

Special Council Meeting in Committee

Draft County Development Plan 19th January 2009

Present: Cllrs. B. Cowen, Cathaoirleach (Presiding), N. Bourke, M. Buckley, J. Butterfield, J. Carroll, M. Corcoran-Kennedy, D. Dolan, E. Dooley, T. Feighery, E. Fitzpatrick, J. Foran, M. Fox, C. Hanniffy, F. McDonnell, T. McKeigue, T. McLoughlin, S. Moylan Ryan, P. Ormond, D. Owens.

In attendance: Mr. P. Gallagher, County Manager, Mr. D. Kirrane, D.O.S., Ann Dillon, S.E.O. (Meetings Administrator)

Apologies: P. Clendennen

Cllr. B. Cowen, Cathaoirleach, advised the draft County Development Plan 2009-2015 had reached the end of its two year process. He said the Ballinamere plan was the remaining item requiring decision before the plan could be considered for adoption. He advised members that legal advice had been obtained and asked Mr. Declan Kirrane D.O.S. to summarise.

Mr. D. Kirrane, D.O.S., read out the reply from Hoey & Denning Solicitors as circulated to the members which comprised of the following four points:

1. The County Manger's report which recommends that the "envelope" would not exceed provision for 34 houses and referred to the crucial issue of ground water protection is not strong or conclusive enough to indicate that an enlarged "envelope" would be a "fatal flaw".
2. The principal court case in relation to elected members disregarding official reports is Child –v– Wiclow County Council. This arose under the old Section 4 Procedure. There are subtle but important references between the old Section 4 Procedure and the making of a Sráid or a local plan under the Draft Development Plan.
3. Counsel does believe that there is some ambiguity or leeway leaving scope for elected members to depart from or make modifications to the Manager's report provided these are:-
 - (a) In accordance with law and;
 - (b) Elected members can show that they gave due consideration ("they had regard to") the official report when coming to their decision
4. Notwithstanding this ambiguity and leeway for the elected members to so depart, such departure is not without legal risk that a Court (in event of subsequent legal proceeding) could possibly take the view that they had not exercised their powers in accordance with proper planning and sustainable development.

Mr. Kirrane advised that it was now a matter for the members to make a proposal.

In the course of a lengthy discussion members considered the legal advice received, discussions held at area level, community views and submissions on the proposal,

sustainable rural development guidelines, the strength of existing development management control systems, and the definition and principles underlying a Sráid.

The Executive reiterated their concerns regarding groundwater vulnerability and the inclusion of any statement regarding the development of more than 35 houses or any change to the existing envelope.

Members broke for lunch at 1 p.m.. On the proposal of Cllr. Hannify, seconded by Cllr. Buckley, members agreed to adjourn the monthly council meeting until 3 p.m. to allow full consideration of the remaining issues before making a decision on Ballinamere Sraid at 2 p.m..

Members reconvened at 2 p.m..A further discussion ensued with some of the members expressing their concerns in relation to groundwater protection. Suggestions were made to limit development by including a specific number of developments which would be allowed over the period of the plan.

Cllr. D. Dolan proposed that the Sráid envelope could accommodate 65-100 dwellings. However, not more than 35 dwellings to be developed over the plan period.

Cllr. Johnny Butterfield, Chairman of the Area Committee proposed that the members revert back to the original proposal which was submitted at the meeting held on September 2008 which included a larger envelope and an amenities area.

Cllr. Butterfield's proposal was as follows;

(i)To make the amendment to the Ballinamere Sráid envelope as decided by the members in September 2008(and put on pubic display in October 2008).

Cllr. Tommy Feighery requested to amend Cllr. Butterfield's proposal to include the following statement:

(ii)To amend Section 4.1 of the Ballinamere Sráid Plan to read: "The Sráid envelope shall be developed in accordance with Policy P04-02 of the County Development Plan"

This proposal was seconded by Cllr. T. McKeigue.

Members agreed that Cllr. Butterfield's proposal (as amended by Cllr Feighery) and seconded by Cllr. McKeigue would be put to the members for final decision at the monthly meeting to follow.

In addressing the members, Cllr. B. Cowen, Cathaoirleach, emphasised that a larger envelope would not guarantee planning permission within that envelope. He advised that the members could abstain from the decision at the monthly meeting if they so wished.

The members expressed their thanks to the staff in the Planning Department and Council who were involved in the development plan process over the past two years. Mr. P. Gallagher, County Manager thanked the members for their input throughout the process and in responding to queries, advised that the plan would come into effect

four weeks from today. He added that it was a long process, with hours spent on submissions alone and indicated that the work done at Area Committee level was a great contribution. He also thanked the members of the public who made submissions.

He continued by stating that a resolution to adopt the plan would be required at the monthly meeting. When adopted the plan must be implemented and he assured the members that the same level of commitment would be applied as during the review process. He noted that a review of the plan would be carried out in two years and presented to the members. Following this in four years a further review would be carried out in preparation for the new plan.

This concluded the business of the meeting.

MINUTES CONFIRMED: -

CATHAOIRLEACH

MEETINGS ADMINISTATOR

18TH MAY 2009