

**SUPPLEMENTARY REPORT BY THE HEAD OF PLANNING AND PUBLIC
PROTECTION**

RECONSIDERATION OF PLANNING APPLICATION

APPLICATION 25/2018/1216

Alterations and rear extension to existing building, demolition of curtilage structure, erection of ancillary building, retention of log cabin (for temporary period), boundary fencing and gates, and provision of on-site parking and turning area.

1. PURPOSE OF REPORT

- 1.1. The report seeks Members' consideration of issues arising as a consequence of the resolution of Planning Committee on 4th September 2019 to grant permission for the above described developments, contrary to the Officer recommendation to refuse the application. Ultimately, Officers are asking Planning Committee to reconsider that resolution having regard to the information contained in this Supplementary Report (SR).
- 1.2. This Report is presented to Planning Committee following deliberations by the Head of Planning and Public Protection in consultation with the Monitoring Officer, and in accordance with Part 2, Section 2.1.9 b) of the current Scheme of Delegation. Part 2 relates to Committee level decisions, and sets out circumstances where applications may be referred to Planning Committee for formal determination. Section 2.1.9 states :

"2.1.9 Any application which has been determined contrary to Officer recommendation at Planning Committee but which, in the opinion of the Head of Planning and Public Protection in consultation with the Monitoring Officer, could involve one of the following:

a) A significant departure from the adopted Development Plan.

b) A significant risk of costs being awarded against the Council at any subsequent planning appeal, legal challenge, possible Welsh Government call-in or Ombudsman investigation."
- 1.3. If either or both of the circumstances outlined under section 2.1.9(a) or (b) arises, then the Scheme of Delegation requires a referral back to Committee.

- 1.4. In this instance it is considered by Officers that there could be a significant risk of costs being awarded against the Council on the basis of potential legal challenge by way of Judicial Review. The Council is on notice that the decision taken in September is subject to a potential legal challenge and the application is being referred back for members to consider the issues arising.

2. BACKGROUND TO THIS SUPPLEMENTARY REPORT

- 2.1 The planning application for the development at Bwlch Du was originally reported to Planning Committee in July 2019, when consideration was deferred to allow opportunity to consider the contents of additional submissions on behalf of the applicants. It was subsequently presented to the September 2019 Planning Committee, with an Officer recommendation to refuse, having regard to current local development planning policies, specialist consultation responses and other representations received. The benefits of preserving a Listed Building, whilst accepted, were not in themselves considered to outweigh the harm caused by the proposal, having regard to the overall planning balance.
- 2.2 Officers' main areas of concern with the proposal related to the issue of whether the building had been abandoned (Officers concluding it had), the adverse visual impact from the existing log cabin on site, the failure to supply adequate information on the impacts on protected species and the proximity of a consented windfarm. It was not considered, by Officers, that the imposition of planning conditions would be sufficient to make the development acceptable having regard to these concerns.
- 2.3 For information and reference, a copy of the Officer report to the September 2019 Committee is attached as *Appendix 1* to this item. This includes a number of attachments including late information presented to the July Committee, and submissions from the applicant's solicitors.

Appendix 2 is the minutes of the 4 September 2019 committee for the item.

Appendix 3 is the letter dated 18 September 2019 issued by Welsh Government (the holding direction preventing the Council from determining the application).

Appendix 4 is the letter dated 18 October 2019 issued by Welsh Government (confirming they did not intend to 'call in' the application for determination).

Appendix 5 is the letter dated 18 October 2019 from Eversheds Sutherland LLP and the Counsel opinion provided by John Litton QC on behalf of Brenig Wind Limited.

- 2.4 The reasons given by Officers to refuse planning permission as set out within the original Committee Report are as below:-

1. *The existing building does not have a lawful use as a dwelling, having regard in particular to the length of time for which it has not been in use for residential purposes and the absence of any clear intention of the previous owner to use or maintain the building as a dwelling. As the residential use of the property is considered to be abandoned, the proposal is therefore considered to be for the re-use and adaptation of a rural building in open countryside. The proposal to re-use and adapt the buildings to use as a dwelling conflicts with the tests of Policy PSE4 of the Denbighshire Local Development Plan, as it has not been demonstrated that its use is unviable for employment purposes or that the proposed dwelling would be affordable to meet local needs. Additionally, it has not been demonstrated that the dwelling would be capable of providing a satisfactory standard of amenity for future occupiers due to the proximity to operational and*

consented windfarms, a factor which is a material planning consideration in line with the guidance in Section 9.4 of the Development Management Manual.

2. *The log cabin and the siting and scale of the proposed ancillary building have an adverse visual impact in an area of remote open countryside, and fail to preserve the setting of a listed building, contrary to Planning Policy Wales 10 with respect to harm to the landscape and also the guidance in Paragraph 9.4.3 of the Development Management Manual, TAN 24, Planning Policy Wales, The Historic Environment Act and Policy VOE 1 of the Denbighshire Local Development Plan and is contrary to Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990.*
 3. *There is insufficient information submitted to demonstrate that the proposed development would not adversely impact on protected species. The proposal is therefore contrary to guidance in TAN5 paragraphs 6.2.2 and 6.3.7, Policy VOE5 of the Denbighshire Local Development Plan along with the guidance in the Council's adopted Supplementary Planning Guidance note 'Conservation and Enhancement of Biodiversity' and paragraph 9.4.3 of the Development Management Manual.*
 4. *The site is located within Welsh Government's Strategic Search Area A, as defined in TAN 8: Renewable Energy. As the grant of permission would in effect convey residential use status to Bwlch Du, this is considered contrary to the requirement on Local Planning Authorities in TAN 8 paragraph 2.10 to safeguard wind farm sites from other developments which could sterilise them, and it has not been demonstrated that the dwelling would be capable of providing a satisfactory standard of amenity for future occupiers due to the proximity to operational and consented windfarms, a factor which as a material planning consideration in line with the guidance in Section 9.4 of the Development Management Manual.*
- 2.5 Members may recall there was debate on a number of issues at the Committee in September. The minutes of the debate are provided at Appendix 2. The debate concluded with the resolution that permission be GRANTED (subject to appropriate planning conditions to be agreed by officers with the local member), contrary to officer recommendations, on the grounds that the building has an existing lawful residential use and would have a negligible adverse impact on the visual amenity or ecological welfare of the area.
- 2.6 Following the resolution to grant permission at the September meeting, a holding direction was issued by the Welsh Government on 18 September 2019. A holding direction is a communication which Welsh Government can issue to a Local Planning Authority (LPA) preventing it from granting permission, in effect to allow Welsh Government opportunity to consider calling in an application for determination. An LPA cannot continue to determine a planning application once a holding direction has been issued. "Call-in" is a process where the Welsh Government take over responsibility for determining a planning application if, for example, it considers a proposal raises issues of more than local importance.
- 2.7 A subsequent letter from Welsh Government dated 18th October 2019 (Appendix 4) confirmed that it did not wish to call in the application for determination by Welsh Ministers. The letter explained that the issue raised within the call-in request was not of more than local importance. The letter stressed that in reaching the decision not to call-in the application they had not deliberated on the planning merits of the proposed development. This meant that Welsh Government referred the application back to the LPA, 'to determine as it sees fit'.
- 2.8 It was at this time that a letter was also received by the LPA from Eversheds Sutherland on behalf of Brenig Wind Ltd, attaching a legal opinion from John Litton QC (Appendix 5). This Counsel Opinion set out detailed comment and analysis on the lawfulness of the previous Planning Committee resolution to grant contrary to Officer recommendation, as made at the 4th September 2019 Planning Committee meeting. In questioning the lawfulness of the decision, mention was made of a potential Judicial Review (JR) against that Committee decision.

- 2.9 Having sought advice from the Head of Legal and Democratic Services and a barrister previously engaged by the Council, in this case, Officers felt it appropriate to make Members aware of the potential legal challenge. It is to be noted that Richard Buxton, (Solicitors for the applicant) have advised the Council that they see the arguments put forward on behalf of Brenig Wind Farm as no more than an attack on the merits of the decision by Planning Committee on 4th September 2019, and they have no doubt that the Council will set out in full its reasons for approving the Application contrary to Officer recommendation when issuing its decision.
- 2.10 Officers are always respectful of the views of Members, and we acknowledge the vote of the September 2019 Planning Committee to resolve to grant planning permission in this case. Notwithstanding this, it is also our duty to ensure key issues of interpretation in relation to the determination of applications are thoroughly examined before a final decision is made, and to provide you with our professional advice, even though it may be at odds with the resolution of the Planning Committee.
- 2.11 The following sections of the report, therefore, provide further commentary on the issues arising in relation to the legal opinion provided on behalf of Brenig Wind Limited.
- 2.12 The report requests Members reassess the application proposal and, if the Committee remain resolved to grant permission, to ensure clarity in the reasons for resolving to grant planning permission in light of the officer recommendation and third party representations. In doing so, Members are advised to consider carefully all relevant documents including the legal representations on behalf of the applicant and those produced by Brenig Wind Farm.

3 COUNSEL ADVICE ON BEHALF OF BRENIG WIND LTD

- 3.1 As mentioned above John Litton QC has provided detailed advice to Brenig Wind Ltd on the resolution of Planning Committee on 4th September 2019. The advice focusses on 4 areas:
- the reasons which Members gave to go against the Officer recommendation to refuse
 - the consistency of the Council's stance on abandonment
 - the breach of Listed Building Act requirements.
 - how the resolution failed to take account of material planning considerations.
- 3.2 Much of the opening parts of the Advice make reference to the main Officer report presented to Committee in September 2019. Sections of that report are presented word for word in the Advice, highlighting how the advice given by Officers has been ignored or disregarded by Members in reaching their resolution to grant.
- 3.3 It is important, therefore, within this SR to highlight to Members the 4 areas covered within the Advice provided to Brenig Wind Ltd so that Members may reconsider their position in light of the apparent criticisms levelled at the Council's decision making.

Reasons given by Committee to go against Officer Recommendation

- 3.4 It is asserted in the Advice from Mr Litton QC that the subject case at Bwlch Du is one which requires the Council to provide reasons for its decision, with particular regard to (1) whether the property has been abandoned and (2) whether the decision has been made in accordance with the development plan unless material considerations indicate

otherwise (as set out in Section 38(6) of the Planning and Compulsory Purchase Act 1990).

3.5 The Advice suggests in paragraph 27 that it is ‘wholly unclear’ as to whether the Committee considered these two issues and what specific conclusion was reached in relation to the two questions. It is also suggested that the decision taken was contrary to Officers’ advice in regard to both abandonment and the planning merits of the application.

3.6 The Advice in regard to the section on ‘reasons’ then concludes at paragraph 29 that:

“The consequences of the conclusion being reached that the residential use has not been abandoned, or that it has been abandoned but planning permission for its residential use should be granted, are substantial because of the impact that it would have on curtailing the operation of the Wind Farm (and possibly other wind farms). In particular, if the Planning Committee’s decision was that the residential use had been abandoned, then the grant of permission for Bwlch Du’s residential use was contrary to the LDP, PPW and TAN8”.

Consistency of Planning Committee’s stance on Bwlch Du

3.7 The Advice asserts at paragraph 30 that consistency is a well-established principle in planning law, and that by issuing the wind farm consents of 2009 and 2016, and in its approach to the enforcement action taken in 2018, it is suggested the Council has consistently accepted that Bwlch Du was derelict and had been abandoned. Paragraph 32 concludes:

“However, nowhere has the Planning Committee explained where it has now concluded that Bwlch Du has not been abandoned (if that is the conclusion it has reached)”

This issue has been set out in the Advice letter because a potential challenge could be made to the way the Council had previously viewed the use of Bwlch Du (during assessments of Wind Farm proposals) and how it is viewing the potential use now.

Breach of Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990

3.8 The Advice states in paragraphs 32 and 33 that the Officer report put before Members (Sept 2019) did not pay sufficient regard to the requirements of the aforementioned Act, insofar as it did not make clear that the harm to Bwlch Du as a listed building had to be given “considerable importance and weight” in determining whether any benefits outweighed the harm. It is suggested the failure to identify the requirement to give the harm to the setting of Bwlch Du considerable importance and weight is an error in law. It adds that there is nothing to indicate the Planning Committee were aware of this statutory requirement, and therefore if they concluded the benefits of the proposed development outweighed the harm to the listed building, the Committee fell into legal error in not giving this harm considerable importance and weight in making that balancing exercise.

A failure to take into account material considerations

3.9 In respect of material considerations, the Advice summarises in paragraph 34 that:

“In the absence of any record of the reasons why the Planning Committee reached the decision that it did to grant planning permission, it is impossible to know what matters it took into account and what matters it didn’t. If the Planning Committee concluded that the use had not been abandoned, an important consideration in deciding whether permission should be granted was the impact the Wind Farm would have on the amenity of the residents of Bwlch Du and on the operation of the Wind Farm. Both PPW and TAN8 set out the commitment for clean energy including generation targets for onshore wind reflected in the 7 Strategic Search Areas to which onshore wind proposals are directed (the Wind Farm falls within Area A – Clocaenog Forest). This was drawn to the Planning Committee’s attention in para. 4.2.9 of the July OR where two particular points were made. First, that there was no evidence that any resident of Bwlch Du would enjoy a satisfactory level of amenity given its proximity to the Wind Farm. Secondly, that because Bwlch Du was within 2km of the Wind Farm there would be adverse implications for the operation of the Wind Farm which would be contrary to TAN8. There is no indication from the webcast that these important material considerations were taken into account by the Planning Committee in resolving to grant planning permission and is a further error of law.”

4 COMMENTARY ON THE OFFICER RECOMMENDATION TO REFUSE

- 4.1 In the context of the Advice on behalf of Brenig Wind Limited, it is considered prudent by Officers to review the basis on which the Committee resolved to take a different view on each of the four suggested reasons for refusal. This is having regard to the further advice received by the Council from its own appointed barrister.

Abandonment and Consistency of Approach

- 4.2 In assessing the current planning application, Officers have had to have regard to the 4 recognised tests of abandonment and have applied them to the facts of this case. As the original Officer report made clear, the question of abandonment requires consideration of relevant legal tests and for an overall judgment to be reached having regard to those tests. It is highlighted for the benefit of Members that this is the first time these tests have been applied in any formal sense to the subject property within the planning process. It was considered by Officers that due to the physical condition of the building at the time of the assessment of the current application, the available evidence on the length of time the building had not been occupied, the absence of any clear evidence of the intentions of the previous owners to use or maintain the building as a dwelling since its last occupation, its residential use had been abandoned. This stance was supported by the Council’s own barrister who advised on the contents of the original Officer Report for the 4th September 2019 Planning Committee. Further detailed assessment of this issue is set out in the Committee report at Appendix 1.
- 4.3 The minutes of the 4th September 2019 Planning Committee included in Appendix 2 confirm that Members took a contrary view. Councillor Welch, in proposing to go against Officer recommendation, considered the building was in good condition, had only ever been used for residential purposes, had been lived in during the 1960s and perhaps more recently for a weekend cottage, and that the owners had paid Council Tax. On this basis, he reached a view that the Committee could and should agree that the residential use had not been abandoned.
- 4.4 The advice provided by the Council’s appointed barrister, whilst supporting the Officer view on abandonment, made it clear that Members could arrive at a contrary view, provided that it was clear that Members had considered the legal tests for abandonment properly. The purpose of raising this issue in this SR is to ensure that, should Members again wish to take this contrary view, they are clear in their reasons for doing so and have full regard to the implications. Given that a different overall

judgment was reached by Members, it is important that Members' reasons for adopting a contrary view to that of Officers are explained and formally recorded.

- 4.5 The Advice provided by John Litton QC has questioned whether the approach taken by Councillor Welch on the issue of abandonment is consistent with the Council's approach to Bwlch Du thus far. This is in reference to the approach taken when considering previous wind farm planning applications. It is therefore important to now highlight the background to this assertion.
- 4.6 Factually, there are references within the 2007 Brenig Windfarm application Environmental Statement (ES) in regard to Bwlch Du as being uninhabited, a derelict cottage, and not being a viable dwelling. This led to it being excluded as a 'sensitive receptor' in the ES for the purposes of impact assessments in relation to the windfarm proposals. Respectfully, this was a non-contentious and easy to conclude position having regard to the physical condition of the property at the time and in the absence of any information presented to the Council to the contrary in the course of processing the windfarm application.
- 4.7 As such, in the determination of the previous wind farm proposal, the Council have accepted the information contained within the ES having regard to the physical state Bwlch Du was in at that time. What the Council has not done, however, is ever come to a formal judgement on the status of Bwlch Du through the processing of a Certificate of Lawfulness application (or planning application), having regard to the case law tests of abandonment which would need to be applied in that context. In this regard, it is relevant that there was (and still is) no national policy or planning law requirement upon a Council to determine whether a property has a lawful residential use or should be considered as a sensitive receptor for the purposes of Environmental Assessment.
- 4.8 It is important to appreciate that there is no legal or policy requirement for the Council or for an applicant seeking permission for a wind farm to reach a formal conclusion as to the lawfulness of the use of any building. There is no indication that the Brenig Wind Farm ES considered the legal tests for abandonment. That is not surprising given that the ES was prepared for an entirely different purpose. Officers would also stress that the absence of any challenge to the Brenig Wind Farm ES by the Council should not be taken as an acceptance that Bwlch Du had been abandoned as a matter of law.
- 4.9 In any event, the Council carried out extensive publicity and consultation on the 2007 windfarm application, providing the owner of the property and any other interested party full opportunity to challenge the 'omission' of Bwlch Du as a sensitive receptor, and to comment on any impacts such development would have on the property. There is no record of any communication drawing the Council's attention to the property stating it should be included as a sensitive receptor or suggesting that impacts on the property should have been taken into consideration.
- 4.10 Overall, it is considered by Officers that the matter of whether the residential use of Bwlch Du has been abandoned is a matter of judgement to be carried out within the proper legal framework and on the basis of the evidence available. Officers set out the legal framework in the original Committee report and provided their conclusion that, on balance, the residential use **has been abandoned**. Officers considered that the evidence confirms after the 1950s it may only have been utilised occasionally as a weekend cottage, its physical condition declined significantly, and it has been evidenced in photographs in use as an animal shelter. There is also no evidence of any intention of the previous owner to use or maintain Bwlch Du as a dwelling over a

considerable period of time. Reaching an overall judgment therefore, Officers concluded that the lawful residential use of Bwlch Du had been abandoned.

- 4.11 It is important for Members to note that the physical state of Bwlch Du at the end of 2019, having regard to the unauthorised physical alterations to the Listed Building made by the current owners in recent months, should not be determinative of their judgement on the issue of abandonment. The physical state of the building prior to the current owners' purchase is one of the matters which members should have regard to when making their judgement on abandonment.
- 4.12 Clarification is, therefore, respectfully sought from Members on the basis on which they have reached the contrary view that the residential use of the building had not been abandoned at the time of deliberating on the application. The evidence on which this view has been taken should be clearly set out so that such a position can be robustly defended if challenged.

Adverse Visual Impact

- 4.13 It is the view of Officers that the impact of the existing log cabin and the siting and scale of the proposed ancillary building would be unacceptable, having an adverse visual impact given the location of the site in an area of remote open countryside. These structures, it is considered, would also impact on the Listed Building, failing to preserve its setting.
- 4.14 As noted in the September 2019 Committee minutes, Councillor Welch advised that the log cabin would be removed once the work requested had been completed, so was not an issue. He added that any adverse visual impact from the ancillary building had to be put in the context of the visual impact of the 16 turbine wind farm situated some 400 metres from the property.
- 4.15 In respecting the view of Councillor Welch, Officers remain of the opinion that there are important issues of visual harm to address in this exposed open countryside location, including on the setting of the Bwlch Du listed building, from development in close proximity to it. It is not considered that the presence of wind turbines in the area provides reasonable justification for accepting any form of development regardless of its impact on what is still a sensitive rural environment, including a listed building. The exact extent of visual harm will of course ultimately be a matter of planning judgement.
- 4.16 Regardless of the ultimate resolution of Planning Committee on this application, Officers are duty bound to draw attention to the potential for challenge to a decision if sufficient regard is not given to the statutory requirements of Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, as highlighted in the Advice for Brenig Wind Limited. In this context, Officers are obliged to lay stress on the need to make clear that any harm to Bwlch Du as a listed building has to be given "considerable importance and weight" in determining whether any benefits arising from the development outweighs that harm.
- 4.17 Members need to give consideration to the impact of the proposals on the setting of the Listed Building and the impact that the proposals have on the visual amenity of the wider open landscape and whether any benefits arising from the development outweighs that harm. In carrying out this balancing exercise, Members are obliged to apply considerable importance and weight to any harm to the listed building through development within its setting.

Biodiversity considerations

- 4.18 The Officer report to Committee in September 2019 presented the comments of the Council's Ecologist on the proposals. These were clear in highlighting that the application did not provide sufficient information to demonstrate that the scheme would not be harmful to protected species (bats/reptiles), as the submitted report contained a number of inaccuracies and no emergence surveys had been provided.
- 4.19 As noted within the Committee minutes, Councillor Welch suggested that the facts relating to ecological matters were unclear but mostly related to the protection of bats in the area, and there was no evidence of any being there. Councillor Welch referred to research which suggested that 80,000 bats were killed each year by turbines, making it an unlikely site for them.
- 4.20 Notwithstanding the conclusions of Members as to whether bats are present in the area, the facts of the case are that the information provided in support of the application does not contain any bat emergence surveys and the report provided is considered to be inaccurate by the County Ecologist, particularly in regard to its assumption that the building has 'negligible' potential to support roosting bats given that the surrounding habitat is of high potential for such roosts. Moreover, it is noted that the photographs of the building appear to show features which are suitable for roosting bats.
- 4.21 In addition to the issues raised in relation to bats, there have not been any surveys undertaken in relation to the presence of common reptiles, making it impossible to assess any impact on potentially impacted protected species.
- 4.22 In light of the above, Officers suggest it is essential that Members clarify how it is considered the Council has discharged its statutory responsibility to establish the presence or otherwise of protected species and the extent to which they may be affected by the development before permission is granted; in order to be satisfied that the development would not impact adversely on European protected species on the site, or that the tests for the eventual grant of a Regulation 44 licence are likely to be satisfied.

Safeguarding Wind Farm Sites and the Amenity Impacts of Bwlch Du

- 4.23 The final reason put forward for refusal was based on the implications of a determination that residential use had not been abandoned, in that the introduction of a residential use in close proximity to a wind farm would run contrary to the TAN8 requirement for Local Planning Authorities to safeguard windfarm sites from developments which could sterilise them, and that it had not been demonstrated that the dwelling would be capable of providing a satisfactory standard of amenity for occupiers, due to the presence of operational and consented windfarms.
- 4.24 With regard to the matter of abandonment, the minutes of the September Committee confirm that Councillor Welch acknowledged that while permission for a new residential dwelling in the vicinity of a wind farm would not be granted, as Bwlch Du was there before the wind farm, he proposed that the application should be granted with appropriate conditions.

- 4.25 The fourth reason for refusal put forward by Officers is accepted as being linked to the matter of abandonment, in that if the building is held to be abandoned then the proposed development would serve to introduce a new dwelling which would not have sufficient level of amenity given the location of existing wind turbines.

