

PLANNING COMMITTEE	DATE: 01/02/2016
REPORT OF THE SENIOR PLANNING AND ENVIRONMENT SERVICE MANAGER	CAERNARFON

Number: 6

Application number: C15/1239/30/LL
 Registration date: 01/12/2015
 Application Type: Full - Planning
 Community: Aberdaron
 Ward: Aberdaron

Proposal: REMOVAL OF OCCUPANCY CONDITION
 Location: THE COTTAGE, RHIW, PWLLHELI, GWYNEDD, LL538AE

Summary of the Recommendation: TO APPROVE UNCONDITIONALLY

1. Description:

- 1.1 This is an application to revoke a planning condition which limits the use of a building, known as 'The Cottage' Rhiwenfa, Rhiw, only as a residential unit in association with the adjacent Rhiwenfa property. The condition was imposed on historical permission number 2/10/113A dated 20 December 1978 which involved changing the use of the building from a shop to a house. It is a small single-storey building, which includes a kitchen, a bathroom, a living room and two bedrooms and there is a small car park in front of it. The proposal does not involve any changes to the property. The adjacent property and an unclassified road lie in a central location in the rural village of Rhiw, and are within the Area of Outstanding Natural Beauty designation.
- 1.2 The application is submitted to Committee at the Local Member's request and as three objections were received.

2. Relevant Policies:

- 2.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 and paragraph 2.1.2 of Planning Policy Wales emphasise that planning decisions should be in accordance with the Development Plan, unless material considerations indicate otherwise. Planning considerations include National Planning Policy and the Unitary Development Plan.
- 2.2 **Gwynedd Unitary Development Plan 2009:**
 POLICY CH5 NEW HOUSING IN RURAL VILLAGES To approve a residential development which includes one or two units only in a Rural Village on specific sites if it conforms to criteria relating to local need for the development, effect on the landscape and the specific features of the site.
- 2.3 **Local Planning Guidance**
 Supplementary Planning Guidance: Affordable Housing, Gwynedd Council (November 2009)
- 2.4 **National Policies:**
 Planning Policy Wales: Edition 8, January 2016
 Chapter 3, page 43, paragraph 3.6

 The Welsh Government Circular 016/2014: Use planning conditions to manage developments

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3. Relevant Planning History:

3.1 2/10/113: Conversion of a shop into a chalet at Rhiwenfa, Rhiw: Refused 22 February 1978

3.2 2/10/113A : Conversion of a shop into a house at Rhiwenfa, Rhiw: Approved 20 December 1978
Condition 2: The residential unit approved through this is used in association with the Rhiwenfa house only.

3.3 Y15/001573 Enquiry regarding the property's situation. The chalet and the Rhiwenfa house have been separated to different occupancy in a will.

4. Consultations:

Community/Town Council: On a majority vote, it was decided to object to this application as the applicant is not local and Rhiw is not a village where the construction of houses is approved. Approving the application would create a new house in the countryside for people from outside the area.

AONB Unit: No objection.

Public Consultation: A notice was posted on the site and nearby residents were notified. The advertising period ended on 23 December 2015 and four items of correspondence were received objecting on the following grounds:

- Creating a new residential unit in the countryside.
- Road safety and parking - a narrow road and concern that the parking space is narrow and inadequate which could mean parking on the road and obstructing visibility.
- Location of the septic tank (existing tank - no change)
- Applicants are not local people to receive a house
- Lack of amenity space for the property

5. Assessment of the material planning considerations:

5.1 The principle of the development

The Welsh Government Circular 016/2014: 'Use planning conditions to manage developments' is the main consideration when considering this application, as it sets a general criteria for the validity of planning conditions. Using planning conditions, when using them appropriately, can enable proposals which would otherwise possibly be refused to be approved. The Circular together with Planning Policy Wales notes that conditions should only be set if they meet the requirements of the six below criteria, namely that they are;

- necessary;
- relevant to planning;

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- relevant to the development which is to be permitted;
- practical to be enforced;
- detailed;
- reasonable in all other aspects.

