

## **NEWRY, MOURNE & DOWN DISTRICT COUNCIL**

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**Minutes of Planning Committee Meeting of Newry, Mourne and Down District Council held on Wednesday 08 February 2023 at 10.00am in the Boardroom, Monaghan Row, Newry and via Microsoft Teams.**

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**Chairperson:** Councillor D McAteer

**In attendance: (Committee Members)**

Councillor R Burgess  
Councillor P Byrne  
Councillor L Devlin  
Councillor G Hanna  
Councillor V Harte  
Councillor M Larkin  
Councillor A Lewis  
Councillor D Murphy  
Councillor L McEvoy  
Councillor G O'Hare  
Councillor H Reilly

**(Officials)**

Mr C Mallon	Director of ERT
Mr A McKay	Chief Planning Officer
Mr Pat Rooney	Principal Planning Officer
Mr A Hay	Principal Planning Officer
Mr M McQuiston	Senior Planning Officer
Ms N Largey	Legal Advisor
Mr Peter Rooney	Legal Advisor
Ms S Taggart	Democratic Services Manager (Acting)(Teams)
Ms L Dillon	Democratic Services Officer (Teams)
Ms L Cummins	Democratic Services Officer (Teams)
Ms C McAteer	Democratic Services Officer
Ms P McKeever	Democratic Services Officer

**P/010/2023: APOLOGIES AND CHAIRPERSON'S REMARKS**

No apologies were received.

**P/011/2023: DECLARATIONS OF INTEREST**

There were no Declarations of Interest.

**P/012/2023:      DECLARATIONS OF INTEREST IN ACCORDANCE WITH PLANNING COMMITTEE PROTOCOL- PARAGRAPH 25**

**Declarations of Interest in relation to Para.25 of Planning Committee Operating Protocol – Members to be present for entire item.**

- Item 7 - LA07/2022/0273/F– Cllrs. Devlin and Harte were not present at the Planning Committee Meeting on 14-12-2022
- Item 8 - LA07/2020/1651/F – Cllrs. Byrne, Larkin, Lewis, Murphy, McAteer and McEvoy attended the site visit on 18-01-2023
- Item 9 - LA07/2022/0578/O – Cllrs. Burgess, Byrne, McAteer, Murphy, McEvoy, Devlin, Reilly and Lewis attended the site visit on 18-01-2023

**MINUTES FOR CONFIRMATION**

**P/013/2023:      MINUTES OF PLANNING COMMITTEE MEETING HELD ON WEDNESDAY 11 JANUARY 2023**

Read:                      Minutes of Planning Committee Meeting held on Wednesday 11 January 2023. (Copy circulated)

**AGREED:                On the proposal of Councillor Murphy, seconded by Councillor Devlin, it was agreed to adopt the Minutes of the Planning Committee Meeting held on Wednesday 11 January 2023 as a true and accurate record.**

**FOR DISCUSSION/DECISION**

**P/014/2023:      ADDENDUM LIST**

Read:                      Addendum List of Planning Applications with no representations received or requests for speaking rights – Wednesday 08 February 2023. (Copy circulated)

**AGREED:                On the proposal of Councillor Hanna, seconded by Councillor Burgess, it was agreed to approve the Officer recommendation in respect of the following applications listed on the addendum list for Wednesday 08 February 2023:**

- LA07/2022/1438/F - Proposed single storey side and rear extension, and new patio area - 25 Main St Bessbrook.    **APPROVAL**

- LA07/2022/1586/LBC - Proposed single storey side and rear extension, and new patio area - 25 Main St Bessbrook **APPROVAL**

### **LOCAL DEVELOPMENT PLAN (CLOSED SESSION)**

**Agreed:** On the proposal of Councillor Harte, seconded by Councillor McEvoy, it was agreed to exclude the public and press from the meeting during discussion on the following items:

**P/015/2023: LDP: Progress Report – Quarterly Update**

**Read:** Report dated 8 February 2023 by Mr A Hay, Principal Planning Officer regarding the Local Development Plan: Progress Report – Quarterly Update.

On the proposal of Councillor Hanna, seconded by Councillor Devlin, it was agreed to come out of closed session.

When the Committee came out of closed session, the Chairman advised the following had been agreed:

**P/015/2023: LDP: Progress Report – Quarterly Update**

**AGREED:** On the proposal of Councillor Burgess, seconded by Councillor Murphy, it was agreed to note the LDP: Progress Report – Quarterly Report provided in the report dated 8 February 2023 from Mr A Hay, Principal Planning Officer regarding the Local Development Plan.

