction of validation checklists will be of benefit to the delivery of planning applications and consider that a corporate response should issue welcoming the amendment to legislation. Should the legislation be amended consideration will be given to the content of the Councils new validation checklist.

Proposed by Councillor Lynch
Seconded by Councillor Webb and agreed that

Council welcomes the introduction of validation checklists and amended legislation.

ACTION BY: Sharon Mossman, Deputy Director of Planning

ITEM 3.15

P/PLAN/1 DEPARTMENT FOR INFRASTRUCTURE (DfI) PUBLIC CONSULTATION TO PLANNING PERMITTED DEVELOPMENT RIGHTS TO PROTECT THE ENVIRONMENT

The Department for Infrastructure opened a consultation on proposed changes to the Permitted Development Rights for Domestic Microgeneration Equipment and Reverse Vending Machines (circulated) on 27 October 2022. The consultation seeks views on proposals to revise permitted development rights for the installation of domestic microgeneration equipment such as heat pumps and provide new permitted development rights for reverse vending machines.

Full details of the consultation and a link to the survey are available at:

<https://www.infrastructure-ni.gov.uk/consultations/consultation-changes-planning-permitted-development-rights-protect-environment-and-help-address>

The survey will be open until **5pm on Friday 23 December 2022**.

Proposed by Councillor Flanagan
Seconded by Alderman Smyth and agreed that

Members respond on an individual or party political basis.

ACTION BY: Stephanie Boyd, Planning and Economic Development Business Supervisor

ITEM 3.16

P/FP/LDP/5 LOCAL DEVELOPMENT PLAN (LDP) UPDATE - DRAFT LOCAL POLICIES PLAN – PROJECT PLAN

Members are reminded that the Council's Planning Section's Forward Planning Team has commenced work on the next stage of the Local Development Plan (LDP) process, the draft Local Policies Plan (LPP). This Plan will set out the site-specific proposals, local policy designations and reasoned proposals for uses of land that will be required to deliver the vision, objectives, spatial strategy and strategic policies that are defined in the Council's Draft Plan Strategy (DPS).

Officers discussed a preliminary LPP Project Plan at the reconvened LDP Members Steering Group which took place on 11 November 2022.

It is proposed to hold a LDP Members workshop to provide a high level overview of the next stage of the Local Development Plan process. A date will issue to all Elected Members and papers will be circulated in advance.

Dfl Updates

Correspondence has been received from the Department for Infrastructure (Dfi) with regard to:

- (a) Final Draft, Development Plan Practice Note 11, 'Receipt of Independent Examination Report and Adoption of a Development Plan Document' (October 2022) – circulated. This guidance relates to the key requirements for the adoption of Development Plan Documents and deals primarily with procedures as well as good practice;
- (b) NI Minerals Group - Mr. Alistair Beggs (Dfi, Director of Strategic Planning Directorate) – circulated. Following the Dfi recommendation that this group be reconvened to assist in the collection of returns on annual mineral statement to the Department of the Economy (DfE), a meeting of the reconvened group took place on 17 November 2022 hosted by Mid and East Antrim Borough Council.

Proposed by Councillor Webb
Seconded by Councillor Lynch and agreed that

the report be noted, and that a Members workshop, to be held in the evening, be arranged to provide a high level overview of the Local Policies Plan.

ACTION BY: Simon Thompson, Principal Planning Officer (Interim)

PROPOSAL TO PROCEED 'IN CONFIDENCE'

Proposed by Councillor Flanagan

Seconded by Councillor Bennington and agreed that

the following Committee business be taken In Confidence.

The Chairperson advised that the livestream and audio recording would now cease.

PART TWO - OTHER PLANNING MATTERS – IN CONFIDENCE

ITEM 3.17

P/PLAN/1 PLANNING APPEALS COMMISSION (PAC) AND DfI RESPONSE TO PLANNING APPEAL – IN CONFIDENCE

Members were reminded that at the August Planning Committee meeting a report was brought before Members which outlined that the Planning Appeals Commission (PAC) had appeared to change their interpretation to Policy CTY 8 of Planning Policy Statement 21, i.e. the infill policy.

