

PLANNING COMMITTEE	DATE: 19/06/2023
REPORT OF THE ASSISTANT HEAD OF DEPARTMENT	

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### COOLING-OFF REPORT - ASSISTANT HEAD OF DEPARTMENT

APPLICATION NUMBER: C23/0148/17/LL

#### 1. PURPOSE

- 1.1 The determination of the application was deferred at the Planning Committee meeting on 22/05/2023 in accordance with the instruction of the Assistant Head, Environment Department, as there was a significant risk to the Council in respect of the Planning Committee's intention to approve the application contrary to officers' recommendation. 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 for planning permission to construct a rural enterprise house (3 bedroomed) at Fferm Uwchlaw'r Rhos approximately 1.5 miles outside the village of Penygroes. The site is located outside any village boundary as defined in the Joint Local Development Plan (Anglesey and Gwynedd).
- 2.2 The application has been before the Planning Committee on 22/05/2023 and the report submitted to the Committee at that time is attached in **Appendix 1**.

#### 3. POLICY CONTEXT

##### Relevant Policies:

- 3.1 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 made in accordance with the Development Plan unless material considerations indicate otherwise. Planning considerations include National Planning Policy and the Local Development Plan.
- 3.2 The Well-being of Future Generations (Wales) Act 2015 places a duty on the Council to take reasonable steps in exercising its functions to meet the seven well-being goals within the Act. This report has been prepared in consideration of the Council's duty and the 'sustainable development principle', as set out in the 2015 Act. In reaching the recommendation, the Council has sought to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.
- 3.3 **Anglesey and Gwynedd Joint Local Development Plan 2011-2026, adopted 31 July 2017**
- PS 1 The Welsh Language and Culture  
PS 2 Infrastructure and developer contributions  
ISA 1 Infrastructure Provision  
PS 4 Sustainable Transport, Development and Accessibility  
TRA 2 Parking Standards  
TRA 4 Managing transport impacts  
PS 5 Sustainable development

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PS 6 Mitigating the effects of climate change and adapting to them  
 PCYFF 1 Development Boundaries  
 PCYFF 2 Development Criteria  
 PCYFF 3 Design and place shaping  
 PCYFF 4 Design and Landscaping  
 PCYFF 5 Carbon Management  
 PCYFF 6 Water Conservation  
 PS 17 Settlement Strategy  
 PS 18 Affordable Housing  
 TAI 15 Threshold of affordable housing and their distribution  
 AMG 3 Protecting and improving features and qualities that are unique to the character of the local landscape  
 PS 19: Conserving and where appropriate enhancing the natural environment  
 AMG 5 Local biodiversity conservation  
 AT 1: Conservation areas, World Heritage Sites and Landscapes, Parks and Registered Historic Gardens

Supplementary Planning Guidance: Building Rural Houses in the Countryside

### 3.4 **National Policies:**

Future Wales: The National Plan 2040

Planning Policy Wales (Edition 11 - February 2021)

Technical Advice Note 6 - Planning for Sustainable Rural Communities

## **4. ASSESSMENT OF THE PLANNING CONSIDERATIONS**

- 4.1 The proposal includes erecting a rural enterprise house on a site located beyond the farmyard and outside any development boundary as defined by the LDP. Policy PCYFF1 states that outside development boundaries proposals will be refused unless they comply with other policies within the local development plan, national planning policies or that the proposal demonstrates that its location in the countryside is essential.
- 4.2 The explanation of policy PCYFF 1 states that the development boundaries were identified for all types of settlements in the Plan apart from clusters. Policy PCYFF 1 notes that the development boundaries amongst other things prohibit inappropriate development from being in the countryside, provide definite guidance and clarity in relation to where exceptions can be applied e.g., rural exception policy, identify areas where developments could be approved and promote the efficient and appropriate use of land and buildings. It is therefore considered that the remainder of the Plan area is subject to more control and is mainly restricted to developments which require a location in the countryside or that meet a local rural need, support rural diversification or sustainability of the countryside.
- 4.3 Within the context of rural protection however, the policy acknowledges that some types of developments are necessary e.g., agricultural sheds and address the area's social, economic or environmental needs. This is an application for a rural enterprise house which is a type of development that can be justified in the countryside in exceptional circumstances.
- 4.4 **As a result of the need to maintain and protect the countryside, special justification is needed to approve the construction of new houses in the countryside. Therefore, new houses**

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**in the countryside will only be approved in exceptional circumstances.** The exceptional circumstances under which new houses in the countryside could be approved are included in Technical Advice Note 6: Planning for Sustainable Rural Communities - July 2010 (TAN6) prepared by the Welsh Assembly Government, and the associated Technical Guidance document.

