



42/2016/0322/PS

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**WARD :** Dyserth

**WARD MEMBER:** Councillor David Gwyn Williams

**APPLICATION NO:** 42/2016/0322/ PS

**PROPOSAL:** Variation of condition no. 2 of outline planning permission code no. 42/2012/1638 to allow an additional 2 years for the submission of an application for approval of reserved matters and deletion of condition no's. 4 and 5 relating to code for sustainable homes

**LOCATION:** Land at (part garden of) Mount House Dyserth Rhyl

**APPLICANT:** Mr & Mrs P Parry

**CONSTRAINTS:** PROW  
AONB

**PUBLICITY UNDERTAKEN:** Site Notice – No  
Press Notice – No  
Neighbour letters - Yes

**REASON(S) APPLICATION REPORTED TO COMMITTEE:**  
**Scheme of Delegation Part 2**

- Referral by Head of Planning / Development Manager

**CONSULTATION RESPONSES:**

DYSERTH COMMUNITY COUNCIL  
No response received at time of drafting report

**RESPONSE TO PUBLICITY:**

In objection

Representations received from:

Alison Lacey, Laburnum Cottage, Bryniau, Dyserth

Mrs Aletha Jane Job, Carreg Wen, Bryniau

Cassidy & Ashton on behalf of Mrs J Walters, The Bungalow, Bryniau, Dyserth

Summary of planning based representations in objection:-

Strongly object to any more time being allowed.

There has been a material change – the adopted plan is now DCC Local Development Plan

**EXPIRY DATE OF APPLICATION:** Extension of time agreed: 12/10/2016

**REASONS FOR DELAY IN DECISION:**

- Ongoing legal issues.

## **PLANNING ASSESSMENT:**

### **1. THE PROPOSAL:**

#### 1.1 Summary of proposals

1.1.1 This application relates to 3 conditions attached to an outline planning permission for a single dwelling on land at the Mount, Bryniau, granted at Planning Committee in 2013, under application 42/2012/1638/PO

1.1.2 The application seeks permission to :

- vary condition no. 2 to allow an additional 2 years for the submission of reserved matters details;
- delete condition no's. 4 and 5 of the same consent which set out a requirement for compliance with the code for sustainable homes applying at the time.

1.1.3 The application is accompanied by a 2 page 'Planning Note' from the agent setting out reasons in support of the variation / deletions. In respect of:

Condition 2: It is argued that uncertainty relating to the Council's position in respect of the Ombudsman Investigation (the Council resolution of 17 February 2016 being pertinent and the most recent established position), it would be reasonable and appropriate to allow 2 further years for application for the approval of reserved matters to be submitted to the Local Planning Authority for approval. Such an approach would, under the circumstances, be consistent with the advice at paragraph 5.21 of Circular 16/2014 relating to the use of conditions for development management.

Conditions 4 and 5: It is argued that Welsh Government withdrew Part B of the national planning policy requirements for sustainable buildings (as then contained in section 4.12 of Planning Policy Wales (PPW). on 31 July 2014 when Planning Policy Wales v7 was issued. It is no longer extant National Development Management Policy and guidance is now offered under the Document "Practice Guidance – Planning for Sustainable Buildings, Welsh Government 2014". Technical Advice Note (TAN) 22: Planning for Sustainable Buildings was also cancelled in line with changes to Part L (energy efficiency) of the Building Regulations which also came into force on 31st July 2014 in parallel.

It is therefore requested that Conditions 4 and 5 are removed as they are no longer required to serve a planning purpose.

#### 1.2 Description of site and surroundings

1.2.1 The site to which this application relates lies adjacent to the southern boundary of Mount House. The plot, within the curtilage of the main dwelling, is set on a slope downwards from north to south. The plot lies to the north of existing residential properties known as The Bungalow, Carreg Wen and Rock Cottage. The southern boundary is formed by some trees/shrubs with a stone wall of between 1m and 2m high.

1.2.2 To the western boundary is a stone wall fronting the highway with some mature trees. Beyond that is Graig Fawr, an area of open land in the ownership of the National Trust.

1.2.3 Other than the 3no. dwellings to the southern boundary, the nearest property is Mount House to the north, which lies approximately 50m away.

#### 1.3 Relevant planning constraints/considerations

1.3.1 The site lies within open countryside beyond any development boundaries identified in the Local Development Plan. The site lies within the Area of Outstanding Natural Beauty.

#### 1.4 Relevant planning history

- 1.4.1 Outline planning permission was granted by Planning Committee on 15<sup>th</sup> May 2013 for the development of 0.1 hectares of land by the erection of one dwelling. All matters except for means of access were reserved for further approval. Condition no. 2 on that Outline consent required the submission of reserved matters before the expiration of three years from the date of the consent (by 15<sup>th</sup> May 2016). Conditions 4 and 5 set out the minimum Code for Sustainable Home construction standards to be achieved in the construction of the dwelling.

A Reserved Matters application was submitted in December 2013, however, this was withdrawn in April 2015.

