

PLANNING COMMITTEE	DATE: 09/12/2019
REPORT OF THE SENIOR PLANNING AND PUBLIC PROTECTION SERVICE MANAGER	CAERNARFON

Number: 1

Application Number: C19/0027/39/LL

Date Registered: 23/10/2019

Application Type: Full - Planning

Community: Llanengan

Ward: Llanengan

Proposal: Construction of two affordable dwellings (amended application).

Location: Land near Drws y Llan, Llanengan, Pwllheli, Gwynedd, LL53 7LH

Summary of the Recommendation: TO REFUSE

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**REPORT TO THE PLANNING COMMITTEE
REFER TO A COOLING OFF PERIOD**

DATE OF THE PLANNING COMMITTEE:	9 December 2019
DESCRIPTION AND LOCATION OF APPLICATION:	C13/1143/11/AM - Construction of two affordable dwellings (amended application) - Land near Drws y Llan, Llanengan
REPORT BY:	Assistant Head, Environment Department
RECOMMENDATION:	To refuse the application on the grounds of reasons 1-4 as submitted in the committee report on 1 July 2019.

1. PURPOSE

- 1.1 Originally, this application was reported to the Planning Committee on 1st July 2019, the recommendation of that committee was to approve the application, contrary to officers' recommendation, on the grounds that it would satisfy the local need for housing.
- 1.2 In the opinion of the Assistant Head, Environment Department, there is a significant risk to the Council in respect of the decision to approve the application contrary to officers' recommendation, therefore, the matter was referred to a cooling off period in accordance with the Committee's standing orders. The purpose of reporting back to the Committee is to highlight planning policy issues, the possible risks and options for the Committee before it reaches a final decision on the application.

2. DESCRIPTION AND BACKGROUND

- 2.1 This is a full application to erect two affordable dwellings. The site is located in the countryside, on the outskirts of the Llangenan cluster of houses.
- 2.2 As referred to above, the application was submitted to committee on 1 July 2019 with the officers' recommendation to refuse the application. Based on the information and the evidence submitted and the responses received, it was considered that the application was unacceptable and did not comply with the requirements of the relevant local and national policies and guidance. A copy of the report, plans and minutes of the application as submitted to the Planning Committee on 1 July 2019, are enclosed in Appendix 1, which further explain the background of the application.
- 2.3 Following referring the application to a cooling off period at the planning committee on 1 July 2019, correspondence was sent to the applicant on 9 July 2019 requesting confirmation / clarity on matters concerning:
 - Need to submit the correct ownership certificate as the applicants were not currently the landowners. This was encouraged as a result of the applicant noting when addressing the Committee on 1 July 2019 that land had been received from family in order to self-build.
 - Update information in terms of Tai Teg assessment as it became evident that there had been changes in employment circumstances and the need to assess the applicants as couples and not as individuals.

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- Biodiversity matters in terms of the time-schedule to present information / reptile report.
- 2.4 A response had been received from the applicant dated 9 July 2019 noting:-
- Unfairness of affordable housing conditions.
 - That a letter had been presented regarding land ownership.
 - Unfairness of the Tai Teg assessment system.
 - Prices of other affordable housing in the area.
 - The biodiversity measures taking more time than expected but this should not affect the committee date.
- 2.5 A reply to the applicant's letter was sent on 19 July 2019 confirming the following:-
- Confirming that Tai Teg usually assess applicants for various types of affordable housing and that it is not unusual for them to assess people who are landowners and wish to self-build.
 - Written confirmation was requested regarding if it was intended to ask Tai Teg to re-assess the situation.
 - Need to ensure that a correct Ownership Certificate is in place and this was required to ensure that the application was valid.
 - That it was a statutory requirement for information about biodiversity to be presented prior to consideration if the application is acceptable or otherwise regarding this aspect, and the assessment was required before the Biodiversity Unit can confirm their viewpoint.
 - Confirmed that it was not possible to re-submit the application to a Planning Committee until the relevant information had been received.
- 2.6 A response was received from the applicant dated 29 July 2019 stating:-
- Enclosing a copy of a letter from Liz Saville supporting the application.
 - Confirming that they would complete the appropriate Certificate of Ownership.
 - Confirming that they were in the process of updating the Tai Teg assessment.
 - Asking if it would be possible to undertake the biodiversity assessment if their application was successful.
- 2.7 A reply was sent to the applicant on 29 July 2019 stating:-
- Thanking the applicant for confirming that it was proposed to present a new Certificate of Ownership and also to get an update to the Tai Teg assessment.
 - In terms of biodiversity matters, it was explained that it would be necessary to receive the information requested prior to reaching a decision on the application and this information was material to the assessment and if the application was acceptable or not from this aspect.
 - It was also explained that the time-schedule in terms of re-submitting the application to the Planning Committee was dependent on when the information was submitted and the need to re-consult once the information was to hand.
- 2.8 Correspondence dated 23 October 2019 from the applicant submitting:-
- Certificate of ownership B.
 - Ecological report
 - Update of the Tai Teg assessment stating that the applicants of house 1 had failed (i.e. not eligible in terms of need for an affordable house) due to the new post of one of the applicants but applicants for house 2 had been successful and were therefore eligible and in need of an affordable house.

