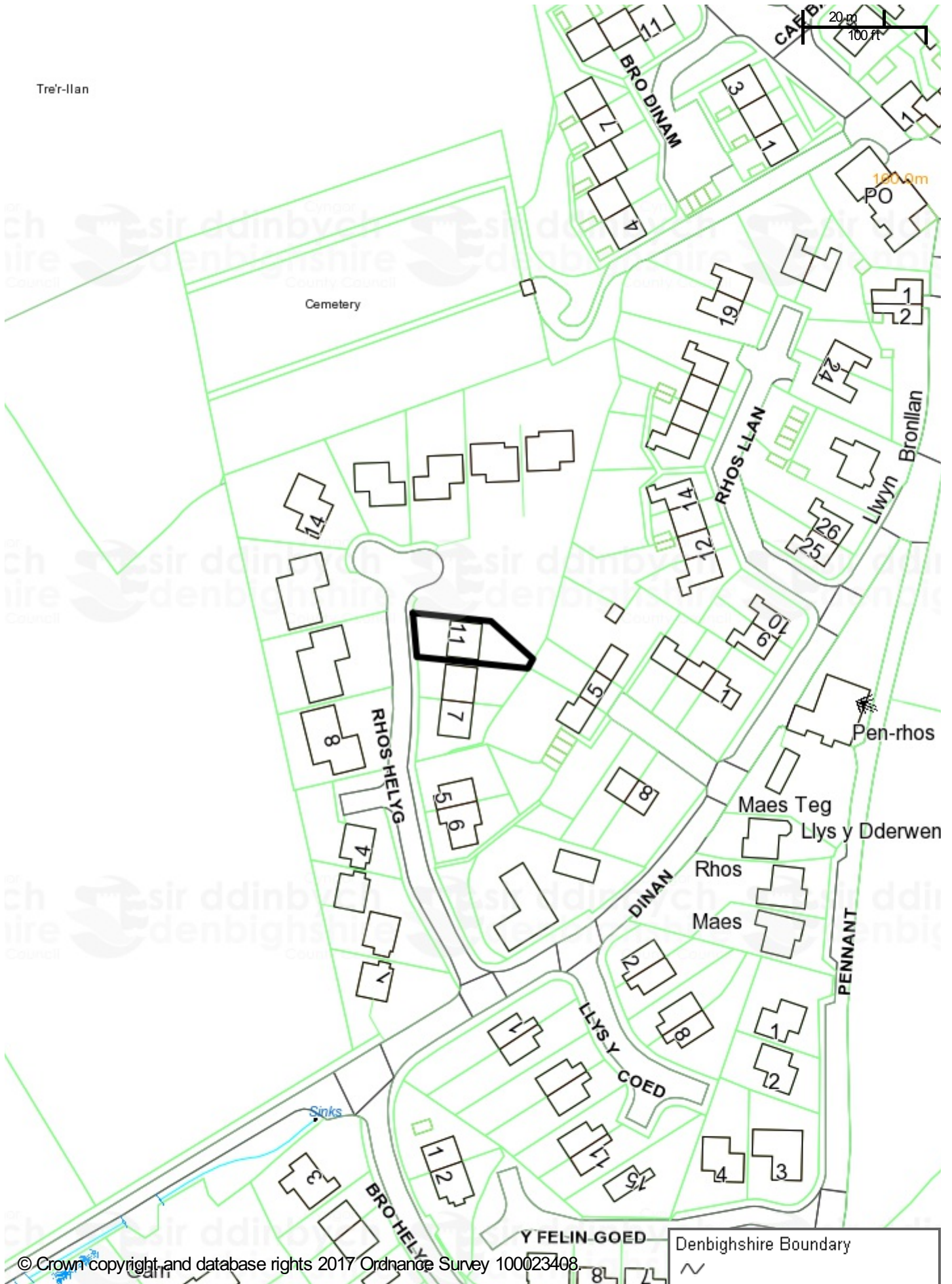


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Denbighshire Boundary



**WARD :** Llandrillo

**WARD MEMBER:** Councillor Mabon ap Gwynfor

**APPLICATION NO:** 07/2017/0559/OB

**PROPOSAL:** To modify the original planning obligation which applied to three properties; by discharging the agreement relating specifically 11 Rhos Helyg, Llandrillo

**LOCATION:** 11 Rhos Helyg, Llandrillo, Corwen

**APPLICANT:** Mr. Sion Roberts

**CONSTRAINTS:** N/a

**PUBLICITY UNDERTAKEN:** Neighbour notification – Yes

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

- Recommendation to grant / approve – contrary to Town / Community Council representations

**CONSULTATION RESPONSES:**

**LLANDRILLO COMMUNITY COUNCIL**

“It has been agreed that the community council will support Mr. Sion Roberts in his application, on the basis that he will give first refusal to Grwp Cynefin to purchase the property, if and when he decides to sell it.