- 4.5 Paragraph 4.3.1 of TAN 6 notes that one of the few circumstances in which a new isolated residential development in the open countryside can be justified is when accommodation is required to enable a rural enterprise worker to live at, or close to, his workplace. Whether this is essential in any particular case will depend on the needs of the rural enterprise concerned and not on the personal preference or circumstances of any of the individuals involved. TAN 6 also notes that Local Planning Authorities should carefully assess applications for planning permission for new rural enterprise dwellings to ensure that a departure from the usual policy of restricting development in the open countryside can be fully justified by reference to robust supporting evidence.
- 4.6 The applicant states that the farm has been in the family's tenancy for 3-4 generations, however he bought the land in 2018 and the house was sold separately. He also states that there are three partners in the business, namely the applicant and his two sons.
- 4.7 It is noted from the site's planning history that a planning application was submitted by one of the sons to construct an agricultural shed on the land of the agricultural holding in 2021, under reference C21/0811/17/LL. The site plan and the site submitted with that application indicate that the plot of the proposed house is isolated and separate from the rest of the farmland and those circumstances are reflected and confirmed on a location plan submitted with this current application. Furthermore, evidence was submitted in the form of a B ownership certificate, confirming that one of the sons is the owner of the Uwchlaw'r Rhos dwelling, i.e., the original farmhouse. **Therefore, a partner in the company currently lives at Uwchlaw'r Rhos. Please note also that the applicant has stated that Uwchlaw'r Rhos has been split into two living units, which include 1 x four-bedroom unit and 1 x three-bedroom unit. Therefore, it appears that there are two houses on the farm already, with one of them occupied by one of the farm's partners.**
- 4.8 From the information submitted, it is stated that the applicant farms 84ha, but that only 59.9ha is in his ownership and the rest is rented under a long-term arrangement. An IACS map was received which shows that the land of the holding surrounds the application site. Please note the location of the rented land at Rhostryfan, Caernarfon. However, the information does not confirm the terms or length of the rental agreement. The applicant states that 20.2ha is used for silage (one cut) as well as a further 8ha (two cuts).
- 4.9 The applicant states that the business has existed for over three years. Business accounts for the previous three years were submitted to show that the business has made a profit in 3 of the last 4 years. Nevertheless, it appears that there is an established business on the land, and therefore in line with the requirements of TAN 6, information must be submitted that relates to the functional test, time test, financial test and other dwellings test to prove the need and justification for the construction of a house in open countryside.

**1. The Functional Test (Section 4.8 of Technical Advice Note 6)** - The functional test is required to show that it is essential, for the proper functioning of the rural enterprise, for one or more workers to be readily available at most times on the site or nearby.

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2. **The Time Test (Section 4.9 of Technical Advice Note 6)** - The time test and the functional test are separate tests, but there must be a full-time requirement for the worker for whom there is a functional need.

3. **The Financial Test (Section 4.10 of Technical Advice Note 6)**- Dwellings will only be approved where it can be proven that a rural enterprise is sustainable, and a financial test is applied to consider the enterprise's financial robustness, its projections over a reasonable period of time, and the ability of the business to fund the proposal.

4. **Other Dwelling Test (Section 4.11 of Technical Advice Note 6)** - The needs of an enterprise are considered in the context of the availability of existing options for alternative dwellings to meet the noted functional need, and/or the scope to reorganise the work of managing the enterprise so that no new dwelling is needed.

4.10 These tests are applicable in all circumstances, and each must be dealt with in a manner which is appropriate to the specific type of application submitted. Having applied the above tests to this application, I note the following:

**The Functional Test and the Time Test**

4.11 An essential functional need relates to a specific management activity or a combination of activities which means that a worker needs to be at hand for the majority of the time (and throughout the year) so as not to harm the normal operation of the existing business, and where this cannot be achieved in any other practical way such as electronic supervision, or making use of permitted development rights (e.g. siting a seasonal caravan). The time test ensures that there is a full-time requirement for the worker. Where a dwelling/dwellings is/are already a part of the enterprise, it must be demonstrated that having an additional worker living on the site is essential in order for the enterprise to operate properly.