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- 2.9 Correspondence dated 28 October 2019 to the applicant confirming the receipt of the information and the file would be updated and a consultation period would take place. It also noted that it was intended to submit the application to Committee on the 13th of January 2020 and to hold a site visit on that morning. It was explained that it was not possible to submit the application to the December committee as it was to take place in Caernarfon and a site visit had already been arranged for that morning.
- 2.10 Further correspondence was sent to the applicant on 11 November 2019 explaining that it was now possible to submit the application to the Planning Committee on the 9th of December 2019, as the number of items on the agenda had been reduced. It was also explained that it was proposed to conduct a site visit on the morning of the Committee but due to the need to visit the application site and another site in Bangor that the Committee would not commence until 2pm.
- 2.11 From the committee report on 1 July 2019, it can be seen that five reasons were given in the recommendation for refusing the application and information is submitted responding specifically to the following matters:-
- Lack of need proven for a local need affordable house.
 - The location of the houses is not an infill site between highlighted buildings, and it is not located directly opposite a curtilage of a highlighted building.
 - The size of the houses do not reflect the size of affordable housing.
 - The value of the houses do not make them affordable.
 - Lack of reptile survey.

3 POLICY CONTEXT

National Planning Guidance

- 3.2 Paragraph 1.21 of Planning Policy Wales (Edition 10, December 2018) clearly states that "Up-to-date development plans are the basis of the planning system and set the context for rational and consistent decision making. Plans at all levels of the development plan hierarchy must be prepared in accordance with national planning policies. Planning applications must be determined in accordance with the adopted plan, unless material considerations indicate otherwise."
- 3.3 It is also noted that the following are relevant:
- Technical Advice Note (TAN) 2 Planning and Affordable Homes (2006).
 - Technical Advice Note 6 Planning for Sustainable Rural Communities (July 2010)
 - Technical Advice Note 12 Design (2016)

Local Planning Arrangements

- 3.4 The adopted Local Plan is the Anglesey and Gwynedd Joint Local Development Plan and the relevant policies in this case are policy PS17 (Settlement strategy), TAI 6 (Housing clusters), TAI 15 (Threshold of affordable housing and their distribution) and AMG 5 (Local Biodiversity Conservation).

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3.5 It is also noted that the following Supplementary Planning Guidance (SPG) are relevant:

- Affordable housing (2019)
- New dwellings in Rural Villages (2010)

Lack of need proven for a local need affordable house.

3.6 Criterion 1 Policy TAI 6 requires that the need for an affordable house for local community need (in accordance with the list of terms) has been proven. Furthermore, SPG: Affordable Housing states that when the initial occupiers of intermediate accommodation are known, they need to be registered with Tai Teg and to have been the subject of a Tai Teg Assessment in order to confirm their eligibility for an affordable house.