**DENBIGHSHIRE COUNTY COUNCIL**

Housing Strategy and Development Officer

‘Denbighshire County Council has been providing affordable housing in various forms including Low Cost Home Ownership and Intermediate Rental since 2004. During that time we have provided over 750 homes across the county; 82 of these homes have been in the south of the County (Ruthin to Llangollen).

The basic tenets behind Denbighshire County Council's affordable Housing Policy is to provide affordable housing for local people who cannot buy or rent on the open market, ‘it..is retained as affordable for the first and any subsequent occupiers.’ Denbighshire County Council’s Affordable Housing SPG.

The property Mr Roberts owns is one of the most flexible on the market as it is a two bedroom bungalow, this means it can appeal to singles, couples, small families and people with disabilities. Bungalows are not often secured as affordable housing, as they command a similar footprint to a standard 3 bedroom house, which a developer can usually achieve a much higher price for.

Mr Roberts has only very recently provided the valuations required to calculate the new affordable price on the affordable property, which are required, in accordance with the terms of the S106 legal agreement.

The valuations of the property which he has provided are £150k, £150k & £175k. The S106 does reserve the right for the authority to get an independent valuation on the property, should we feel it has been overvalued. As one of the valuations is £25k more than the other two and therefore substantially higher, this could be an option we consider pursuing prior to finalising the affordable

price, however should the valuations be accepted, the affordable price the property would now be sold at would be £114,443. This is calculated as follows:

- Three valuations giving an average price of £158,333
- The discounted percentage at which the property is sold at 72.28 of this figure.
- Giving an affordable price of £114,443.

The price was originally set using local income information and average savings and multiplying them by 3.5. This would mean an affordable portion of income (i.e. less than third of income would be spend on housing costs). Based on government guidelines, a house hold spending more than 30% of its gross income on rent or mortgage payments is considered to have an unaffordable rent/mortgage. Due to the fall in local incomes and their slow recovery since the credit crunch of 2007, this way of setting the price will mean that the affordable price for this property is still 4.5 times the local median income for the area, which is £25,372, however this is still far less than the open market prices supplied by Mr Roberts. The local median income is still 8% less than the verified median income of 2007.

Comparable properties in the area have been marketed and sold at considerable less than being quoted over the last year. .

<http://www.rightmove.co.uk/property-for-sale/property-68199695.html>

<http://www.rightmove.co.uk/house->

[prices/detailMatching.html?prop=59086607&sale=88466385&country=england](http://www.rightmove.co.uk/house-prices/detailMatching.html?prop=59086607&sale=88466385&country=england)

<http://www.rightmove.co.uk/house->

[prices/detailMatching.html?prop=35243274&sale=87925419&country=england](http://www.rightmove.co.uk/house-prices/detailMatching.html?prop=35243274&sale=87925419&country=england)

As the property has not been marketed it is impossible to say whether there are any local people interested or able to buy the property. Although there is no-one currently registered on the affordable housing register for Llandrillo, there are people in the wider cascade area that the S106 refers to (Cynwyd, Corwen, Betws Gwerfil Goch, Gwyddelwern, Llanelidan, Bryneglwys, Llantysilio and Llangollen).

Affordable housing occupancy is subject to DCC's Local Connections Policy, this is to ensure local people have priority for housing in the area to which they already work and live. This helps communities to retain their younger people and families in the area, in which they themselves have grown up in, and so supporting the vibrancy of the smaller villages and helping to retain the Welsh culture of our rural communities.

The S106 currently in place on the property obliges the owner to advertise the property in the local paper and to restrict the sale of the property to a local person in housing need for a period of 12 months. If, at the end of 12 months a local person has not been found, the property may be sold to someone who is proven housing need. Again, this is as yet untested by the present owner as the property price has not been finally agreed and the property has not been advertised in a local paper or registered with an estate agent. It is possible to reduce the length of the restrictive marketing period, down to 20 weeks if the current owner requests it, which Mr Roberts was advised of when he came to discuss the situation with DCC in January 2017.

Grŵp Cynefin have advised me that they have been in touch with Mr Roberts regularly asking for pictures of the property, confirmation of the estate agent he is using and the affordable price, so they can begin marketing the property for him, to applicants on the affordable housing register. Due to the slight differences in S106 agreements, a bespoke marketing strategy will be undertaken by DCC and Grŵp Cynefin to market the property.