5 POTENTIAL COST IMPLICATIONS OF A JUDICIAL REVIEW

- 5.1 In advising the Council, our barrister has indicated that if Members do not properly consider the specific points raised in John Litton QC's Advice, it seems likely that Brenig Wind Farm will seek a judicial review of the decision. In those circumstances, it is considered there is at least the prospect of a judicial review claim gaining permission from the Planning Court and a reasonable prospect that such a challenge will be successful if Members do not address carefully the points raised in this Supplementary Report.
- 5.2 If a planning permission granted by Members is quashed following legal proceedings, it is suggested the Council could be exposed to a costs order running into thousands of pounds. Consequently, Members' reconsideration of the planning application in light of the content of this report, Mr Litton's Advice, and the representations provided on behalf of the applicant will reduce the risks outlined above.

6 CONCLUSIONS

- 6.1 Officers are fully respectful of the stance taken by Members at the 4 September 2019 Committee and the resolution made to grant permission. However, it is imperative that a final decision is reached having regard to relevant considerations, and is supported by the necessary evidence in regard to countering all four of the suggested reasons for refusal put forward by Officers. Any failure to demonstrate precisely why the resolution was made opens the Council up to challenge via judicial review, as set out in the Counsel opinion put forward on behalf of Brenig Wind Limited.
- 6.2 It must also be stressed that even if Members do conclude that the residential use of Bwlch Du has not been abandoned, it is necessary to demonstrate that the other highlighted planning issues have been given due consideration, namely the adverse visual impact on the setting of the listed building and the wider open countryside, and the impact on ecology.

7 RECOMMENDATIONS

Recommendation (A)

- 7.1 Having regard to the contents of the Supplementary Report (SR), should Members again resolve to **GRANT** permission, Officers would request that the Committee explain clearly the reasons for granting planning permission with particular regard to the four key issues in this report, so that there is no ambiguity over the decision making process adopted, the evidence base which has been considered and the national or local planning policies and guidance that have been taken into account. Members should be aware that their decision is likely to be subject to considerable scrutiny.

Recommendation (B)

7.2 Should Members resolve to **REFUSE** planning permission, they should do so for the reasons set out in Appendix 1 to this report. For ease of reference the reasons are set out below also.

1. *The existing building does not have a lawful use as a dwelling, having regard in particular to the length of time for which it has not been in use for residential purposes and the absence of any clear intention of the previous owner to use or maintain the building as a dwelling. As the residential use of the property is considered to be abandoned, the proposal is therefore considered to be for the re-use and adaptation of a rural building in open countryside. The proposal to re-use and adapt the buildings to use as a dwelling conflicts with the tests of Policy PSE4 of the Denbighshire Local Development Plan, as it has not been demonstrated that its use is unviable for employment purposes or that the proposed dwelling would be affordable to meet local needs. Additionally, it has not been demonstrated that the dwelling would be capable of providing a satisfactory standard of amenity for future occupiers due to the proximity to operational and consented windfarms, a factor which is a material planning consideration in line with the guidance in Section 9.4 of the Development Management Manual.*
2. *The log cabin and the siting and scale of the proposed ancillary building have an adverse visual impact in an area of remote open countryside, and fail to preserve the setting of a listed building, contrary to Planning Policy Wales 10 with respect to harm to the landscape and also the guidance in Paragraph 9.4.3 of the Development Management Manual, TAN 24, Planning Policy Wales, The Historic Environment Act and Policy VOE 1 of the Denbighshire Local Development Plan and is contrary to Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990.*
3. *There is insufficient information submitted to demonstrate that the proposed development would not adversely impact on protected species. The proposal is therefore contrary to guidance in TAN5 paragraphs 6.2.2 and 6.3.7, Policy VOE5 of the Denbighshire Local Development Plan along with the guidance in the Council's adopted Supplementary Planning Guidance note 'Conservation and Enhancement of Biodiversity' and paragraph 9.4.3 of the Development Management Manual.*
4. *The site is located within Welsh Government's Strategic Search Area A, as defined in TAN 8: Renewable Energy. As the grant of permission would in effect convey residential use status to Bwlch Du, this is considered contrary to the requirement on Local Planning Authorities in TAN 8 paragraph 2.10 to safeguard wind farm sites from other developments which could sterilise them, and it has not been demonstrated that the dwelling would be capable of providing a satisfactory standard of amenity for future occupiers due to the proximity to operational and consented windfarms, a factor which as a material planning consideration in line with the guidance in Section 9.4 of the Development Management Manual.*

APPENDICIES TO THE SUPPLEMENTARY REPORT

Appendix 1

Officer report to the 4th September 2019 Committee, with attachments including late information presented to the July Committee, and submissions from the applicant's solicitors.

Appendix 2

Minutes of the 4th September 2019 committee for the item.

Appendix 3

Holding Direction letter from Welsh Government (18th September 2019) - preventing the Council from determining the application.

Appendix 4

Letter issued by Welsh Government (18th October 2019) - confirming they did not intend to 'call in' the application for determination.

Appendix 5

Letter dated 18 October 2019 from Eversheds Sutherland LLP and Counsel opinion provided by John Litton QC on behalf of Brenig Wind Limited.

Appendix 1

Officer report to the 4th September 2019 Committee, with attachments including late information presented to the July Committee, and submissions from the applicant's solicitors.

WARD : Llanrhaeadr Yng Nghinmeirch

WARD MEMBER: Councillor Joseph Welch (c)

APPLICATION NO: 25/2018/1216/ PF

PROPOSAL: Alterations and rear extension to existing building, demolition of curtilage structure, erection of ancillary building, retention of log cabin (for temporary period), boundary fencing and gates, and provision of on-site parking and turning area

LOCATION: Bwlch Du Nantglyn Denbigh LL16 5RN

APPLICANT: Miss Ashley Trengove

CONSTRAINTS: SSSI
Listed Building

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

SUPPLEMENTARY OFFICER REPORT TO COMMITTEE

1. INTRODUCTION

- 1.1. Members will recall that two separate reports were presented to the July Planning Committee in relation to proposals at the property Bwlch Du:
- Application 25/2018/1216 – a planning application involving alterations and extensions to the main building, erection of an ancillary building, retention of a log cabin, and associated works.
 - Application 25/2018/1217 – a listed building application in relation to the works on the listed building
- 1.2. Committee resolved to defer consideration of the two applications to allow opportunity to consider the contents of additional submissions from the applicant's solicitors, received two days prior to the July meeting. The submissions comprised of a cover letter and subsequent email from the solicitors, which introduced separate Counsel advice on the issue of abandonment, this being of specific relevance to deliberations on the planning application code no. 25/2018/1216.
- 1.3. In light of the contents of the additional submissions, Officers have sought legal advice, and are now in a position to provide a supplementary report to Committee outlining the basis of that advice, with commentary and a recommendation. This report should be read in light of the original Officer report and following consideration of the package of information produced on behalf of the applicants.
- 1.4. The report in front of Committee is presented as follows:

- Officers' summary of the legal advice received by them on the submissions of the applicant's solicitors, and the Officer recommendation on application 25/2018/1216
- Appendix A – the Officer report on application 25/2018/1216, as presented to the July 2019 Planning Committee
- Appendix B – the late information sheets as presented to the July 2019 Committee
- Appendix C – the submissions of the applicant's solicitors, received two days prior to the July 2019 Committee (Solicitors letter and email, and Counsel advice).

1.5. The Officer report on the listed building consent application, code no. 25/2018/1217 is re-presented as the next item on the agenda.

2. SUMMARY OF LEGAL ADVICE / COMMENTARY

- 2.1. Having regard to the legal advice provided to the Council, Officers are satisfied that the original Officer Report (OR) compiled for the July 2019 committee was robust and assessed the proposed development in a correct and reasonable manner. The original Officer Report (OR) is attached as Appendix A. Members should now have regard to the contents of the OR, the late information sheet from the July Committee (Appendix B) and this Supplementary Officer Report (SOR) in their consideration of the planning application.
- 2.2. The legal advice provided for the Council concentrates on the main points raised in the applicant's Counsel Advice (referred to subsequently as '*the Advice*') as submitted by the applicant's solicitors on 15th July 2019. The contents of the following sections are detailed and therefore need to be cross referenced to '*the Advice*' reproduced in Appendix C.
- 2.3. The legal advice provided to the Council since the July Committee draws attention to the need to remember that the question of abandonment, on which *the Advice* focuses, is a matter of judgment requiring the application of correct legal tests and, in this respect, *the Advice* does not state that the original committee report (OR) misapplies the relevant legal tests.
- 2.4. It is suggested, given that planning law dictates that each case must be judged on its own merits, that caution should be exercised regarding the reliance placed by *the Advice* upon a number of appeal decisions (some of them extremely old) in attempting to draw parallels between Bwlch Du and other cases.
- 2.5. It is noted that no criticism is made regarding the correct legal tests applied within the OR, and what follows in *the Advice* is a barrister (who gives no indication of having visited the site) explaining why he disagrees with the factual conclusions in the OR. In this respect, a barrister is in no better position to reach these factual and evaluative judgments than an officer or Members.
- 2.6. In relation to the main tests of abandonment:

Physical Condition

- 2.7. It is considered *the Advice* is incorrect when it refers to 'previous case law' [para 9], especially as this seems to be a reference to the appeal decisions which pre-date the Hughes judgment (which sets out the key tests for abandonment and to which reference was made in the original Officer's report), and which are in no way binding on the Council in any event. *The Advice* is similarly wrong in inferring that there need to be 'positive steps' taken to demonstrate abandonment [para 9] as it is by definition not possible to positively abandon something, and it is not a requirement of any of the decided cases. The correct approach, in the view of Officers, is to consider the relevant legal tests and to make an holistic judgement

taking into account all evidence currently available.

Length of time unused for residential purposes

- 2.8. The assertion within *the Advice* that the physical condition of a property and the length of time it remains unoccupied are separate considerations is overly picky and legalistic. The factors within the Hughes case are plainly related and it would be odd indeed if there was no overlap whatsoever. In any event, the reference to the lack of bathroom facilities etc. is made in the context of the committee report (OR), simply reflecting what information was held on the Public Protection files.
- 2.9. An entry on the electoral roll is relevant but *the Advice* interprets the original Committee report (OR) as finding that this factor is 'conclusive'. This is a misreading as this is not actually what the report says. The Committee report (OR) also makes reference to the Public Protection department's note of 'weekend cottage', but the file draws no conclusion about whether it was occupied as such. In any event, the committee report (OR) makes it clear that the overall conclusion is that the property has not been used for residential purposes for a considerable period of time.
- 2.10. At paragraph 12, *the Advice* again misunderstands the Committee report (OR) which makes it plain that the Council has conducted its own assessment but has given the Applicant the chance to disprove it. This does not put the onus on the Applicant but shows that the Council were being reasonable and accepted further evidence from the Applicant. In any event, there is not any particular burden of proof on either party but rather it is a question of the decision taker evaluating all relevant evidence. *The Advice* does not provide any authority for its assertion.
- 2.11. Paragraph 12 of *the Advice* refers to "... documentary evidence (some of which has already been made available to the Council) can be deployed in assessing whether the residential use of the Property has been abandoned." Officers would comment as follows:
- 12a - the Committee report simply records that Council Tax was paid, and has already considered the significance of this;
- 12b - other than asserting that a septic tank may have been installed in 1970, this takes matters no further.
- 12c - the certificate from the Coal Authority is probably neutral in that Bwlch Du looks like a house and was being sold as a house. No one would have thought to consider whether, in planning terms, its use had been abandoned as that question simply would not have been relevant in that particular context.
- 12d - the Committee report (OR) does not place any particular weight on the lack of an electrical supply. In particular, Officers do not consider that the absence of an electricity supply is – in itself – probative of abandonment;
- 12e - the plan relied upon by *the Advice* was simply utilised to show the location of the property when handling a previous case relating to enforcement action. It is not possible or relevant to interpret whether the information annotated on the plan records what was in place at the property or whether it notes proposals to install services. It does not relate to any planning application submitted to the Council, or convey any acknowledgement that the water supply or septic tank were in place at the time.
- 2.12. Paragraph 13 of *the Advice* makes reference to a number of other documents which it is stated "...indicate evidence of occupation later than the 1950's that has not been taken into account in the Officer report.". Officers would comment as follows:
- 13a – Reference in an email from the Planning Compliance Officer to a legal colleague in 2017 that the property "has not been inhabited since circa 1971" was little more than an

informal / anecdotal indication of the Officer's understanding that it had not been occupied for many years – the Officer was not in possession of information at that time to make any authoritative statements on this matter.

13b – The Council's Revenues team has confirmed that if they have a property banded, it does not necessarily mean it is occupied. They have advised they do not hold records of inspections going back to 1996 so it is not possible to verify whether it was recorded by observation that the property was " ...occupied by a sole resident lady" between September 1995 and May 1996. This comment may therefore have been based on information provided on a Council Tax form and payment of Council Tax.

13c - A form returned to the Public Health section of the Council in 1992, which it is understood was completed by / on behalf of the owner of the property records information relating to water supply. This does not evidence occupation, simply indicating water was transported in water carriers when the property is in use. Inspection by Public Protection Officer(s) in April 1995 recorded that the property was not occupied.

13d.- A statement from the Revenues Section to a Development Management Officer in October 2017 indicating 'the property was a banded Council tax property from 01.09.1995 to 03.11.2016", simply records that it was an entry on the Council Tax register, and as noted above, conveys no information on its actual occupation. In relation to the statement from the Revenues Section that "It wasn't always occupied for the whole period but it was definitely deemed to be a residential dwelling for that period", this again is terminology used by the Revenues Section based on the fact that Council Tax forms may have been returned and payments made. The Revenues team have advised that a Property Inspector visited the property on 04/08/1999 and the property was deemed unoccupied, and has done ever since, and that various property inspections have taken place over the years and each visit has confirmed it has remained unoccupied.

- 2.13. At paragraph 15, *the Advice* again imports a test that is not present in the legal authorities. It is not necessary to prove that there was no residential use between 1970 and 1996; that would require the Council to prove a negative. The real question is whether there is any evidence of residential occupation based on the available information. The committee report (OR) concluded, taking all evidence into account, that there was no such occupation during this period.
- 2.14. Overall therefore, whilst Members should consider these additional documents, the view of Officers is that they do not advance matters materially. For the avoidance of doubt, Officers consider that these documents do not undermine the conclusion that the residential use of the property has been abandoned.

Use for other purposes

- 2.15. No comments are required on this factor because *the Advice* (rightly) does not criticise the assessment.

Owner's Intentions

- 2.16. At paragraph 21 *the Advice* takes an overly legalistic approach given that, in the absence of any clear evidence as to the owner's intentions, it is entirely reasonable to infer the owner's intention from the condition of the property, amongst other surrounding evidence. It is difficult to identify how else it would be possible to reach a conclusion on this factor.
- 2.17. The specific points raised under paragraph 23 have been considered by officers but are not considered to represent robust indicators as to the owner's intentions to utilise the property as a dwelling. In this regard, the attendance of the former owner at a public consultation event is not as significant as *the Advice* suggests as we have absolutely no idea why Mr Hebblethwaite attended the consultation event or whether he actually said anything.

- 2.18. At paragraph 24, *the Advice* suggests that the Committee report (OR) uses the 'intention factor' as 'conclusive'. This is wrong as the judgment on abandonment correctly and thoroughly reviewed in the committee report, is an holistic one.
- 2.19. At paragraph 26, *the Advice* makes reference to previous Counsel's opinion that Bwlch Du was not abandoned. Officers wish to make it clear that such advice was informal and was given without sight of all relevant documents or a site visit.
- 2.20. There is a separate matter raised in the cover letter from the applicant's Solicitors in respect of the issue of heritage and how it was dealt with in the officer report (OR). The Solicitors submit there has been a failure to comply with legislation including the requirement to have special regard to the desirability of preserving listed buildings or their setting in particular that there has been no real consideration of the desirability to preserve the listed heritage asset that would occur through the granting of permission itself, nor any evidence of the Officer undertaking a balancing exercise of the material considerations.

In response, Officers would remind members that there is specific reference to s.66(1) Listed Buildings Act 1990 in the original officer report (OR).

3. SUMMARY

- 3.1. This Supplementary report (SOR) is drafted to deal with detailed matters arising from submissions by the applicant's solicitors, in response to the Officer report (OR) to the July Committee. These focus primarily on the matter of abandonment of the residential use of Bwlch Du, which is considered to be a significant issue in the assessment of the application before the Committee.
- 3.2. The report (SOR) needs to be read in association with the original Officer report (OR) to Committee, which assesses a range of considerations of relevance to the determination of application 25/2018/1216, and also with due regard to the submissions from the applicant's solicitors. These documents are appended and should be taken into account.
- 3.3. Officers acknowledge the application raises difficult issues which require careful weighing up by the Committee. Officers are satisfied that the information now in front of the Council is comprehensive and provides a reasonable basis on which to reach a decision.
- 3.4. Ultimately, it is Officers' opinion that having regard to the legal advice now obtained in response to the submissions of the applicant's solicitors and their Counsel Advice, the original Committee report correctly and reasonably undertook a robust assessment of the proposal. Officers have had to make a judgement on the issue of abandonment having regard to evidence available and from the legal advice provided, hence the recommendation to refuse remains as set out in the report to the July 2019 Committee (Appendix A).

RECOMMENDATION

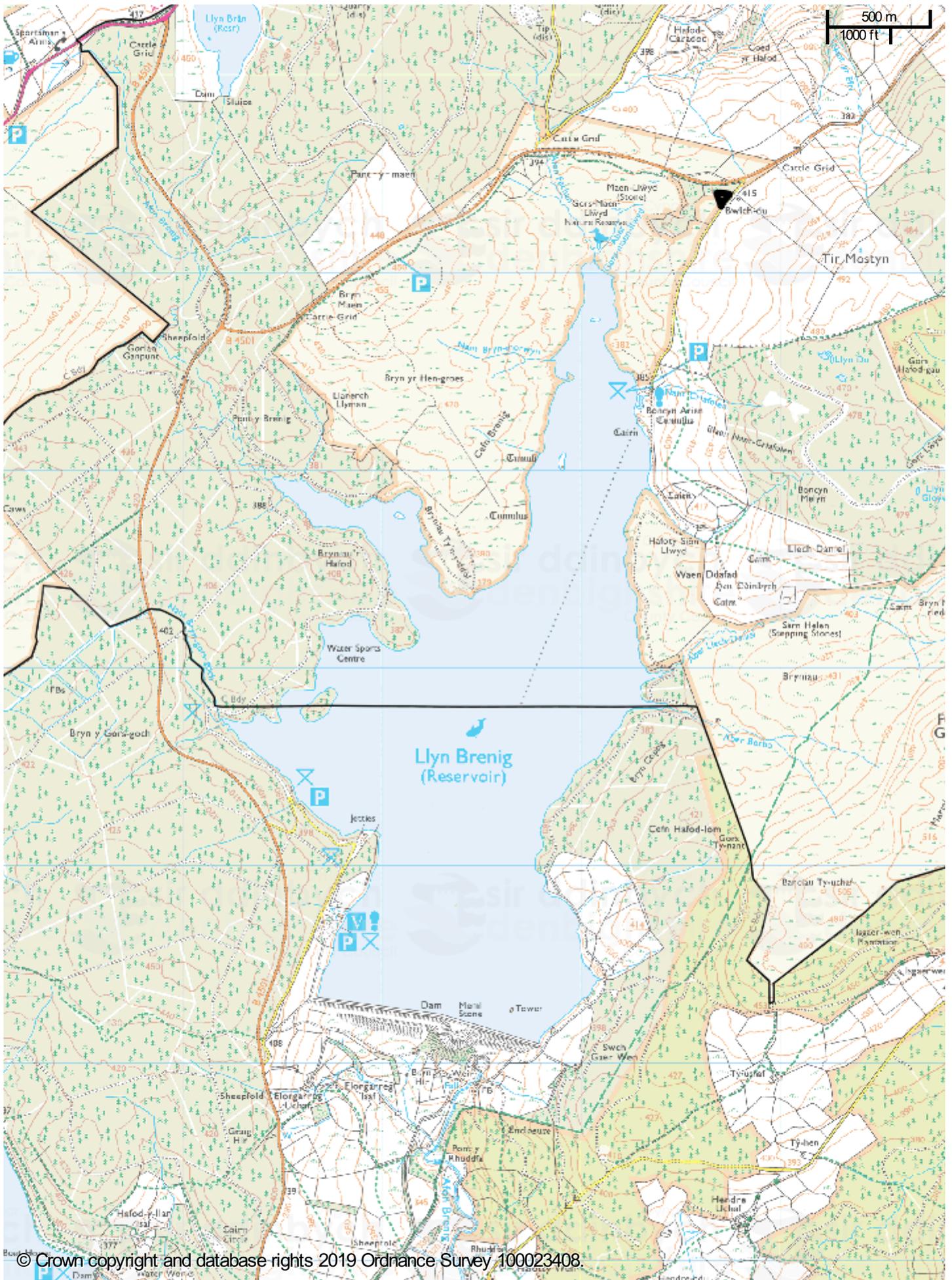
4. It is recommended that permission be REFUSED for the reasons set out in the recommendation at the end of section 5 of the Officer report to the July 2019 Committee, in Appendix A to this report.

DOCUMENTS ATTACHED TO THIS REPORT

- Appendix A – Officer report on application 25/2018/1216, as presented to the July 2019 Planning Committee
- Appendix B – Late information sheets as presented to the July 2019 Committee
- Appendix C – Submissions of the applicant's agents, received immediately prior to the July 2019 Committee (Agent's letter and email, and Counsel advice).