3.7 Since deferring the application the applicants have been re-assessed in terms of if they need an affordable house. There was a need to re-assess as a result of the fact that one of the applicants had received a new post as Headteacher of a primary school and also that originally the applicants had been assessed as individuals rather than as couples. You will remember that when the application was submitted to Committee on 1 July 2019, that the applicant of house 1 had proven successful with regard to confirming that they need an affordable house, whilst the applicants of house 2 were unsuccessful. These results are now different with the applicants of house 2 following their assessment as a couple having proven successful and their need for an affordable house, however, the applicants of house 1 have failed to show that they are in need of an affordable house. Therefore, although there has been a change in terms of who is eligible for an affordable house the need for an affordable house has not been fully proven and therefore reason 1 for refusal remains as in the 1 July 2019 report.

The location of the houses is not an infill site between highlighted buildings, and it is not located directly opposite a curtilage of a highlighted building.

3.8 Criterion 2 of policy TAI 6 requires that the site is an infill site between buildings highlighted on the relevant inset map, or is a site immediately opposite a highlighted building's curtilage. Nothing has changed in terms of the location of the houses since preparing the report to committee on 1 July 2019, and as explained in that report the site is not an infill site between highlighted buildings, and it is not located directly opposite a curtilage of a highlighted building. Policy PS 17 also supports this viewpoint, stating that only highlighted sites adjacent to a dwelling (on the infill maps) will be considered. The proposal therefore continues to be contrary to criterion 2 Policy TAI 6 and also to Policy PS17.

The size of the houses do not reflect the size of affordable housing.

3.9 Criterion 5 of policy TAI 6 requires that the size of the property reflects the specific need for an affordable dwelling in terms of the size of the house in general and the number of bedrooms. There is also guidance regarding the size of affordable housing in the Supplementary Planning Guidance – Affordable Housing. The circumstances in terms of the size of the housing continues as noted in the Committee report on 1 July 2019. They are three bedroom houses, with an internal floor surface area of 116 square metres, and SPG Affordable Housing recommend an internal floor area of 94 square metres for 5 person, three bedroom housing. The houses that are the subject of this application are therefore larger than what is designated in the Affordable Housing SPG.

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The proposal therefore continues to be contrary to criterion 5 Policy TAI 6 and also to SPG Affordable Housing.

The value of the houses do not make them affordable.

- 3.10 Criterion 7 of Policy TAI 6 requires that mechanisms restrict the occupancy of the dwelling both on first occupation and in perpetuity to those who have a need for an affordable dwelling. If all matters were acceptable, it would be possible to bind both proposed houses as affordable homes through a 106 agreement. Policy TAI 6 along with Policies PS 17 and TAI 15 promote affordable housing only within clusters such as Llanengan. This means that the house should not only be affordable to the applicants (first owners), but they should continue to be affordable for any future prospective occupiers. The price of the houses is therefore material to ensuring that the houses will continue to be affordable in the future.
- 3.11 As noted in the committee report on 1 July 2019, a valuation was received for the proposed houses and this was prepared for the applicant by Beresford Adams who gave an open market price for the houses at £325,000 each.
- 3.12 Since submitting the application to the 1 July 2019 committee, the Council has consulted with the District Valuer to get an unbiased opinion regarding the open market value of the houses. This is in accordance with the requirements of the SPG Affordable Housing where it is noted in paragraph 3.7.7 in cases where dispute remain over the open market valuation, the services of the District Valuer Service will be sought to resolve such disputes. The District Valuer's report takes into account the proposal, site, together with the value of other local houses of a similar size which have been sold recently. The District Valuer is of the opinion that value of the houses is £370,000 each on the open market. This is £45,000 higher than the valuation received from the applicants.
- 3.13 Paragraph 3.3.7 of the SPG Affordable Housing states that affordable housing provided as intermediate housing must be for an affordable price in the area of the proposal and Councils will use the median income of a household, multiplied by 3.5, along with the 5% or 10% deposit, based on the required level by mortgage providers. The SPG Affordable Housing therefore sets out the formula to calculate the value of the affordable unit. However, when the open market value of a house is available it is better to use that to calculate the value of the affordable unit. In order to get an opinion on this the Strategic Housing Unit were asked for their observations.
- 3.14 The Strategic Housing Unit's observations were received regarding the value of the affordable units and they note that the proposal is in Llanengan ward, which has a median household income of £31,386 (Caci Paycheck 2018) and in accordance with the Affordable Housing SPG, the price of affordable property in an area is calculated by multiplying the median income by 3.5 and adding 10% deposit of the open market value. In the observations it is also noted that the open market value should comply with the 'Red Book' valuation method, namely those that meet with the criteria noted by the Royal Institution of Chartered Surveyors. It is understood that there are two valuations in question, namely:
- Valuation received from Beresford Adams who state the value of the housing as £325,000.
 - District Valuer's (DV) valuation namely £370,000.