4.12 Although lambing and calving are considered to be such activities, their seasonal nature means that it is possible to deal with the situation by means of the exceptions proposed in Part V of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended). Evidence was submitted with the application to demonstrate why it would not be possible to supervise the stock during these periods under the permitted rights.

4.13 **The applicant's comments are noted, however, it is difficult to see how the construction of a new house in the countryside based on seasonal use can be justified, particularly bearing in mind that the applicant lives in Penygroes, which is only approximately 1.6 miles from the site. It should also be noted that the applicant's son lives on the farm permanently, works on the farm occasionally and is in a position to supervise the farm's activities during difficult hours.** The Council is not convinced that robust evidence has been submitted as a specific confirmation that the applicant needs to be available permanently on the farm, considering the circumstances of the holding.

4.14 As the applicant's son provides natural supervision on the farm, during hours outside normal working hours, it is therefore considered that the seasonal need during lambing and calving in itself is insufficient to prove this functional need, and that the proposal fails under the essential functional need test.

4.15 **It also appears that the holding has been operational since 2018 (date the business was purchased) and the applicant has been living around 1.6 miles from the site in Penygroes**

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**ever since. No information was received showing an intention to change the farming system, which would change the situation, resulting in a need for a permanent presence on the land.**

- 4.16 No information has been submitted regarding the occupancy of the property in Penygroes (mortgage/unmortgaged occupancy/rent), or any evidence that this property does not meet the housing need, bearing in mind that the farm has been operating like this for three years and the partners in the business were aware of this when purchasing the land. In addition, it is obvious that the farmhouse was available to the family to purchase at the time when the land was sold, and one of the sons successfully purchased the house; there is no information or evidence regarding the applicant's circumstances at the time and why the dwelling was not purchased by the main agricultural workers.
- 4.17 This history causes concern over the actual need for a new house and paragraph 4.11.2 of TAN 6 states: "In cases where the planning authority is particularly concerned about possible abuse, it may be helpful to investigate the history of the enterprise to establish the recent pattern of use of land and buildings and whether, for example, any dwellings or buildings suitable for conversion to dwellings have recently been sold. Such a sale could constitute evidence of a lack of need."
- 4.18 Although information has been submitted to demonstrate full-time labour for 1.5 persons, the functional test has not been fully met, and therefore the proposal continues to fail.

#### **The Financial Test**

- 4.19 As it is an existing business, the applicant must provide a financial test for a period of at least three years, which means providing a copy of the books/end of year statement for this period. The financial test should also assess the size and cost of the proposed dwelling in relation to the ability of the enterprise to fund and maintain it without damaging the ongoing viability of the enterprise and demonstrate reasonable likelihood that it will maintain to fund the labour costs employed for the subsequent five years. In addition, the figures provided for the Financial Test should show that the business can cope with paying workers' wages and that there is residual profit to maintain the business and to build the dwelling (figure 5.18 of the Practice Guidance for Technical Advice Note 6).
- 4.20 Unless it can be proven that the existing enterprise is sustainable in the immediate short-term, it is unlikely that planning permission will be granted for a dwelling, even if there is currently a functional need to accommodate a worker, as it is unlikely that this need will be maintained.
- 4.21 A statement was received from an accountant, referring to the business' profit over the past three years; this letter makes a financial statement only and it does not confirm the position regarding funding the proposed house. It also states that the company's substantial growth is likely to slow down over the next three years; however, no explanation or reasoning for this was provided. **Although the accounts show a profit and that the partners receive a proportion of the profit, it is unclear whether the applicant receives a salary from the business as a full-time worker. It is not clear either whether one of the sons receives a salary from the business as an agricultural contractor and the second son as a casual worker on the farm.**
- 4.22 In those circumstances, it is not considered that the applicant has provided sufficiently robust information that would show that the financial situation of the business is sufficient to warrant the construction of a house, and therefore the application cannot be supported as it fails the financial test. Other dwelling
- 4.23 Those who apply for a new dwelling to serve existing rural enterprises will need to demonstrate:

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- why any other dwelling that exists on the land is not available or suitable to meet the functional need to accommodate a worker;
- why there are no other options to a new development on the land; for example, buildings that are suitable for conversion or opportunities to meet the functional needs by rearranging the work of managing the enterprise;
- why the other houses in the area are not suitable to meet the functional need of the enterprise, or why they are not available; for example, due to the isolated location of the enterprise, the high costs of houses on the open market, or the overall lack of suitable types of housing.