Appendix A

Officer report on application 25/2018/1216, as presented to the July 2019 Planning Committee



25/2018/1216 & 25/2018/1217

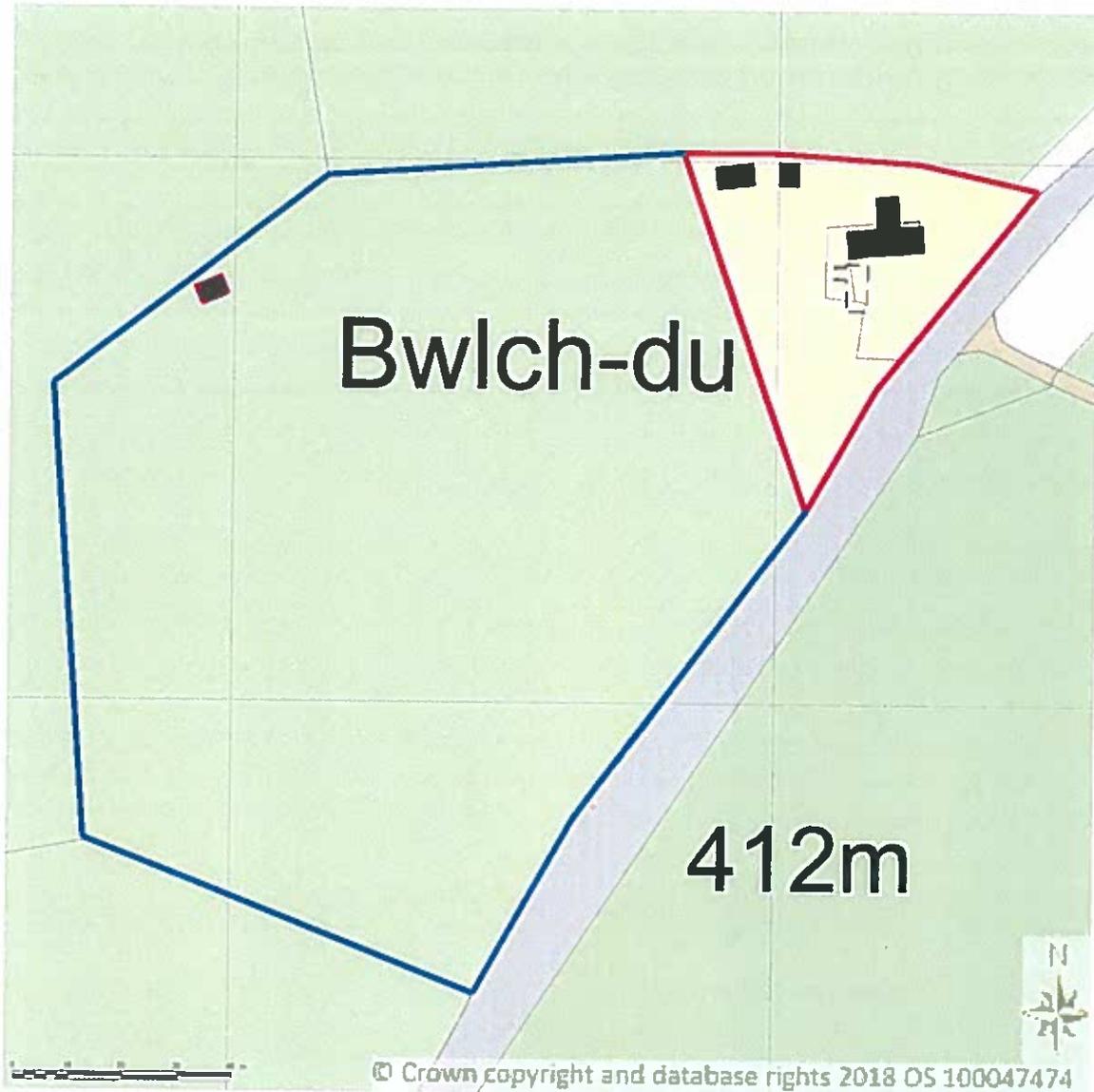
Scale: 1:25000

Printed on: 26/6/2019 at 16:32 PM



© Denbighshire County Council

SITE LOCATION PLAN
AREA 4 HA
SCALE 1:1250 on A4
CENTRE COORDINATES: 298659, 358328

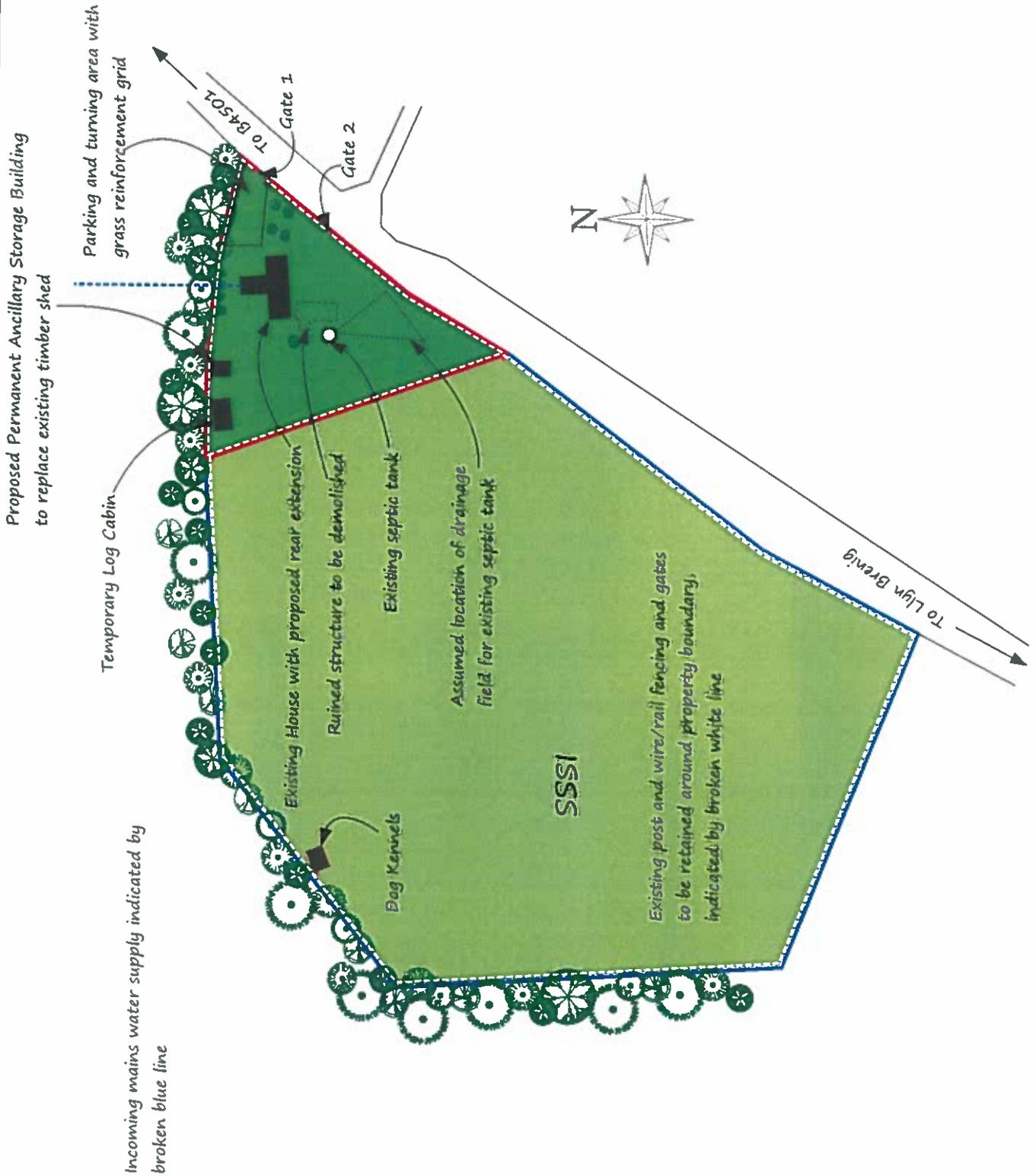


Supplied by Streetwise Maps Ltd
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Licence No: 100047474
16/01/2019 11:19:11

GENERAL ARRANGEMENT PLAN



Project	Bwlch Du
Author	LNJ
Checked By	TJN
Drawing Description	General arrangement of buildings, landscaping and amenity areas
Drawing Number	DWG 19 V2
Date	7th April 2019
Scale	1:1250 @ A4



BWLCH DU PROPOSED FLOOR PLAN



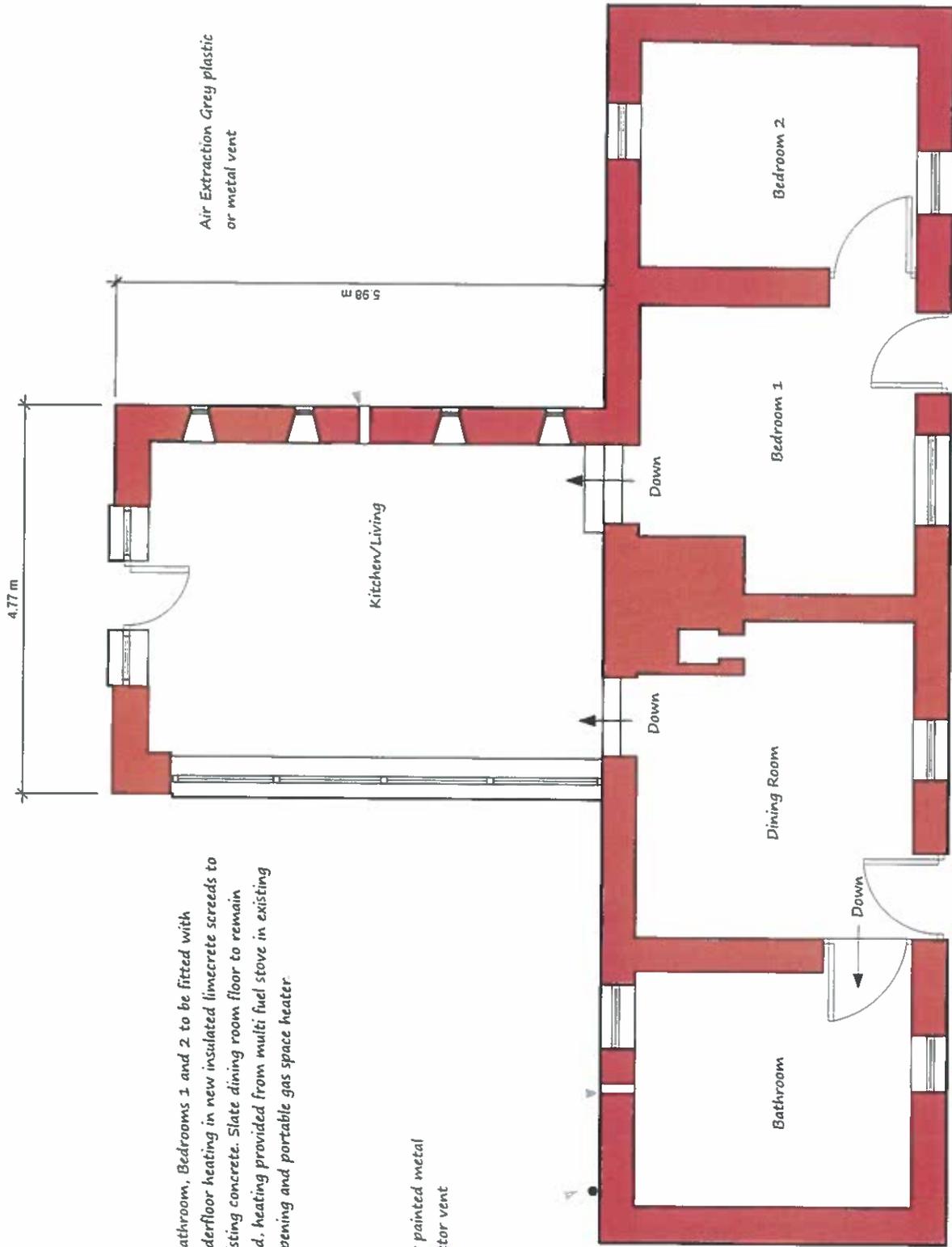
	
Project	Bwlch Du
Author	LNJ
Checked by	TJN
Drawing Description	Bwlch Du Floorplan As Proposed
Drawing Number	DWG10V2
Date	5th April 2019
Scale	1mm:50mm @ A3

Floorplan As Proposed

Kitchen, Bathroom, Bedrooms 1 and 2 to be fitted with electric underfloor heating in new insulated limecrete screeds to replace existing concrete. Slate dining room floor to remain undisturbed. Heating provided from multi fuel stove in existing fireplace opening and portable gas space heater.

Grey plastic or painted metal cover to extractor vent

Cast iron SVP



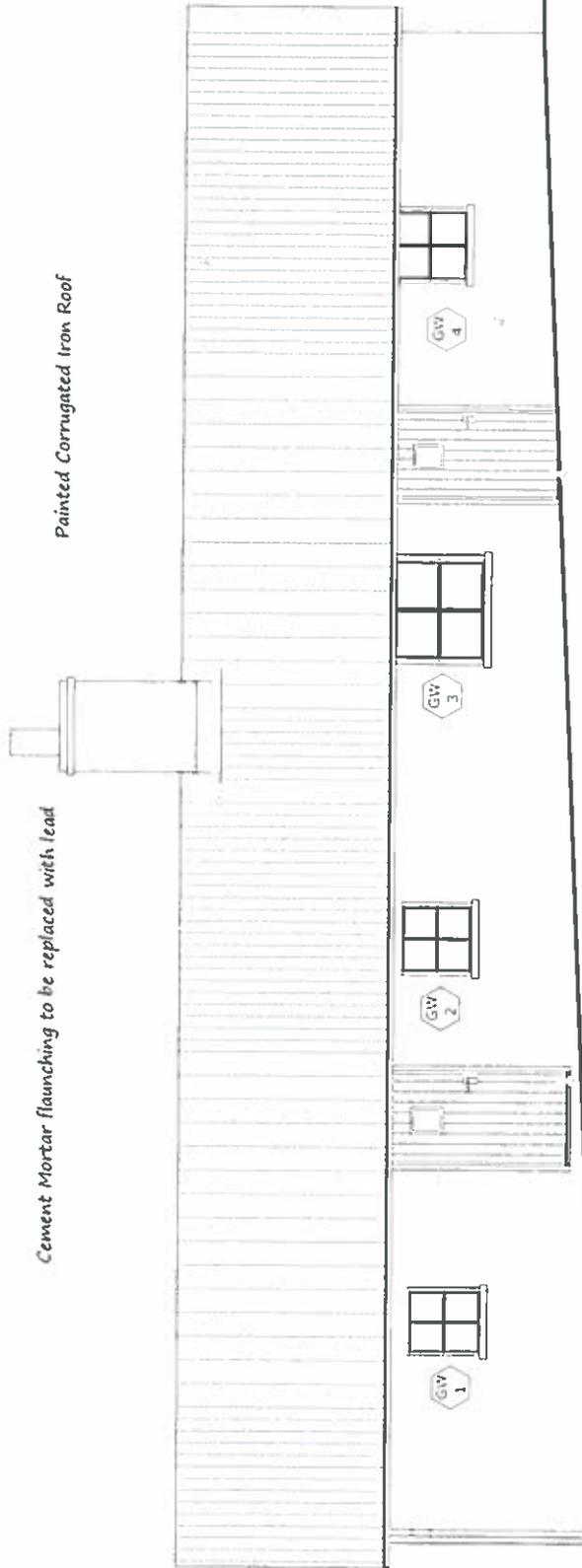
See DWG 12 for sash window details



BWLCH DU PROPOSED SOUTH ELEVATION

	
Project	Bwlch Du
Author	LANJ
Checked by	TJN
Drawing Description	Bwlch Du South Eleva As Proposed
Drawing Number	DWG13V2
Date	5th April 2019
Scale	1mm:50mm @ A3

South Elevation As Proposed



Cement Mortar flashing to be replaced with lead

Painted Corrugated Iron Roof

Cast iron gutters and downpipes to sookaways

Doors to be painted hardwood

Solid rubble masonry to be re-pointed where required with NHL 3.5/ sharp sand 1:3 all elevations to be given minimum 3 coats of lime wash.

Windows GW1 - 4 are to be painted hardwood frames, vertical sliding sashes with 12mm double glazed units, 6mm sightline, outer pane to be conservation grade glass.



BWLCH DU PROPOSED NORTH ELEVATION

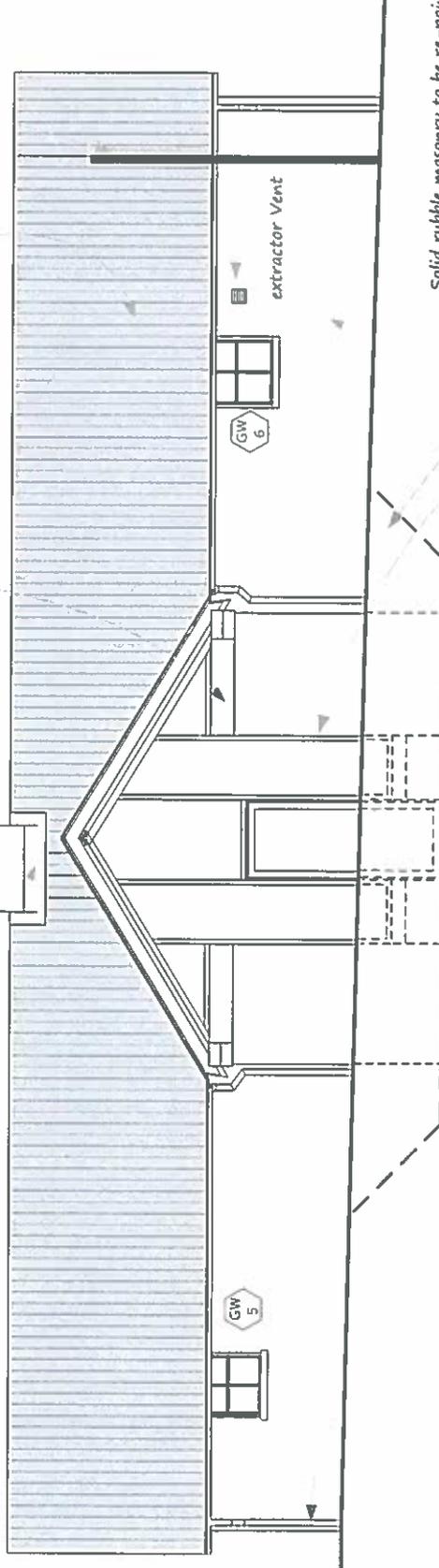
	
Project	Bwlch Du
Author	LNJ
Checked by	TJN
Drawing Description	Bwlch Du North Elevation As Proposed
Drawing Number	DWG14V2
Date	5th April 2019
Scale	1mm:50mm @ A3

All projecting masonry elements including, sills, heads, gable end kneeler stones to be new locally obtained limestone tooled finish.

Cement Mortar flaunching to be replaced with lead

Painted Corrugated Iron Roof

SVP



Solid rubble masonry to be re-pointed where required with NHL 3.5/ sharp sand 1:5 all elevations to be given minimum 3 coats of lime wash.

Base of wall may require consolidating where ground has been excavated, precise details to be subject engineers inspection and report, and agreement with DCC Conservation Officer.

Extension to include thermally broken powder coated aluminium frame with double or triple glazed units

Ground excavated to facilitate lowered extension roof line. Perimetre path around extension to be finished with limestone chippings, perforated drainage pipes to be installed, these to discharge to the south of the house, details to be agreed on site and in consultation with NRW.

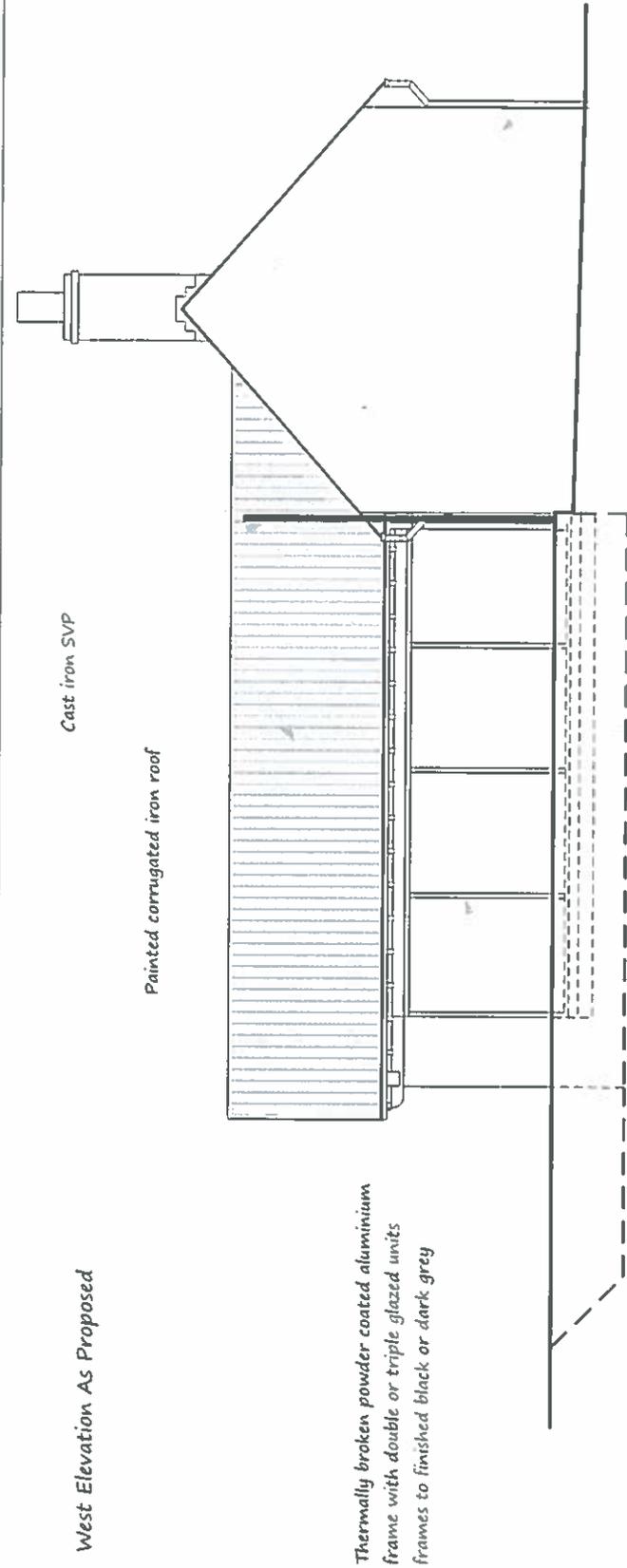
Windows GW5 and GW6 are to be painted hardwood frames, vertical sliding sashes, with 12mm double glazed units, 6mm sightline, outerpane to be conservation grade glass.