### **DEVELOPMENT MANAGEMENT - PLANNING APPLICATIONS FOR DETERMINATION**

**P/016/2023: PLANNING APPLICATIONS FOR DETERMINATION**

(Councillors Devlin and Harte withdrew from the discussion/decision on this application)

**(1) LA07/2022/0273/F**

**Location:**

54 Market Street Downpatrick

**Proposal:**

Change of use application from existing shop (Use Class A1)

Planning Application was brought back to Committee to confirm reasons for refusal following overturn of the Case Officer opinion at the Planning Committee Meeting on Wednesday 14 December 2022.

Mr McKay advised Members it was not possible to frame reasons for refusal based on DCAN1 as it was an advice note, and he had taken the rationale as set out by Councillors regarding points 4 and 5 of DCAN1 and translated it into a refusal reason based on policy, as was required, and suggested the following wording:

*'The development is contrary to para 3.8 of the SPPS in that the development as proposed would, if permitted, result in the break up of a continuous shopping frontage along Market Street and also have a detrimental impact on the wider neighbourhood of Downpatrick specifically community groups, churches and schools, by virtue of an accumulation of adult gaming facilities in the area.'*

Ms Largey said she considered the concern of Members related to the impact of the proposal on Market Street and the primary retail core as well as the wider area, and she said that wording should be included to reflect the concerns of Members in respect of the application location, in addition, she said, for the purposes of clarity, a reference to DCAN1 should be included, so it was clear to the applicant and in any subsequent appeal that it was a material consideration in the Committee's decision.

Councillor Byrne agreed with the suggested wording, and as pointed out by Ms Largey, agreed wording be included to the effect the decision was backed up by points 4 and 5 in the advice note DCAN1. Councillor Byrne and Councillor Murphy indicated they were content for Planning to finalise the appropriate wording.

**AGREED:                    On the proposal of Councillor Byrne, seconded by Councillor Murphy, it was agreed the wording for refusal in respect of Planning Application LA07/2022/0274/F be amended to that suggested by Planning Department and to include a reference to DCAN1.**

**(2)    LA07/2020/1651/F**

(Councillors Burgess, Devlin, Harte, O'Hare and Reilly withdrew for the discussion/decision on this application.

Councillor Hanna said whilst he was not at the site visit on 18<sup>th</sup> January 2023, he was at a previous site visit and was very familiar with the site and did not feel his decision would be impacted by his failure to attend.

**Location:**

75m north of 18 Ballinasack Road, Mullaghbawn, Newry

**Proposal:**

Erection of dwelling (Change of house type from that previously approved under P/2006/2002/F) (Amended description)

**Conclusion and Recommendation from Planning Official:**

Refusal

**Speaking rights:**

As Planning Application LA07/2020/1651/F was the subject of a site visit on 18 January 2023, and in line with the updated Operating Protocol, no further speaking rights were permitted on this application.

Mr Colin O'Callaghan, agent was present to answer any queries from Members.

**Issues raised:**

- Mr Rooney said the timeframe for commencement of works would have been clearly stated on the formal notice issued to the applicant / agent and it was this formal notice that should have been relied upon by the applicant and not the planning portal.
- Mr Rooney said pre commencement conditions had to be carried out prior to carrying out any other works on the site and he said these conditions were imposed for road safety reasons. He said there were PAC decisions to support the view that if an access was not implemented on site as specified within the conditions, prior to any other development works being carried out, then the approval granted, would be considered lapsed.
- Mr O'Callaghan said the applicant considered work was carried out within the timeframe.
- Mr O'Callaghan acknowledged the visibility splays were a pre commencement condition but said there was a natural splay already in place with no works required on the right side and only minimal works would have been required on the left side.
- Mr O'Callaghan said he did not consider foundations to be erroneously sited, he said there was a considerable degree of overlapping and a certificate of lawfulness had previously been granted under similar circumstances.
- Mr Rooney said determining weight could not be given to previous approvals granted as they had lapsed.
- Ms Largey said case law was clear in that the decision notice was the relevant document to be relied on, and not the planning portal and the timeframe would have been clearly set out in the decision notice.
- Ms Largey said the pre commencement conditions had not been complied with in accordance with the plans and a previous judicial review had outlined concerns with what had been approved and what had been carried out, and she said there were certainly more concerning issues than the agent was suggesting.
- Ms Largey said the agent had confirmed the visibility splays had not been provided on one side of the access.
- Ms Largey advised Members there were objective issues that would be very difficult to justify if the Committee decided to overturn the recommendation by Planning.