4.24 Each of these considerations must be dealt with by submitting a rational argument or clear and robust evidence. The applicant's report states that no buildings suitable for conversion exist on the holding, but no information or test has been forthcoming in relation to this statement. **The applicant also states that it was not possible to purchase the existing house, Uwchlaw'r Rhos, as part of the business, however the applicant's evidence confirms that the existing house, Uwchlaw'r Rhos, is owned by the applicant's son who is a partner in the business.** As discussed in paragraphs 5.15 and 5.16, the authority is concerned about the situation.

4.25 Please note that the applicant emphasises that no other property is available to the business on the farm, even though one son lives in the original house at Uwchlaw'r Rhos. TAN 6 asks if there is another house or suitable building for conversion on the farm and not a house that is part of the business. **In this case, the son (a partner in the business) owns Uwchlaw'r Rhos and therefore has a permanent home on the farm, regardless of whether the house is a part of the business or not.** Therefore, it is considered that the proposal also fails the other dwelling test

4.26 In summary, it is considered that the information submitted with the application does not satisfy the criteria of the relevant planning policies.

4.27 Members must be able to submit reasons and evidence to justify the approval of the application contrary to the officers' recommendation, and to also consider that this is an application for a new house in open countryside. In this particular case it is not believed that there are sufficient reasons and evidence to justify the approval of the application contrary to local and national planning policies and to the Officers' recommendation.

## 5 RISKS TO THE COUNCIL OF APPROVING THE APPLICATION

5.1 The site is located outside any development boundary, as identified in the Anglesey and Gwynedd Joint Local Development Plan, where there is a strong presumption against the building of houses in the countryside and there is no strong and reliable justification for the proposal. As the above assessment shows together with the assessment in the Committee report of 22 May 2023, officers are not convinced that sufficient justification has been shown for the approval of the proposal that would normally be contrary to local and national planning policies. Approval of this application would be contrary to the recommendation and would undermine policies on a national and local level.

5.2 Approving the application would create inconsistency in terms of implementing the Council's adopted planning policies in determining applications for rural enterprise developments.

5.3 The Welsh Government has powers to call-in planning applications for determination. Also, they have powers to intervene formally in how the Council provides the Planning Service and this would ultimately be the greatest possible risk to the Council.

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## 6. OPTIONS FOR THE COMMITTEE

6.1 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 proceed 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 Technical Advice Note 6 - Planning for Sustainable Rural Communities (July 2010). This is the only possible resolution without any risks to the Council. If the applicant is dissatisfied with the Council's refusal, then he/she can appeal against the refusal.

**b) Approve the application with a standard planning condition for a rural enterprise house and other normal planning conditions** - However, the risk of a planning application being submitted in the future to remove the condition would have to be accepted, and the strong potential that this would have to be agreed, bearing in mind that there was no evidence of need for a new rural enterprise house in the first place.

**c) Approve as an open market house outside the development boundary with the usual conditions** - This is the greatest risk to the Council as it would approve an open market house in the countryside without any control in terms of occupancy or price. This would completely undermine local and national policies and guidance 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. It is noted once more that there is a strong possibility that choosing option b) above would ultimately lead to this option.

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 submitted to Committee on 22 May 2023 and reproduced below to avoid any doubt.

### **Recommendation: To refuse – reasons**

1. The Local Planning Authority has not been convinced that the applicant has a real functional need for an agricultural dwelling on the site that is the subject of the application; that the site mentioned is suitable, and that no other property can meet the need mentioned, and it is not considered that there is sufficient evidence to prove with certainty the viability of the farming enterprise in the future; it is also not considered that the size of the agricultural house reflects the size of the enterprise (affordable). It is therefore considered that the proposal is contrary to policies PCYFF1 and PCYFF3 of the Anglesey and Gwynedd Joint Local Development Plan 2011-2026, Supplementary Planning Guidance: Building Rural Houses in the Countryside, and Technical Advice Note 6: Planning for Sustainable Rural Communities.
2. The site occupies an elevated, open and prominent location in the landscape above farm buildings where building a house on the site would have a substantial negative impact on the area's visual amenities, contrary to the objectives of Policies PCYFF 2, PCYFF 3 and PCYFF 4 of the Anglesey and Gwynedd Joint Local Development Plan 2011 – 2026.