

**Application Reference: VAR/2018/4**

**Applicant:** Mr Frank Gibbons

**Description:** Application under Section 73A for the variation of condition (10)(Pedestrian footpath) of appeal decision reference APP/L6805/A/15/3132036 (Erection of a dwelling, installation of a sewage treatment plant together with the construction of a vehicular access) so as to allow for the submission of a scheme for the provision of a pedestrian footway following the expiry of the 4 month period at

**Site Address:** Ger y Mynydd, Brynrefail, Dulas



**Report of Head of Regulation and Economic Development Service (Joanne Roberts)**

**Recommendation:** Permitted

**Reason for Reporting to Committee**

The application is being presented to the Planning and Orders Committee as the application is contrary to policies of the Joint Local Development Plan but which the Local Planning Authority is minded to approve.

**Proposal and Site**

The application is located in the settlement of Brynrefail adjacent to the A5025 at the junction with the minor road which leads to Mynydd Bodafon.

### Key Issues

The key issue in this case relates primarily to the provision of a pedestrian footway as part of the development. A condition of a recent appeal decision required a scheme to be submitted to the Local Planning Authority for approval, however due to apparent miscommunication the details were agreed directly with the Highways Department rather than the planning department resulting in an inadvertent breach of the condition.

This application therefore seeks to regularise the situation such that the details may be formally agreed with the Local Planning Authority, however the subsequent change in policy following the adoption of the Joint Local Development Plan is a material factor which must be taken into account.

### Policies

#### Joint Local Development Plan

Policy PCYFF 1: Development Boundaries  
 Policy PCYFF 2: Development Criteria  
 Policy PCYFF 3: Design and Place Shaping  
 Policy TAI 6: Housing in Clusters  
 Planning Policy Wales (Edition 10, December 2018)

#### Response to Consultation and Publicity

Consultee	Response
Ymgynghorydd Tirwedd / Landscape Advisor	No comments relevant to landscape policies.
Ymgynghorydd Ecolegol ac Amgylcheddol / Ecological and Environmental Advisor	No ecological comments.
Adain Dechnegol (Draenio) / Technical Section (Drainage)	No response at time of writing report.
Priffyrdd a Trafnidiaeth / Highways and Transportation	The footway details are satisfactory and should be implemented in accordance with the timeframe set out in the appeal decision condition.
Swyddog Llwybrau / Footpaths Officer	No response at time of writing report.
Swyddog Cefn Gwlad a AHNE / Countryside and AONB Officer	No response at time of writing report.
Cynghorydd Margaret Murley Roberts	No response at time of writing report.
Cynghorydd Ieuan Williams	No response at time of writing report.
Cynghorydd Vaughan Hughes	No response at time of writing report.
Cyngor Cymuned Moelfre Community Council	No response at time of writing report.

The application was afforded three means of publicity. These were by the posting of notices near the site and serving of personal notification letters on the occupiers of the neighbouring properties together with the publication of adverts in the local press. The latest date for the receipt of representations is the 06/02/2019.

At the time of writing the report no representations had been received.

### **Relevant Planning History**

40C323 - Outline for one dwelling on land opposite Bryn Hyfryd, Brynrefail - Granted 19.12.2013  
40C323A/SCR - Screening for one dwelling Bryn Hyfryd, Brynrefail - EIA not required 19.12.2013  
40C323B - Full application for the erection of a dwelling, installation of a septic tank together with the construction of a vehicular access on land opposite Bryn Hyfryd, Brynrefail. Appeal Allowed (non-determination) 10.12.2015  
40C323C/SCR - Screening opinion for the erection of a dwelling on land opposite - Bryn Hyfryd, Brynrefail. EIA not required 18.05.2015  
40C323D/DIS - Application to discharge conditions (07) being access detail, (10) being creation of a footway and (11) means of enclosure from planning permission reference 40C323B on land opposite Bryn Hyfryd, Brynrefail. Conditions Discharged 15.02.2016  
40C323E/DEL - Application under Section 73 for the removal of condition (10) (Pedestrian Footpath) from Appeal Decision reference APP/L/6805/A/15/3132036 (erection of a dwelling) at Ger y Mynydd, Brynrefail. Refused 23.01.2018 - Appeal Allowed (subject to revised condition) - 20.06.2018  
SCR/2018/6 - Screening opinion for erection of a dwelling, installation of a sewage treatment plant together with the construction of a vehicular access at Ger Y Mynydd, Brynrefail. EIA not required 19.12.2018

