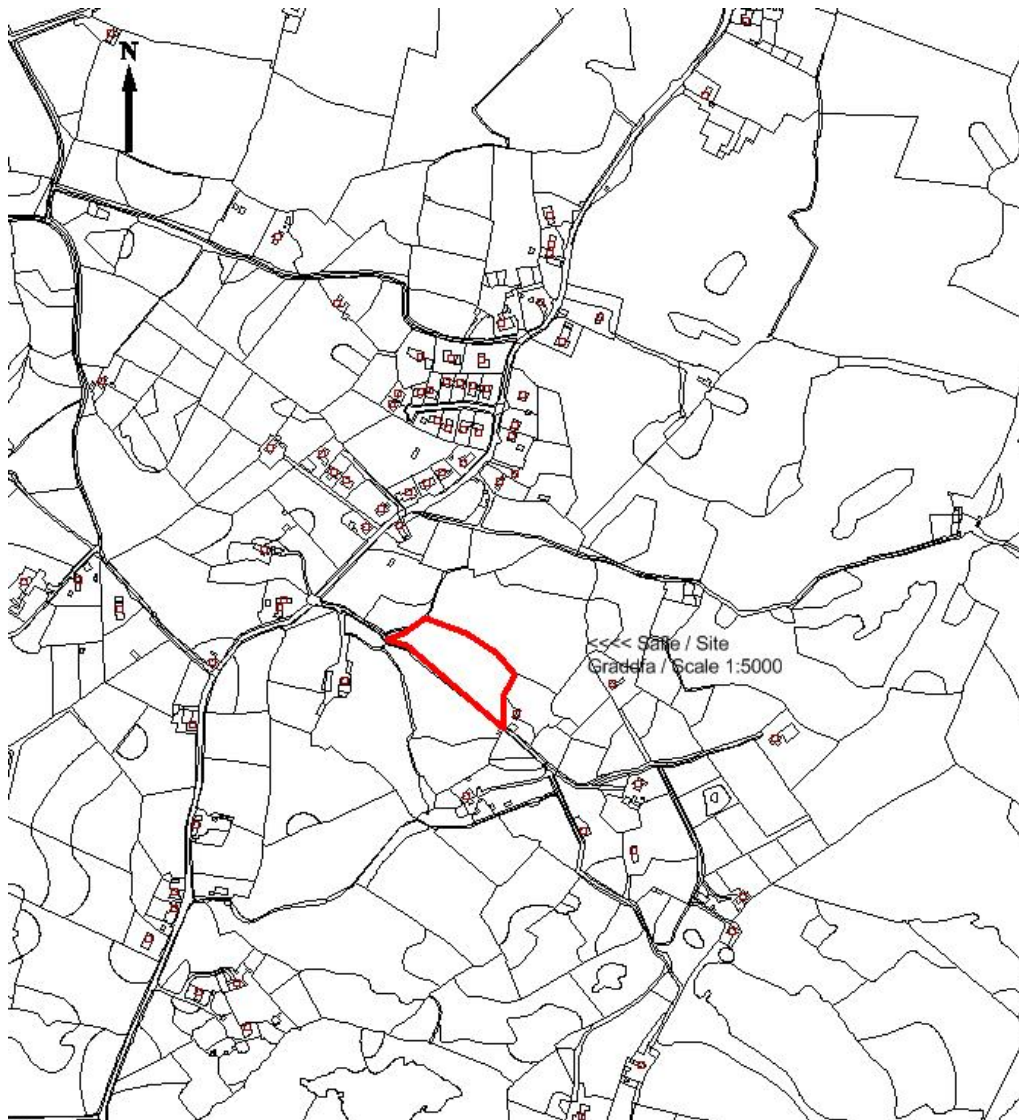


Rhif y Cais: **38C275B** Application Number

Ymgeisydd Applicant

**Ms Elaine Lunt**

**Cais i ddileu amod (ii) 'annedd amaethyddol' oddiar caniatâd cynllunio T/1305b ynghyd â chadw'r estyniad porth, sied cysylltiedig a lloches, tanc septig, a dau fynedfa i gerbydau yn / Application for the deletion of condition (ii) 'agricultural dwelling' from planning permission T/1305b together with the retention of a porch extension, associated shed and shelter, septic tank and two vehicular accesses at**

**Pedwar Gwynt, Llanfechell**

**Planning Committee: 03/12/2014**

**Report of Head of Planning Service (IWJ)**

**Recommendation:**

Permit

**Reason for Reporting to Committee:**

Officer's recommendation is to permit a departure application contrary to local development plan policies.