As the restrictive marketing conditions do naturally mean there is a smaller pool of people eligible to buy the property, as local people are given priority, a range of different communication methods can be used to ensure that local people are given every opportunity to secure the property. This is usually undertaken with the local member and can mean using any relevant local Facebook/Twitter pages as well as community magazines, in addition to the normal methods of estate agent marketing.

Mortgages on S106 properties are not offered by all mortgage providers as noted in the letter Mr Roberts has provided from NatWest, however The Principality, Halifax and Nationwide all offer S106 mortgages and in the case of the Nationwide, they provide mortgages for over half of all first time buyers, so cater for a significant amount of the market.

It has been stated that the S106 renders the property unsellable, however it has been suggested to Mr Roberts that rather than removing the S106 altogether from the property and thus losing an affordable property in a rural area, a Deed of Variation can be drawn up, to address the issues he feels are preventing any sale. This would include widening the Local Connection catchment area, in agreement with the local member, reducing the restrictive affordable housing marketing period to 20 weeks, in accordance with our current procedures, marketing the property through the Affordable Housing Register and Rightmove/On The Market rather than advertising in the local paper exclusively, as internet advertising is now the first point of call for people seeking a new or first home. But this option has not been taken up by the applicant.

We have also approached the Grwp Cynefin who own the other two affordable properties on this development to see if they would be interested in buying this property, they are currently undertaking a financial viability and housing need assessment to see if they can proceed. At the time of this response, this process is still underway, so I cannot firmly advise it would be an option for Mr Roberts. Due to the fact that the market for affordable housing has not been tested in the locality, through the property being marketed anywhere, the terms of the S106 have not been complied with, and as a result we cannot advise that the S106 is unfit for purpose and should be removed. There are elements that can be addressed to make selling the property easier and we would advise that these are attempted before considering the removing the S106 agreement altogether to allow the property to be sold free of restriction on the open market. ‘

#### **RESPONSE TO PUBLICITY**

None at time of drafting the report

#### **EXPIRY DATE OF APPLICATION: 24/08/2017**

Extension of time requested to 13/10/2017

#### **REASONS FOR DELAY IN DECISION (where applicable):**

Awaiting determination by Committee

#### **PLANNING ASSESSMENT:**

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

###### 1.1 Summary of proposals

- 1.1.1 The report seeks a resolution on a submission requesting the modification of the terms of a Section 106 Obligation which applied to three dwellings constructed as part of a housing development granted permission in November 2005 at Rhos Helyg, Llandrillo.
- 1.1.2 The application seeks the discharge of the obligation insofar as it relates to one of the three dwellings, which is No 11 Rhos Helyg.

###### **Background**

- 1.1.3 Members will be aware that Section 106 Obligations are the Council's preferred mechanism for securing the provision of affordable housing in new developments and for retaining units in perpetuity for local residents in affordable housing need. The contents of Section 106 Obligations are often complex and assessment of applications seeking modifications to the terms of agreements inevitably require delving into fine detail in order to determine the reasonableness of the requests. This case is no different, hence to be fair on the applicant and members, the report includes a volume of background material in order to provide as complete a picture as possible of the issues in front of the Committee.

1.1.4 Planning permission for the development of 9 dwellings at Rhos Helyg was granted at Planning Committee under application code no. 07/2004/0805. The permission was subject to completion of a legal Agreement setting out requirements for the provision of 3 units of affordable housing (2 for rent and 1 low cost for sale), in order to comply with the policies of the Development Plan in place at that time. No 11 was designated as a low cost home for sale. The legal agreement was completed on the 5<sup>th</sup> November 2005 and the planning permission was dated 8th November 2005.

1.1.5 A Deed of Variation to the November 2005 Section 106 was made in July 2006. This replaced the definitions of Low Cost Housing Units and Registered Social Landlord Units.

1.1.6 In essence, the Section 106 Obligation and its Deed of Variation contain specific conditions relating to the provision and occupation of the 3 affordable units, including criteria to be applied to first and subsequent occupancy, and covenants in relation to the disposal of the units. The basic intention of the obligation was to ensure that the dwellings remain available in perpetuity for local residents in proven housing need, in accordance with Council Policies and Guidance in relation to affordable housing.