### **Main Planning Considerations**

The principle of a dwelling in this location has already been established under planning permission reference 40C323B which was granted on appeal on 10.12.15 and which remains extant. Furthermore the dwelling has since been built and is occupied.

However, since the adoption of the Joint Local Development Plan, Brynrefail is now identified as a Cluster where any new dwelling must be for affordable local need on an infill site. The application is therefore contrary to policy TAI 6 of the Joint Local Development Plan; however a fallback position exists since the development benefits from an extant planning permission for the erection of a dwelling which has since been completed.

As part of the original permission there was a condition requiring the provision of a pedestrian footway from the site and connected into the existing footway along the A5025.

The applicant subsequently sought to have the condition deleted, however the application was refused. A subsequent appeal was allowed on the 20.06.18 subject to the following revised condition:

1) Unless within 4 months of the date of this decision a scheme for the provision of 1.8m wide pedestrian footway along the whole frontage of the site and connected into the existing footway on the A5025 is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 12 months of the local planning authority's approval, the occupation of the dwelling shall cease until such time as a scheme is approved and implemented. If no scheme in accordance with condition 1 above is approved within 9 months of the date of this decision, the occupation of the dwelling shall cease until such a time as a scheme approved by the local planning authority is implemented.

In accordance with the above condition of the appeal decision, a scheme should therefore have been submitted to the Local Planning Authority by 20.10.18, however no such details were submitted consequently a Breach of Condition has occurred.

The Local Planning Authority therefore wrote to the applicant on 22.11.18 regarding the breach and advising that the Local Planning Authority were minded to issue a Breach of Condition Notice in order to address matters.

Thereafter, it transpired that due to an apparent miscommunication between the applicant and the Highways Officer, a scheme had in fact been agreed directly with the Highways Department which the Local Planning Authority had been unaware of and that works had been scheduled to take place in early December.

Notwithstanding the above, there remained a breach of the condition as the footway scheme had not been submitted directly to the Local Planning Authority for approval in accordance with the requirements of the condition such that the condition could be formally discharged.

Since it is not open to the Local Planning Authority to discharge conditions retrospectively and in order that the situation may be resolved without the need for formal action, the applicant was therefore advised that it would be necessary to apply to vary the requirements of the condition in order that the scheme may be formally agreed by the Local Planning Authority following the expiry of the 4 month period, hence the application currently under consideration.

The applicant was further advised that in light of the fact that acceptable details had been agreed with the Highways Department, that in the circumstances the Local Planning Authority had no objection to the works being carried out as planned pending resolution of the planning aspects, which to all intents and purposes is a technical issue arising from the inadvertent failure to have the condition discharged by the Local Planning Authority.

Approval of an application under Section 73A effectively involves the grant of a new permission for the development and notwithstanding that due to the subsequent change in policy since the original permission was granted such that the development is now considered to be a departure from adopted policies, a fallback position nevertheless exists and the fundamental issue in this case relates primarily to the provision of the footway.

It is clearly in the best interests of all concerned that the required footway is constructed in the interests of pedestrian highway safety. As noted above, an acceptable scheme has already been agreed directly with the Highways Department and the current application will therefore enable the Local Planning Authority to formally agree those details such that the works to construct the footway may proceed.