Cast iron gutters and downpipes to soakaways

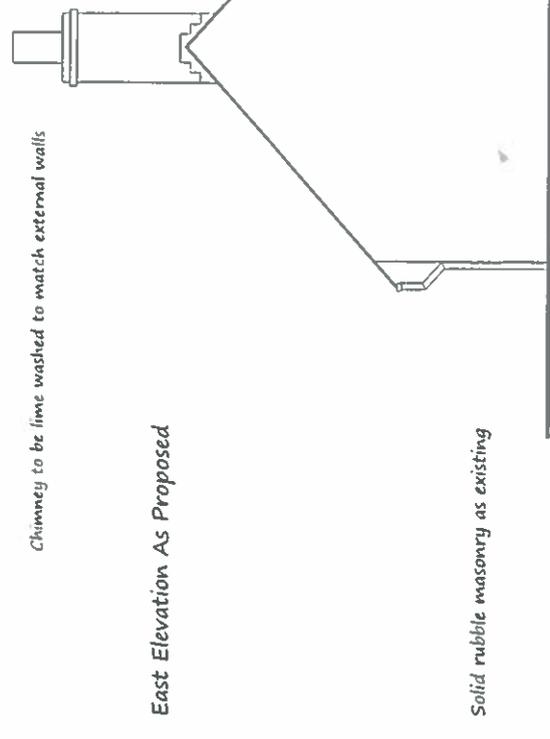


BWLCH DU PROPOSED WEST AND EAST ELEVATION

Project Bwlch Du
Author LNJ
Checked by TJN
Drawing Description Bwlch Du West and Ea. Elevations As Proposed
Drawing Number DWG15V2
Date 5th April 2019
Scale 1mm:50mm @ A3



Solid rubble masonry as existing



Frameless double glazed units bonded directly into masonry openings

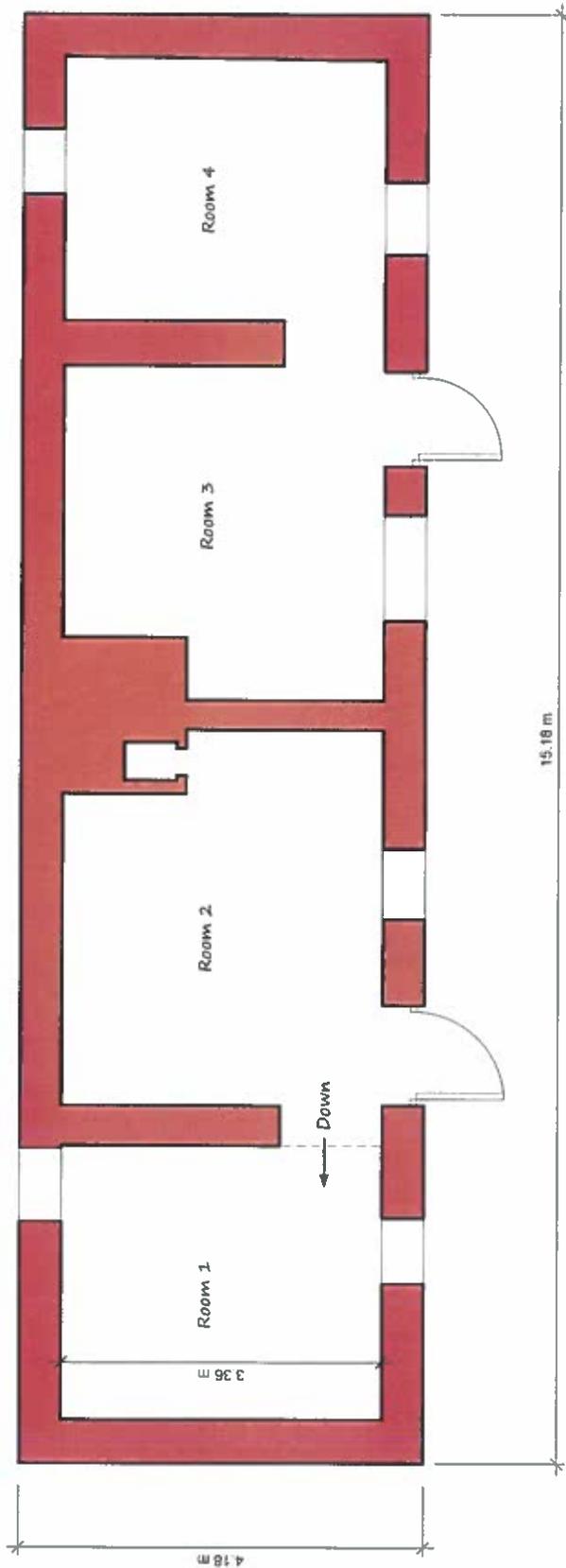


BWLCH DU EXISTING FLOOR PLAN



Project	Bwlch Du
Author	LNJ
Checked by	TJN
Drawing Description	Bwlch Du Floorplan AS Existing
Drawing Number	DWG1
Date	23rd November 2018
Scale	1mm:50mm @ A3

Bwlch Du Farmhouse Floorplans As Existing



BWLCH DU EXISTING SOUTH ELEVATION



Project
Bwlch Du
 Author
LNJ
 Checked by
TJN

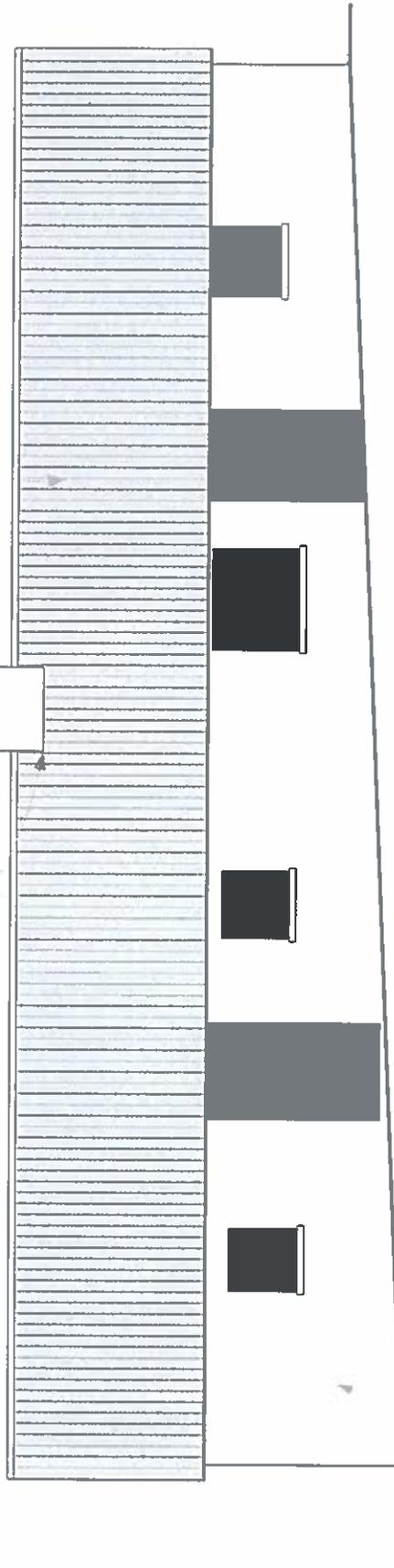
Drawing Description
**Bwlch Du South Elev
 As Existing**
 Drawing Number
DWG2
 Date
23rd November 201
 Scale
1mm:50mm @ A3

South Elevation AS Existing

Cement mortar flashing at base of chimney

Corrugated Asbestos Roof

Guttering and downpipes absent



Solid Rubble Masonry

Modern boarded windows and doors

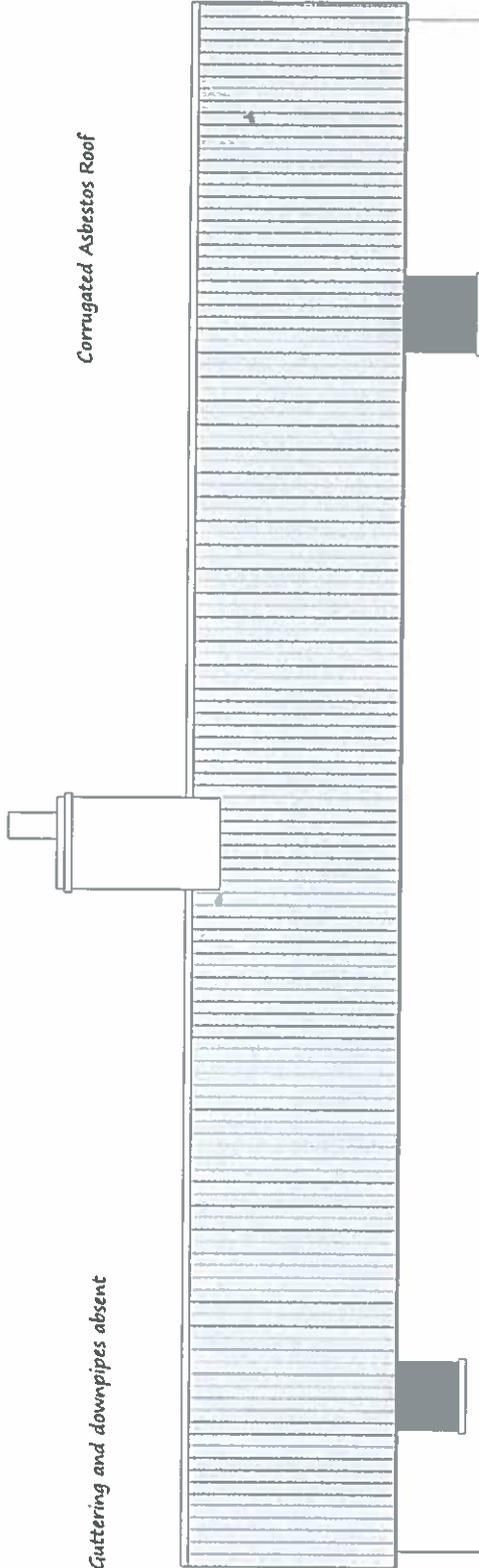


BWLCH DU EXISTING NORTH ELEVATION

	
Project	Bwlch Du
Author	LNJ
Checked by	TJN
Drawing Description	Bwlch Du North Elevation AS Existing
Drawing Number	DWG5
Date	23rd November 2018
Scale	1mm:50mm @ A3

North Elevation As Existing

Cement mortar flaunching at base of chimney



Guttering and downpipes absent

Solid Rubble Masonry

Modern boarded windows

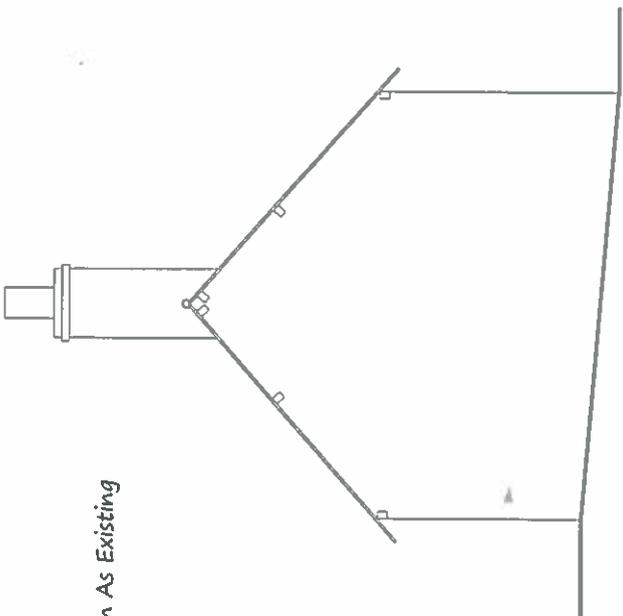


BWLCH DU EXISTING WEST AND EAST ELEVATION



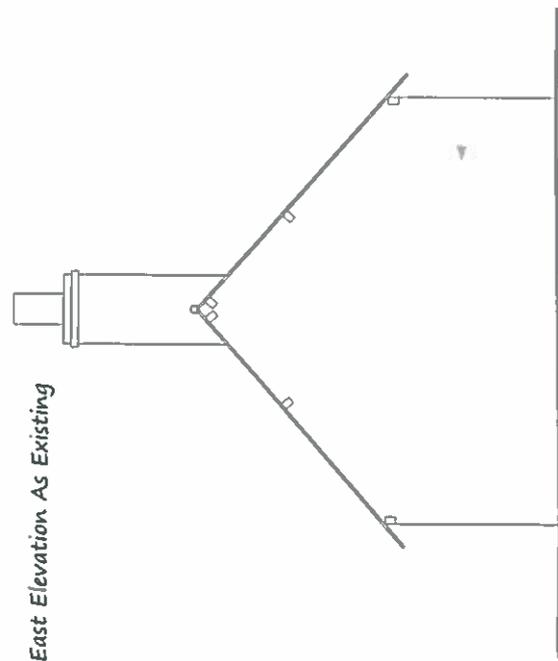
Nishubhoomi Price Associates
 Project
Bwlch Du

Author	LNJ
Checked by	TJN
Drawing Description	Bwlch Du West and East Elevations As Existing
Drawing Number	DWG4
Date	23rd November 2018
Scale	1mm:50mm @ A3



West Elevation As Existing

Solid Rubble Masonry



East Elevation As Existing

Solid Rubble Masonry

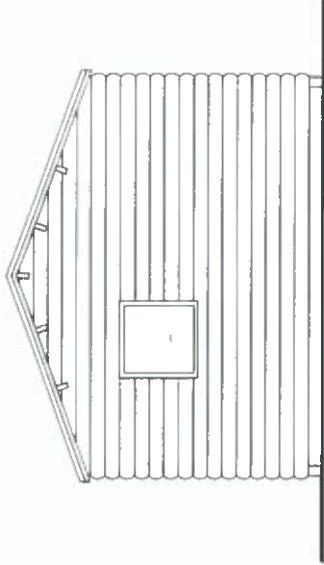


LOG CABIN

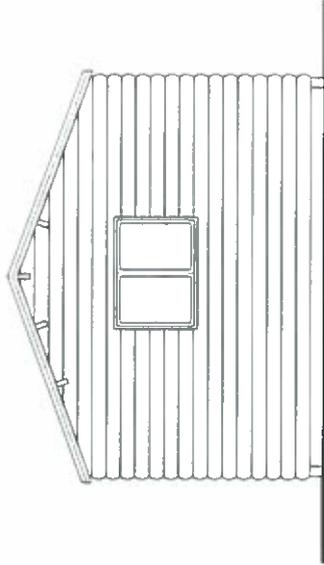


Project	Bwlch Du
Author	LNJ
Checked by	TJN
Drawing Description	Log Cabin As Existing
Drawing Number	DWG8
Date	23rd November 2018
Scale	1mm:50mm @ A3

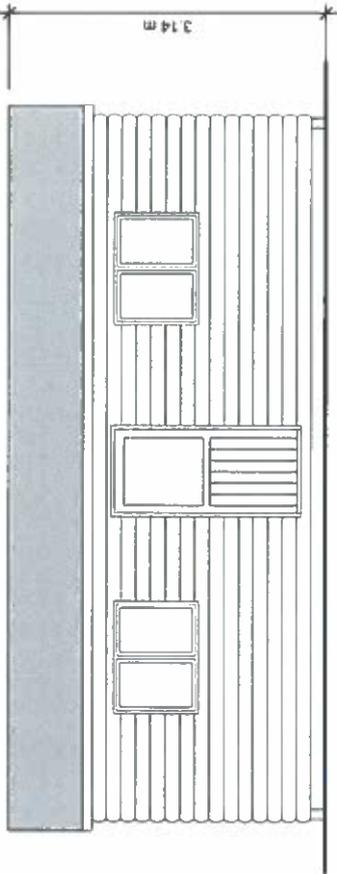
East Elevation



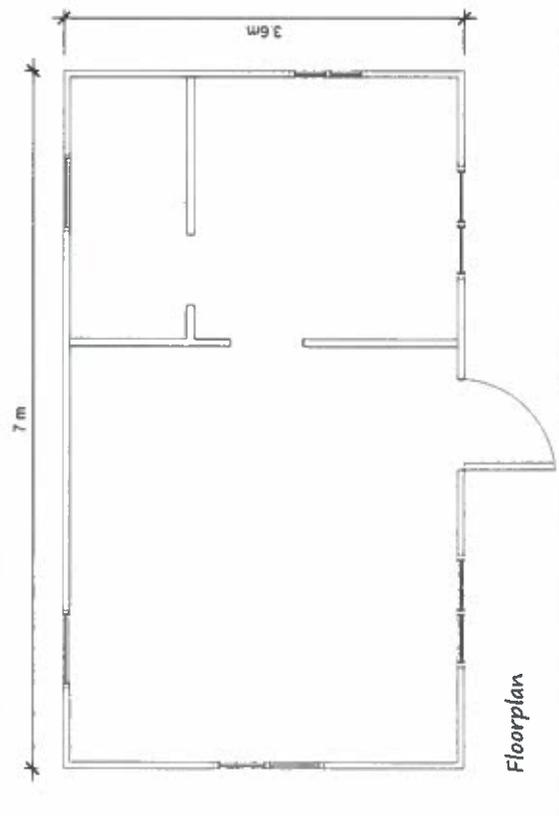
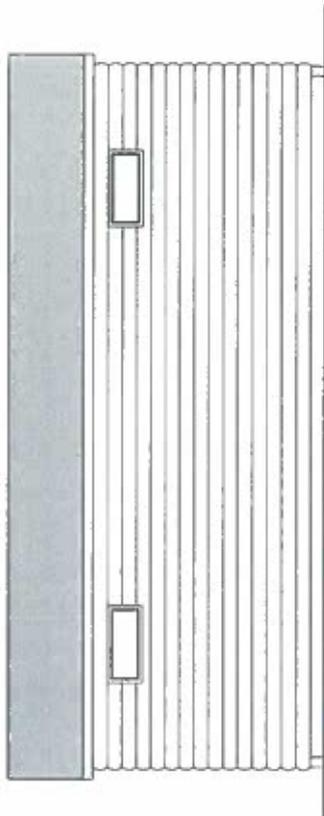
West Elevation



South Elevation



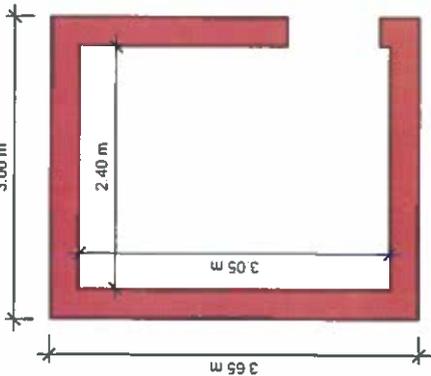
North Elevation



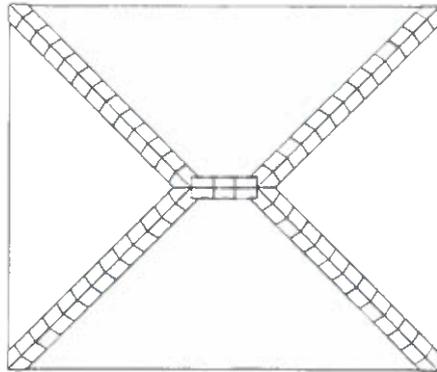
Floorplan



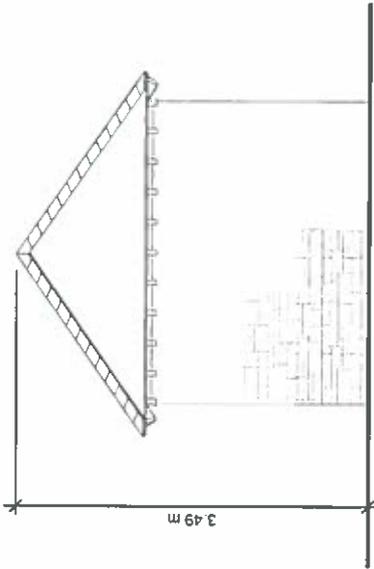
Floorplan As Proposed



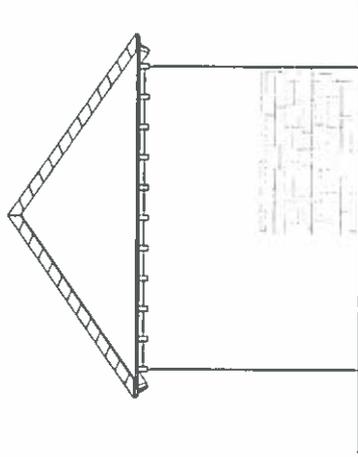
Roofplan As Proposed



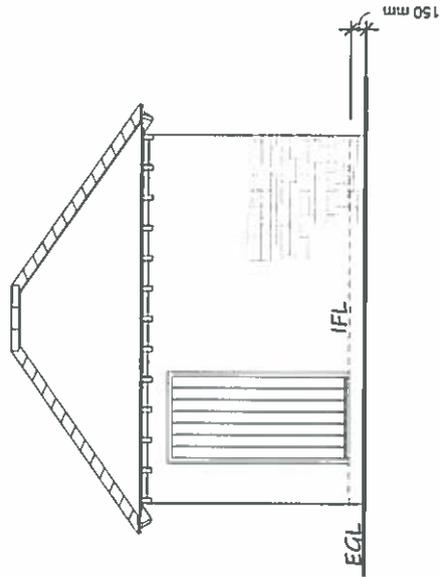
South Elevation As Proposed



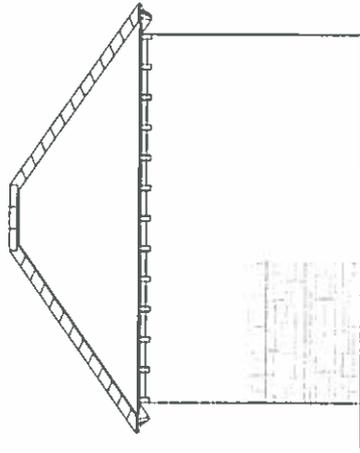
North Elevation As Proposed



East Elevation As Proposed



West Elevation As Proposed



Reclaimed Welsh slate roof, butt jointed ridge tiles
Solid walls constructed from stone salvaged from
demolished ruin adjacent to house. Painted timber
traditional style boarded door to East.



8 Metres

PROPOSED STORAGE BUILDING

	Project Bwlch Du
Author LNJ	Drawing Description New Ancillary Storage Building As Proposed
Checked By TJN	Drawing Number DWG18 V2
Date 16th January 2019	Scale 1mm 50mm @ A3

WARD : Llanrhaeadr Yng Nghinmeirch

WARD MEMBER: Councillor Joseph Welch (c)

APPLICATION NO: 25/2018/1216/PF

PROPOSAL: Alterations and rear extension to existing building, demolition of curtilage structure, erection of ancillary building, retention of log cabin (for temporary period), boundary fencing and gates, and provision of on-site parking and turning area

LOCATION: Bwlch Du Nantglyn Denbigh LL16 5RN

APPLICANT: Miss Ashley Trengove

CONSTRAINTS: SSSI
Listed Building

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

**REASONS APPLICATION REPORTED TO COMMITTEE:
Scheme of Delegation Part 2**

- Recommendation to refuse – 4 or more representations of support received
- Member request for referral to Committee
- Referral by Head of Planning / Development Control Manager

CONSULTATION RESPONSES:

NANTGLYN COMMUNITY COUNCIL –
“No objection”.

NATURAL RESOURCES WALES –
Raised initial concerns on 21 February 2019 at the lack of a protected species survey, then subsequently confirmed no objection by letter dated 24 April 2019 on the basis of the ecological report lodged on 23 April 2019.

DWR CYMRU / WELSH WATER –
No objection.

CLWYD POWYS ARCHAEOLOGICAL TRUST –
Note that the barn structure is proposed to be completely removed and object to this as it was an integral part of the curtilage of the cottage buildings along with another wholly demolished barn to the south, both of which are visible on the first and second edition OS mapping. The ruinous walls could usefully be lowered and retained as a stub wall to represent the original outline of the barns. The interior may include a flag floor which should be retained as e.g. a garden patio area with planters.

CADW –
No objection.

SPAB (SOCIETY FOR THE PROTECTION OF ANCIENT BUILDINGS) –
Object to the loss of internal features and demolition of the adjacent ruined barn.

DENBIGHSHIRE COUNTY COUNCIL CONSULTEES –
Highways Officer –

No objection.

Senior Technical Environmental Health Officer –

Noise

The planning status of the property is relevant to noise considerations, as a suitable noise assessment and details of noise mitigation measures may be necessary, should they be required as indicated by the assessment, to ensure the residential amenity of the occupiers is not compromised by potential noise disturbance from the adjacent Brenig Windfarm.

Water Supply

The current situation regarding the water supply to the application site is unclear. Should the existing spring be used, no further comment. If a borehole is installed on site, the borehole will be required to be a minimum of 50 metres from the septic tank and soak away. The applicant should notify the Council in relation to installation of a borehole so records can be updated. If the applicant intends to have a utility company mains water supply to the site, should notify proof of connection.

