

Rhif y Cais: **22C224** Application Number

Ymgeisydd Applicant

Mrs Grace Fisher

**Cais amlinellol ar gyfer codi annedd yn cynnwys manylion llawn am y fynedfa ar dir ger/
Outline application for the erection of a dwelling together with full details of the access on land adjacent**

Tan y Ffordd Isaf, Llanddona



Planning Committee: 03/06/2015

Report of Head of Planning Service (GJ)

Recommendation:

Refuse.

Reason for Reporting to Committee:

The application is being presented to the Planning Committee as the applicant is related to a member of staff within the Planning and Public Protection Department of the County Council.

The application has been scrutinised by the Monitoring Officer as required under paragraph 4.6.10.4 of the Constitution.

1. Proposal and Site

The proposal is for Outline planning for the erection of a dwelling with full details of access reserved on land adjacent Tan y Ffordd Isaf, Llanddona.

2. Key Issue(s)

The key issue is whether the proposal complies with current policies and whether the proposal will affect the amenities of the surrounding properties.

3. Main Policies

Ynys Mon Local Plan

Policy 1 – General Policy

Policy 42 – Design

Policy 48 – Housing Development Criteria

Policy 50 – Listed Settlement

Gwynedd Structure Plan

Policy D4 – Location, Siting and Design

Policy D29 - Design

Stopped Unitary Development Plan

Policy GP1 – Development Control Guidance

Policy GP2 – Design

Policy HP4 – Villages

4. Response to Consultation and Publicity

Community Council – No response at the time of writing the report

Local Member (Cllr Lewis Davies) –

No response at the time of writing the report

Local Member (Cllr Alwyn Rowlands) – No response at the time of writing the report

Local Member (Cllr Carwyn Jones) – No response at the time of writing the report

Highways Authority – Conditional Approval

Drainage Section – No response at the time of writing the report

Welsh Water – No response at the time of writing the report

Natural Resources Wales - No response at the time of writing the report

The proposal was advertised through the posting of a notice on site together with the distribution of personal letters of notification to the occupiers of neighbouring properties. The latest date for the receipt of representations was the 28th May, 2015. At the time of writing the report no letters had been received.

5. Relevant Planning History

None

6. Main Planning Considerations

Affect on amenities of surrounding properties -

The proposal will not harm the amenities of the occupants of neighbouring properties due to the distances between the proposal and existing properties.

Policy - Llanddona is identified as a Listed Settlement under Policy 50 of the Ynys Mon Local Plan and as a village under Policy HP4 of the stopped Unitary Development Plan.

Single plot applications within or on the edge of a settlement are considered acceptable under Policy 50 of the Ynys Mon Local Plan.

Policy HP4 of the Stopped Unitary Development Plan states that residential development within the village boundary will be permitted subject to the listed criteria.

Following a review of the growth level seen in the Listed Settlement over the stopped UDP period a Policy Interpretation note has been adopted for all applications received on and after the 9th April, 2015. The review identifies those settlements whose growth level has exceeded that anticipated and stricter control over future growth is necessary.

The current position in Llanddona is that the settlement has exceeded 3 times the anticipated growth level and any application for open market housing would be refused subject to suitable justification on affordable housing to meet an identified local need.

7. Conclusion

No justification has been received that the applicant is in need of an affordable dwelling, therefore the application is recommended for refusal due to the growth level of the area.

8. Recommendation

Refuse

In addition the Head of Service be authorised to add to, remove or amend 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) The Local Planning Authority consider that the growth level in the area has been exceeded. No evidence has been submitted by the applicant to justify a need for an affordable dwelling in this location. The application therefore conflicts with Policy 50 of the Ynys Mon Local Plan.