## **Conclusion**

The primary objective in this case is to secure the provision of the pedestrian footway. Whilst it is open to the Local Planning Authority to take formal enforcement action by way of the issuing a Breach of Condition Notice, approval of the current application will serve to achieve the same result.

The application to vary the condition so as to enable the footway scheme to be formally agreed by the Local Planning Authority following the expiry of the 4 month period stipulated in the appeal decision will satisfactorily resolve the situation and is therefore considered to be acceptable.

## **Recommendation**

**(01) Unless within 10 months of the date of this decision the approved scheme for the provision of a 1.8m wide pedestrian footway is implemented in accordance with submitted Proposed Block Plan Site Plan dated 27 June 2018, the occupation of the dwelling shall cease until such a time as the approved scheme is implemented.**

Reason: In order to minimise danger, obstruction and inconvenience to pedestrians, users of the highway and of the access.

**(02) Natural slates of uniform colour shall be used as the roofing material of the dwelling and it shall not be roofed or re-roofed other than with natural slates.**

Reason: To ensure that the development is in the interests of amenity.

**(03) The access shall be retained in accordance with the approved details and thereafter shall be retained and kept free from permanent obstruction and used only for access purposes.**

Reason: In order to minimise danger, obstruction and inconvenience to users of the highway and of the access.

**(04) Any new highway boundary wall/hedge/fence erected fronting the highway shall at no time be higher than 1 metre above the level of the adjoining county road carriageway along the whole length of the sites boundary with the adjoining highway and nothing exceeding this height erected within 2 metre of the said wall/hedge/fence or any new boundary.**

Reason: To provide adequate intervisibility between the access and the existing public highway for the safety and convenience of users of the highway and of the access.

**(05) No surface water from within the development shall discharge onto the highway.**

Reason: In order to minimise danger, obstruction and inconvenience to users of the highway and of the access.

**(06) The car parking and turning areas shall be retained in accordance with the approved details and thereafter retained solely for those purposes.**

Reason: To enable vehicles to draw off and turn clear of the highway to minimise danger, obstruction and inconvenience to users of the adjoining highway.

**(07) The development hereby permitted shall be carried out in strict conformity with the details shown on the plans below, contained in the form of application and in any other documents accompanying such application unless included within any provision of the conditions of this planning permission.**

- Location Plan dated 24 February 2015 approved under planning permission reference 40C323B
- Proposed Ground Floor Plan dated 3 June 2015 approved under planning permission reference 40C323B
- Proposed First Floor Plan dated 3 June 2015 approved under planning permission reference 40C323B
- Proposed Front and Rear Elevations dated 3 June 2015 approved under planning permission reference 40C323B
- Proposed Right and Left Elevations dated 3 June 2015 approved under planning permission reference 40C323B
- Soakaway Design drawing no. 08315/004/Rev. A approved under planning permission reference 40C323B
- Block Plan with Planting Details dated 12 February 2016 approved under discharge of condition application reference 40C323D/DIS
- Proposed Block Plan Site Plan dated 27 June 2018

Reason: To ensure that the development is implemented in accord with the approved details.

The development plan covering Anglesey is the Anglesey and Gwynedd Joint Local Development Plan (2017). The following policies were relevant to the consideration of this application: PCYFF1, PCYFF2, PCYFF3, TAI6.

In addition the Head of Service be authorised to add to, remove or amend/vary any condition(s) before the issuing of the planning permission, providing that such changes do not affect the nature or go to the heart of the permission/development.