Conservation Officer –

Original comments were to express support for the proposal to renovate the listed building and proposals in general but had concerns regarding the following items;

- ' 1) The existing fireplace and bread oven is an important feature of the building and needs to be retained as existing. I strongly object to any alterations to the structure and fabric and suggest an alternative means of access is made from the new extension to the other side of the building.
- 2) The large dog kennel is sited a fair distance from the property in the adjacent field within the SSSI area and in my opinion unacceptably stands out with the design and materials not being appropriate for the surrounding area. I would suggest siting the kennel within the curtilage of the property in the least prominent location at the rear and painted in a suitable colour to blend in
- 3) The log cabin, solar panels, shed and wind turbine will need a condition stating the time period these structures are allowed to be retained on site as currently they are detrimental to the setting of the listed building and surrounding area. I object to them being on site but will be agreeable to temporary siting for a relatively short period of time for the reasons given in the application.'

Confirmed in further response dated 20 May 2019 that there was no objection subject to the amended plans and the removal of the dog kennels from the scheme.

In relation to the derelict outbuilding, notes it was the preference to retain the remains and consolidate the walls of the outbuilding but if a future application is submitted (as has been suggested) to rebuild the structure to its original form and appearance, would be supportive of this proposal in principle subject to approval of details.

Ecologist –

Initially raised an objection to the effect on the designated features of the Mynydd Hiraethog SSSI and other protected species of conservation. Having reviewed the details of the bat survey lodged on 23 April 2019, considers the assessment of the building as having negligible potential to support roosting bats is incorrect given that the surrounding habitat is of high potential to support bats and the photographs of the building appear to show features which are suitable for roosting bats, which would require further surveys.

Notes that the bat report states *"There are no roof voids and no insulation beneath the asbestos panels, the rooms extend to the ridge, all areas are accessible"* however, the Construction Details and Photographs document includes photos from inside the building which appears to contain a number of features which are potentially suitable for roosting bats, along with a completely different internal structure than that described above. The building appears to contain wooden boarding underneath the asbestos roofing sheets which could be utilised by roosting bats, and also stop the building from being fully surveyed internally.

Based on the inaccuracies within the report, it is recommended that emergence surveys are undertaken to ensure that no bat roost is present and that the proposed development will not result in negative impacts to protected species. In addition, there has still been no submission relating to common reptiles so it is still not possible to determine the impacts on these species or ensure that the proposed development will not result in an offence.

Recommends that this application is rejected until such time that the bat and reptile surveys outlined above have been completed, and the results of these compiled with in appropriate reports and submitted to the local planning authority for review and approval.

RESPONSE TO PUBLICITY:

In support

Representations received from:

Helen Job, 2 Maes Garnedd, Peniel
David Hall, 13, Valdene Drive, Worlsey
Michael Grzegorzewski, Carreg-y-Fran
Michael Skuse, Caenant, Llangynhafal

Summary of planning based representations in support:

- Proposals should be supported as the scheme allows for the renovation and retention of a Grade II listed building / It is Council policy to encourage owners to convert redundant buildings for holiday, tourism, residential use / The proposed conversion of the building into a residential property, carefully done, would improve and enhance the site.
- The residential use has not been abandoned, Bwlch Du retains its roofs and walls and structural integrity, has been boarded up (indicating it was always intended to be restored)/ has had Council tax paid on it consistently
- Bat survey undertaken was comprehensive and to ask the applicant to undertake another seems excessive / dry heathland is unlikely to support protected reptile species
- History of the house is significant / its survival should be cherished / failure to allow this sympathetic and modest proposal to extend and restore would amount to cultural vandalism

In objection

Representations received from:

Natural Power, by letter dated 9 May 2019 which reads as follows:

“Our comments do not focus on the design detail of the application but the more basic point that the applicant relies on the assumption that Bwlch Du is a dwelling that they are seeking to alter and extend, whereas we consider the property to be a derelict building that would require change of use to be reinstated as a dwelling.

Brenig Wind Farm is an operational wind farm adjacent to the property which was consented by Denbighshire County Council in 2009. A further consent was granted on appeal for an increased tip height in 2016, though this consent was not implemented.

At the time of the grant of the 2009 planning permission, the related application was supported by an Environmental Statement. That Environmental Statement included an assessment of noise impacts at nearby sensitive receptors (i.e. residential properties) to demonstrate that appropriate noise limits could be met at those properties. This was accepted by DCC, Dick Bowdler (the external noise consultant appointed by DCC), and other consultees. The list of properties assessed was scrutinised by DCC, an independent noise consultant acting on behalf of DCC, DCC’s environmental health officer and was publicly available to the community and interested parties. It was not challenged.

The then owner of Bwlch Du, a Mr Hebblethwaite who lived in Chester, attended a public consultation event at Nantglyn and I remember speaking to him and his daughter. He told me that the property was used occasionally for summer picnics but had not been lived in for a long time. It would seem reasonable to think that he would have raised the issue of its use as a dwelling had it been the case.

The local ward member, Cllr Richard Walsh was opposed to the wind farm and would surely have raised the issue of Bwlch Du being a dwelling had he considered it to be the case.

Subsequently there was a second planning application for a wind farm with an increased tip height at Brenig. This was refused by DCC but granted on appeal in 2016. Again there was no dispute by any consultee, local representative or other party that Bwlch Du should be considered as a noise sensitive party. Once again the local ward member, Cllr Joe Walsh on this occasion, opposed the application but did not flag up any deficiency in the noise assessment due to the omission of Bwlch Du. Once again Dick Bowdler acted for DCC in advising them on the noise assessment.

In both instances the scope of the noise assessment was agreed with DCC, was scrutinised by an external expert acting on their behalf, and it appears that no issue was raised with it either during the application or the appeal process. Further scrutiny was added by the planning inspector who attended a site visit prior to granting the appeal. It is reasonable therefore to conclude that all parties regarded it as a robust assessment of the impacts of the proposed Brenig Wind Farm on all relevant noise receptors at the time at which planning permission was granted.

The Coflein website <https://www.coflein.gov.uk/en/site/26899/details/bwlch-du> describes Bwlch Du as “now derelict”. Photos on the page clearly show the property as derelict, having no door or windows and with sheep freely entering the building.

In summary, this was because both the applicant, DCC, its advisors and other consultees considered that Bwlch Du was not a residential property. To the extent that it may have been in the past, it appears to have been common ground between the applicant and the Council that such use had been abandoned in planning law terms.

In support of my client’s position I would ask you to consider the conclusions of the Court of Appeal in Hughes v Secretary of State for the Environment Transport and the Regions (see attached – and in particular the criteria at paragraph 4 to 8 and paragraph 23).

Any application for residential use should cover both the “existing” dwelling and the proposed extension and therefore that the application in its current form should be refused or amended.”

EXPIRY DATE OF APPLICATION: 12/03/2019

EXTENSION OF TIME AGREED: 21/06/2019

REASONS FOR DELAY IN DECISION (where applicable):

- delay in receipt of key consultation responses
- additional information required from applicant
- protracted negotiations resulting in amended plans
- re-consultations / further publicity necessary on amended plans and / or additional information
- awaiting consideration by Committee

PLANNING ASSESSMENT:

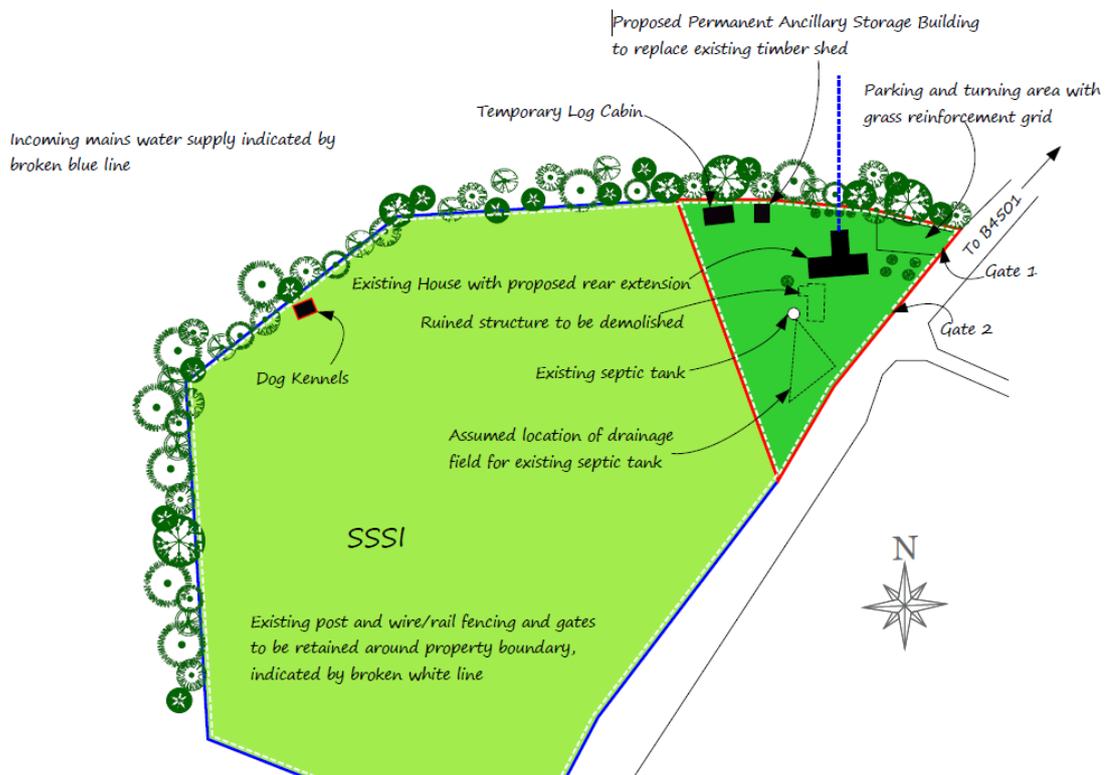
1. THE PROPOSAL:

1.1 Summary of proposals

- 1.1.1 The application seeks planning consent for a number of developments at the property Bwlch Du:

- a) Alterations and rear extension to existing building
- b) Demolition of curtilage structure
- c) Erection of ancillary building
- d) Retention of log cabin (for temporary period)
- e) Boundary fencing and gates
- f) Provision of on-site parking and turning area

1.1.2 The location of the above elements is shown on the site plan extract provided below for ease of reference. The applicants confirmed in May 2019 that the proposals for dog kennels were to be removed from the application:



1.1.3 The alterations to the existing building were revised by amended plans on 8 April 2019 following discussions with Council officers, to limit impact on the internal features of the existing building, primarily the central fireplace. The works now proposed would add a single-storey extension to the rear (north) of the building to accommodate a kitchen/living area with the remainder of the building being laid out to provide two bedrooms, a bathroom and a dining room. The extension would utilise stonework/render and a painted corrugated iron roof to match the host building.

1.1.4 The rear extension would have a footprint of 6.0 metres by 4.8 metres, adding a floor area of 29 sq m to the existing structure which has an existing floor area of 64 sq m, thereby representing an increase in floor area of 45%.

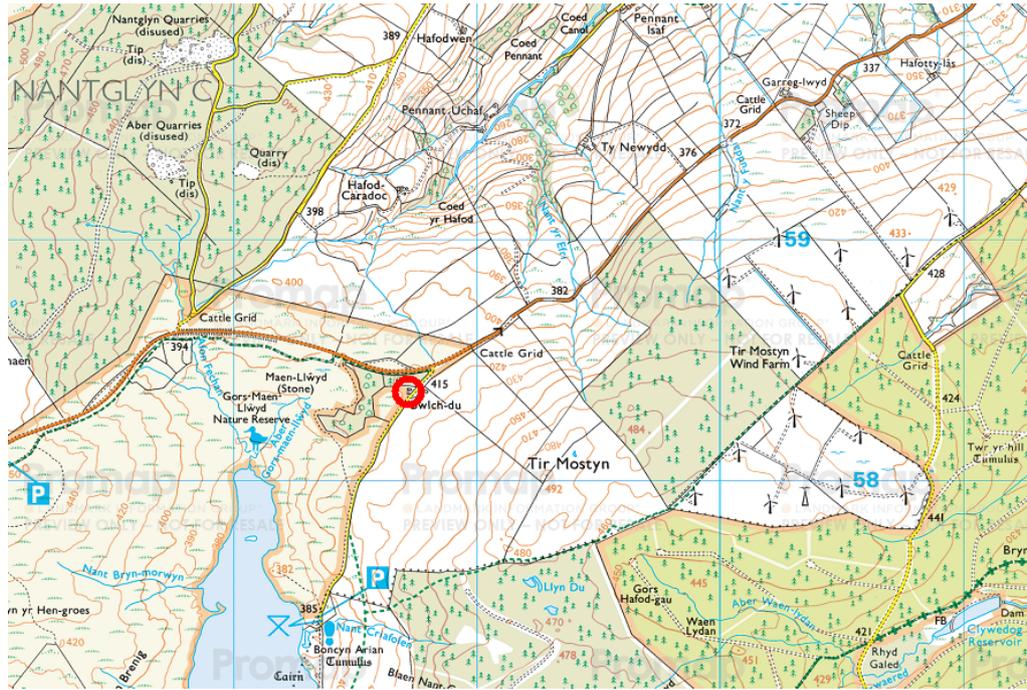
1.1.5 The existing building has the remains of a former barn located to its southern side which is proposed to be demolished as part of the scheme. During discussions with the agent and at a case officer site visit on 5 March 2019 it was confirmed that it was

feasible to retain the base element of this former structure as some form of patio area should it be considered prudent to do so by the Council, although no plans or details of how this could be achieved have been provided.

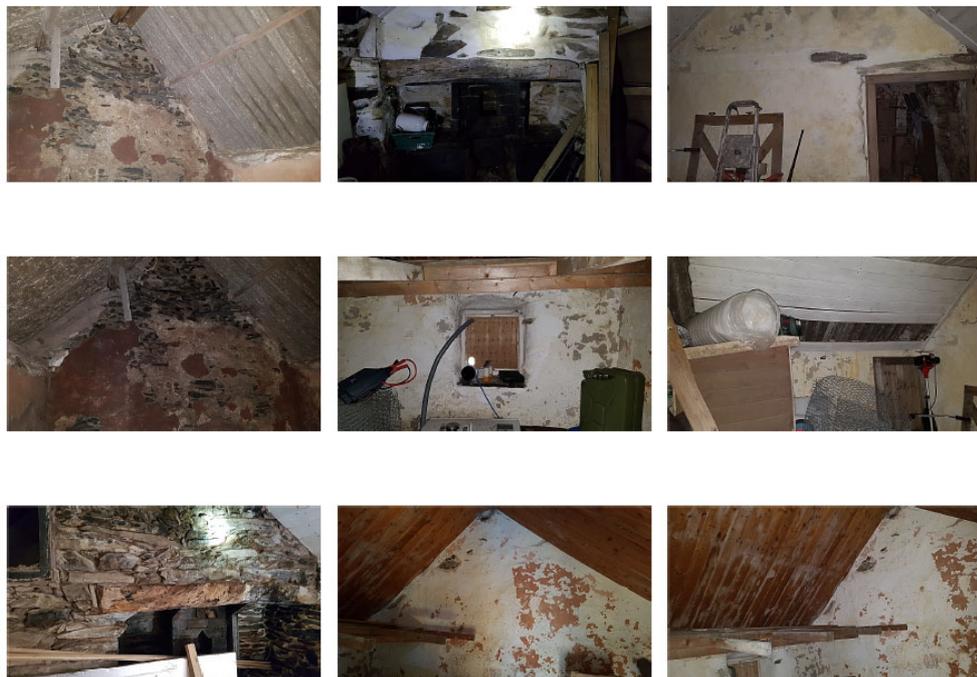
- 1.1.6 The proposed ancillary storage building would be located adjacent to the northern boundary of the site with a footprint of 3.0 metres by 3.65 metres with a hipped roof over up to a height of 3.5 metres. The structure would utilise a slate roof and stonework for its walls, salvaged from the remains of the ruined barn to be demolished.
- 1.1.7 The log cabin which is currently in place at the site has a footprint of 7.0 metres by 3.6 metres with a ridge of 3.1 metres, and is located adjacent to the northern boundary as indicated on the site plan extract earlier in this report. It is proposed to be retained for a maximum period of five years until works on the main building have been completed. The log cabin is being utilised without the benefit of planning consent as a dwelling by the applicant and her partner, and has been subject to enforcement action requiring its removal.
- 1.1.8 The extent of the boundary fencing which has been put in place around the perimeter of the site including the road frontage is indicated on the site plan and takes the form of post and wire fencing. Two gates have been provided on the south eastern side, one of which leads into a parking/turning area which has been created within the north eastern corner of the site and will be laid out as a reinforced grid system to allow grass to grow and provide a natural appearance. The extent of this parking/turning area is indicated on the site plan. As the fencing and gates have already been put in place, permission for this element of the scheme is sought retrospectively.
- 1.1.9 When initially submitted, the application also proposed the retention of a substantial dog kennel building standing in the adjacent field. This element was confirmed by the agent for the scheme on 7 May 2019 as being no longer included and has been omitted from the description of development.
- 1.1.10 The main points of the applicants / agents submissions in relation to key elements of the proposals are referred to in the main planning considerations sections of the report.
- 1.1.11 The plans at the front of the report illustrate the different elements of the scheme.

1.2 Description of site and surroundings

- 1.2.1 The application site is located 4km south west of Nantglyn, adjacent to a road junction on the B4501, to the east of which lie the Brenig and Tir Mostyn wind farms. Llyn Brenig lies around 700m to the south west of the site, as indicated on the location plan provided below. The site location is denoted by a red circle:



- 1.2.2 The site slopes from the southern boundary up to the north where it abuts a ribbon of tree planting, with a farm building across the minor road to the east and an open field to the south west which slopes down towards Llyn Brenig.
- 1.2.3 The main existing building at Bwlch Du appeared to be in use for storage purposes at the time of the case officer site visit on 5 March 2019. It is a single-storey building with stonework walls and a pitched corrugated asbestos roof. The interior of the building was sub-divided into two main rooms (one at each end) either side of a central fireplace/oven feature.
- 1.2.4 Photographs taken on 5 March 2019 of the interior of the building and the site are shown below:





- 1.2.5 The recently constructed Brenig windfarm is located on land to the east / south east of Bwlch Du, with the turbines at Tir Mostyn further to the east.

1.3 Relevant planning constraints/considerations

- 1.3.1 The existing building is a Grade II Listed property, described within the official Cadw listing as follows:

History:

Late C18 or early C19 encroachment smallholding farmstead, built on the edge of the moors.

Exterior:

Long, single-storey small farmhouse of whitened rubble construction with corrugated asbestos roof, probably formerly thatched; modern purlins visible at the gable ends. The farmhouse is in two sections, a 2-window living section to the R and a 2-window brewhouse section to the L; a large central chimney divides the two. The latter has weather-coursing and C20 brick corning. C20 boarded doors, the brewhouse section flanked by small, plain late C19/early C20 sliding sashes and the main section with similar sash to the R and a larger 12-pane sliding sash to the L; projecting slate sills throughout.

Interior:

The interior was not inspected at the time of survey.

Reasons for Listing:

Listed for its special interest as a small late C18 or early C19 encroachment homestead in an isolated moorland location.

- 1.3.2 The site lies outside of any development boundary and is adjacent to an SSSI designation as shown in the Denbighshire Local Development Plan. For planning policy purposes it is in open countryside.

- 1.3.3 The site lies within the boundary of Strategic Search Area A – Clocaenog Forest in Welsh Government's Technical Advice Note 8: Planning for Renewable Energy. This is one of seven areas designated as suitable for large scale onshore wind developments, to assist achievement of Welsh Government's targets for onshore wind production.

1.4 Relevant planning history at the site

- 1.4.1 The Development Management Section's recent records reveal the submission of applications in 2017 in relation to developments at Bwlch Du, which were not considered valid, and have not been pursued by the applicants.
- 1.4.2 The current planning and listed building submissions were received in late December 2018.
- 1.4.3 An Enforcement Notice was served in 2018 in relation to breaches of planning control at the site including the siting of the timber cabin, the boundary fencing and gates, a wind turbine, an electrical plant storage shed, solar panels, a poultry shed and the kennel building. The Notice was the subject of an appeal in early 2019. This appeal was dismissed by the Planning Inspectorate in May 2019 and the enforcement notice upheld.

1.5 Developments/changes since the original submission

- 1.5.1 The application has been subject to extensive discussions with the original agent (Nicholson Price Associates) and the latest agents (Richard Buxton Solicitors, who were appointed on 15 May 2019), along with the applicant Ashley Trengove and her partner Dean Turner, who has also been authorised by the applicant to correspond on the case.
- 1.5.2 These discussions have led to the submission of revised plans on 8 April 2019 which showed the repositioning of the extension to allow the central fireplace to be retained, the provision of further bat information on 23 April 2019, and the removal of the dog kennels from the scheme as confirmed on 7 May 2019 by the original agent and on 13 May 2019 by Mr Turner.
- 1.5.3 Further information has been received throughout the period of the consideration of the case by the Council, and is referred to later in the report.

1.6 Other relevant background information

- 1.6.1 The proposals relating to the extension and alterations of the listed building and the demolition of the curtilage structure are the subject of a separate listed building consent application, which is presented in the following report on the agenda, application reference 25/2018/1217/LB.

2. **DETAILS OF PLANNING HISTORY:**

2.1 25/2018/1217/LB – Alterations and rear extension to existing building and demolition of curtilage structure: Undetermined at the time of this report.

2.2 Enforcement Appeal ref APP/R6830/C/18/3203539: dismissed on 23 May 2019.

3. RELEVANT POLICIES AND GUIDANCE:

The main planning policies and guidance are considered to be:

3.1 Denbighshire Local Development Plan (adopted 4th June 2013)

Policy RD3 – Extensions and alterations to existing dwellings

Policy PSE4 – Re-use and adaptation of rural buildings in open countryside

Policy VOE1 – Key areas of importance

Policy VOE5 – Conservation of natural resources

Policy VOE9 – On-shore wind energy

Policy VOE 10 – Renewable energy technologies

Policy ASA3 – Parking standards

Supplementary Planning Guidance

Supplementary Planning Guidance Note: Access For All

Supplementary Planning Guidance Note: Conservation and Enhancement of Biodiversity

Supplementary Planning Guidance Note: Listed Buildings

Supplementary Planning Guidance Note: Parking Requirements In New Developments

Supplementary Planning Guidance Note: Renewable Energy

Supplementary Planning Guidance Note: Residential Development

Supplementary Planning Guidance Note: Residential Development Design Guide

Supplementary Planning Guidance Note: Residential Space Standards

Supplementary Planning Guidance Note: Re-use and adaptation of rural buildings

3.2 Government Policy / Guidance

Planning Policy Wales (Edition 10) December 2018

Development Control Manual November 2016

Technical Advice Notes

TAN 5 Nature Conservation and Planning (2009)

TAN 8 Renewable Energy (2005)

TAN 12 Design (2016)

TAN 24 The Historic Environment (2017)

Circulars

3.3 Other material considerations

4. MAIN PLANNING CONSIDERATIONS:

In terms of general guidance on matters relevant to the consideration of a planning application, Section 9.1.2 of the Development Management Manual (DMM) confirms the requirement that planning applications 'must be determined in accordance with the approved or adopted development plan for the area, unless material considerations indicate otherwise'. This guidance is consistent with the statutory requirement to determine planning applications in accordance with the development plan unless material considerations indicate otherwise (s.38(6) Planning and Compulsory Purchase Act 2004). It 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.