**Proposal:**

New Dwelling and Domestic Garage

**Conclusion and Recommendation from Planning Official:**

Refusal

The Chairperson advised Planning Application LA07/2022/0578/O had been deferred at the request of Councillor Hanna, as the agent had advised the Planning Consultant was not available to attend the Planning Committee Meeting on 8 February 2023.

**(4) LA07/2020/1043/F****Location:**

Proposed residential development of 22 no two storey dwellings, detached garages and associated site works

**Proposal:**

Land 30m north of 4A Tollymore Road

**Conclusion and Recommendation from Planning Official:**

Approval

**Power-point Presentation:**

Mr Anthony McKay, Chief Planning Officer gave a power point presentation on the application with supporting information including a site location plan, an aerial view of the site and photographs from various critical views of the site.

**Speaking rights:**In objection

A written objection was received from Mr G Kendall (circulated separately due to personal information).

In support

Mr Barry Fletcher, agent presented in support of the application, detailing and expanding upon a written statement that had been circulated to Committee Members.

**Issues raised:**

- Mr McKay said the separation requirement distance to the boundary was 10 metres, and the separation distance from the application site to the boundary was 10.1 metres and 10.5 metres to the rear of the property.
- Mr McKay said Planning was satisfied the applicant had done all that was required in terms of advising any other interested parties and he said any other future disputes that may arise would be a civil matter.
- Mr Fletcher confirmed all outstanding issues had been resolved.
- In addressing concerns raised regarding overlooking issues outlined in the objection letter, Mr McKay said the proposed building and the existing building were back to back, the requirement needed was 20 metres of separation, provided, on the application side, the 10 metre separation distance was achieved.

- Mr Fletcher said he had worked with Planners to address overlooking concerns and during the design process the site location had been moved further away from the objector's house.
- Mr Fletcher said there was a 1.8 metre fence, two large mature trees and three proposed trees to be planted in front of the fence and he said it would be the same as the rear of every property in the development.

**AGREED: On the proposal of Councillor Devlin, seconded by Councillor McEvoy, it was unanimously agreed to issue an approval in respect of Planning Application LA07/2020/1043/F as per Officer recommendation the information contained within the Case Officer report and presented to Committee.**

**(5) LA07/2021/1995/F**

**Location:**

Lands to the NW of 26 – 34 Boulevard Park and SW of 59 Boulevard Park, Newcastle

**Proposal:**

Proposed 2no detached dwellings with associated car parking and landscaping

**Conclusion and Recommendation from Planning Official:**

Approval

The Chairperson advised Planning Application LA07/2021/1995/F had been deferred at the request of Councillor Devlin, as the agent had advised an objector was not available to attend the Planning Committee Meeting on 8 February 2023.

**(6) LA07/2022/1069/F**

**Location:**

80-82 Market Street Downpatrick

**Proposal:**

Change of Use of the former bank (Class A2) to an amusement arcade/adult gaming centre facility and alterations to shop front

**Conclusion and Recommendation from Planning Official:**

Approval

**Power-point Presentation:**

Mr Anthony McKay, Chief Planning Officer gave a power point presentation on the application with supporting information including a site location plan, an aerial view of the site and photographs from various critical views of the site.

**Speaking rights:**

In objection

Mr Philip Campbell, Chair, Downpatrick Town Committee and Mr Andy Stephens, Planning Consultant presented in objection to the application, detailing and expanding upon a written statement that had been circulated to Committee Members.

Councillor Gareth Sharvin DEA Councillor presented in objection to application.

Mr McKay said Planning Application LA07/2022/1069/F was unusual as it was already the subject of an appeal to the PAC and jurisdiction for the application now rested with the PAC, however, he said, the process required the view of the Planning Committee, whether it was to accept the recommendation or an alternative view so they could ultimately adjudicate on the application.