**Planning Committee:** 06/02/2019

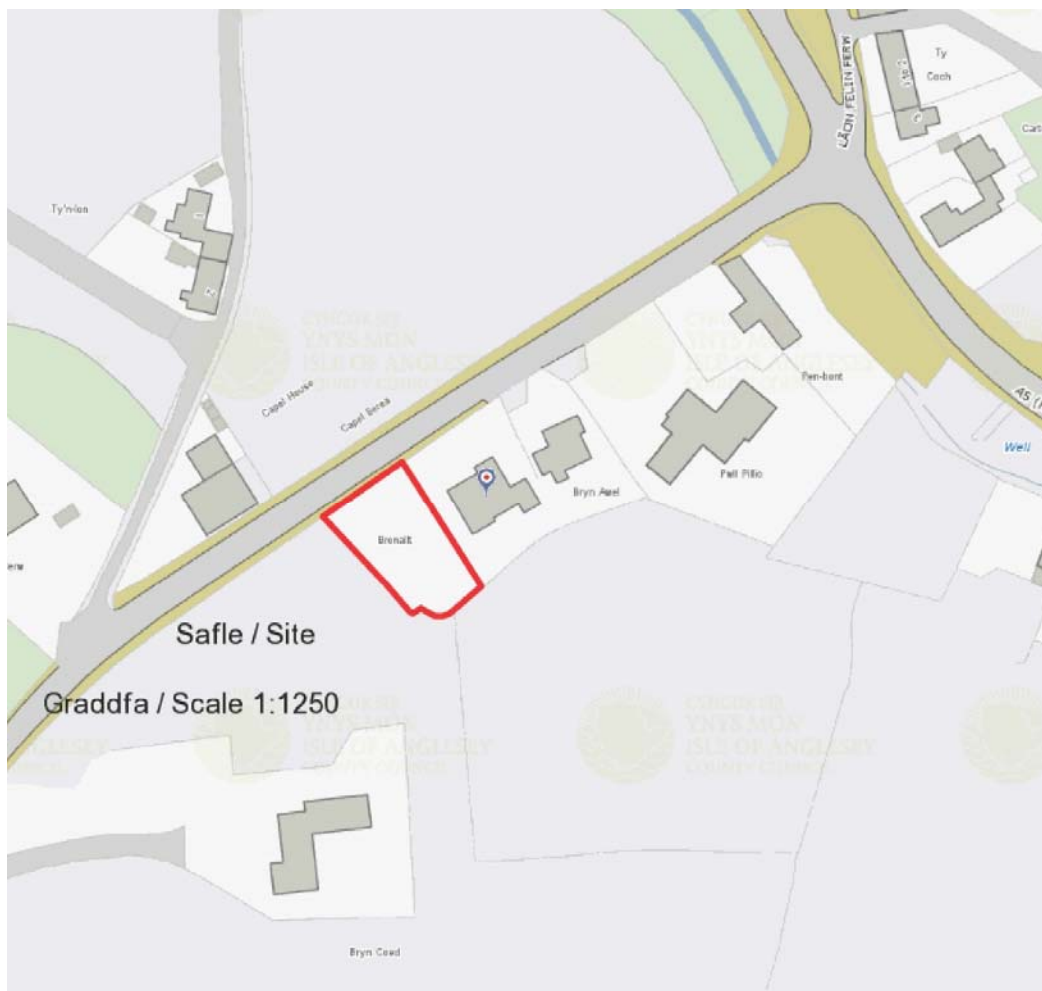
**10.2**

**Application Reference:** FPL/2018/21

**Applicant:** Mr Aled Hughes

**Description:** Full application for the erection of a dwelling together with the creation of a new vehicular access on land adjacent to

**Site Address:** Bronallt, Gaerwen



**Report of Head of Regulation and Economic Development Service (Gwen Jones)**

**Recommendation:** Permitted

**Reason for Reporting to Committee**

The application is being presented to the Committee as the proposal is contrary to policies of the Joint Local Development Plan but which the Local Planning Authority is minded to approve.

## Proposal and Site

The application is a full application for the erection of a dwelling together with the creation of a new vehicular access on land adjacent to Bronallt, Gaerwen.

## Key Issues

The key issue is whether the proposal is an improvement to that originally approved under application reference 33C231/DA.