The PAC had made a decision to allow an appeal for an infill dwelling and garage at lands between 142 and 144 Seven Mile Straight, Muckamore, Antrim (Appeal Ref: 2021/A0094). The appeal while made by an individual Commissioner was reviewed by the PAC collectively and represents a corporate decision of the PAC made by a panel of Commissioners. In addition, on the same day the PAC made a similar decision on an appeal for an infill dwelling in the Newry and Mourne District Council area, (Appeal Ref:2021/A0094).

It is the view of Officers that the recent decisions by the PAC represented a notable shift in the interpretation of policy and there were matters taken into account which were not material to the assessment and not factually accurate.

The Committee decided that Officers should write to both DfI Planning, given their responsibility for regional policy, and the PAC to ascertain their views on what appeared to be a change in the interpretation of policy which had been in existence for some 12 years. (copy of correspondence circulated)

DfI Planning responded to the Council's letter (circulated) and indicated that the interpretation of policy was largely a matter for the Council and the PAC. They further indicated that the Council could bring forward detailed local operational policies to address the issue which the Council has already done in its draft Local Development Plan – Plan Strategy which has gone through Independent Examination. (Policy DM 18C 'Dwellings within a Built Up Frontage' refers).

The response from the PAC (circulated) sought to justify their decision making, however, it is the view of Officers that they failed to identify how the garage had a frontage to the public road and failed to identify the location where the Commissioner had stated that the garage could be viewed. While the PAC stated that they had to address the visual aspect of the garage as it was a matter raised by the Council it appears to Officers that the PAC applied weight to this matter in their decision making which is not a policy test.

Given that DfI Planning have indicated that the interpretation of their policy is matter for local Councils and the PAC, and given that the PAC are indicating that they have not made any error in their decision making, the only recourse is for the Council to either accept the decision of the PAC or challenge it through a Judicial Review to the High Court.

It is not expected that a judicial challenge of the PAC would be appropriate given that the Council's new policy (Policy DM 18C), will provide greater clarity and certainty to the infill policy and should become operational following the adoption of the Draft Plan Strategy, which is anticipated to be in 2023. It is recommended, based on the recent interpretation of Policy by the PAC, that the Officers consider each case for an infill dwelling opportunity in the countryside on a case by case basis.

Proposed by Councillor Webb
Seconded by Councillor Lynch and agreed that

applications for infill dwellings be considered by Officers on a case by case basis.

ACTION BY: Barry Diamond Head of Planning Development Management (Interim)

ITEM 3.18

P/PLAN/1 LA03/2022/0418/O - LANDS APPROX. 50M SOUTH EAST OF 15 CROSSHILL ROAD, CRUMLIN, BT29 4BQ – IN CONFIDENCE

Members are reminded that the following was agreed by Members at the Planning Committee meeting in October:

the application be deferred for one (1) month to allow for a report to be brought back to the next Planning Committee meeting allowing Members to consider legalities and planning issues relating to land transfer, and that no further speaking rights to be granted to the applicant subject to legal team confirmation.

Members are reminded that Policy CTY1 of PPS21 sets out the types of development that are considered acceptable in principle in the countryside. These include a dwelling on a farm in accordance with Policy CTY 10. Policy CTY 10 states that all of the following criteria must be met:

- (a) The farm business is currently active and has been established for at least 6 years;

- (b) No dwellings or development opportunities out-with the settlement limits have been sold off from the farm holding within 10 years of the date of the application. This provision will only apply from 25 November 2008; and
- (c) The new building is visually linked or sited to cluster with an established group of buildings on the farm.

The following are the main matters which require further clarification in respect of this Planning Application:

- 1. Ownership of the land in question.**
- 2. CTY10 of PPS21.**
- 3. Speaking rights.**
- 4. Additional matters.**

The responses to the above 4 matters are as follows:

1. Ownership of the land in question.

DAERA confirmed the Applicant's farm business and has been established for more than 6 years, therefore CTY10 (a) is satisfied.