9. Other Relevant Policies

Technical Advice Note 12 – Design

SPG – Urban and Rural Environment

Planning Policy Wales 7th Edition

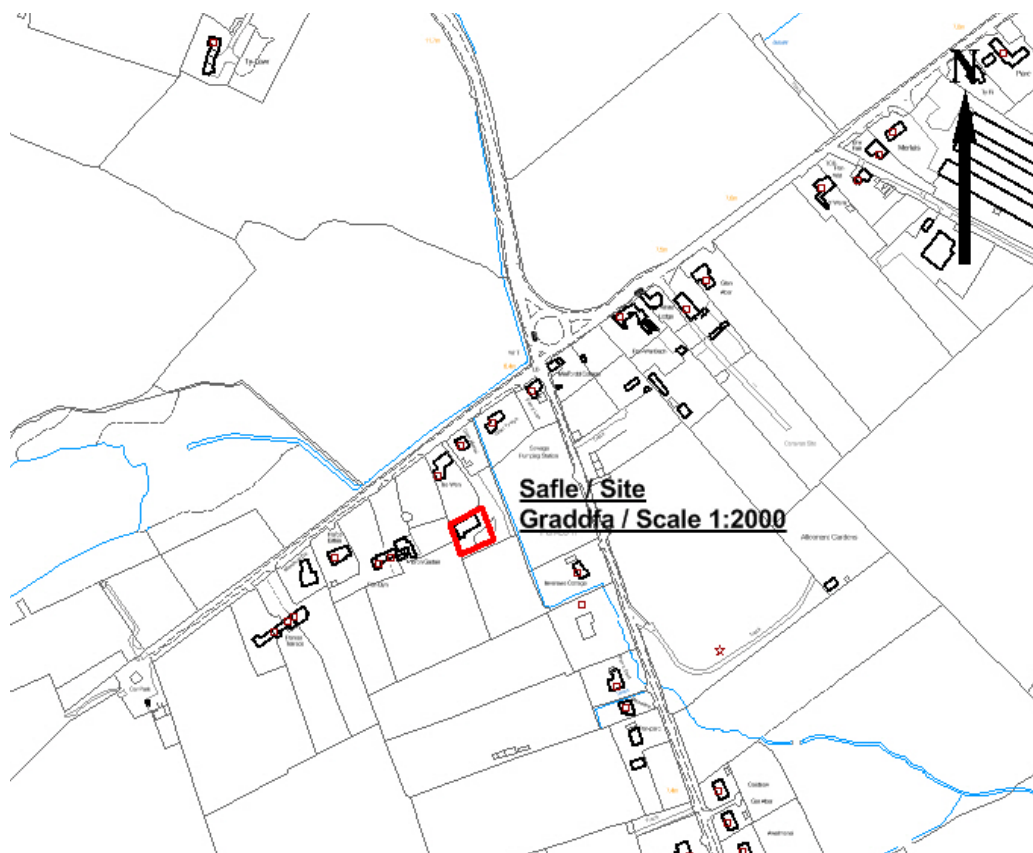
Rhif y Cais: **45C83C/DEL** Application Number

Ymgeisydd Applicant

Mr T.W & Mrs Y. Owen

Cais o dan Adran 73 i dynnu amod (05) (dim ond er lles Mr T.W. Owen y defnyddir y gweithdy a phan nad oes angen ymhellach amdano cai ei ddefnyddio i ddefnydd amaethyddol) o ganiatâd cynllunio rhif 45C83A (codi gweithdy) yn / Application under Section 73 for the removal of condition (05) (workshop shall be used for the benefit of Mr T.W. Owen and when no longer required by him shall be used for the purposes of agriculture) from planning permission reference 45C83A (erection of a workshop) at

Trewen, Penlon, Newborough



Planning Committee: 03/06/2015

Report of Head of Planning Service (NJ)

Recommendation:

Permit.

Reason for Reporting to Committee:

The applicant is related to a relevant officer. The application has been scrutinised by the Council's Monitoring Officer.

1. Proposal and Site

The application site is occupied by a brick and clad building measuring 18m x 9.5m approximately on plan and with a ridge height of just over 6m, which houses a joinery business. The application made is to delete condition 05 of consent 45C83A which states as follows:

"The workshop hereby permitted shall be used for the benefit of Mr. T. W. Owen and when no longer required for his use shall be used for agricultural purposes".