A further Reserved Matters application was submitted in March 2016 (within the time limit) and is the subject of a separate application on the agenda, code no. 42/2016/0223/PR.

#### 1.5 Developments/changes since the original submission

- 1.5.1 None, other than extensions of time to determine the application, as agreed with agent.

#### 1.6 Other relevant background information

- 1.6.1 None

### 2. **DETAILS OF PLANNING HISTORY:**

- 2.1 42/2012/1638/PO Development of 0.1 hectares of land by the erection of one dwelling (outline application including access) GRANTED by Planning Committee 15<sup>th</sup> May, 2013.

42/2013/1548/PR Details of layout, scale, siting and appearance of dwelling, site landscaping and parking and turning facilities submitted in accordance with condition numbers 1 and 6 of outline planning permission 42/2012/1638/PO WITHDRAWN 22<sup>nd</sup> April, 2015

42/2016/0223/PR Details of layout, scale, appearance and landscaping of dwelling submitted in accordance with condition no. 1 of outline planning permission code no. 42/2012/1638 PENDING (separate agenda item)

### 3. **RELEVANT POLICIES AND GUIDANCE:**

The main planning policies and guidance are considered to be:  
Denbighshire Local Development Plan (adopted 4<sup>th</sup> June 2013)

**Policy BSC6** – Local connections affordable housing in hamlets

**Policy BSC 8** – Rural Exceptions

**Policy BSC9** – Local connections affordable housing within small groups or clusters

**Policy BSC11** – Recreation and open space

**Policy VOE2** – Area of Outstanding Natural Beauty and Area of Outstanding Beauty

#### 3.1 Government Policy / Guidance

Planning Policy Wales Edition 8 January 2016

### 4. **MAIN PLANNING CONSIDERATIONS:**

In terms of general guidance on matters relevant to the consideration of a planning application, Planning Policy Wales Edition 8, January 2016 (PPW) confirms the requirement that planning applications 'should be determined in accordance with the approved or adopted development plan for the area, unless material considerations indicate otherwise' (Section 3.1.2). PPW advises that material considerations must be relevant to the regulation of the development and use of land in the public interest, and fairly and reasonably relate to the development concerned., and that these

can include the number, size, layout, design and appearance of buildings, the means of access, landscaping, service availability and the impact on the neighbourhood and on the environment (Sections 3.1.3 and 3.1.4).

The following paragraphs in Section 4 of the report therefore refer to the policies of the Denbighshire Local Development Plan, and to the material planning considerations which are considered to be of relevance to the proposal.

4.1 The main land use planning issues in relation to the application are considered to be:

4.1.1 What, if any, material changes to planning circumstances have occurred since the original grant of consent

4.2 In relation to the main planning considerations:

4.2.1 What, if any, material changes to planning circumstances have occurred since the original grant of consent

### **In relation to Condition 2 to allow an additional 2 years for the submission of an application for approval of reserved matters**

Outline planning permission was granted for a single dwelling on land at Mount House on 15<sup>th</sup> May 2013. Conditions were imposed on this consent which clearly required the submission of reserved matters before the expiration of 3 years from that date.

Outline planning permission was granted having regard to the planning policies and guidance in place at that time, as contained within the Denbighshire Unitary Development Plan.

In June 2013, the Denbighshire Local Development Plan (LDP) was adopted, and superseded the Unitary Development Plan. This is considered to be a significant material change to planning circumstances which has occurred since the original grant of Outline consent.

The issue to be addressed, therefore, is whether the development of a single dwelling in this location would comply with the current LDP Policies and would, therefore, warrant an extension of time to submit reserved matters details for the original Outline proposal.

#### Denbighshire Unitary Development Plan (adopted 3<sup>rd</sup> July, 2002)

For clarity, the relevant former UDP Policies and guidance are summarised below.

There were a number of UDP policies considered relevant to the proposal - Policy GEN 3, GEN 4, GEN 6, HSG 5, HSG 6 and ENV 2.

Policy GEN 3 related to Development outside development boundaries and did not permit development outside development boundaries with the exception of specific proposals.

Policy GEN 4 related to Scattered development outside development boundaries and did not permit development which leads to isolated development or the consolidation of sporadic, scattered or loosely related development in the countryside.

Policy GEN 6 related to Development Control Requirements and permitted development that was in accord with other plan policies provided detailed criteria was met

Policy HSG 5 related to "Groups of Houses in the Open Countryside" and permitted infill development of one or two housing units where a proposal met a number of tests.

Policy HSG 6 related to new dwellings in the open countryside and only permitted development proposals that were in accord with other plan policies provided detailed criteria was met.

Policy ENV 2 related to Development affecting the AONB/AOB and permitted development that would not detract from the character and appearance of the AONB.

The application was presented to Planning Committee in May 2013. Officers recommended the application be refused as, in their opinion, the proposal did not meet the criteria of UDP policies (listed above) and specifically Policy HSG 5. Members, however, felt that the proposal did meet the criteria of Policy HSG 5 and resolved to grant Outline consent subject to conditions.