The Applicant, Mr McKavanagh, does not own the land subject to this planning application. Mr McKavanagh verbally informed Officers that he holds the land in question in conacre. A conacre agreement does not form a landlord and tenant relationship, it is normally a seasonal agreement between a landowner and a third party for a specific farming activity. Officers have no documentary evidence of a conacre agreement. The land which Mr McKavanagh says he holds in conacre is owned by Ms Hagan, one of the speakers at last month's Planning Committee meeting. Mr McKavanagh wishes to apply for a dwelling on the land he says he holds in conacre so that Ms Hagan's son can live there and assist Mr McKavanagh in running the farm on the site.

In addition to the land subject to this planning application, Mr McKavanagh, has his own farm land nearby. The subject lands form part of Mr McKavanagh's farm holdings as shown on the submitted farm maps (dated 14th January 2022) and this would suggest that Mr McKavanagh takes these lands in conacre and claims single farm payments on the subject lands. However, no evidence has been provided to support this conclusion.

2. CTY10 of PPS21

The Applicant stated in planning application forms that no dwellings or development opportunities have been sold off from his farm holding within 10 years of the date of the current application. A planning history search identified that a farm dwelling in respect of the Applicants land was approved on 28 September 2009 on the lands using the Applicants farm business identification. Therefore, this is compliant with the element of CTY10 that allows for a farm dwelling once every 10 years.

A land registry check shows that land was sold off from the Applicants farm holding to a family member before 31 July 2014. The previous planning approval for a farm dwelling expired on 28 September 2014. Paragraph 5.40 of CTY10 of PPS21 states: *'Planning permission will not be granted for a dwelling under this policy where a rural business is artificially divided solely for the purpose of obtaining planning permission or has recently sold-off a development opportunity from the farm such as a replacement dwelling or other building capable of conversion. For the purposes of this policy, 'sold-off' will mean any development opportunity disposed of from the farm holding to any other person including a member of the family.'*

For the purposes of CTY10 (b) of PPS21 the Applicant's farm holdings cannot be taken in a piecemeal fashion and his entire farm holdings which relate to his farm business identification must be treated as one entity. This will apply to his farm land which he owns and the farm land which he says he holds in conacre which is owned by Ms Hagan.

Therefore, as a development opportunity has been sold off from the Applicant's farm holding within the last 10 years it does not comply with CTY10 (b) of PPS21. It is irrelevant whether the development opportunity was acted upon or not, the fact is that Mr McKavanagh no longer owns the land in question and therefore it is considered disposed of for the purposes of CTY10 (b) of PPS21.

3. Speaking rights.

As a number of matters have been raised in this report it is reasonable to allow a right of reply. Therefore if Members are minded to bring the matter back to the Planning Committee it is recommended that Members only allow speaking rights to address the matters contained in this report.

4. Additional matters

In addition to the legal matters raised above, the application is still required under Policy CTY 10 (c) to demonstrate that the new building is visually linked or sited to cluster with an established group of buildings on the farm etc. There is a house/buildings located beside the proposed new dwelling but no evidence has been provided to demonstrate that they are part of the farm holding. Paragraph 5.41 of CTY 10 (c) of PPS21 states "It will not be acceptable to position a new dwelling with buildings which are on a neighbouring farm holding.'

In summary, no evidence has been presented regarding the issue of conacre other than word of mouth and no evidence has been presented regarding if the current property/buildings are part of the farm holding as required by policy.

Members' instructions were requested on this issue before bringing the application back for Committee consideration.

Proposed by Councillor Webb
Seconded by Alderman Smyth and agreed that

The application be brought to December's Planning Committee with the Legal Report being made available in the public domain, and speaking rights be granted to address only matters contained in the Legal Report.

ACTION BY: Barry Diamond, Head of Planning Development Management(Interim)

PROPOSAL TO MOVE OUT OF 'IN CONFIDENCE'

Proposed by Councillor Bennington
Seconded by Alderman Smyth and agreed

that any remaining Committee business be conducted in Open Session.

The Chairperson advised that audio recording would recommence.

There being no further Committee business the Chairperson thanked Members for their attendance and the meeting concluded at 10.04 pm.

MAYOR