**1. Proposal and Site**

The site itself is located within a relatively rural area of Mynydd Mechell. The agricultural dwellinghouse is a three bedroom bungalow. Access to the site is afforded off a minor road along which serves other dwellings. The application site is approximately 4.9 acres and is generally a rocky outcrop.

The principle of the development has previously been established for the site in 1968. A reserved matters application for the agricultural dwelling was approved in 1969. The applicant claims that work subsequently commenced on the dwellinghouse, however ceased during the 1970s.

Following the death of a relative in 1980 the property was 'mothballed'. However, during 2010 further works were carried out to the dwellinghouse.

The department was made aware of this fact. Subsequently, as part of a planning enforcement investigation the site was visited on several occasions. The owners were advised to submit a retrospective application for all unauthorised works.

The current application includes the retention of a porch, shed, shelter, septic tanks and two vehicular accesses which are included within the application.

Following completion of the renovation work, the dwellinghouse is currently occupied and used for residential purposes. In light of this fact, the application also attempts to regularise the use of the property as a residential dwelling without occupation restrictions. Condition (ii) of planning permission T/1305b requires that *the occupation of the dwelling shall be limited to a person employed, or last employed, locally in agriculture as defined by section 221(1) of the Town and Country Planning Act 1962, or in forestry, or a dependent of such a person residing with him (but including a widow or widower or such a person).*

**2. Key Issue(s)**

- i) Whether the siting, design, scale and materials of the porch extension, associated shed and shelter, septic tank are acceptable.
- ii) Whether the siting and position of the access is acceptable.
- iii) Whether or not the application for the deletion of condition (ii) of planning permission T/1305b would outweigh the provisions of the development plans.

### **3. Main Policies**

#### **Ynys Mon Local Plan**

Policy 1 - General  
Policy 26 - Parking  
Policy 31 - Landscape  
Policy 42 – Design  
Policy 53 – Hosing in the Countryside  
Policy 58 - Extensions

#### **Gwynedd Structure Plan**

Policy D4 – Location, Siting, Design  
Policy D29 - Design

#### **Stopped Unitary Development Plan**

Policy GP1 – Development Control Guidance  
Policy GP2 – Design

#### **Technical Advice Note (Wales) 6: Planning for Sustainable Rural Communities**

#### **Technical Advice Note (Wales) 9: Enforcement of Planning Control**

### **4. Response to Consultation and Publicity**

**Highways Department** – The highways department recommends that the application be approved subject to conditions.

**Community Council** – The community Council strongly object to the deletion of condition and have put forward the following observations:

- Granting the application would not only give official status to the development but would add a financial benefit to the property as a whole.
- The property was constructed without the granting of planning permission on the foundation of a ruin within the boundaries of registered common land some 40 years ago.
- Approximately 15 years ago the property was developed and additional buildings added without planning permission.
- During the past 3 years the property has been further enhanced, again without prior planning permission.
- The owner of the property sited 4 large caravans in the curtilage.
- Several complaints from surrounding residents regarding the development. Caravans are suspected to be offered as housing of multiple occupancy for contractors.
- How can the planning department grant such an application on a property that officially does not exist in the format that it purports to in the application.

In response to points raised by the community council I comment as follows:

- The application seeks to regularise the breach of planning control in accordance with the advice contained within Technical Advice Note (Wales) 9. Financial factors are not a material planning consideration.
- Planning permission was originally approved for an agricultural dwelling under planning reference T/1305A and T/1305B.
- Following undertaking the necessary checks it was evident that the application site is not in fact common land.
- The Local Planning Authority has no record of unauthorised works undertaken at the site

approximately 15 years ago.