The same principles should be implemented when dealing with applications to revoke planning conditions, under section 73 of the Town and Country Planning Act 1990. Conditions should not be retained if there is no genuine reason to do so. It will therefore be required to assess whether the condition to limit the use of a building, 'The Cottage', Rhiw, only as a residential unit in association with the adjacent Rhiwenfa property continues to adhere to the requirements of the six above criteria, and if the condition still achieves a useful purpose in planning terms.

- 5.2 It is understood according to the information on the application that 'The Cottage' has been left to the applicant in a will. It appears that the former owner, who used to occasionally use the building to accommodate his visitors/family/friends in line with the condition, had separated both properties in his will. The Land Registry document submitted with the application indicates that both properties are now in separate occupancy and have been legally separated. Due to the changes in occupancy circumstances, it is not physically possible for the applicant to comply with the condition and therefore he wishes that it be revoked. The Circular states that conditions should not be imposed on land which is outside the applicant's control, although this was not true when the condition was originally imposed, the change in situation makes it impossible for the applicant to comply. Based on the change in circumstances, which is outside planning control, it would be difficult to argue in an appeal situation that the condition is necessary now given that the Local Planning Authority would be unable to enforce it due to the difference in occupancy.
- 5.3 It appears that the description of the original application 2/10/113A which was approved in 1978 refers to the 'Conversion of a shop into a house' and therefore in principle has established and identified the use of the building as a house. However, the condition to limit the use of the building in association with Rhiwenfa was imposed at the time to make it an acceptable development due to concerns about creating a house in the countryside, the practicality of its size and an overdevelopment of the site. The building in question does not have a physical link to the Rhiwenfa property, as a small boundary wall separates them together with a small curtilage area to the front of the properties. Given that the building and the rooms within are self-contained and completely independent of Rhiwenfa, it is difficult to argue that it is not a house in the first place.
- 5.4 One of the Community Council and the objectors' arguments against revoking the condition is that approving the application would create a new house in the countryside for people from outside the area. As the description of the application historically states to change the use of Rhiwenfa to a 'house' rather than an 'annexe', it must be legally accepted that the building is a house. It is therefore not considered that it is possible to consider the building as a new house in terms of the Council's housing policies. Rhiw is a rural village, and policy CH5 of Gwynedd's Unitary Development Plan would usually be relevant, which requires any new housing to be affordable and for people with proven community local need. The applicant is not local to the area in this case, however this small building would be likely to be affordable due to its size. The land registry document indicates that the value of the property on 10 September 2015 was £40,000 which is an affordable price.

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5.5 Based on the information submitted and the above assessment, it is not considered that the condition meets the requirements of the 6 criteria relating to conditions as noted in the Welsh Government Circular 016/2014. Given the wording of the original permission and that the applicant physically cannot comply with the condition due to the split in occupancy, the condition is no longer relevant or necessary to the current circumstances. It is believed that there is a genuine reason for revoking the condition as it is not possible to enforce it, nor is there any reasonable justification for it to remain imposed.

Response to the public consultation

5.6 It is acknowledged that the objectors had expressed concern about the highway and parking situation that could arise from permitting a house on the site. However, the proposal before us does not involve any changes to the property in terms of its existing use, it only concerns revoking the condition. At present, there is provision for one car to pull in in front of the property and given the size of the property it is considered that this is adequate. It is not considered that revoking the condition would involve significant changes to what has currently been proven.

6. Conclusions:

6.1 The condition which limits the use of the 'The Cottage' building only as a residential building in association with the Rhiwenfa property as it stands today does not draw attention to relevant planning purposes or meet with the requirements of the Welsh Government Circular 016/2014. For this reason, there is no reasonable justification to retain the condition.

7. Recommendation:

7.1 To approve the application unconditionally.