#### Denbighshire Local Development Plan

The Denbighshire Local Development Plan (LDP) was adopted in June 2013.

The previous infill Policy from the UDP (Policy HSG 5) was not directly carried forward into the new LDP. The considerations to be applied to proposals for any new dwelling in such an open countryside location, in the new LDP, focus on ensuring it is provided for local affordable need.

The LDP policies considered relevant to the development of a single dwelling in this location are as follows:-

The application site remains outside of the development boundary and accordingly its development for housing is limited to it being in compliance with Policies BSC 6, BSC 8 or BSC 9 of the Local Development Plan. Policy VOE 2 is also relevant as it relates to development within Areas of Outstanding Natural Beauty and Areas of Outstanding Beauty

Policy BSC6 – Local connections affordable housing in hamlets, states that local connections affordable housing will be permitted in the hamlets listed within the plan, provided a number of tests are met.

Policy BSC 8 – Rural Exceptions, states that affordable housing development will be supported as an exception to normal policy provided it meets a number of tests.

In relation to policies BSC 6 and BSC 8, the site is not within a hamlet listed in the LDP and the proposed dwelling is not an affordable housing unit, therefore these policies are not considered to be relevant to the consideration of this application.

Accordingly, it is suggested that as the proposal relates to new residential development in the open countryside, it can only be considered under Policy BSC 9 - Local connections affordable housing within small groups or clusters.

Policy BSC 9 states the following:

In open countryside, local connections affordable housing development of one or two units will be permitted within small groups or clusters, provided that the proposal meets all the following criteria:

- i) comprises infilling of a small gap between buildings within a continuously developed frontage; and
- ii) does not result in ribbon development or the perpetuation of existing ribbon development; and
- iii) is of comparable scale and size to, and is sited so as to respect adjacent properties and the locality; and
- iv) satisfactory arrangements can be made to ensure that the dwelling(s) are retained in perpetuity as affordable dwelling for local need and this is contained in a Section 106 agreement.

It is not considered that the proposal satisfies criterion i) or iv) of the policy. The development of the application does not comprise the infilling of a small gap between buildings within a continuously developed frontage and therefore conflicts with criteria i). No information has been

submitted suggesting the proposed property would be an affordable dwelling for local need and accordingly the proposal is contrary to criterion iv).

Policy VOE 2 states that in determining proposals within or affecting the Area of Outstanding Natural Beauty (AONB) or Area of Outstanding Beauty (AOB) development that would cause unacceptable harm to the character and appearance of the landscape and the reasons for designation will not be permitted.

Having regard to the above, Officers consider that the proposal does not meet the policy requirements of the adopted Local Development Plan and the application is unacceptable in principle.

#### Conclusion

Material changes to planning circumstances have occurred since the original grant of consent, in the form of the adoption of a new development plan for the County - the Local Development Plan. The Local Development Plan was adopted in June 2013.

The original outline consent was approved having regard to UDP policies, with standard time conditions imposed requiring the submission of reserved matters within 3 years.

This proposal seeks an additional 2 years to submit an application for approval of reserved matters. Having regard to the current policy relating to housing in small groups or clusters, the development of a new dwelling would only be permitted for Local Connections Affordable Housing only and no information has been submitted by the applicant to demonstrate compliance with this policy requirement.

#### **In relation to Conditions 4 and 5 for the deletion of conditions relating to code for sustainable homes.**

Conditions 4 and 5 were imposed in 2013 in accordance with the guidance contained in TAN 22 and in the former section 4.12 Planning Policy Wales. TAN 22 has now been cancelled.

The national planning policy requirements for sustainable building standards were removed from Planning Policy Wales and TAN 22: Planning for Sustainable Buildings was cancelled as it was considered that Building Regulations 2014 would adequately address the energy and carbon performance of buildings, and therefore this is no longer a planning consideration.

#### Conclusion

Officers accept there have been material changes to planning circumstances since the original grant of consent, through the deletion of TAN 22 and therefore it is considered reasonable to agree to the removal of Conditions 4 and 5.

## **5. SUMMARY AND CONCLUSIONS:**

- 5.1 Officers do not consider it reasonable or justified to allow a further 2 years for the submission of reserved matters on a scheme approved having regard to a different Development Plan. Having regard to the current Development Plan policies the proposed development of a single dwelling would not be acceptable.
- 5.2 Officers consider it reasonable and justified to delete the conditions relating to the Code for Sustainable Homes given the change in Policy from Welsh Government on this matter.



**6. RECOMMENDATION: Split decision**

**REFUSE variation of Condition 2** for the following reason:-

It is the opinion of the Local Planning Authority that material changes to planning circumstances have occurred since the original grant of consent in the form of the adoption of a new development plan for the County, the Denbighshire Local Development Plan. The proposal to seek an additional 2 years for the submission of reserved matters would be contrary to Policy BSC 9 in the adopted Denbighshire Local Development Plan which does not support the proposal and only allows proposals for Local Connections Affordable Housing only and no information has been submitted by the applicant to demonstrate compliance with this policy requirement.

**APPROVE deletion of Conditions 4 and 5:**