1.1.7 The key clauses in the Section 106 Obligation at Rhos Helyg, setting out the Covenants by the Owners of the 3 affordable units, which are of relevance to the current application are in the **First Schedule**:

- Not to dispose of any Affordable Housing Units either by way of sale or transfer other than in accordance with the procedures set out in the First and Second Schedules
- Not to dispose of the Affordable Housing Units provided by way of low cost for sale except by selling the freehold or long leasehold to one or more Local Residents in proven housing need at the Initial Price
- The selling price on any second and subsequent transfer of the Affordable Housing Units as low cost housing shall be controlled so as to ensure that the Affordable Housing Unit(s) remains as affordable housing for as long as the need for affordable housing Units exists. This will be achieved by the owner including within the transfer of the Affordable Housing Unit(s) a restrictive covenant in favour of the owner.
- If after using all reasonable endeavours the Owner has been unable to dispose of the RSL Units to a Registered Social Landlord or as low cost housing as provided for in the Second and Fourth Schedule the Owner shall notify the Council and comply with such alternative method of securing the affordable housing benefits and within such timescale as shall be specified by the Council

The Section 106 Obligation contains sections dealing with 'Definitions and Interpretation' of expressions including Affordable Housing Units, Initial price, local resident, Low Cost housing Unit(s), Open Market Value, and RSL Unit(s). It also sets out processes for Dispute resolution. Significant to this application is the requirement that the low cost home for sale should not be sold for more than 72.28% of Open Market Value.

1.1.8 The **Second Schedule** of the Obligation contains Covenants in Disposals of Affordable Housing Units / Low Cost Unit(s). This provides interpretation of meanings of terms including 'Open Market value' and the methodology to be followed in the disposal of any freehold interest including the first transfer, and second or subsequent transfer.

1.1.9 The original definitions in the November 2005 Obligation were replaced with the following:

- Low Cost Units - Dwelling comprising of one house / bungalow of two bedrooms to be provided as low cost housing on the land shown as plot 7 on Plan 2 annexed or one or more of RSL Units if they are not purchased by a RSL within the time specified in paragraph 4 of the Fourth Schedule
- RSL Units – Dwellings comprising of houses / bungalows of two bedrooms on the land and shown as plots 8 and 9 on Plan 2 being provided as neutral tenure (social rented or shared ownership) as set out in the Fourth Schedule.

### **The applicant's submissions**

1.1.10 The current application seeking the consent of the local planning authority to the modification of the Section 106 Obligation was registered as a valid submission on the 30<sup>th</sup> June 2017. It was supplemented by additional information from the applicant, received on 29<sup>th</sup> August, 14<sup>th</sup> September, and 19<sup>th</sup> September 2017.

1.1.11 The applicant is Mr Sion Roberts of No. 11 Rhos Helyg. The original submission contained the following:-

- The application forms and plans identifying the property
- Accompanying information setting out the applicant's arguments for agreeing to the modification.
- A copy of the 2005 Section 106 Obligation

1.1.12 From the forms and accompanying documents:

The changes to the Obligation as stated on the application form are:

**'To modify the original planning obligation which applied to three properties; by discharging the said agreement relating specifically to my property, being 11 Rhos Helyg, Llandrillo'**

The reason for the proposed changes is stated as 'not fit for purpose'.

The information considered relevant to the determination of the application states:

'The house was purchased in 2008 for £92,032 from RTL developments. 72.28% of the present market value (from valuations that are included) is £101,192. Denbighshire County Council have said their limit is £75,354. There is nobody on the DCC list for affordable housing in the local area. 2 bed houses in the local area are for sale at around £100,000.'

There are a number of letters / emails, including exchanges between Council Officers and the applicant following a meeting to discuss the Obligation, and other email exchanges leading up to that meeting clarifying which clauses of the Obligation apply to the property.

There are letters from two Estate Agents which provide valuations for the property, and comments on the impact on the property's marketability and value as a consequence of the Section 106 Agreement. Both provide an open market valuation based on no restrictions, one suggesting the Section 106 would have a very significant effect on the marketability and value.

The remaining section of the application comprises print outs of information on the website of 'rightmove.co.uk', which show property in the LL21 postcode area on the market up to £110,000.

1.1.13 The additional information provided in August 2017 advised:

- Three estate agents had been approached, providing open market valuations of the property.
- Each of the agents commented on the difficulty in obtaining a mortgage for properties subject to a Section 106 application - two were currently unwilling to advertise the property and the third said it would be effectively a waste of time doing so.

- Grwp Cyefin have also refused to market the property due to the difficulty obtaining a mortgage on a property subject to an obligation
- The Council's Housing Officer has reinforced this point in confirming the difficulty with potential purchasers obtaining a mortgage
- Numerous mortgage providers have been approached. None were willing to offer a mortgage subject to such an Obligation.
- A letter from NatWest attached indicates the parts of the Obligation which makes for difficulty in obtaining a mortgage
- The S106 makes the property not mortgagable and thus unsellable. It cannot be bought by a local person in housing need, hence is unfit for purpose.
- There are questions over the mechanism of the setting of initial sale price, discounting from full market value, and whether the property was ever affordable
- Denbighshire has taken the decision not to enforce the building of an affordable property on land at Penrhos, Llandrillo, which would suggest there is no local need.
- There are currently 21 properties cheaper (average open market valuation, less discount) free of obligations within a 5 mile radius.