### **Issues raised:**

- Mr McKay said the Case Officer report indicated there were approximately 11 units within the block from Lidl at 93 – 100 Market Street and the junction of Market Street and St. Patrick's Avenue, of these 7 units including the subject building were in non-retail use.
- Councillor Byrne considered the shop frontage on either side of the application site along the block was predominantly retail.
- Councillor Larkin said Councillor Devlin and Councillor Byrne were privately considering information not disclosed to other Members and asked for legal advice regarding this. Councillor Byrne advised the information he and Councillor Devlin were sharing was page 6 of the Officers report, which, he said all Members had access to. Councillor Devlin expressed her resentment at the accusation made by Councillor Larkin saying it was completely inappropriate and she asked it be recorded that her integrity had been questioned. Ms Largey said there was nothing in Standing Orders to prevent Members privately discussing an application and it was not procedurally an issue.
- Councillor Murphy said under SPPS, there was an obligation to encourage development of an appropriate nature to enhance the attractiveness of the town and asked what weight should be given to the fact the objectors did not consider it complied with SPPS.
- Mr Stephens said he considered clear harm would be done as demonstrated in his speaking notes. He said the company's balance sheet obtained from Companies House indicated a significant increase in turnover in the post covid world – up from 3.8m to 8.45m and no one had considered where this money had come from.
- Mr Stephens said the proposal would not generate link trips or additional footfall and the income would come from other shops and services in the town centre.
- Mr Stephens said there were 13 similar facilities in Downpatrick which, he said indicated a level clearly above saturation.
- Mr Stephens said the PAC decisions outlined in the Case Officer's report was a misrepresentation in that there were no educational facilities or churches in one referred to by the Officer in Wellington Street, Belfast, which was not the case with this application, and therefore he said, a direct parallel could not be made.
- Mr Stephens said community groups were against the proposed application, it would not enhance the town and ultimately, the Planning Committee needed to be consistent in their determinations, and a recommendation of refusal was put forward for a similar recent application at 54 Market Street, Downpatrick

- Mr McKay said the description of the proposed business was an Amusement Arcade / Adult Gaming Centre, he said, it was predominantly gaming machines, no more detail had been asked for or had been received.
- Mr Stephens said the application had included a planning access and design statement and documentation from Companies House indicated gambling and betting activities.
- In response to a comment made by Councillor Hanna that gambling was a personal choice, Mr Stephens said he was not making a moral point, but rather that the town centres were on their knees, there were already 2 bookmakers in the town and the proposal would not positively impact the town.
- Mr Stephens said an amusement arcade differed to the proposed application in that it provided family entertainment by way of slot machines, dodgems, air hockey etc and was entirely different to that proposed. He said the proposed application was likely to be open 15 hours/day and would have a negative effect on the primary retail core of Downpatrick.
- Councillor Byrne asked if the planners had considered the level of the facility already in Downpatrick or just in the direct primary retail core as outlined in the Case Officer report.
- In response, Mr McKay said a judgement call would have to be made in this regard, he said it was not that straightforward in that there were nuances and he said there was also a need to be mindful about straying into moral judgement.
- Councillor Byrne referred to DCAN1: Paragraph 4 and said at no point had he made any moral comments, but he said the possibility of demonstrable harm needed to be questioned and it was important to know the number of similar outlets across Downpatrick, and that had not been clarified.
- Mr McKay said the focus of the Case Officer report had been the town centre, however if the Committee wished to get more detail regarding the number of amusement arcades, casinos, gaming facilities and bookkeepers across town and the town centre, that could be carried out and the findings brought back to the Committee.
- In response to concerns regarding delaying the application further by deferring it for further information, Mr McKay said the PAC needed to understand the Planning Committee had their procedures.

**AGREED:**                    **On the proposal of Councillor McAteer, seconded by Councillor Devlin it was unanimously agreed to defer Planning Application LA07/2022/1069/F to allow time to seek and define the numbers of businesses operating in the Downpatrick area of an entertainment nature, define what they were and their particular operations in relation to DCAN1: Paragraph 4.**

**P/017/2023:**            **HISTORIC ACTION SHEET**

Read:                            Historic Action Sheet. **(Copy circulated)**

**AGREED:**                    **It was unanimously agreed to note the Historic Action Sheet**

**P/018/2023: PLANNING COMMITTEE PERFORMANCE REPORT – DECEMBER 2022**

**Noted: Noted the Planning Committee Performance Report for December 2022 was not available.**

**P/019/2023: CURRENT APPEALS AND DECISIONS**

**Noted: Noted the current Current Appeals and Decisions was not available.**

The meeting concluded at 12.50pm.

**Signed: \_\_\_\_\_ Chairperson**

**Signed: \_\_\_\_\_ Chief Executive**