## Policies

### Joint Local Development Plan

Policy PCYFF 2: Development Criteria  
Policy TAI 6: Housing in Clusters  
Policy TRA 2: Parking Standards  
Strategic Policy PS 5: Sustainable Development

## Response to Consultation and Publicity

Consultee	Response
Awdurdod Glo / Coal Authority	No comments
Cynghorydd Eric Wyn Jones	No response at the time of writing the report.
Cynghorydd Dafydd Roberts	No response at the time of writing the report.
Cyngor Cymuned Llanfihangelesceifog Community Council	No response at the time of writing the report.
Dwr Cymru Welsh Water	Conditional Approval
Priffyrdd a Trafnidiaeth / Highways and Transportation	Conditional Approval
Adain Dechnegol (Draenio) / Technical Section (Drainage)	No response at the time of writing the report.
Uned Polisi Cynllunio ar y Cyd / Joint Planning Policy Unit	Standard Policy Comments.
Cyfoeth Naturiol Cymru / Natural Resources Wales	Standard Response
Ymgynghorydd Tirwedd / Landscape Advisor	No response at the time of writing the report.
Ymgynghorydd Ecolegol ac Amgylcheddol / Ecological and Environmental Advisor	Conditional Approval

The application was afforded two means of publicity. A site notice was placed near the site and neighbouring properties were notified by individual letters. The latest date to receive representations was the 28/12/2018. At the time of writing the report no letters had been received.

## Relevant Planning History

33C231/DA - Detailed application for the erection of a dwelling - Approved 8/6/04



33C311/LUC - Application for a Certificate of Lawfulness for the proposed use for the erection of a dwelling at plot 4 adjacent to - Bronallt, Pentre Berw - Lawful 26/1/16

### **Main Planning Considerations**

The principle of a dwelling has already been established under a historic planning application A/967A. A detailed application was approved under planning application 33C231/DA on the 8/6/04. An application for a lawful use certificate to prove that works had been undertaken to implement planning permission A/967A was proved lawful on the 26/1/16. Therefore planning permission for a dwelling has been safeguarded on the application site.

### **Joint Local Development Plan**

Since the adoption of the Joint Local Development Plan, Pentre Berw is identified as a Cluster under the provision of Policy TAI 6. The policy does not support the provision of open market housing. However, as the application site has an extant planning permission the following must be considered:-

- Is there a likelihood that the existing permission can be implemented.
- Are the amendments to the permission better than that previously approved.

A planning application reference A/967A was approved for 4 dwellings and a detailed application subsequently approved under 33C231/DA. On the 26/1/16 a lawful use certificate was issued which confirmed that planning permission for a dwelling on the site had been safeguarded. It is therefore likely that the dwelling will be implemented.

### **Amendments**

The planning application entails a re-design of the dwelling previously approved under 33C231/DA.

The previously approved dwelling was a single storey dwelling with room in the roof which measured 5.9m high x 13.1m wide x 16.9m long. The ground floor area measured 154.2 square metres.

The amended design also entails a single storey dwelling with room in the roof which measures 6m high x 20m wide x 15.7m long. The ground floor area measuring 199.58 square metres.

It is not considered that the proposed changes deteriorate that previously approved under 33C231/DA.

### **Rock Excavation**

The applicant had already excavated rock on the site prior to this planning application being submitted. The applicant has confirmed that further rock excavation will only take place to provide footings for the dwelling.

### **Biodiversity**

An Environmental Mitigation Plan has been received and a planning condition will be placed on the permission specifying that the mitigation as listed in the plan is to be carried out.

### **Adjacent residential properties**

Neighbouring properties have been notified of the development. The expiry date to receive representations being 28/12/18. At the time of writing the report no letters had been received. It is not considered that the proposal will have a negative impact upon adjoining residential properties. The amended scheme will have less of an impact upon the neighbouring property due to a reduction of windows in the side elevation. The proposal also entails the erection of a 1.2m high post and rail fence to the East boundary.