The Authority is also dealing with a written request from the applicant to delete a Section 52 agreement on the land which was entered into in granting the planning permission for the workshop.

2. Key Issue(s)

The validity of the planning condition as imposed.

3. Main Policies

WG Circular 016/2014 The Use of Planning Conditions for Development Management - October 2014.

Planning Policy Wales Edition 7 July 2014

Circular 13/97 Planning Obligations

4. Response to Consultation and Publicity

Councillor Ann Griffith: No response at the time of writing

Councillor Peter Rogers: No response at the time of writing

Rhosyr Community Council: No response at the time of writing

Environmental Health Officer: Awaited at the time of writing

Joint Planning Policy Unit: Reference should be made to WG Circular 016/2014 The Use of Planning Conditions for Development Management

Response to neighbour notification: One letter of objection was received as a result of the publicity

undertaken. The owners of pen Llyn, Penlon state that the development would cause injury to their amenity – they intend to start building their dwelling shortly and the workshop is located within 8 metres of the build; an intensification of use at the site would cause injury to amenities; additional noise may be created.

A response is included in the body of the report.

5. Relevant Planning History

45C83: Erection of a joinery workshop together with the formation of a vehicular access at Trewen, Penlon, Newborough – Refused 07/09/88

45C83A: Erection of a workshop at Tre Wen, Penlon, Newborough – Approved 02/08/89 Section 52 dated 10th July 1989 restricting:

- i) the vehicular access to the site both during construction of the building and its subsequent use to the access past the dwelling at Tre Wen;
- ii) That the building shall only be operated by the applicant Mr. T. W. Owen or his son, and if at any future time neither requires such use, the building shall be used for agricultural purposes in connection with the land adjoining the property;
- iii) that neither the building nor any other part of the property shall at any time be sold as separate units and that the whole of the property be retained as a single planning unit.

The property as outlined in the S106 agreement comprised two enclosures totalling 3.61 acres.

45C83B: Erection of a shed for the storage of machinery at Tre Wen, Penlon – Approved 04/02/10

45C311E: Amended plans for the erection of a dwelling at Annan, Penlon - Approved 08/10/09

6. Main Planning Considerations

Background: An application made for a joinery workshop and new access road in 1988 under reference 45C83 was refused planning permission because it was considered that the development would adversely affect the amenities of occupants of nearby dwellings by reason of noise, general disturbance and increased generation of vehicular and pedestrian traffic; the proposal would result in an alien commercial intrusion into an area which is mainly residential in character, thereby causing serious injury to the amenities and character of that area and to the amenities of local residents; the road serving the site was considered substandard in width and unsuitable to cater for the number and size of vehicles that would be likely to call at the workshop.

A second application was made under reference 45C83A for a workshop building, with the access moved alongside the existing dwelling at Tre Wen. The development was approved subject to numerous conditions including that the only means of access to it would be the access past Tre Wen; that no machinery be operated on the premises between the hours of 8pm and 8am on weekdays or at any time on Sundays; that the noise level immediately outside the building shall at no time exceed 55 dB(A) averaged over a frequency range 100 to 3150 HZ when measured at any point on the boundary of the site as well as the condition restricting the use of the building only to the applicant Mr. T. W. Owen and when no longer required by him, requiring that it be used for agricultural purposes.

Before planning permission was released under reference 45C83A the applicant was required to enter into a Section 52 agreement (now Section 106) with the planning authority to restrict the means of access to the building; to retain the property as a single planning unit with the land owned by the

applicant and extending to just over 6.5 acres; and restricting the use of the building to the applicant and his son, and if no longer required by them, to an agricultural use in association with the 6.5 acre holding.

The Application: The application made seeks to delete the personal permission as defined under condition 05 of the consent. A separate request has been made to delete the Section 52 agreement.

Paragraph 3.1.6 of Planning policy Wales states:

“3.1.6 Unless otherwise specified, **a planning permission runs with the land** and it is seldom desirable to provide for any other arrangement. Exceptionally, even though such considerations will rarely outweigh the more general planning considerations, the **personal circumstances** of occupiers, personal hardship or the difficulties of businesses which are of value to the local community, may be material to the consideration of a planning application. In such circumstances, permission may be granted subject to a condition that it is personal to the applicant. Authorities should bear in mind that personal permissions will hardly ever be justified for works or uses that will remain long after the personal circumstances of the applicant have changed”.