- The current application seeks to regularise all unauthorised developments on site.
- The static caravans are not constructed as part of the current application. The Local Planning Authority intends to re-investigate matters surrounding the use made of the caravans following the determination of this application.

**Natural Resources Wales** – Provided standard advice.

**Drainage** – Standard advice with the additional comment relating to the septic tank.

Response to publicity. In total 6 letters of objection were received which are available for viewing in full on the application file. In summary however, the main points of objection are as follows:

- The rationale, based on alleged changes in legislation leading to non-viability of small scale agricultural production, appears plausible.
- Concerns regarding the use made of the caravans.
- Concerns regarding the location of the septic tank and whether it, along with the soak away can accommodate the extra use made by the caravans.
- Concerns regarding access to the site.
- Development does nothing to enhance the traditional appearance of the area.
- Removing the agricultural occupancy condition would set precedence. A person with agricultural interest and connection could reside.
- The bungalow is large and not in accordance with the approved plans.
- Development is ugly, overdeveloped and crowded.
- Shed is not constructed on the footprint of the old barn and has doubled in size.
- Concerns over future use of shed.
- Concerns regarding retrospective planning applications.
- Concerns regarding future use of land.
- Surface water running directly onto the public highway.
- Concerns regarding the planting of trees and vegetation being cleared from the site.
- Four concrete bases have been constructed.
- A couple of horses and a vegetable patch do not make for a profitable farming business. The land is not fit for grazing.
- Applicant has not demonstrated that have research thoroughly the need for low cost agricultural accommodation.
- Concerns regarding the large number of people residing on the site. Concerns regarding the impact upon local amenities and services.
- Concerns over the greater volume of traffic.

In response to points raised in objection I comment as follows:

- The merits of deleting condition (ii) of planning permission T/1305B (relating to the occupation of the dwelling) will be discussed later within the report.
- The static caravans are not considered as part of the current application. The Local Planning Authority intends to re-investigate matters surrounding the use made of the caravans following the determination of this application.
- The drainage department are content with the proposal.
- The response from the Authority's professional highway officers does not raise any concerns with respect to highway safety.
- Matters relating to design will be considered when determining the application.
- If the agricultural occupancy condition is removed as part of the application, it would not set precedence as each application is considered on its own merits.

- The application is submitted in order to regularise the unauthorised works to the bungalow.
- Considerations will be given to design and overdevelopment when determining the application.
- All relevant material considerations will be given to the proposed shed when determining the application.
- The Local Planning Authority is duty bound to consider the present application on the basis of the information which has been presented before it. It would be unreasonable for the Local Planning Authority to refuse permission for that which is currently proposed on the basis that it might lead to an alternative use or that it may lead to the further expansion of the site.
- It is not a criminal offence to carry out development without first obtaining the necessary planning permission. The legislation allows development to be carried out without first obtaining the necessary consent and thereafter applying for permission retrospectively.
- The response from the Authority's professional highway officers does not identify concerns with respect to water being discharged onto the country highway.
- There are no Tree Preservation Orders identified on site therefore the clearing of trees and vegetation does not require planning permission.
- It appears the concrete bases have been constructed within the proposed curtilage of the property therefore would fall within the landowners permitted development rights.
- Observations relating to the current agricultural use and substandard quality of land will be considered as part of determining the application.
- Issues relating to the removal of the occupancy condition will be considered later within the report.
- The static caravans are not included as part of the current application. The Local Planning Authority intends to again investigate matters surrounding the use made of the caravans following the determination of this application.
- The response from the Authority's professional highway officers does not identify concerns with respect to the increase in volume of traffic.