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3.15 The DV's valuation confirms that they have followed the Red Book arrangements. In this case it is not clear if Beresford Adams have used the 'Red Book' valuation method. As a result of both valuations the Strategic Housing Unit have given an analysis in terms of the discount on both valuations as follows:

3.16 **Beresford Adams Valuation:**

To be affordable the property's price should be $£31,386 * 3.5 + £32,500 = £142,351$
 To ensure that the property is affordable, a discount of 55% on the open market value of £325,000 should be requested giving the sum of £146,250.

3.17 **DV Valuation**

To be affordable the property's price should be $£31,386 * 3.5 + 37,000 = £146,851$
 To ensure that the property is affordable, a discount of 60% on the open market value of £370,000 should be requested giving the sum of £148,000.

3.18 The Strategic Housing Unit also notes that 83% of households have been priced out of the market on this ward.

3.19 In accordance with the observations of the Strategic Housing Unit the affordable price of the houses should be £146,851 based on the District Valuer's open market price. If a discount of 60% is given on the DV's open market price then the affordable price for the houses would be £148,000.

3.20 In an area such as Llanengan, where house prices are usually high, it is customary when preparing a 106 agreement to provide a discount of approximately 40% or 45% in the house price when they are sold on to ensure that they continue to be affordable. The table below shows what the proposed prices of the proposed housing would be with such an income:

Open market price	Price with a 40% discount	Price with a 45% discount
£325,000 (Beresford Adams)	£195,000	£178,750
£370,000 (District Valuer)	£222,000	£203,500

3.21 These prices are significantly more than the affordable price of £146,851 noted by the Strategic Housing Unit. In order to ensure that the price of the houses is affordable it would be necessary to give a significant discount on the houses in question of about 55% - 60% to get a comparative price to the affordable price noted and as seen in the following table.

Open market price	Price with a 55% discount	Price with a 60% discount
£325,000 (Beresford Adams)	£146,250	£130,000
£370,000 (District Valuer)	£166,500	£148,000