## Conclusion

The application is contrary to Policy TAI 6 of the Joint Local Development Plan; however the fallback position is that the application site has an extant planning permission for an open market dwelling.

It is considered that the previous application 33C231/DA is likely to be implemented and the proposed changes do not deteriorate that previously approved under 33C231/DA. A condition will be placed on the permission which will preclude the implementation of the previous permission.

## Recommendation

**(01) The development to which this permission relates shall be begun not later than the expiration of five years beginning with the date of this permission.**

Reason: To comply with the requirements of the Town and Country Planning Act 1990.

**(02) Only foul water from the development site shall be allowed discharge to the public sewerage system and this discharge shall be made at/ or downstream of manhole reference number SH47722101 as indicated on the extract of the Sewerage Network Plan attached to this decision notice.**

Reason: To prevent hydraulic overloading of the public sewerage system, to protect the health and safety of existing residents and ensure no pollution of or detriment to the environment.

**(03) The access shall be laid out and constructed strictly in accordance with the submitted plan before the use hereby permitted is commenced and thereafter shall be retained and kept free from permanent obstruction and used only for access purposes.**

Reason: In order to minimise danger, obstruction and inconvenience to users of the highway and of the access.

**(04) The highway boundary wall/hedge/fence or any new boundary erected fronting the highway shall at no time be higher than 1 metre above the level of the adjoining county road carriageway along the whole length of the sites boundary with the adjoining highway and nothing exceeding this height erected within 2 metre of the said wall/hedge/fence or any new boundary.**

Reason: To provide adequate intervisibility between the access and the existing public highway for the safety and convenience of users of the highway and of the access.

**(05) The car parking accommodation shall be completed in accord with the details hereby approved before the use hereby permitted is commenced.**

Reason: To enable vehicles to draw off, park and turn clear of the highway to minimise danger, obstruction and inconvenience to users of the adjoining highway.

**(06) The development shall take place in accordance with the Mitigation Sections measures for bats (Sections 2.1 - 2.5), nesting birds (Section 2.6 – 2.7), replacement hedges (Sections 2.8 – 2.9), trees (Section 2.10 – 2.14) and planting and ground prep details (Sections 2.15 – 2.22), along with any lighting scheme (Sections 2.23 – 2.28), all as contained within the Ecological Mitigation Plan dated 03.01.2019, submitted under application reference FPL/2018/21. A basic report of mitigation actions is to be provided ahead of discharge. The report is to include photos of bat and birds boxes and features as installed, photos of new hedges and trees, and written confirmation from an ecologist that these are to an acceptable standard.**

Reason: To safeguard any protected species which may be present on the site.

**(07) Natural slates of uniform colour shall be used as the roofing material of the proposed dwellings.**

Reason: To ensure that the development is in the interests of amenity.

**(08) The development permitted by this consent shall be carried out strictly in accordance with the plan(s) and document(s) submitted below received with planning application FPL/2018/21.**

- **Location Plan - 16:001:02.00A**
- **Extent of possible Excavation - 16.001.02 SK11A**
- **Elevations + Section - 16.001.02 PL02G**
- **Plans - 16.001.02. PL01F**
- **Elevations + Sections - 16.001.02 - PL02F**
- **Ecological Mitigation Plan - Salopian Consultancy Ltd dated 3/1/19**
- **Traffic Management Plan - Wray Architects dated 29.11.18**
- **CEMP - Wray Architects dated 16/11/18**

Reason: For the avoidance of doubt.

The development plan covering Anglesey is the Anglesey and Gwynedd Joint Local Development Plan (2017). The following policies were relevant to the consideration of this application: PCYFF2, TAI6, TRA2, PS5

In addition the Head of Service be authorised to add to, remove or amend/vary any condition(s) before the issuing of the planning permission, providing that such changes do not affect the nature or go to the heart of the permission/development.