## **5. Relevant Planning History**

T/1305 Siting of one residential caravan on o.s. enc no 1034 near Tai, Llanfechell – Approved 09/10/1968

T/1305A Erection of an agricultural dwelling on o.s. enc no 1034 near Bryn Goleu, Llanfechell – Approved 19/12/1968

T/1305B Erection of an agricultural dwelling of a bungalow (previously approved under Planning Decision No T/1305A) on o.s. enc no 1034 near Bryn Golau, Llanfechell – Approved 14/05/1969

T/1305C Siting of one residential caravan on o.s. enc no 1034 near Tai, Llanfechell - Approved 03/02/1971

T/1305D Siting of a residential caravan for a temporary period on o.s. enc no 1034a near Tai, Llanfechell – Refusal 05/05/1972

T/1305E Siting of a temporary caravan to be lived in while bungalow is being erected on o.s. enc 1034a Pedwar Gwynt, Mynydd Mechell – Approved 06/03/1974

T/1305F Substitution of tiles instead of slates as imposed under planning decision T/1305B on bungalow to be erected on o.s enc no 1034 near Bryn Golau, Llanfechell – Approved 01/09/1976

38C275A – Application for the Certificate of lawfulness for the existing use of a residential dwelling which was constructed in the incorrect position at Pedwar Gwynt, Llanfechell – Unlawful 22/08/2012 – The evidence submitted was not sufficient to meet the test of being clear, precise and unambiguous

such that the burden of proof can be discharged.

## **6. Main Planning Considerations**

Retention of a porch, extension, associated shed, shelter, septic tank and two vehicular accesses.

With the principle of development previously established, the key issue is whether the unauthorised porch extension, associated shed and shelter would have an unacceptable impact upon the residential amenity of neighbouring properties.

The pitched roof porch extension is located at the rear of the bungalow. The materials used are in keeping with the original bungalow.

The associated shed and shelter are located to the south east of the application site. The scale and position of the proposal is not considered out of proportion.

It is not considered that the above development will affect the amenities of any of the neighbouring properties to such an extent that it should warrant refusing. The siting, design, scale and materials are considered acceptable and do not have a detrimental effect on the amenities of the area or nearby residential properties.

Furthermore, the site can comfortably accommodate these developments without being deemed an overdevelopment. The unauthorised structures respect the character of the locality and main thrust of both local and national planning policies.

The drainage department are satisfied with the proposal including matters relating to the septic tank.

Based upon the consultation response from the Local Highways Authority, the two vehicular accesses are considered acceptable and would not have an adverse effect on the traffic using the adjoining highway subject to conditions.

Deletion of condition ii) of planning permission T1305b

The reserved matters application for the agricultural dwelling was approved in 1969 which imposed a condition requesting that *the occupation of the dwelling shall be limited to a person employed, or last employed, locally in agriculture as defined by section 221(1) of the Town and Country Planning Act 1962, or in forestry, or a dependent of such a person residing with him (but including a widow or widower or such a person).*

The policy underpinning the consideration of the planning application is set out in Planning Policy Wales. This is that new house building in the open countryside should be strictly controlled and only permitted whether there is a special justification, for example whether a dwelling is essential to meet the needs of agricultural workers. In such cases specific functional and financial tests are required to be met, and any dwelling will be subject to a restriction on its future occupancy. This approach is reiterated in TAN 6 in which it is made clear that such dwellings are exceptions to the policy of restraint and subject to occupancy control to ensure they are kept available for the purposes for which they were permitted.

It is implicit in this approach that, if special justification is needed to permit agricultural dwellings in the countryside it is also needed to remove the control of their retention to meet agricultural needs.

Notwithstanding the above, the information presented as part of the original planning application

proposed that the smallholding shall be used for pig farming and for keeping of battery hens for egg production. In total, the application site is approximately 4.9 acres.

*The applicant claims that whilst at the time of the planning application pig farming was relatively unregulated and battery egg production was on the increase and small scale poultry and meat producers were quite widespread the reality of this site was that due to the poorly drained land and the legislation charges that happened following a foot and mouth epidemic of 1967 – 1968 placed crippling restrictions on farming methods and made this site unviable for the intended use.*

Based upon my observations together with those by members of the public, it is clear the application site is generally a rocky outcrop, inappropriate for agricultural farming.

In addition, during the consultation period for the original T/1035A planning application, the Ministry of Agricultural Fisheries and Food provided comments upon the quality of the land. A correspondence 12<sup>th</sup> December, 1968 stated *that the 5 acre site is considered to be rough, rocky and wet with very limited agricultural value for growing crops.*

The applicant has no intention of selling and has nor demonstrated there is no longer a need for agricultural workers dwelling in the locality. No appropriate efforts have been made to sell or rent the property by targeted marketing to the agricultural community over a reasonable period and values reflecting the occupancy condition. However, given the functional requirement, size of the application site together with the condition of the land, it is not considered that the site could provide a viable livelihood for the occupants of the property.