The letter from Nat West indicates that the bank will not normally lend on a property where there are title restrictions on resale with associated risk with the resale of the property and concerns over their security. It refers to the following specific restrictions which mean they would be unable to proceed with a mortgage application:

- \* Restrictions on who can buy the property, e.g. people on a housing waiting list, people who have lived in the area for a certain period, people of specified professions
- \* Restrictions on the selling price, e.g. the property must be sold for 20% under market price.

1.1.14 The additional information provided on 14th September is in response to the comments of Llandrillo Community Council and states :

'I have considered the suggestion given by the community council with regards to my application. I would support their proposal and will give grwp cynefin first refusal with regards to purchasing my property. It is my understanding that the section 106 would still need to be removed to allow them to buy the property.'

1.1.15 The additional information provided on the 19<sup>th</sup> September includes the majority of the letter summarised in 1.1.12, and emphasises the point that the Section 106 Obligation makes the property unmortgagable and thus unsaleable; that it cannot be bought by a local person in housing need, or other; and consequently it is not fit for purpose.

The letter also includes:

- the open market valuations referred to,
- emails from the housing officer containing advice over the approach to varying / modifying the Section 106, options to consider, etc.
- letters / mails from Nat West, HSBC and Santander advising that they do not normally lend on properties subject to a Section 106

## 1.2 Description of site and surroundings

1.2.1 The dwelling forming the subject of the application is one of nine developed at Rhos Helyg, a small residential cul de sac to the south west of the centre of Llandrillo village.

1.2.2 It is a detached single storey two bedroom dwelling, and is one of three on the site which were subject to the legal agreement relating to affordable units.

## 1.3 Relevant planning constraints/considerations

1.3.1 The relevant 'constraint' in this instance is the Section 106 Obligation which accompanied the planning permission for the Rhos Helyg development in 2005. The key terms of the agreement are set out in sections 1.1.5 – 1.1.9 of the report.

#### 1.4 Relevant planning history

- 1.4.1 The main application relating to the application was 07/20104/0805, for the erection of 9 dwellings on the site, granted permission in 2005.

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

- 1.5.1 The applicant's case in support of the application is set out in detail in sections 1.1.10 to 1.1.15 of the report. This comprises the contents of the original submission and additional information provided in August and September 2017.

#### 1.6 Other relevant background information

- 1.6.1 The applicant has been in discussion with Housing and Legal Officers in relation to the Obligation, prior to submission of the application. He has been informed of the relevant terms of the Obligation, which establish that the property should not be sold for more than 72.28% of the Open Market Value; and that it has to be sold to local residents in proven housing need, save where it has been on the market for 12 months or more – when it can be sold at the restricted price referred to above to someone who is not local, but in proven housing need.
- 1.6.2 The applicant was advised on the process to follow in relation to seeking written valuations from estate agents and how the terms of the Obligation should be followed in relation to certification of sale price, advertisement of the property to test the market, recognising the need to secure compliance of purchasers with local residency / housing need requirements. It has been suggested by Officers that if there are potential difficulties for potential purchasers obtaining a mortgage, then other options could be explored. The Strategic Housing Officer's response outlines some of the options which exist.
- 1.6.3 The applicant is aware of the concerns of Officers over the complete discharge of the Obligation on the basis of the current submission, but has requested the application be reported for determination, as he considers a reasonable case is made to consent to his request and he is anxious to progress matters in order to secure a sale.
- 1.6.4 The Local member has been kept informed of the situation.

## 2. DETAILS OF PLANNING HISTORY:

07/2004/0805

Erection of 9 no. dwellings and construction of new vehicular and pedestrian access

Granted 8<sup>th</sup> November 2005

Subject to Section 106 Obligation relating to 3 affordable units.

## 3. RELEVANT POLICIES AND GUIDANCE:

### Context for assessment of the application

The detailed legal/planning context within which an application to modify or discharge a planning Obligation is outlined in Circular 13/97 (including Annex C), Section 106A (6)(b) of the 1990 Planning Act, and Welsh Government's Planning Policy Wales. The basic requirements are:

- Where the applicant seeks the discharge of a planning obligation, the test under s.106A(6)(b), whether the obligation "*no longer serves a useful purpose*".



- Where modification is sought, the test under s.106A(6)(c) is whether 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”.