The DMM further states that material considerations 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 (Section 9.4).

The DMM has to be considered in conjunction with Planning Policy Wales, Edition 10 (December 2018) and other relevant legislation.

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 Lawful use of the property
- 4.1.2 Principle
- 4.1.3 Visual amenity and landscape impact
- 4.1.4 Residential amenity
- 4.1.5 Ecology and the SSSI
- 4.1.6 Drainage
- 4.1.7 Highways
- 4.1.8 Impact on the Listed Building
- 4.1.9 Implications on Brenig Wind Farm / TAN 8 Strategic Search Area

4.2 In relation to the main planning considerations:

4.2.1 Lawful use of the property

Officers consider the critical starting point for the assessment of the application is inevitably the lawful use of the existing main building, as this dictates the key planning policies at local and national level that should be applied.

The applicant's position

A summary of the applicant's view is that the heritage listing for the property estimates that the cottage was erected in the late 18th or early 19th century and the agent contends that it has been utilised for the majority of its lifetime as a dwelling connected to the wider farmstead.

It is stated in paragraph 7.2 of the submitted 'Revised Heritage Impact Statement and Supplementary Information' dated 7 April 2019 that occupation of the cottage *'may well have continued until the recent past'* but paragraph 7.3 accepts that the cottage is currently unoccupied although this period of vacancy was *'always intended by the previous owners to be temporary'*. No evidence has been provided to endorse this assertion.

Paragraph 7.4 asserts that comparatively minor extensions, alterations and repairs are needed for the building to continue to function for modern habitable living. Paragraph 7.6 concludes that 'the residential use has not been substantively abandoned and the site still possesses an authorised use as a dwelling and curtilage'.

Individual representations

Comments received on the application contend the residential use has not been abandoned, and refer to the fact that Bwlch Du retains its roofs and walls and structural integrity, it has been boarded up, suggesting it was always intended to be restored, and has had Council tax paid on it consistently.

The Council's position

The Council's evidence in relation to the recent enforcement appeal notes that there is no history of planning permissions at the property. The main stone building is a derelict and uninhabitable farmstead, with no evidence of occupation or renovation works for a number of decades.

There is useful archive information on Bwlch Du on the Coflein online mapping service, which records built heritage in Wales. This contains an entry for the building from an inspection in July 2007 of: 'Now derelict. This is reported to have remained roofed with heather until the mid-19th century'. The Coflein site contains the following photographs taken in 1954 and 2008.



Bwlch Du 1954- Coflein



Bwlch Du -September 2008- Coflein

Other 2008 photographs on the Coflein record show the interior of the property as having an earth floor and with all windows and doors having been removed.

By way of background, a request for submission of a lawful use certificate to assist consideration of the residential use status was made to the applicant in May 2017 but as no application was submitted, the status of the land and the building remains at issue. The Inspector in the recent enforcement appeal decision letter made no definitive comments in regard to the lawful use of the building.

Officers have no grounds to dispute that the building was originally constructed as a dwelling and was utilised as such for much of its long lifespan. It is however unclear as to exactly when permanent occupation ceased and this is considered to be a critical matter in relation to the current application.

It was evident from the internal inspection of the building made by the case officer on 5 March 2019 that it had not been lived in for some time, with the photograph from 1998 provided above further evidencing this fact.

Marketing particulars dating from 2016 from Rightmove, after which the applicant purchased the site, describe the building as being a 'detached house for sale', but this sheds no useful light on the issue as the description is purely informative and not evidenced within the particulars.

The Council Tax section have records that payments were made by the previous owner from 1996 to 2016, but this was stopped once the applicant purchased the property. Payment of Council tax does not confirm occupation or use of a property or the lawfulness of its use in planning terms.

Available water supply records refer to the property as a holiday cottage in 1976 with a further record in 2005 stating the building was derelict and used as a sheep shelter, which lends weight to the view that it was not occupied, or capable of being occupied.

Abandonment

Through case law, Officers are aware that the relevant factors to be taken into account when considering whether the use of a dwelling has been abandoned are:

- 1) *Physical condition of the building;*
- 2) *Length of time for which the building has not been utilised for residential purposes;*
- 3) *Whether the building has been utilised for any other purposes;*
- 4) *The intentions of the owners.*

The above factors are assessed below. It should be recognised that none of these factors are in themselves determinative. They should be considered in the round and in light of the overarching question: whether a reasonable man with knowledge of all the relevant circumstances would conclude that the house had been abandoned.

- Physical condition of the building

The main building is in a poor condition and has suffered from neglect over a long period of time, having no door or window frames and no internal fittings. It is in a clearly uninhabitable state. However, whilst a structural survey has not been provided as part of the application package and the building has not been inspected by any qualified surveyor, it is the opinion of the case officer and the conservation officer from an internal and external inspection of the property that the building is not in a dangerous condition. There was no readily apparent visual evidence of structural instability in the main walls or roof at the time of the site visit on 5 March 2019, which is apparent from the photographs provided elsewhere in the report.

It is not considered that the physical condition of the building provides conclusive evidence either way on the matter of abandonment of the residential use.

- *Length of time for which the building has not been utilised for residential purposes*

The Council's proof of evidence for the recent enforcement appeal confirmed that there is no history of planning permissions at the site. It refers to the property being a derelict and unoccupied farmstead dating from the late 18th or early 19th Century, and that the main building has not benefitted from any renovation works for a number of decades.

The photograph provided earlier in the report dating from 1954 depicts the building with a thatched roof, and containing windows and doors but provides no firm evidence as to the use of the building at that time with no internal views being available.

When the issue of the lawful use was raised with the current applicant, a response was lodged which included the following information:

"The council is in possession of evidence, including full council tax records, proving Bwlch Du's residential status, therefore, again, I find it unreasonable that officers are again questioning this, and asking my planning agent to provide a statement.

There have been no intervening uses of Bwlch Du, no previous applications for a change of use since it was last lived in, the state of the building, even according to CADW, is well preserved and the intentions of the previous owner were to retain its residential status – why else would the previous owner pay tens of thousands of pounds in council tax and even travel a two hour round trip from his home in Chester to attend a community meeting regarding the Brenig Windfarm (admission from the previous Brenig project manager at Natural Power). Bwlch Du was also purchased as a residential property.

To be clear, the residential status of Bwlch Du has not been abandoned. Should the council wish to challenge this further, they should apply the four tests of abandonment and formally challenge this through the judicial system. Holding our property informally "in limbo" and saying the residential status remains "unresolved" without even, according to Chief Executive, Judith Greenhalgh, formally challenging this, is both unreasonable and unlawful."

In regard to Council Tax payments, it is confirmed by the Council tax section that this was paid by the previous owner from 1996 to 2016, but payments were stopped following challenge from the current owners and now applicant. E-mail correspondence from the owners in support of the challenge included the following dated 15 April 2016:

"On 3 November 2015 we purchased the above property in the knowledge that it has been derelict for decades and requires major structural repair, therefore rendering it unfit for human habitation... With the property being so dilapidated and unfit for human habitation, I queried with council tax bill in the first place, and have now applied to the Valuation Office Agency to have the property deleted from the banding system while in its current state."

Information on water supplies for the property held by the Council's Public Protection section is also of assistance in regard to establishing the length of time for which the building has not been occupied. The 1976 file describes the building as a 'weekend cottage' without any bathroom or toilet. A further note in 1992 reiterates the lack of bathroom facilities, with a note in 2005 describing the building as being derelict and used as a sheep shelter.

The Electoral Services Officer has confirmed that an application was received in 2017 for registration on the electoral roll at the property, but that historical paper registers dating back to 1974 have no-one registered at Bwlch Du.

Taking all the above available evidence into account, it would appear that the building has not been utilised as a permanent residential property since at least the 1950s, its deteriorating physical condition since this time rendering it uninhabitable as a dwelling.

The applicant/agent have been requested to put forward their own evidence to endorse their opinion that the property remains a lawful dwelling, but have not provided any documentary evidence to contradict the Council's records and overall opinion that the building ceased to be utilised as a permanent dwelling more than 60 years ago.

On this basis, it is Officers' view that the property has not been used for residential purposes for a considerable period of time, and consideration of this factor points strongly to the conclusion that the use of the building as a dwelling house has been abandoned.

- *Whether the building has been utilised for any other purposes*

There is no clear evidence to show there has been any 'intervening' use of Bwlch Du since its last use as a dwelling. Whilst it has been noted in the past that animals have been seen using it as a shelter, Officers would not consider this would constitute a 'positive' alternative use established over time.

Officers' conclusions are that consideration of this factor is neutral in the overall judgment as to whether the dwellinghouse use has been abandoned.

- *The intentions of the owners*

It seems from the information in front of the Council that prior to the most recent change of ownership in 2016, the owner of Bwlch Du had no clear intention to utilise the building as a permanent dwelling, evidenced by the fact that little or no efforts were made over a considerable period of time to maintain the basic structure, and by the time of consideration of the windfarm application in 2007, it was in a dilapidated and totally uninhabitable condition.

Whilst it is recognised that the current applicant's intentions are to renovate Bwlch Du as a dwelling, this is not considered of significance to consideration of the issue of abandonment, as the test has to be applied over the owner's intentions over a period of time. Indeed, it could be argued that if a property's use as a dwellinghouse has already been abandoned, the intentions of the current owners should be given limited, if any, weight.

Taking into account the evidence of the intentions of previous owners of the property, Officers conclude that this particular factor supports a conclusion that the use of the building as a dwellinghouse has been abandoned.

Conclusions on the planning status of the property

The available evidence confirms that the property was originally constructed as a dwelling and appears to have remained in use as such until the 1950s, after which time it may have been utilised occasionally as a weekend cottage. Its physical condition has declined, and it has been evidenced in use as an animal shelter. There is no evidence of any intention of the previous owner to use or maintain Bwlch Du as a dwelling over a considerable period of time.

Having regard to the evidence available and the factors set out earlier in this report Officers conclude that a reasonable man with knowledge of all the relevant circumstances would conclude that the house has been abandoned. The property therefore has no lawful use. The proposals before the Council should therefore be considered to be for the adaptation of a redundant rural building for use as a

dwellinghouse. The remainder of this report therefore considers the other relevant issues on this basis.

4.2.2 Principle

In terms of the national planning policy context in respect of development in open countryside, Planning Policy Wales 10 (December 2018) paragraph 3.56 states that this should be located within and adjoining those settlements where it can be best be accommodated in terms of infrastructure, access and habitat and landscape conservation. It also advises that new buildings in the open countryside away from existing settlements or areas allocated for development in development plans must continue to be strictly controlled. All new development should be of a scale and design that respects the character of the surrounding area.

Representations received on the application suggest the principle of the development should be supported as the scheme allows for the renovation and retention of a Grade II listed building, which is encouraged by planning policy and would improve and enhance the site. There is also reference to the significance of the history of the house which suggests its survival should be cherished.

In Officers' opinion, having regard to the background history, the proposal should properly be considered as one involving the conversion of a disused building in the open countryside to a dwelling, with the ancillary developments. Local Development Plan Policy PSE 4, Re-use and adaptation of rural buildings in open countryside, allows for such conversions where the scheme of conversion makes a positive contribution to the landscape, any architectural features of merit are retained, and two tests are met :

- 1) an employment use has been demonstrated not to be viable; and
- 2) the dwelling is affordable to meet local needs.

The development proposes conversion and extension works on the main building, with the extension as revised adjudged to retain the internal features of architectural merit of the structure

Having regard to the tests of policy, there is no information in the submission to show that the re-use of the disused building is unviable for employment use or that the proposed dwelling would be affordable to meet local needs. It is the view held by officers that the applicant has not submitted evidence on these criteria because she does not consider them to be relevant given her view that the dwellinghouse use has not been abandoned.

Overall, the development is considered to be contrary to the requirements of LDP Policy PSE 4 and the advice of PPW10 in regard to development in the countryside.

4.2.3 Visual amenity and landscape impact

The Development Management Manual advises at paragraph 9.4.3 that material considerations must be fairly and reasonably related to the development concerned, and 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; and the effects of a development on, for example, health, public safety and crime. The visual amenity and landscape impacts of development should therefore be regarded as a material consideration.

PPW 10 Section 6.3.3 states 'All the landscapes of Wales are valued for their intrinsic contribution to a sense of place, and local authorities should protect and enhance their special characteristics, whilst paying due regard to the social, economic,

environmental and cultural benefits they provide, and to their role in creating valued places.’

Having regard purely to the physical impacts of the different elements of the proposals:

The scale, siting and detailing of the proposed extension to the existing building is considered to be appropriate in respect of the character of that building, with the new post and rail fence and gates also relatively small-scale changes to the appearance of the site.

If the existing building were held to be a lawful dwelling, the minor extension to the residential curtilage is also not considered unreasonable.

However, the retention of the log cabin for any period of time and the siting and scale of the proposed ancillary building are adjudged to have a clear adverse visual impact as they are alien structures within the landscape which have no required relationship to the listed building or the wider open countryside.

These elements of the development are therefore considered contrary to PPW10 in regard to harm to the landscape and also guidance in Paragraph 9.4.3 of the Development Management Manual.

4.2.4 Residential amenity

The Development Management Manual advises at paragraph 9.4.3 that material considerations must be fairly and reasonably related to the development concerned, and 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; and the effects of a development on, for example, health, public safety and crime. The residential amenity impacts of development should therefore be regarded as a potential material consideration.

The works as proposed are not considered likely to give rise to harm to existing residential amenity of occupiers of any nearby dwellings, given the absence of any dwellings in the immediate locality.

The matter of granting the permission sought in relation to the impact of the nearby wind farm on the amenity of any future residential occupiers of Bwlch Du is addressed later in this report.

4.2.5 Ecology and the SSSI

Policy VOE 5 requires due assessment of potential impacts on protected species or designated sites of nature conservation, including mitigation proposals, and suggests that permission should not be granted where proposals are likely to cause significant harm to such interests.

This reflects policy and guidance in Planning Policy Wales (Section 6.4), current legislation and SPG 18 – Nature Conservation and Species Protection, which stress the importance of the planning system in meeting biodiversity objectives through promoting approaches to development which create new opportunities to enhance biodiversity, prevent biodiversity losses, or compensate for losses where damage is unavoidable.

Planning Policy Wales also draws attention to the contents of Section 6 of the Environment (Wales) Act 2016, which sets a duty on Local Planning Authorities to demonstrate they have taken all reasonable steps to maintain and enhance biodiversity in the exercise of their functions.

The Development Management Manual advises at paragraph 9.4.3 that material considerations must be fairly and reasonably related to the development concerned, and 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; and the effects of a development on, for example, health, public safety and crime. The ecological impacts of development should therefore be regarded as a potential material consideration.

There is key guidance is provided in Technical Advice Note (TAN) 5: Nature Conservation and Planning on the consideration to be given to the presence of protected species. Paragraph 6.2.2 and 6.3.7. These include the following:

“It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted”; “Planning permission should not be granted subject to a condition that protected species surveys are carried out and, in the event protected species are found to be present, mitigation measures are submitted for approval”; and “It is clearly essential that planning permission is not granted without the planning authority having satisfied itself that the proposed development either would not impact adversely on any European protected species on the site or that, in its opinion, all three tests for the eventual grant of a regulation 44 licence are likely to be satisfied”.

The guidance also warns that “bearing in mind the delay and cost that may be involved, developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of them being present”

There are individual representations on the application which contend that the bat survey undertaken was comprehensive and it is excessive to require the applicant to undertake further survey, and it is suggested the dry heathland is unlikely to support protected reptile species.

The detailed comments of the Council’s ecologist set out earlier in this report highlight concerns over the adequacy of information in relation to reptiles and bats, in particular its lack of a robust analysis of bat habitat, roosts and emergence surveys. The ecologist points to parts of the building structure which could be utilised by roosting bats, and also stop the building from being fully surveyed internally. The clear conclusion is that emergence surveys need to be undertaken to ensure that no bat roost is present and that the proposed development will not result in negative impacts to protected species. In relation to common reptiles, the absence of any survey means it is still not possible to determine the impacts on these species or ensure that the proposed development will not result in an offence.

Prior to the receipt of the final comments from the Council’s Ecologist, the applicants expressed concerns at the suggestion that additional bat surveys may be necessary, pointing to their own Consultant’s findings and information in the Brenig Windfarm Environmental Statement in 2007 which indicated Bwlch Du was not a suitable habitat for bats. Their agents have been made aware of the Ecologist’s final comments in an email dated 1 July 2019 and have responded as below:

‘We are hoping to obtain some further comments from Mr Bennett on the points raised by Mr Walley but he is currently away and we do not know when he will be able to respond. If any further information is forthcoming from Mr Bennett in advance of the meeting, we trust that this will be accommodated given the very significant delay in Mr Walley’s response (which was provided well after the consultation period and in fact after the original date that the application was intended to be heard). In any event it seems clear that if there are any outstanding issues by the time of the hearing, these can be dealt with by conditions.’

Any additional representations received from the agents between the drafting of this report and the day before the Planning Committee meeting will be referred to in the late information sheets.

In respecting the applicant's previous comments, on the basis of the Ecologist's clear response it is considered that insufficient information has been submitted to demonstrate that the proposed development would not adversely impact on protected species. In circumstances where it is not possible to be satisfied that a proposal would not adversely affect a protected species or that NRW would be able to grant a regulation 44 permit, the matter of impact on protected species is not something which can be conditioned as it requires resolution prior to any approval being issued. The grant of planning permission would risk breaching the requirements of the Habitats Regulations. The proposal is therefore considered to be contrary to the requirements of TAN 5, Policy VOE5, SPG18 and paragraph 9.4.3 of the Development Management Manual.

4.2.6 Drainage

The Development Management Manual advises at paragraph 9.4.3 that material considerations must be fairly and reasonably related to the development concerned, and 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; and the effects of a development on, for example, health, public safety and crime. The drainage and flood risk impacts of development should therefore be regarded as a potential material consideration.

Planning Policy Wales (PPW 10) Section 6.6.9 states 'The adequacy of water supply and the sewage infrastructure should be fully considered when proposing development, both as a water service and because of the consequential environmental and amenity impacts associated with a lack of capacity'.

On the basis of consultation responses, the scheme as a whole is not considered to raise any significant concerns in regard to drainage impacts or water supply. In the event of permission being granted, it would be necessary to include suitable conditions and notes to applicants requiring further details of the drainage proposals, to ensure impacts on a sensitive environment are mitigated to an acceptable level.

4.2.7 Highways

The Development Management Manual advises at paragraph 9.4.3 that material considerations must be fairly and reasonably related to the development concerned, and 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; and the effects of a development on, for example, health, public safety and crime. The highway impacts of development should therefore be regarded as a potential material consideration.

Policy ASA 3 requires adequate parking spaces for cars and bicycles in connection with development proposals, and outlines considerations to be given to factors relevant to the application of standards. These policies reflect general principles set out in Planning Policy Wales (PPW) and TAN 18 – Transport, in support of sustainable development.

The Parking Standards in New Developments SPG sets out the maximum parking standards for new developments.

The highway officer raises no objections to the proposals, and it is not therefore considered that the proposals raise any negative highway related issues.

4.2.8 Impact on the Listed Building

Local Development Plan Policy VOE1 seeks to protect sites of built heritage from development which would adversely affect them, and requires that development proposals should maintain and wherever possible enhance them for their characteristics, local distinctiveness and value to local communities.

Planning Policy Wales (PPW 10) Section 6 'Distinctive and Natural Places' refers specifically to the need to ensure the character of historic buildings is safeguarded from alterations, extensions, or demolition that would compromise their special architectural and historic interest.; and 6.1.10 indicates that where a development proposal affects a listed building or its setting, the primary material consideration is the statutory requirement to have special regard to the desirability of preserving the building or its setting, and any features of special architectural or historic interest which it possesses.

Whilst it is concluded that the extension and alterations to the listed building are acceptable developments in terms of visual impacts and the character and appearance of the listed building, and are supported by the Conservation Officer, the impacts of the ancillary buildings on the setting of the listed building are not considered to be acceptable, and fail to preserve that setting, in conflict with policy and guidance on the historic environment, TAN 24, Planning Policy Wales, The Historic Environment Act, Policy VOE 1 of the Denbighshire Local Development Plan and Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

4.2.9 Implications on Brenig Wind Farm / TAN8 Strategic Search Area

The presence of windfarms in close proximity to Bwlch Du raises separate considerations in relation to this application. These are outlined in the response submitted by Natural Power, which is included at the front of the report.

The planning policy context is set in Technical Advice Note 8, which outlines considerations Welsh Government require to be given to proposals for and impacting on windfarms. Of particular interest is Paragraph 2.10, which encourages Local Planning Authorities to take an active approach to developing local policy for Strategic Search Areas in order to secure best outcomes. It refers to local issues which could be addressed, including:

- 'Safeguarding wind farm sites. Local Planning authorities should be aware that other developments could sterilise land for wind power proposals, and bear this in mind during policy formulation and decision making'.

The TAN8 requirement is relevant to the application as the grant of permission for the proposals to reinstate a residential use at Bwlch Du has potential to impact on the Brenig windfarm, and potentially others in the vicinity as the introduction of sensitive developments such as residential properties in close proximity to operational and consented windfarms could prejudice the functioning of windfarms due to adverse effects from noise and shadow flicker. No information has been provided with the application to demonstrate the property is capable of achieving a satisfactory standard of amenity for future occupiers, and accordingly there is insufficient information to conclude that the future occupiers of the property would enjoy an adequate level of residential amenity, having regard to the proximity of the property to an operational wind farm. Officers have concerns the proposal would not be compatible with windfarm developments on adjoining land.

The Natural Power response explains the background to the grant of permission for the Brenig (and other) windfarms in this area, and the involvement of the County Council, the Planning Inspectorate at appeal, and the Secretary of State in relation to the Clocaenog windfarm. In summary, the Environmental Impact Assessments (EIAs) submitted with the windfarm applications have included detailed noise assessments to establish impacts at identified sensitive receptors (i.e. residential properties), to demonstrate that appropriate noise limits could be met at those properties. Bwlch Du was not recognised in any of the windfarm applications as a sensitive residential

receptor as it was in a derelict and uninhabitable condition. This was public information open to challenge from any party with an interest in the applications (County Council, Community Council, consultees, private individuals, Councillors, and the property owner). There is no evidence this was ever challenged. Applications refused by the County Council which have been subject to appeal have been scrutinised by Planning Inspectors, and again there has been no reference to the need for inclusion of Bwlch Du as a sensitive residential receptor. This lack of any challenge is a relevant indicator of the abandonment of the property, although not determinative.