The first application for a joinery workshop, under reference 45C83, was refused due to access issues as well as the effects of the development on the amenities of the area and of adjoining residents. The application as approved overcame access issues by proposing an access past the dwelling at Tre Wen. It appears that the council considered that imposing restrictions on the hours of operation and imposing noise limits, as well as imposing a personal permission, overcame the issues of amenity.

It would seem that restricting the use of machinery between 8pm and 8am and imposing a noise limit on activities would ensure that the activities at the site would be compatible with neighbouring uses and would not unacceptably affect amenities. It is not clear therefore why, in addition to these limits, a personal permission to the applicant was imposed and furthermore, why, if no longer required by the applicant, the workshop use was to cease and the building could only be used for agricultural purposes. It is not clear why the section 52 agreement allows the use as a joinery workshop by the applicant's son, as well as the applicant, at variance with the wording of the planning condition. Presumably, the Section 52 requirement to retain the property as a single planning unit (extending to just over 6.5 acres of land) gave legitimacy to the backstop position of the building being used for agricultural purposes if no longer required as a workshop.

Concern has been raised by a neighbouring owner that there may be an intensification of use if the condition is deleted. However, no request has been made to extend the operating hours of the site or to amend the noise limiting condition. Even if additional persons used the site, the noise condition sets a limit on acceptable noise levels. There is no indication therefore that there should be any discernible effects on amenity as a result of deleting the personal permission condition.

WG Circular 016/2014 The Use of Planning Conditions for Development Management sets out the tests of the validity of planning conditions including that they are necessary; relevant to planning; relevant to the development to be permitted; enforceable; precise; and reasonable in all other respects and states at paragraph 1.2 that “the power to impose conditions when granting planning permission is very wide. If used properly, conditions can enhance the quality of development and enable many development proposals to proceed where it would otherwise have been necessary to refuse planning permission. The objectives of planning, however, are best served when the power is exercised in such a way that conditions are clearly seen to be fair, understandable, reasonable and practicable”. Paragraph 3.4 states that “conditions should be designed to tackle specific problems rather than impose unjustifiable controls. If a condition is wider in its scope than is necessary to achieve the desired objective, it will fail the test of necessity”.

Conditions imposed on the planning consent for the joinery workshop limit the hours of operation and the noise which can be generated. Imposition of a personal permission condition is unnecessary as the development would already be adequately controlled in terms of its amenity impacts. The personal permission condition is unreasonable in as much as it restricts the benefit of the planning permission granted and requires the building to be put to an agricultural use (in relation to a limited holding of just over 6.5 acres as controlled by the Section 52 agreement) when no longer required by the applicant for its intended purpose as a joinery workshop. The condition is more restrictive than the clause in the Section 52 agreement which allows use of the building as a joinery workshop by the applicant's son. Paragraph 3.41 states that "an unreasonable condition does not become reasonable just because an applicant suggests it, or agrees to its terms. A condition must always be justified on its planning merits and will normally run with the land and will therefore still be operative long after the applicant has moved on". Paragraph 3.42 states that "Any condition which would put a severe limitation on the freedom of owners to dispose of their property, or that would obviously make it difficult to raise finance for the development, should be avoided".

Paragraphs 5.83 and 5.84 deal specifically with occupancy and personal permission and state:

"Since planning controls are concerned with the use of land rather than the identity of the user, the question of who is to occupy the premises for which permission is to be granted will normally be irrelevant. Conditions restricting occupancy to a particular occupier or class of occupier should only be used when sound planning grounds can be demonstrated, and where the alternative would be refusal of permission. A local planning authority who imposes such conditions may run the risk of contravening its duties under the Equality Act 2010 and care should be taken to avoid such conflict...commercial and industrial buildings in an area of open countryside will not become more acceptable because their occupancy is restricted. Similarly, the expansion of a local firm will not necessarily lead to less pressure for further development (e.g. housing) than the arrival of a firm from outside. Such conditions are therefore undesirable".