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- 3.22 Therefore it can be seen from the above to have any chance of getting the houses down to an affordable price a discount of about 60% would be required. Historically we are aware that giving such a high discount causes problems and lenders are not willing to give a loan on this basis.
- 3.23 Although applications should be determined according to their own merit, it is also necessary to ensure that planning policies are consistently implemented and therefore consideration given to similar cases if they have implications to the fundamental principle of the proposal. An important case in this area is application C15/1349/39/RC to remove a section 106 affordable need agreement at Ocean Crossing, Bwlchtocyn. In this case the applicants presented a case that the price of the property would not be affordable even with a discount of 50% as noted in the section 106 agreement. A valuation was provided as part of the application with an open market price of £475,000 for the property and therefore with a discount of 50% the price of the house would be £237,500. This application went to appeal when the Inspector resolved on 9 January 2017 to approve the removal of the section 106 agreement as the property's price was not affordable in the first place. In light of the appeal decision officers had no choice but to allow the removal of the section 106 agreement for a similar affordable need at Awel Neigwl, Sarn Bach on 21 November 2017, once again as the price of the house with a discount of 50% was not affordable.
- 3.24 This appeal decision has been important in terms of the consideration that should be given to the open market price of a house when determining applications for new affordable housing. We should also ensure that we are consistent in the way we deal with such cases. The Committee may recall the case of application C17/0557/38/LL at Beach Road, Llanbedrog, where the affordability of the proposed house was also an important matter and one of the reasons recommended in the application's refusal. With that application the applicant submitted a valuation from a Chartered Buildings Surveyor who valued the proposed dwelling on the open market at £250,000. However, when the District Valuer was approached for an independent, impartial opinion the DV gave an open market value of £340,000 for the house. In the end, the application was withdrawn by the applicant.
- 3.25 When dealing with the application attention was drawn to sites where the sale prices of affordable housing were high, such as the site of the former Harbour Hotel and Riverside in Abersoch and also affordable housing near Llanegan Church. It should be noted that these three sites have received planning permission prior to the Ocean Crossing appeal resolution in January 2017. These permissions were also under alternative development plans and not under the current development plan namely the Anglesey and Gwynedd Joint Local Development Plan. Also, since granting the above applications the Affordable Housing SPG has been updated. We therefore realise that affordable values on the above three sites are higher and if these applications were submitted now these would also be required to show that the houses would be affordable with a suitable discount in a section 106 agreement. However, it should be noted that the above applications were determined on the grounds of the evidence that was to hand at the time in terms of open market and affordable housing prices and in terms of policy and relevant planning guidance requirements then. Since these applications have already received planning permission it is not possible to change the circumstances of these sites, however, we can try to ensure that similar situations do not occur again when dealing with current applications. We have learnt from the resolutions to remove the affordable housing 106 agreement that detailed consideration needs to be given to the open market value of affordable housing to ensure that these approved houses are really affordable not just to the applicant or first (occupier) but

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also to any future occupiers and to ensure that the houses continue to be affordable in perpetuity.

- 3.26 Therefore, having considered the above it is considered that the price of the affordable housing in question is too high for them to be really affordable even for a reduced price and therefore it is considered that the housing would not contribute to the aims of providing affordable housing on the site in question and therefore the proposal continues to be contrary to Policy TAI 6, PS 17, TAI 15 and the Affordable Housing SPG.

Lack of reptile survey.

- 3.27 Since submitting the application to the Planning Committee on 1 July 2019, an Ecological Survey has been submitted for the application. This report states that there is potential for birds to be nesting in nearby scrubland and the site supports a population of breeding slow-worms. Mitigation measures are proposed within the survey for nesting birds and reptiles. The Biodiversity Unit was consulted on the proposal and their observations were received. Observations confirm that the report has been undertaken to an acceptable standard. As a result of receiving the ecological report the Biodiversity Unit has no objection to the proposal and recommend if the application is approved that a number of conditions are imposed to safeguard wildlife when undertaking the work and also to have mitigation measures as part of the development. As a result of receiving the observations, if the Committee wish to approve the application it would now be possible to impose ecological mitigation measures on the permission. Therefore, reason number 5 for refusal in the committee report on 1 July 2019, is not now relevant.

In summary

- 3.28 In light of the above, it is now considered that this proposal is not acceptable and the application as submitted does not comply with the requirements of local and national policies and guidance.
- 3.29 Members should present firm reasons and evidence to approve and reverse the officers' recommendation on an application for local need affordable housing that are not in compliance with the relevant policies of the Gwynedd Unitary Development Plan as well as the Welsh Government's specified planning policies. In this particular case it is not believed that there are sufficient reasons and evidence to support the reasons to approve given by the Planning Committee on 1 July 2019, which would reverse the officers' recommendation.

4 RISKS TO THE COUNCIL OF APPROVING THE APPLICATION

- 4.1 As has been outlined above, approving this application would undermine policies on a national and local level. The site is located on the outskirts of the Llanengan cluster, as denoted in the Anglesey and Gwynedd Joint Local Development Plan, where only local need affordable housing can be approved. As the above assessment shows together with the assessment in the Committee report on 1 July 2019, the proposal would not satisfy the need for local need affordable housing, the location is not suitable, the size of the house is beyond the size of affordable housing as stated in SPG - Affordable Housing and therefore the houses because of their price would not be affordable.