The relevance of this is that Bwlch Du is within 2km of a number of operational and consented windfarms including Tir Mostyn / Foel Goch windfarm, the Brenig Windfarm, Clocaenog Forest windfarm and the Pant y Maen windfarm. The property was not considered to be a residential receptor in any of the EIAs for the windfarm planning applications, and at no point did the decision makers or any party expressing interest in the applications consider it to be residential. As noted, the decision makers on these applications have been the County Council, the Planning Inspectorate on appeal decisions, Welsh Ministers and the UK Secretary of State.

The grant of permission would run contrary to the requirement in TAN8 that consideration has to be given to safeguarding windfarm sites in making planning decisions.

Other matters

Well-being of Future Generations (Wales) Act 2015

The Well-being of Future Generations (Wales) Act 2015 imposes a duty on the Council not only to carry out sustainable development, but also to take reasonable steps in exercising its functions to meet its sustainable development (or well-being) objectives. The Act sets a requirement to demonstrate in relation to each application determined, how the development complies with the Act.

The report on this application has taken into account the requirements of Section 3 'Well-being duties on public bodies' and Section 5 'The Sustainable Development Principles' of the Well-being of Future Generations (Wales) Act 2015. The recommendation is made in accordance with the Act's sustainable development principle through its contribution towards Welsh Governments well-being objective of supporting safe, cohesive and resilient communities. It is therefore considered that there would be no significant or unacceptable impact upon the achievement of well-being objectives as a result of the proposed recommendation.

5. SUMMARY AND CONCLUSIONS:

5.1 The Bwlch Du proposals raise significant issues of principle. Officers do not consider the property has a lawful use as a dwelling, evidenced by the background history, hence it is contended that the proposals before the Council are for the re-use and adaptation of a redundant rural building for residential use, with ancillary developments. On this basis, the development is considered to be unacceptable in principle. The ancillary developments cause visual harm to the locality, impacting adversely on the setting of the listed building.

5.2 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the development plan unless material considerations indicate otherwise. The subject case fails to comply with the development plan as a whole, having regard to its failure to comply with Policies PSE4, VOE1 and VOE5.

5.3 Additionally, the grant of permission would not safeguard wind farm sites from a development which could negatively impact on them, and it has not been demonstrated that the dwelling would be capable of providing a satisfactory standard of amenity for future occupiers due to the proximity to operational and consented windfarms. The submission also fails to provide sufficient details to allow for an adequate assessment of the potential impact on protected species.

5.4 Whilst the benefits of the renovation and retention of the listed building are recognised, this is not in itself considered to be of sufficient strength to outweigh the harm caused when taken in the overall planning balance. It is not considered that the use of conditions would be sufficient to make the development acceptable given the objections raised within this report regarding the matters of abandonment, the conversion of the building to a dwelling, adverse visual impact and impact on the setting of the listed building, lack of information regarding protected species, and the windfarm impact. Accordingly, there are insufficient material considerations that displace the presumption in favour of the development plan in this case.

RECOMMENDATION: - REFUSE for the following reasons:-

1. The existing building does not have a lawful use as a dwelling, having regard in particular to the length of time for which it has not been in use for residential purposes and the absence of any clear intention of the previous owner to use or maintain the building as a dwelling. As the residential use of the property is considered to be abandoned, the proposal is therefore considered to be for the re-use and adaptation of a rural building in open countryside. The proposal to re-use and adapt the buildings to use as a dwelling conflicts with the tests of Policy PSE4 of the Denbighshire Local Development Plan, as it has not been demonstrated that its use is unviable for employment purposes or that the proposed dwelling would be affordable to meet local needs. Additionally, it has not been demonstrated that the dwelling would be capable of providing a satisfactory standard of amenity for future occupiers due to the proximity to operational and consented windfarms, a factor which is a material planning consideration in line with the guidance in Section 9.4 of the Development Management Manual.
2. The log cabin and the siting and scale of the proposed ancillary building have an adverse visual impact in an area of remote open countryside, and fail to preserve the setting of a listed building, contrary to Planning Policy Wales 10 with respect to harm to the landscape and also the guidance in Paragraph 9.4.3 of the Development Management Manual, TAN 24, Planning Policy Wales, The Historic Environment Act and Policy VOE 1 of the Denbighshire Local Development Plan and is contrary to Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
3. There is insufficient information submitted to demonstrate that the proposed development would not adversely impact on protected species. The proposal is therefore contrary to guidance in TAN5 paragraphs 6.2.2 and 6.3.7, Policy VOE5 of the Denbighshire Local Development Plan along with the guidance in the Council's adopted Supplementary Planning Guidance note 'Conservation and Enhancement of Biodiversity' and paragraph 9.4.3 of the Development Management Manual.
4. The site is located within Welsh Government's Strategic Search Area A, as defined in TAN 8: Renewable Energy. As the grant of permission would in effect convey residential use status to Bwlch Du, this is considered to conflict with the requirement on Local Planning Authorities in TAN 8 paragraph 2.10 to safeguard wind farm sites from other developments which could sterilise them, and it has not been demonstrated that the dwelling would be capable of providing a satisfactory standard of amenity for future occupiers due to the proximity to operational and consented windfarms, a factor which is a material planning consideration in line with the guidance in Section 9.4 of the Development Management Manual.

Appendix B

Late information sheets as presented to the July 2019 Committee

ADDENDUM REPORT BY HEAD OF PLANNING AND PUBLIC PROTECTION**AGENDA ORDER, LATE INFORMATION AND AMENDMENTS TO PLANNING COMMITTEE REPORTS**

The following sheets are an addendum to the main agenda for the Committee. They set out the order in which items will be taken, subject to the discretion of the Chair. They provide a summary of information received since the completion of the reports, and matters of relevance to individual items which should be taken into account prior to their consideration.

Where requests for public speaking on individual planning applications have been made, those applications will normally be dealt with at the start of that part of the meeting.

AGENDA FOR THE MEETING

1. APOLOGIES
2. DECLARATIONS OF INTEREST
3. URGENT MATTERS AS AGREED BY THE CHAIR
4. MINUTES (Pages 11 - 14)
5. APPLICATIONS FOR PERMISSION FOR DEVELOPMENT
(Item numbers 5 – 11)

ORDER OF APPLICATIONS**PART 1**

	Application no.	Location	Page
Public Speaker items			
8	25/2018/1216	Bwlch Du, Nantglyn, Denbigh	77
9	25/2018/1217	Bwlch Du, Nantglyn, Denbigh	129
6	21/2019/0197	Tan Y Graig, Maeshafn, Mold	33
10	45/2019/0156	64 Brighton Road, Rhyl	161
Other items			

5	14/2019/0233	Llys Heulog, Cyffylliog, Ruthin	15
7	22/2014/0626	Peniarth, Gellifor, Ruthin	57
11	45/2019/0415	Land at Brookdale Road, Rhyl	193

PUBLIC SPEAKER ITEMS

Item No.8

Page 77

Code No. 25/2018/1216

Location : Bwlch Du, Nantglyn, Denbigh

Proposal : Alterations and rear extension to existing building, demolition of curtilage structure, erection of ancillary building, retention of log cabin (for temporary period), boundary fencing and gates, and provision of on-site parking and turning area

LOCAL MEMBER : Councillor Joseph Welch (c)

OFFICER RECOMMENDATION IS TO REFUSE

Public Speaker: For – Mr Peter Jones-Hughes

LATE REPRESENTATIONS

Committee Members will be aware of correspondence sent by the applicant's solicitors (email sent at 17.26pm, Monday July 15th). The document contains:

- a covering note from the solicitors, referring to attached Counsel advice on the issue of abandonment, and copies of documents referred to in that advice. The note requests the documents are considered in time for the meeting citing historic applications at both the application site and elsewhere. It also submits the Officer report fails to comply with statutory requirements in relation to considerations to be applied to listed buildings and their settings and a balancing of material considerations.
- An 11 page document containing legal Counsel advice on the validity or otherwise of the reasons for refusal numbered 1 and 4 in the officer report, dealing in detail with the lawful use of the property / abandonment issue. It concludes...'I do not consider the Property to ever have abandoned its residential use in planning terms and therefore neither the first nor the fourth reasons are grounds for refusing Application No. 25/2018/1216/PF.'
- A 37 page document containing the reference material referred to in the Counsel advice.

Having regard to the detailed contents of the late information, and its significance in relation to the application in front of the Committee, Officers would recommend, in fairness to all parties, that the most appropriate course of action here is to DEFER consideration of the Bwlch Du items. This would be to afford Officers a reasonable opportunity to review the submissions, to seek legal advice as necessary on the issues arising, and to revise, if necessary, the contents of the Officer reports on the items, for future presentation to Committee.

Item No.9
Page 129

Code No. 25/2018/1217

Location : Bwlch Du, Nantglyn, Denbigh

Proposal : Alterations and rear extension to existing building, and demolition of curtilage structure
(Listed Building application)

LOCAL MEMBER : Councillor Joseph Welch (c)

OFFICER RECOMMENDATION IS TO GRANT

Public Speaker: For - Mr Peter Jones-Hughes

LATE REPRESENTATIONS

See notes on previous application.

Item No.6
Page 33

Code No. 21/2019/0197

Location : Tan Y Graig, Maeshafn, Mold

Proposal : Erection of a replacement dwelling, detached garage and associated works

LOCAL MEMBER : Councillor Martyn Holland

OFFICER RECOMMENDATION IS TO REFUSE

Public Speaker: For – Bethan Smith

No late information

Item No.10
Page 161

Code No. 45/2019/0156

Location : 64, Brighton Road, Rhyl

Proposal : Change of use and alterations to former offices to form a 61 bed, 6 ward bespoke hospital

LOCAL MEMBERS : Councillors Barry Mellor and Tony Thomas (c)

OFFICER RECOMMENDATION IS TO REFUSE

Public Speaker: For – Mr John Horden (agent)

LATE REPRESENTATIONS

A petition containing 128 signatures has been received. This is headed 'Petition against the development of an independent mental health hospital on Brighton Road, Rhyl', and the text states ...'Please sign this petition to OBJECT to planning permission being given in relation to ...application 45/2019/0156.'

There are no land use planning grounds of objection referred to in the petition.

From the applicant's agent:

The agent has asked that attention be drawn to problems being encountered at the property from break-ins and vandalism, despite perimeter fencing and the site being made secure. It is appreciated that this does not have a direct bearing on the planning consultation process, but it is suggested that it would be in everyone's interest if the application can be brought to a favourable conclusion, to allow the project to proceed.

OFFICER NOTE

For clarification, the application is referred to Committee by the Development Manager having regard to the issues arising on the application.

OTHER ITEMS

Item No.5
Page 15

Code No. 14/2019/0233

Location : Llys Heulog, Cyffylliog, Ruthin

Proposal : Development of 0.48ha of land for residential purposes (outline application including access)

LOCAL MEMBER : Councillor Joseph Welch (c)

OFFICER RECOMMENDATION IS TO GRANT

OFFICER NOTES

Important correction to section 4.2.9 of the report, which deals with Open Space.

Paragraphs 4 and 5 in this section should be disregarded, as they do not relate to the application (they have been inadvertently copied from the report on Item 7 relating to an outline application in Gellifor).

The following paragraph should be inserted after the third paragraph in 4.2.9:

The relevant open space contribution can only be calculated when the final number of dwellings is known, hence officers suggest this matter is best covered by condition, if a permission is to be granted.

Item No.7

Page 57

Code No. 22/2014/0626

Location : Peniarth, Gellifor, Ruthin

Proposal : Development of 0.55ha of land for residential purposes and provision of school car parking area (outline application with all matters reserved)

LOCAL MEMBER : Councillor Huw O. Williams

OFFICER RECOMMENDATION IS TO GRANT

No late information

Item No.11

Page 193

Code No. 45/2019/0415

Location : Land at, Brookdale Road, Rhyl

Proposal : Application for Deed of Variation to remove Plot 5 from Section 106

Obligation relating to affordable housing provision in connection with planning permission

45/2006/0816/PF

LOCAL MEMBERS : Councillors Pete Prendergast (c) and Pat Jones

OFFICER RECOMMENDATION IS TO GRANT

No late information

Appendix C

Submissions of the applicant's solicitors (Solicitors letter and email, and Counsel advice).

RICHARD BUXTON SOLICITORS

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The Planning Department
Denbighshire County Council
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Ruthin
LL15 1YN

Attn. The Members of the Planning Committee

By email only

Your ref. Planning application Reference 25/2018/1216/PF

Our ref. PT/SKB/TNA1

By email: ptaylor@richardbuxton.co.uk and sknox-brown@richardbuxton.co.uk

FOR URGENT CONSIDERATION

15 July 2019

Dear Sirs

**Planning application Reference 25/2018/1216/PF
Re Bwlch Du, Nantglyn, Denbigh LL16 5RN**

We are instructed by Mr Dean Turner and Ms Ashley Trengove, owners of the above property. This application is due to come before the planning committee on 17 July 2019.

We have reviewed the Officer's Report which recommends refusal of the application, and enclose the following to assist the Committee:

1. Counsel's advice on the issue of abandonment.
2. Copies of the documents referred to in the advice.

We ask that these documents are considered in time for Wednesday's Committee Meeting.

On the issue of abandonment, we also refer to a 2009 decision granting Listed Building Consent (application ref: 03/2009/1059) to a grade II listed building "The Willows". The building is described as "conversion of existing dwelling into 3 No. apartments involving alteration, partial demolition and extension to existing Listed Building". In the Council's own 'Empty Homes Strategy', The Willows is described as empty for over 20 years, in extremely poor condition, boarded up and requiring extensive works both internally and externally to make it habitable. Despite this, the Council still treated The Willows

Partners: Richard Buxton* MA (Cantab) MES (Yale), Lisa Foster Juris D MSc (UEA) MA (York)

Solicitors: Simon Kelly BA MSc (Oxon), Paul Taylor BA (Oxon), Hannah Brown MA (Cantab), Matthew McFeeley BSc MPP Juris D,

Lucy Cooter BA (Hons), Sarah Knox-Brown MA (Hons)

Consultants: Paul Stookes* PhD MSc LLB, Kristina Kenworthy BA (Hons) LL.M Env (UCL)

Solicitor and Practice Manager: Caroline Chilvers BA (Hons) Office Manager: Kath Kusyn

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* Solicitor-advocate

as an existing dwelling for planning purposes. The photos of The Willows in the planning application indicate that its condition was far worse than Bwlch Du, but there was no claim by the Council that the property had been abandoned. There is a clear inconsistency in the Council's approach to properties such as Bwlch Du, and The Willows.

We are also aware that one of our clients' previous applications (subsequently withdrawn) for commercial activities at the site (application ref: reference 25/2017/0734) was invalidated, and documents show that the Council at that time considered that the Bwlch Du had residential status and that our clients would need to make an application for change of use.

Counsel's advice addresses the first and fourth reasons for the Officer's Report. At the Committee Meeting itself, our clients' planning consultant Peter Jones Hughes will address the Committee on the remaining issues.

On the issue of heritage, it will be submitted that there has been a failure to comply with the requirements of the Planning (Listed Building and Conservation Areas) Act 1990 (specifically s.66(1) and the requirement to have special regard to the desirability of preserving listed buildings or their setting) and the relevant paragraphs of NPPF (specifically 193 and 196). In particular there has been no real consideration of the desirability to preserve the listed heritage asset that would occur through the granting of permission itself, nor any evidence of the Officer undertaking a balancing exercise of the material considerations.

At the time of writing, we have not had any reply from the clients' ecologist who we understand to be away. Nevertheless, Mr Jones Hughes will make submissions to the Committee on this issue as well.

Yours faithfully



Richard Buxton Solicitors
Environmental, Planning and Public Law

cc Mr P Garner (Case Officer) by email only

From: Paul Taylor <ptaylor@richardbuxton.co.uk>

Sent: 16 July 2019 14:06

To: Sarah Knox-Brown

Cc: Ellie.Chard@denbighshire.gov.uk; janetann.davies@denbighshire.gov.uk;
peter.evans@denbighshire.gov.uk; alan.james@denbighshire.gov.uk; Brian.Jones@denbighshire.gov.uk;
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mark.young@denbighshire.gov.uk; Philip Garner; Peterjoneshughes; Tim Nicholson
Subject: Re: FOR YOUR URGENT CONSIDERATION: Planning application Reference 25/2018/1216/PF Re
Bwlch Du, Nantglyn, Denbigh LL16 5RN

Dear Sirs

We refer to the letter sent to you yesterday. We mistakenly referred in that letter to the NPPF. We should of course have referred to the latest version of Planning Policy Wales (2016) for which the relevant paragraphs are 6.1.10 and 6.1.11. We apologise for this oversight.

Paul Taylor
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On Mon, 15 Jul 2019 at 17:27, Sarah Knox-Brown <sknox-brown@richardbuxton.co.uk> wrote:
Dear Sirs

Planning application Reference 25/2018/1216/PF Re Bwlch Du, Nantglyn, Denbigh LL16 5RN

Please find attached a letter with regards to the above, and the enclosures referred to therein, for your urgent consideration.

Kind regards

Sarah Knox-Brown
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IN THE MATTER OF:
THE TOWN AND COUNTRY PLANNING ACT 1990
PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) ACT 1990

**RE: BWLCH DU, NANTGLYN,
DENBIGHSHIRE LL16 5RN**

ADVICE

1. I am asked to advise as to the validity or otherwise of the reasons for refusal numbered (1) and (4) as set out in the Officer's Report ("the OR") in response to Application No: 25/2018/1216/PF, which relates to Bwlch Du ("the Property").

BACKGROUND

2. I do not propose to rehearse the background to this matter in detail. The Planning Committee will have before them the OR in full. Any documentation referred to in addition to the OR is indicated in bold and with square brackets (e.g. [X]).
3. This advice will focus on section 4.2.1 of the OR, 'Lawful use of the property', which sets out the Officer's application of the test for abandonment. The factors to consider when assessing whether a property has been abandoned are those confirmed in the case of *Secretary of State for the Environment, Transport and the Regions v Hughes*¹:

"1) the physical condition of the building;

2) the length of time for which the building had not been used for residential purposes;

3) whether it had been used for any other purposes; and

4) the owner's intentions."

4. These factors are, quite properly, identified in the OR and each is considered in turn below.

The physical condition of the Property

5. In relation to this factor, the OR states:

¹ (2000) 80 P. & C.R. 397

"The main building is in a poor condition and has suffered from neglect over a long period of time, having no door or window frames and no internal fittings. It is in a clearly uninhabitable state. However, whilst a structural survey has not been provided as part of the application package and the building has not been inspected by any qualified surveyor, it is the opinion of the case officer and the conservation officer from an internal and external inspection of the property that the building is not in a dangerous condition. There was no readily apparent visual evidence of structural instability in the main walls or foot at the time of the visit on 5 March 2019, which is apparent from the photographs provided elsewhere in the report.

It is not considered that the physical condition of the building provides conclusive evidence either way on the matter of abandonment of the residential use."

6. There are elements of the assessment in the OR in relation to this first factor with which I would agree, namely that from an internal and external perspective the Property is not in a dangerous condition and that there is no evidence of structural instability. This would accord with the information I have been provided about the Property.
7. However, I must disagree with the conclusion reached in the OR, it is my opinion that the physical condition of the property is such that it would support the conclusion that the use as a residential dwelling has not been abandoned. Guidance in this matter is found in the decisions recorded in the Journal of Planning & Environment Law:
 - a. In the matter of Mount Cottage, Stanley Pontlarge, Winchcombe (Tewkesbury Borough Council)², whilst it was accepted that the property had been unoccupied for some 31 years and that cattle had entered the building, the condition of the roof and exterior walls was found to render the building clearly recognisable as a dwelling-house. It was considered by the Secretary of State that 'where the design of the structure is so closely determined by the use... where so much of the structure is still standing... [abandonment] must rely on evidence of more positive actions.' [1-3]
 - b. In the matter of Eglwys Wen farm cottage, Whitchurch Road, Denbigh (Glyndwr District Council)³, a case in which the property in question (a former farm cottage, uninhabited for over 30 years) had suffered from neglect and a lack of maintenance, yet still retained its inherent character and appearance of a dwelling (the external walls were of reasonable condition, the slate roof was intact but all of the doors and windows required renewal) the fact that a considerable amount of internal repair and renovation work was required to make the dwelling fit for human habitation did not constitute abandonment. [4-6]

² (1978) J.P.L 651-653

³ (1986) J.P.L 846-848

- c. In the matter of Blindmill Cottage, the Hillocks, Lyneham (North Wiltshire District Council)⁴, by way of distinction the use of the property as residential had been found to have been abandoned, but this was in circumstances where the property was found, on the balance of probabilities, to have been subject to a significant amount of demolition following the service of a Demolition Order. [7-9]
8. In light of the foregoing examples, I conclude that on the basis of previous application of the factors alone the condition of the Property, which is accepted in the OR not to be dangerous, is evidence that the residential use has not been abandoned. In additional support of this conclusion I would respectfully highlight the following:
 - a. The letter from Cadw to Ms Bayliss of The Planning Inspectorate dated 19 July 2018 (relating to the previous proposed appeal against an enforcement notice), which states that the Inspector of Historic Buildings considered that,

“...Although unoccupied for many years, the dwelling appears to have surprised surprisingly intact – with only the original thatched roof replaced with corrugated sheets in an attempt to keep out the weather.” (My emphasis) [10-11]
 - b. The pictures at Appendix 2 of the report of David Bennett dated 14 April 2019 clearly show that the Property’s walls and roof are in such a condition as would render the building ‘clearly recognisable as a dwelling-house’ and indeed one which someone has taken care to maintain as watertight. [12-18]
9. Taking together the previous case law dealing with when the physical condition of a building might indicate abandonment (and where it does not) with the additional evidence it is my opinion that in this matter the physical condition of Bwlch Du does not indicate abandonment and may be considered as a factor in support of the contrary, i.e. that residential use has been retained. No positive steps can be said to have been taken by previous owners to abandon the residential use of a building that otherwise clearly retains its dwelling-house character. It is not, as the OR would indicate, a neutral factor.

The length of time for which the Property has not been used for residential purposes

10. I do not propose to set out the full consideration of this factor in the OR as it quotes at length from emails from the Applicants. It is necessary however to quote the following extracts:

“...In regard to Council Tax payments, it is confirmed by the Council tax section that this was paid by the previous owner from 1996 to 2016⁵, but

⁴ (1986) J.P.L. 849-851

⁵ I note that the Council is only able to provide Council Tax data from 1 September 1995 to date as prior to that no data is held and in fact it was from this earlier date that Council Tax appears to have been paid.

payments were stopped following challenge from the current owners and now applicant...

...

Information on water supplies for the property held by the Council's Public Protection section is also of assistance in regard to establishing the length of time for which the building has not been occupied. The 1976 file describes the building as a 'weekend cottage' without any bathroom or toilet. A further note in 1992 reiterates the lack of bathroom facilities, with a note in 2005 describing the building as being derelict and used as a sheep shelter.

The Electoral Services Officer has confirmed that an application was received in 2017 for registration on the electoral roll at the property, but that historical paper registers dating back to 1974 have no-one registered at Bwlch Du.

Taking all the above available evidence into account, it would appear that the building has not been utilised as a permanent residential property since at least the 1950s, its deteriorating physical condition since this time rendering it uninhabitable as a dwelling.

The applicant/agent have been requested to put forward their own evidence to endorse their opinion that the property remains a lawful dwelling, but have not provided any documentary evidence to contradict the Council's records and overall opinion that the building ceased to be utilised as a permanent dwelling more than 60 years ago.