In relation to the requirements outlined, it is also considered relevant to assess whether:

- the obligation still accords with the 5 principles applying to the use of obligations (necessary, relevant to planning, directly related to the proposed development, fairly and reasonably related in scale and kind to the development, and reasonable in all other respects);
- there has been a genuine change of circumstance since the signing of the obligation which makes insistence on compliance unreasonable.

3.1 The above reflect the contents of PPW 3.7.6 and Regulation 122 of the Community Infrastructure Levy Regulations 2010 in relation to the tests to be satisfied in order for planning obligations to be required in respect of new development proposals. These are that an Obligation must:

- be necessary to make the proposed development acceptable in planning terms
- be directly related to the proposed development
- be fairly and reasonably related in scale and kind to the proposed development.

## **Welsh Government and Council strategies relating to affordable housing**

### **Welsh Government**

3.2 There has been no fundamental change in Welsh Government policy and guidance in relation to the provision of affordable housing in connection with new housing development since the original grant of planning permission and completion of the Section 106 Obligation in 2005.

3.3 Current policy and guidance is in Planning Policy Wales 9 and Technical Advice Note 2 – Planning and Affordable Housing.

PPW9 retains the principle that a community’s need for affordable housing is a material consideration to be taken into account in formulating development plan policies (9.2.14), and where development plans make clear that an element of affordable housing is required on specific sites, this is a material consideration in planning applications (9.3.5).

TAN 2 dates back to 2006, and sets out general principles in support of provision of affordable housing through the land use planning system, and the roles of Local Authorities, Registered Social Landlords and private developers in securing provision. It refers to the use of planning agreements to ensure affordable housing is occupied in perpetuity by people falling within particular categories of need and provides general advice on approaches to the use of conditions and obligations.

### **Denbighshire County Council**

3.4 The Council’s strategies relating to the provision of affordable housing in residential development schemes are little changed since the grant of the permission for the Rhos Helyg development, and the signing of the Section 106 in 2005.

The Housing Strategy section of the **Unitary Development Plan** which was in place in 2005 required provision of a wide range of housing needs, including affordable housing.

The Rhos Helyg application was considered with regard to Policy HSG 10 which contained a specific policy in relation to Affordable Housing within development boundaries which identified this as a material consideration.

A Supplementary Planning Guidance Note - Affordable Housing in New Developments was approved in July 2005 and was a consideration in relation to the Rhos Helyg application. The SPG set out a policy requiring 30% affordable units on sites of 3 dwellings or more.

The **Local Development Plan** which was adopted in 2013 contains a range of Objectives including a basic aim to meet projected housing needs in terms of a total number, type, and size of dwellings, including provision of affordable housing.

Policy BSC4 relates to Affordable Housing and sets the requirement for provision of 10% on sites of 10 or more units, with a financial contribution for sites with less than 10 units.

In support of the LDP are two Supplementary Planning Guidance documents: one on Affordable Housing covering the different types of Affordable Housing, and the most recent in November 2016 on Planning Obligations setting out considerations to be given to the calculation and principles of provision of affordable housing. The Affordable Housing SPG emphasises the basic principle behind the Council's affordable housing policy is to provide housing for local people who cannot buy or rent on the open market, and that units are retained as affordable for the first and subsequent occupiers.

#### **The Council's options in considering the application**

To assist Members' considerations, it is understood there are three basic options open to the Committee in determining the application:

1. If the obligation is no longer needed to serve its original intended purpose, it may be discharged;
2. If it is considered that the obligation is still needed to serve its original intended purpose, but that this can be achieved by modifying the obligation in the way proposed in the application in relation to No. 11 Rhos Helyg, it can be agreed to modify the obligation
3. If it is considered that the obligation still serves a useful purpose, the application to discharge it in respect of No 11 Rhos Helyg should be refused.

## **4. ASSESSMENT OF THE APPLICATION**

### **Main planning considerations**

4.1 Officers suggest the key consideration is whether the planning obligation still serves a useful purpose with regard to No 11 Bro Helyg, having regard to the applicant's case in the context of the Council's Policies and Guidance, the principles applying to the use of obligations, and whether there has been a genuine change of circumstance since the signing of the obligation which makes insistence on compliance unreasonable.

4.2 In terms of procedure, the application is an unusual one as it relates to a Section 106 Obligation covering 3 affordable units in the Rhos Helyg development. Hence whilst the request as worded as one for a 'discharge' of the Obligation, Officers interpretation is that as it relates solely to that part of the Obligation applying to No. 11 Rhos Helyg, it is effectively for a 'Modification' of the Section 106 as the restrictions would continue to apply to the other two units. There are no submissions or arguments here that the Obligation should not continue to apply to the other two affordable units at Rhos Helyg.