Circular 13/97 Planning Obligations sets out the tests relevant to the planning obligations which are similar to the tests for conditions. Paragraph B2 of the Circular states that "properly used, planning obligations may enhance the quality of development and enable proposals to go ahead which might otherwise be refused. They should, however, be relevant to planning and directly related to the proposed development if they are to influence a decision on a planning application. In addition, they should only be sought where they are **necessary** to make a proposal acceptable in land use planning terms".

As stated previously, it would appear that the legal agreement entered into duplicates the controls sought to be imposed by the planning conditions restricting the use to the applicant only and use of the building thereafter as an agricultural building and restricting the means of access to the site. It appears to seek to legitimise the requirement to use the building as an agricultural building, when no longer required as a workshop by the applicant, or, in the case of the agreement (contrary to the planning condition) by his son, by retaining the land owned by the applicant as a single planning unit.

Since the agreement was entered into several applications have been made on part of the site to be retained as a single planning unit for the erection of a dwelling, the latest permission being granted for amended plans for the erection of a dwelling in 2009 with the land being certified as being outside the current applicant's ownership. The agreement pre-dates Section 106A of the Town and Country Planning Act 1990 and its variation or deletion can be agreed in writing with the Planning Authority rather than by means of a formal application. Nevertheless, the tests for the validity of the agreement and the considerations in relation to a request for its deletion are equally relevant - Section 106A of the Town and Country Planning Act 1990 allows the modification or discharge of a planning obligation

and in determining an application to delete the obligation, the local planning authority may determine-

- a. That the planning obligation shall continue to have effect without modification;
- b. If the obligation no longer serves a useful purpose, that it shall be discharged; or
- c. If the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.

The controls over the hours of operation and noise limits at the site appear to be relevant to the development and necessary to protect the amenities of the neighbouring occupiers. Discussion is ongoing with the Environmental Health officers as to whether these should be updated in line with current guidance. The restriction on the means of access to the site appears reasonable and precise in terms of the planning condition but is unnecessarily duplicated in the Section 52 agreement.

It is clear however that the restriction of the permission to a personal consent for the applicant and the requirement to use the building for agricultural purposes when no longer required by the applicant as a joinery workshop are unreasonable and unnecessary and do not meet the Circular tests for conditions. Similarly, the Section 52 agreement restrictions do not serve any useful planning purpose.

7. Conclusion

The condition restricting the permission to the benefit of the applicant only and requiring that the building be used as an agricultural building when no longer required as a joinery workshop does not meet the Circular tests for conditions. There is no reason to consider that the removal of this condition would lead to any intensification of the use of the site or to any additional amenity impacts. Other conditions of the consent, which are appropriate and valid, control the noise and operation of the site and appropriately safeguard the amenities of neighbouring occupiers and the locality. The condition limiting the access to the site appears reasonable and necessary.

The Section 52 agreement unnecessarily duplicates the planning conditions and seeks to retain the land owned by the applicant as a single planning unit. Legal agreements should not be used instead of, or in addition to, planning conditions.

8. Recommendation

That deletion of the condition (and deletion of the accompanying Section 52 agreement) be **approved** and that the following conditions are retained:

(01) The only means of access to the site shall be past the existing property known as Trewen as shown on the plans submitted on 25/11/88 under reference 45C83A.

Reason: in the interests of highway safety.

(02) The car parking and turning areas as shown on the plans submitted on 25/11/88 under reference 45C83A shall be retained for the lifetime of the development.

Reason: in the interests of highway safety

(03) No machinery shall be operated on the premises between the hours of 8pm and 8am on weekdays or at any time on Sundays.

Reason: In the interests of amenity

(04) The noise level immediately outside the building shall at no time exceed 55 dB(A) averaged over a frequency range 100 to 3150 HZ when measured at any point on the boundary of the site.

Reason: in the interests of amenity

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.