The circumstances on the agricultural holding which provided the basis for the original planning permission no longer persist or apply.

On balance considering all factors the Local Planning Authority consider the condition was never properly applied and should therefore be removed.

## **7. Conclusion**

In this instance I have considered the substance of representations received from the public, the applicant and agent together with the statutory consultees alike and have balanced these against the advice contained within the relevant policy documents. Although careful consideration has been given to the objections raised by the objectors, it is considered that the objections received carry insufficient weight to warrant the refusal of the application.

The advice provided under para 3.1.8 within Planning Policy Wales (Edition 7) on such matters states...

*When determining planning applications local planning authorities must take into account any relevant view on planning matters expressed by neighbouring occupiers, local residents and any other third parties. While the substance of local views must be considered, the duty is to decide each case on its planning merits. As a general principle, local opposition or support for a proposal is not, on its own, a reasonable ground for refusing or granting planning permission; objections, or support, must be based on valid planning considerations. There may be cases where the development proposed may give rise to public concern. The Courts have held that perceived fears of the public are a material planning consideration that should be taken into account in determining whether a proposed development would affect the amenity of an area and could amount to a good reason for a refusal of planning permission. It is for the local planning authority to decide whether, upon the facts of the particular case, the perceived fears are of such limited weight that a refusal of planning*

*permission on those grounds would be unreasonable.*

There are no other significant material consideration which are of relevance in the determination of the application presently under consideration which have not already been given due consideration.

Whether or not the unauthorised development was carried out intentionally or not is a moot point. In any event it is not a criminal offence to carry out development without first obtaining any necessary planning permission. There are provisions within the Act to allow for permission to be applied for retrospectively.

Whilst any development could be argued to have a potential impact upon the amenities of neighboring properties or the character of the locality, the question which needs to ask is whether or not the impact is so adverse that it warrants refusing the application. On balance however I do not consider the unauthorised development is so adverse that it should warrant refusing the application. Moreover, I do not consider that any refusal issued could be substantiated on appeal.

The application presently under consideration has been considered in light of the advice provided within Technical; Advice Note (Wales) 9 Enforcement of Planning Control together with all other material planning considerations. In accordance with the advice contained with the aforementioned document ....

*'Enforcement action should be commensurate with the breach of planning control to which it relates; it is usually inappropriate to take formal action against a trivial or technical breach of control which causes no harm to public amenity. The intention should be to remedy the effect of the breach of planning control, not to punish the person(s) carrying out the breach. Nor should enforcement action be taken simply to regularise development for which permission had not been sought, but otherwise acceptable'*

It is not considered expedient nor in the wider public interest for the Local Planning Authority to take formal planning enforcement action in this case irrespective of the motive, whether intentional or otherwise.

On balance, having given detailed consideration to the professional consultees comments in the matter, the representations received and all other material planning considerations, it is not considered that the refusal of the application could be warranted. The Local Planning Authority considers the condition was never properly applied and should be removed. Moreover, it is not considered that it would be expedient or in the wider public interest that formal planning enforcement action should be instigated in the matter.

## **8. Recommendation**

That the proposal ought to be **permitted** subject to the following conditions. 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:

**(01) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2013 (or any Order revoking or re-enacting that Order), the development permitted by Classes A, B, C, D, E and F of Part 1 of Schedule 2 are hereby excluded.**

Reason: To safeguard the visual amenities and character of the rural area.



## **9. Other Relevant Policies**

### **Planning Policy Wales (Edition 7)**

## **10. Other Non-Material Issues Raised**

It can be confirmed that the Local Planning Authority's actions in this matter have been robust, proportional and measured throughout. Moreover, such action has been in accordance with the advice contained within the Welsh Assembly Government's advice as contained within Planning Policy Wales (Edition 7) and Technical Advice Note (Wales) 9: Enforcement of Planning Control.