4.3 In noting the Community Council's response that the application is supportable on the basis that the owner gives first refusal to Grwp Cynefin to purchase, and the applicant's indication that this would be acceptable to him, this is not what has been applied for. Officers advice is that this would need to be the subject of a further variation / modification application. The determination of the Committee has to be on the basis of the application in front of it for the complete discharge of the Obligation relating to No 11 Rhos Helyg.

### **The applicant's case**

4.4 The applicant's case in support of discharging the obligation in respect of No. 11 Rhos Helyg is set out in detail in sections 1.1.10 to 1.1.15 of the report.

4.5 The basis of the case is that the S106 makes the property not mortgagable and thus unsellable, and that it cannot be bought by a local person in housing need, hence is unfit for purpose. It is argued that responses from mortgage lenders and estate agents suggest advertising and marketing of the dwelling would be a waste of time; and that the property was not affordable when it was purchased, and remains unaffordable.

### **The Strategic Housing Officer's response**

4.6 The comments of the Strategic Housing Officer are appended to the Consultation responses section of the report. These are drafted having regard to the latest submissions from the applicant with regard to the tests to be applied to proposals for the modification / discharge of an Obligation, and follow previous dialogue with the applicant over the approach to the submission. In Officers' view these comments are of some significance to the consideration of the merits of the application.

4.7 The Housing Officer's comments touch on key areas:

- The Council's policy and Supplementary Guidance continue to support the provision of affordable housing with new development and the retention of affordable housing for first and subsequent occupiers
- No.11 Rhos Helyg is one of the most flexible on the market and can appeal to a range of persons in need of affordable housing
- The property has not been marketed as required by the Obligation, hence it is impossible to say that there are any local people interested or able to buy it. Whilst it is recognised there is no one currently registered on the affordable housing register for Llandrillo, there are people in the wider 'cascade' area included in the S106 ( 8 Community Council areas are listed)
- Grwp Cynefin have been in touch regularly with the applicant to request information on the property so they can begin marketing it for him.
- A range of different communication methods can be used to market the property (facebook, twitter, community magazines, in addition to estate agents)
- Mortgages on S106 properties are offered by the Principality, Halifax, and Nationwide
- It has been suggested to the applicant that if the property is unsellable, that there are a number of options open to vary the terms of the Obligation rather than remove it altogether and lose another affordable dwelling in a rural area. These include widening the Local Connection catchment area, reducing the marketing period to 20 weeks, marketing through the Affordable Housing Register and Rightmove / On the Market rather than simply a local paper
- Grwp Cynefin have been approached to consider buying the property, and are undertaking relevant assessment of the viability / feasibility of doing so

4.8 The conclusion of the Housing Officer is that it cannot be advised that the Section 106 Obligation is unfit for purpose and its removal cannot be supported. The concerns are that the market for affordable housing has not been tested in the locality as marketing has not been undertaken anywhere, contrary to the terms of the Obligation; and that there are elements of the Obligation that can be addressed to make selling the property easier, which should be attempted before considering removing the Obligation and allowing it to be sold free of restriction on the open market.

### **Conclusions**

4.9 Having regard to the applicant's submissions and the responses to the application, in the context of the tests to be applied, Officers conclusions are:

- Scrutiny of an application to modify / discharge a planning Obligation of this nature inevitably has to be intense as there are potentially far reaching implications for similar obligations throughout the County from the loss of affordable dwellings in rural areas.
- The Obligation is considered to still serve a useful purpose in respect of No 11 Rhos Helyg. It is consistent with the Council's Policies and Supplementary Planning Guidance which looks to secure affordable housing in rural areas and to retain them as affordable units for subsequent occupiers in perpetuity. It is considered the Obligation still meets the relevant planning principles applying to the use of obligations.
- The applicant has an understandable desire to sell the property, and has made clear his frustrations over the restrictions in the Obligation. Considerable effort has been made to support the submission with information from mortgage lenders and estate agents, and interrogation of the terms of the Obligation. He is arguing that responses from mortgage lenders and estate agents suggest mortgages will not be offered and that marketing is pointless with a Section 106 Obligation on the property. He is also raising questions over the mechanism of the setting of the initial sale price, discounting from full market value, and whether the property was ever affordable.
- In assessing the contents of the submission, and with respect to the applicant's arguments, the fundamental questions are over the evidence presented to show that there is no prospect of a mortgage being offered on the property with the affordable restriction, and the absence of any marketing of the property in accordance with the terms of the Section 106 Obligation. Officers consider these to be significant weaknesses which undermine the case to discharge the Obligation. The Housing Officer's response makes it clear that contrary to the applicant's arguments, there are mortgage providers who will offer Section 106 mortgages; and that as the property has not been subject to any marketing, and there are a number of mechanisms to undertake that marketing, it is not possible to conclude that there are not any local people interested or able to buy it, either in the immediate locality or the Community Council areas in a wider arc around Llandrillo.
- It is apparent from the Housing Officer's assessment that there are other options which could be investigated to sell or let the property as an affordable unit which do not fundamentally conflict with the terms of the Obligation, or which could form the basis of an alternative application to modify it which would be supportable, as it would retain the unit as affordable. Officers believe it is essential to see all feasible avenues explored before consenting to the discharge of any Obligation, which in this case would result in the loss of an affordable dwelling.
- In respect of the mechanism in the Obligation which concerns the setting of the initial sale price and the principle of discounting from full market value for subsequent re-sale, Officers understand this followed the standard approach adopted at the time of drafting the agreement.
- For the record, based on the 3 valuations that have been provided by the applicant, the calculation of the affordable price is £114,443.00.
- The Obligation system seeking to retain dwellings for affordable use in perpetuity would be rendered pointless if owners were simply allowed to discharge them in order to receive full market price / value on sale.
- It is a pertinent point that now the policies of the development plan in relation to Affordable Housing provision in connection with new developments have changed, meaning on site provision is now a requirement only on developments of 10 or more dwellings. In a location such as Llandrillo, this means the likelihood of securing further affordable dwellings as part of a single new development is very limited. This in turn emphasises the need to retain an existing stock of affordable dwellings wherever it is reasonable to do so.
- Ultimately, it is concluded that the submission does not demonstrate that all practical attempts have been made to comply with the terms of the Section 106 Obligation and it is considered

there remain options which could be investigated to retain the property as an affordable unit. Whilst this will appear frustrating to the applicant, it is incumbent on all parties to exhaust all reasonable possibilities to retain the dwelling as affordable before the big step of discharging the obligation is taken.

- Having regard to the above matters, it is also concluded that there has been no significant change of circumstance since the signing of the obligation which makes insistence on compliance unreasonable.

## 5. SUMMARY AND RECOMMENDATION

- 5.1 The application relates to a planning obligation tied to a planning permission for a housing development at Rhos Helyg, Llandrillo. It concerns No 11 Rhos Helyg, which was designated as a low cost home for sale. Two other units were designated as homes for rent, and are controlled by Grwp Cynefin.
- 5.2 The report outlines the background history and details the applicant's case for the discharge / modification of the Obligation in respect of No 11 Rhos Helyg.
- 5.3 Consultation responses are included in the report. Llandrillo Community Council offer support on the basis that the applicant will give first refusal to Grwp Cynefin to purchase the property, if and when he decides to sell it. The Council's Housing Officer does not support the removal of the Obligation, on the basis that the market for affordable housing has not been tested in the locality, the terms of the Obligation have not been complied with, it is not demonstrated the Obligation is unfit for purpose and there are options which should be explored to retain it as an affordable unit.
- 5.4 Ultimately, in applying the relevant tests to the application, and for the reasons outlined in the report, Officers consider the Obligation still serves a useful purpose. With respect to the applicant's submission, it is not considered this shows that all practical attempts have been explored to comply with the terms of the Obligation, and there are options which have not been investigated to retain the property as an affordable dwelling. It is therefore concluded the case is not made to justify the discharge / modification of the Obligation. If granted, this would allow the dwelling to be sold free of restriction on the open market, and would mean the loss of an affordable dwelling in a rural area. There are inevitable concerns from Officers over the precedent which would be set through the grant of consent in respect of the myriad of other Obligations with similar restrictions.

### RECOMMENDATION

That the Local Planning Authority REFUSE to discharge / modify the Section 106 Obligation in relation to No. 11 Rhos Helyg for the following reason:

It is the opinion of the Local Planning Authority that the Obligation still serves a useful purpose in retaining a stock of affordable dwellings in this rural area in support of the Council's Affordable Housing policies and Supplementary Planning Guidance, and that the information submitted with the application does not justify the modification / discharge of the Obligation in relation to No 11 Rhos Helyg as it does not :

- fully demonstrate that there are no options for securing a mortgage on a property with a S106 obligation
- show any reasonable attempts to market the property as an affordable dwelling in accordance with the terms of the obligation to show there is no need in the locality for an affordable dwelling,

- show that all reasonable options have been investigated for selling the property as an affordable dwelling before it is allowed to be sold free of restriction on the open market.

DOCUMENTS SUBJECT TO THE DECISION

Application forms and supporting information received on 30<sup>th</sup> June 2017

Additional information received:

29<sup>th</sup> August 2017; 14<sup>th</sup> September 2017; 17<sup>th</sup> September 2017