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- 4.2 Approving the application would create inconsistency in terms of implementing the Council's adopted planning policies in reaching decisions on applications regarding affordable housing developments.
- 4.3 There is a risk that the application may called in by the Welsh Government for determination. As well as the risk of individual applications being called in, the Welsh Government has powers to intervene formally in the way the Council provides the Planning Service. This would ultimately be the greatest risk to the Council.

5 OPTIONS FOR THE COMMITTEE

- 5.1 The options available to the Committee in determining the application are noted below with the options increasing in terms of risk to the Council as you go down the list:
- a) Refuse the application in accordance with the recommendation - The above assessment assesses the merits of the application against the requirements of relevant policies and guidance and reaches the conclusion that the proposal does not comply with the policies of the Anglesey and Gwynedd Joint Local Development Plan or the guidance in the SPG - Affordable Housing This is the only possible resolution without any risks to the Council.
 - b) Approve the application with a Section 106 Agreement - The only way to make the houses affordable is if a high discount such as 60% is given on them. However, historically we are aware that giving such a high discount causes problems and lenders are not willing to give a loan on this basis. Also, even if permission can be given with a high discount one couple is not eligible for an affordable house. Therefore, one couple will not be eligible to live in any of the houses if the application is approved. In addition, there is a need to control the size of the houses and for them to comply with affordable housing standards. Approving the application would therefore undermine local policies and guidance concerning affordable housing with a risk of not consistently implementing relevant policies and guidance.
 - c) Approving two open market houses outside the boundary - This is the greatest risk to the Council as it would approve two open market houses in the countryside without any control in terms of occupancy or price. This would completely undermine local and national policies as well as the Council's credibility. Once more it is noted that the Welsh Government has powers to intervene formally in the way the Council provides the Planning Service.
- 5.2 **In order to ensure that the Council avoids the risks outlined above and as the application's merits have been assessed thoroughly by Council officers it is deemed that the proposal does not conform to the requirements of the adopted policies of the Anglesey and Gwynedd Joint Local Development Plan, local and national guidance and national planning policies. Therefore it is recommended that the application is refused as submitted in accordance with the reasons for refusal numbers 1 - 4 in the report submitted to Committee on 1 July 2019 and reproduced below to avoid any doubt.**

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5.3 To refuse - reasons

1. In accordance with the Supplementary Planning Guidance: Affordable Housing (2019), when the initial occupiers of intermediate accommodation are known, they need to be registered with Tai Teg and they need to have been the subject of a Tai Teg Assessment in order to confirm their eligibility for an affordable house. Both applicants have not been successful in being assessed by Tai Teg and, therefore, it is not considered that the local need for an affordable house has been fully proven. The proposal is, therefore, contrary to criterion 1 of Policy TAI 6 of the Anglesey and Gwynedd Joint Local Development Plan and the requirements of the Supplementary Planning Guidance: Affordable Housing (2019).
2. The site is not an infill site between highlighted buildings, and it is not located directly opposite a curtilage of a highlighted building; therefore, it is contrary to the requirements of Criterion 2 of Policy TAI 6 of the Anglesey and Gwynedd Joint Local Development Plan.
3. The size of the houses does not reflect the size of affordable houses as noted in the Supplementary Planning Guidance: Affordable Housing; therefore, it is considered that the proposal is contrary to criterion 5 of Policy TAI 6 of the Anglesey and Gwynedd Joint Local Development Plan and the requirements of the Supplementary Planning Guidance: Affordable Housing (2019).
4. In light of the open market price of the houses, they cannot be justified as an affordable development as the value of the houses, even at a reduced price, would be too high to satisfy any affordable need. It is considered that the proposal is, therefore, contrary to criterion 7 of Policy TAI 6, Policy PS 17 and Policy TAI 15 of the Anglesey and Gwynedd Joint Local Development Plan and the requirements of the Supplementary Planning Guidance: Affordable Housing (2019).

6. APPENDICES

- 6.1 Appendix 1 – A copy of the previous report, plans and records submitted to the Planning Committee dated 1 July 2019.