On this basis, it is Officers' view [sic.] that the property has not been used for residential purposes for a considerable period of time, and consideration of this factor points strongly to the conclusion that the use of the building as a dwelling house has been abandoned."

11. Before considering the evidence of use of residential purposes I would highlight the following issues:

- a. Irrespective of the intervening period, the OR fails to address the impact of the payment of Council Tax for the 20-year period immediately prior to the purchase of the Property by the Applicants. Even if the OR is correct in its assertion that residential use was abandoned in the 1950s, the payment of Council Tax over such a long period would surely provide good evidence of use for residential purposes absent conclusive evidence to the contrary.
- b. In considering this factor the OR improperly elides the first factor (the physical condition of the building) and this one. Length of (or lack of) residential use and the physical condition of the Property are separate factors and should be treated as such.

This is made clear in an email to Adam Turner at 10:31 on 1 September 2017 [19]. On this basis it would presumably be accepted by the Council that there is every possibility that Council Tax was paid prior to this date as well as after it.

- c. That the previous owners of the Property chose not to register at the address for the purposes of the electoral role is hardly conclusive evidence of a lack of residential use when considered against a background of engagement by (at least) one previous owner of the Property with the Council by means of the payment of Council Tax.
 - d. Finally, and perhaps most importantly, the OR concludes that the Property 'ceased to be utilised as a permanent dwelling more than 60 years ago' (my emphasis). That is, with respect, not the test the factor envisages; the question being considered is for how long the Property has not been used for residential purposes and not 'permanent dwelling'. On its own evidence the Council would accept that the Property has been used as a 'weekend cottage', use which is clearly residential.
12. That the OR asserts that the Applicants has failed to put forward documentary evidence to contradict the Council's conclusion that the Property ceased to be utilised as a permanent dwelling more than 60 years ago is somewhat disingenuous on the basis that it is for the Council to prove, on the balance of probabilities, that the Property has been abandoned.⁶ The onus does not fall on the Applicants. That notwithstanding, the following documentary evidence, some of which I understand has already been made available to the Council, can be deployed in assessing whether the residential use of the Property has been abandoned:
- a. Within the 'Replies to Enquiries' dated 27 September 2015 the vendors of the Property stated: "*3. Residential. Occupation has not been permanent but full residential council tax has been continuously paid.*" This is, of course, substantiated by the OR. [22-24]
 - b. Further within the 'Replies to Enquiries' it is stated that "*Believed to be, but the deceased installed the [septic] tank in 1970 so we have no means of checking.*" [23]
 - c. When purchasing the Property a residential rather than non-residential certificate was obtained from The Coal Authority [25], which would accord with the general nature of the purchase of the Property being one concerned with a residential dwelling rather than an abandoned site. This is substantiated by the Property's particulars of sale, which are referred to in the OR but not as part of the application of the factors relating to abandonment:

"Marketing particulars dating from 2016 from Rightmove, after which the applicant purchased the site, describe the building as being a 'detached house for sale', but this sheds no useful light on the issue as the description is purely informative and not evidence within the particulars."

⁶ This was acknowledged by the Council internally when considering the Property, see the email from Denise M. Shaw at 10:39 on 23 March 2017: "*...The property has an address point on our system, so whilst it is derelict, from a planning perspective we would need to demonstrate the residential use has been abandoned before requiring a planning application to re-establish residential use.*" [20-21]

The full particulars provided for the Property at the time it was purchased by the Applicants was:

"A rare opportunity to purchase a traditional stone Grade II listed single storey residential property with derelict outbuildings... The property has four rooms with lots of character and original features including two open fire places, one with a traditional bread oven... the property... provides an exciting opportunity as a renovation project." [26-27]

It is clear that at the time of sale to the Applicants the Property was considered as a dwelling with residential purpose, and was sold as such. Therefore, contrary to the conclusion reached in the OR, the particulars should be considered as evidence of use when considering the question of abandonment.

- d. It should also be noted that the fact of a lack of connection to electricity or heating (as noted in the Rightmove particulars) is not indicative of a lack of residential purpose. Whilst it might be if the connections to electricity or heating had been removed from a property, where a property has never had electricity or heating in the past, yet has been used for residential purposes previously, the lack of electricity or heating is irrelevant in assessing whether it has residential purpose at a particular point in time. The same may be said for the lack of bathroom.
- e. There is a document relating work planned to the septic tank drawn up in 2007 [28].

13. In addition, the Council's own records include evidence of occupation later than the 1950s that has not been taken into account in the OR:

- a. An email from Adam Turner to Alison Lessels at 18:54 on 21 June 2017 which states that Bwlch Du *"...has not been in habited since circa 1971."* [29]
- b. An email to Adam Turner at 10:31 on 1 September 2017 which states that between 1 September 1995 and 1 May 1996, *"The property was occupied by a sole resident lady and Council tax was paid."* The same email says that she vacated the property from 1 May 1996 and the property was empty. [19]
- c. There is a form dated 30 June 1992 relating to the water supply. The form was returned to the Council in 1992 and says *"We await connection to Welsh Water supply. This should have been early 1992 but so far has not occurred."* The form also states that water is *"...transported in water carriers when property is in use pending above connection to Welsh water."* [30-31]
- d. An email to Denise Shaw at 17:50 on 17 May 2017 states that "From our records I can see that the main property 'Bwlch Du' was a banded Council tax property from 01.09.1995 to 03.11.2016. It wasn't always occupied for

that whole period but it was definitely deemed to be a residential dwelling for that period." [32]

14. From the foregoing I would not be able to accept the conclusion reached in the OR. The Council has not provided any evidence to substantiate its conclusion that the Property has been abandoned since 'at least the 1950s'. Indeed, on its own case the OR appears to accept that in 1954 the Property had windows and a thatched roof whereas it can be seen from later photos that the Property has an asbestos board roof, clearly indicating some updating of the Property by a previous owner and thus a retention of residential purpose.
15. To the contrary, the evidence would suggest that over the intervening years previous owners have undertaken works to the Property, which would indicate a continuance of its residential purpose, including the installation of a septic tank in 1970. The residential purpose is then evidenced by the payment of Council Tax for a considerable period up to the purchase by the Applicants (who have, as I understand, continued to pay Council Tax at an equivalent rate on the Property, albeit in relation to the temporary caravan, since purchasing the Property and whilst carrying out works).
16. Balancing the evidence, whilst there would appear to be a period between 1970 and 1996 which is unaccounted for, there is scant evidence to suggest that during this period the Property was not used for some form of residential purpose and the installation of the septic tank provides good evidence of continued residential purpose. Additionally, from 1996 to the purchase by the current owners, Council Tax was paid indicating use for residential purpose. In any event, as the case law highlighted above (see the reports concerning Mount Cottage and Eglwys Wen farm cottage) demonstrates, lengthy periods of no residential use (in those cases 30 years or more) does not necessarily constitute abandonment.
17. It would be my conclusion that there is not enough evidence to assert that the Property has been abandoned since the 1950s and good evidence to the contrary. In my opinion this factor does not support an argument that the Property has been abandoned.

Whether the Property has been used for any other purposes

18. In relation to this factor, the OR quite properly states:

"There is no clear evidence to show there has been any 'intervening' use of Bwlch Du since its last use as a dwelling. Whilst it has been noted in the past that animals have been seen using it as a shelter, Officers would not consider this would constitute a 'positive' alternative use established over time.

Officers' conclusions are that consideration of this factor is neutral in the overall judgment as to whether the dwellinghouse use has been abandoned."

19. I would respectfully agree with the conclusions reached in the OR regarding this factor and note that the case of Mount Cottage, referred to above, would support

this conclusion. I would, however, disagree that this therefore means this factor is neutral in the overall judgment; where there is no evidence of use for any other purpose, this should, in my submission, be evidence in support of the conclusion that the use of the Property has not been abandoned.

The Owner's Intentions

20. In relation to this factor, the OR states:

"It seems from the information in front of the Council that prior to the most recent change of ownership in 2016, the owner of Bwlch Du had no clear intention to utilise the building as a permanent dwelling, evidenced by the fact that little or no efforts were made over a considerable period of time to maintain the basic structure, and by the time of consideration of the windfarm application in 2007, it was in a dilapidated and totally uninhabitable condition.

Whilst it is recognised that the current applicant's intentions are to renovate Bwlch Du as a dwelling, this is not considered of significance to consideration of the issue of abandonment, as the test has to be applied over the owner's intentions over a period of time. Indeed it could be argued that if a property's use as a dwellinghouse has already been abandoned, the intentions of the current owners should be given limited, if any, weight.

Taking into account the evidence of the intentions of previous owners of the property, Officers conclude that this particular factor supports a conclusion that the use of the building as a dwellinghouse has been abandoned."

21. Before turning to consider what evidence of the owner's intentions there actually is, I would make the following points that here, again, the OR elides the first factor (physical condition of the building) with this factor. It would not be proper to simply infer from the dilapidated state of the Property that the previous owner(s)' intention was to abandon its residential use.
22. Furthermore, and again, the OR seeks to assert that it is evidence of use as a 'permanent dwelling' that is required; this improperly seeks to introduce a higher threshold than that required, which is residential use.
23. However, in any event, insofar as the previous owner cannot be interrogated as to his intentions, the following evidence would, in my opinion, tend to suggest that the previous owner's intention was not to abandon the residential use of the Property:
- a. The installation of a septic tank in 1970.
 - b. The intention to connect the property to the water supply in 1992.
 - c. The boarding of the windows and doors at some point in the past to ensure the building remained watertight.

- d. The continued payment of residential Council Tax over a 20-year period.
- e. The attendance of the immediately prior owner (a Mr Hebblethwaite) at a public consultation event in Nantglyn during the application process for the wind farm.⁷
- f. That the Property was sold as a residential dwelling to the current Applicants and its use was indicated as residential in the 'Replies to Enquiries'.

24. It is obviously difficult to circumstantially assess what the previous owner's intentions were without being able to directly question him, however in my opinion the condition of the Property should not be considered as conclusive evidence that the previous owner had intended to abandon the residential use of the Property, and that in actual fact there is ample evidence to suggest the opposite to be the case.

25. Perhaps the only evidence available of the previous owner personally is that he attended the public consultation event as recounted in the objection letter from Natural Power. I understand from the account that Mr Hebblethwaite lived in Chester at the time of the public consultation and therefore presumably he travelled for roughly an hour each way to attend (apparently with his daughter). This, if anything, does not demonstrate abandonment of the Property by him but quite the opposite; a continued interest in the Property and one which he was willing to travel considerable distance at an advanced age to act upon.

Conclusion on Abandonment

26. Having considered the four factors required, it is my considered opinion that the residential use of Bwlch Du has not been abandoned. That the Property is not abandoned in planning terms is an opinion which I believe the Council have already been given by other Counsel.⁸

REASON FOR REFUSAL (1)

27. The first reason for refusal in the OR is:

"The existing building does not have a lawful use as a dwelling, having regard in particular to the length of time for which it has not been in use for residential purposes and the absence of any clear intention of the previous owner to use or maintain the building as a dwelling. As the residential use of the property is considered to be abandoned, the proposal is therefore considered to be for the re-use and adaptation of a rural building in open countryside. The proposal to re-use and adapt the buildings to use as a

⁷ This incident is recorded in the objection letter from Natural Power, quoted at length in the OR.

⁸ In an email from Adam Turner at 11:30 on 10 October 2017 it is stated: "We've not had anything in writing but the opinion was, in light of the case law on this matter, that the use of the dwelling has not been abandoned." [33-34]

dwelling conflicts with the tests of Policy PSE4 of the Denbighshire Local Development Plan, as it has not been demonstrated that its use is unviable for employment purposes or that the proposed dwelling would be affordable to meet local needs. Additionally, it has not been demonstrated that the dwelling would be capable of providing a satisfactory standard of amenity for future occupiers due to the proximity to operational and consented windfarms, a factor which is a material planning consideration in line with the guidance in Section 9.4 of the Development Management Manual."

28. For the reasons set out above, I do not consider that the Property is abandoned in planning terms and therefore the first reason for refusal is entirely flawed. The Property has not been abandoned and therefore the application should not be considered as a proposal to 're-use and adapt' a rural building in open countryside and the consideration of the Property as proximate to 'operational and consented windfarms' is irrelevant.

REASON FOR REFUSAL (4)

29. The fourth reason for refusal in the OR is:

"The site is located within Welsh Government's Strategic Search Area A, as defined in TAN 8: Renewable Energy. As the grant of permission would in effect convey residential use status to Bwlch Du, this is considered to conflict with the requirement on Local Planning Authorities in TAN 8 paragraph 2.10 to safeguard wind farm sites from other developments which could sterilise them, and it has not been demonstrated that the dwelling would be capable of providing a satisfactory standard of amenity for future occupiers due to the proximity to operational and consented windfarms, a factor which is a material planning consideration in line with the guidance in Section 9.4 of the Development Management Manual."

30. Again, for the reasons set out above, I do not consider that the Property is abandoned in planning terms and therefore the fourth reason for refusal is also entirely flawed.
31. The fourth reason for refusal is also flawed insofar as it presupposes that the application for the wind farm correctly assessed the Property as abandoned, which, on the evidence I have seen, it did not. It is apparent from Volume 2 of the Environmental Statement in support of the application for the Brenig Wind Farm that up to a point the Property was considered as a residential property as it is marked as no.1 (presumably because it is the most proximate residential property to the wind farm as constructed) on Figure 6.4, 'Representative Residential Properties & Small Clusters' [35]. There is then no evidence which I have seen to show how the Property was assessed to ensure that in planning terms it was considered abandoned such that it did not need to be considered for noise impact from the wind farm.
32. This is not, therefore, as the fourth reason for refusal would suggest a scenario in which the granting of residential status on a property would sterilise an

operational windfarm but rather an example of an assumption having been made, incorrectly, as to the planning status of the Property in a previous planning application. The residential use of Bwlch Du has never been abandoned and thus to consider it as a sterilising impact is to try and correct a mistake after the event. That this is the case is clear from internal emails from within the Council:

*"...we have always assumed [the Property] to be a derelict cottage and the residential use... long since abandoned, so it was never included in cumulative noise assessments for SSA windfarm development."*⁹

33. I therefore conclude that, as with the first reason for refusal, the fourth reason for refusal should be considered as wholly inappropriate as a reason for refusal.

CONCLUSION

34. As set out above, I do not consider the Property to ever have abandoned its residential use in planning terms and therefore neither the first nor the fourth reasons are grounds for refusing Application No: 25/2018/1216/PF.

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15 July 2019

⁹ Email from Denise M. Shaw at 11:42 on 10 May 2017 [36-37]

IN THE MATTER OF:
THE TOWN AND COUNTRY PLANNING ACT 1990
PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) ACT 1990

**RE: BWLCH DU, NANTGLYN,
DENBIGHSHIRE LL16 5RN**

DOCUMENTS RELIED UPON IN ADVICE

1978	Mount Cottage, Stanley Pontlarge, Winchcombe (Tewkesbury Borough Council) 1978 J.P.L 651-653.....	1-3
1986	Eglwys Wen Farm Cottage, Whitchurch Road, Denbigh (Glyndwr District Council) 1986 J.P.L 846-848.....	4-6
1986	Blindmill Cottage, the Hillocks, Lyneham (North Wiltshire District Council) 1986 J.P.L 849-851.....	7-9
19.07.18	Cadw letter to PINS (re. enforcement APP/R6830/C/3203539.....	10-11
14.04.19	Clwydian Ecology Report by David Bennett, extract App.2.....	12-18
01.09.17	Email from Revenues Officer to Denbighshire County Council ('DCC') Adam Turner.....	19
23.03.17	Email from DCC Denise Shaw to Councillor Welch.....	20-21
27.09.15	Replies to Enquiries on purchase of Bwlch Du.....	22-24
28.09.15	The Coal Authority, Residential certificate.....	25
Undated	Rightmove listing for Bwlch Du.....	26-27
2007	Septic Tank plans.....	28
21.06.17	Email from DCC Adam Turner to Alison Lessels.....	29
30.06.92	Glyndwr District Council water supply form from Bwlch Du occupant.....	30-31
17.05.17	Email from redacted to DCC Denise Shaw.....	32
10.10.17	Email from DCC Adam Turner to DCC Paul Mead.....	33-34
21.03.07	Figure 6.4 Representative Residential Properties & Small Clusters (Extract from Environment Statement to Brenig Wind Farm Application (<i>ref. 25/2007/0565</i>), Volume 2 of 2 Supporting Figures, April 2007).....	35
10.05.17	Email from DCC Denise Shaw to DCC Sarah Stubbs.....	36-37

are situated and has been unable to obtain the co-operation of the other owners or occupiers of property in the block. For this reason he proposes, as an alternative solution, to instal a flue liner. [The Inspector] takes the view that the determining issue in this case is whether or not the flue liner is an acceptable alternative to the originally proposed external duct. He accepts that there may be cases where flue liners fitted into existing chimney stacks satisfactorily discharged the smells of cooking or cooked food into the atmosphere. In his view, however, there are too many unsolved problems for the risk involved in fitting a flue liner to the chimney stack of the appeal premises to make this an acceptable alternative, bearing in mind that the City of Glasgow District Council had found that flue liners have proved to be unsatisfactory in situations similar to that of the appeal proposal and they were not now acceptable to the district council. [The Inspector] points out that there had been no physical test to show that the existing chimney stack in its present state could accept a flue liner, and that even if a flue liner could be passed over the whole length of the chimney there would be no guarantee that there would be no cracks in the liner. If cracks did exist it would be extremely difficult in his view to locate them and carry out successful repairs without dismantling the existing chimney, but as the chimney stack through which the flue liner would pass adjoined three floors of residential flats he considers that a method of sealing the cracks involving the dismantling of the existing chimney would not be acceptable. [The Inspector] is in no doubt that in the event of a leak in the flue liner the smells would penetrate the walls of the existing chimney stack and enter the flats adjoining the chimney stack. In all these circumstances he recommends that the enforcement notice should be confirmed. The Secretary of State accepts the recommendation.

"Accordingly the Secretary of State hereby dismisses the appeal and directs:

1. That the enforcement notice be upheld;
2. that planning permission for the flue liner shall not be granted."

[By courtesy of the Scottish Development Department.]

Abandonment of use of dwelling-house: residential occupation discontinued for 35 years

Ref. APP/5228/C/76/2349.

April 5, 1978.

Appeal against an enforcement notice served by Tewkesbury Borough Council relating to use of land at Mount Cottage, Stanley Pontlarge, Winchcombe, for residential purposes.

"From the evidence, it is considered that the notice should have alleged the change in the use of Mount Cottage to the use as a dwelling-house. Under section 87 (3) (c) such a notice may only be served within the period of four years from the date of the breach, and it is agreed with the Inspector that the notice was incorrectly drawn in alleging the breach had taken place since the end of 1963. However, the view is taken that you were not prejudiced by either of these errors

and, had it been proposed to uphold the notice, they would have been corrected within the powers of the Secretary of State under section 88 (4) (a) of the 1971 Act.

“ On the appeal on ground (b) the Inspector concluded : —

‘ As is not disputed by the parties, I agree that section 23 (4) cannot apply in the present case. Although evidence shows that the appeal property was occupied on or after January 7, 1937, and was unoccupied on the appointed day, reoccupation did not occur until 1975, *i.e.*, after, and not before, December 6, 1968.

‘ The legal issue under ground (b) is whether the residential use of the property was abandoned, and the reoccupation for residential purposes constituted a material change in the use for which planning permission was required. In determining this the following can usefully be examined in the light of the particular circumstances: the period of discontinuance and non-use, the physical condition and fittings of the building, whether it was put to any other use, and lastly the evidence as to the intentions of its owners.

‘ As a fact not disputed, some 35 years elapsed between residential occupations, the length of which alone must weigh heavily in favour of inferring abandonment. During this period, the owner from 1944 to 1956 apparently had no intention to use it. The next owner, until 1974, did however carry out some repairs in 1960 and considered it available for reoccupation either for a farm worker or himself on retirement.

‘ The evidence as to the condition and lack of essential fittings and facilities in the cottage is, however, in conflict with this. By the 1970’s it was clearly not in a habitable state of repair and had no internal water supply, sanitation or other basic facilities. It was not properly protected by a fence or against entry by persons or cattle. While it may, therefore, have been considered as a subject for future renovation and improvement it could not have been said to have been readily available for habitation, no doubt due to the cost and work involved in bringing it up to modern standards.

‘ Although there is evidence that cattle entered the building, in the absence of the door and fencing around the property, I regard this as accidental and not indicative of the establishment of a new substantial use as a cattle shelter. In consequence, while there has been a very long nil or non-use, this has not been interrupted by any substantial intervening use.

‘ On balance, while it is a matter for the Secretary of State’s legal advisers to determine, I do not consider that the fact that the period of non-use was not interrupted by another use should outweigh these arguments in favour of inferring abandonment. The evidence as to the condition of the property and to the considerable length of time it was unoccupied, suggest not the relatively short and accepted cessation of a use, but rather an indeterminate postponement of a resumption of the use—even if this was kept alive in the mind of the owner. For these reasons, I consider that abandonment can be assumed, and that the reoccupation constituted a material change in the use and does constitute a breach of development control and therefore the appeal fails on ground (b).’

These conclusions are noted. However, it is considered that the question whether the use of Mount Cottage as a dwelling-house requires planning permission, is not a

matter for the Secretary of State's legal advisers but is a matter for the Secretary of State. While it is agreed with the Inspector that the material factors in determining this appeal are the period the cottage was not used, the physical condition and fittings of the building, whether it was put to any other use and the evidence of the owners' intentions, the Secretary of State has come to different conclusions on the implications of these factors. It is accepted that the building was unoccupied from 1944 to 1975 and that, for the reasons given above by the Inspector, any use, for any other purpose during this period was negligible for planning purposes. It is also accepted that, while there was no evidence of any intention by the owner from 1944 to 1956 to use the building as a dwelling-house, there is clear evidence that the next owner carried out repairs to the building and, during his ownership, intended that the building should eventually be re-used as a dwelling-house. There is no evidence that anyone took any positive action to prevent the use of the building as a dwelling-house or to use it for any other purpose.

"It is accepted that by the 1970s the building was not in a habitable state of repair and lacked essential fittings and facilities. However, it is clear from photograph 1 and Document 13 that most of the roof and the exterior walls were intact, and it is considered that this is confirmed by the works you found it necessary to carry out before you and your family occupied the building. The view is taken that, before you started work on it in 1974, the building was clearly recognisable as a dwelling-house and it is considered that proof of abandonment in the case of a dwelling-house, where the design of the structure is so closely determined by the use, and where so much of the structure is still standing, must rely on evidence of more positive actions to abandon the use. In this case, therefore, the view is taken that the use of Mount Cottage as a dwelling-house had not been abandoned and that the recommencement of the use did not constitute a material change in the use of the building as alleged. The appeal on ground (b), therefore, succeeds, the notice is being quashed and the other grounds of appeal, including the deemed application for planning permission under section 88 (7), do not fall to be considered.

"For the reasons given above, the Secretary of State hereby quashes the notice."

[By courtesy of the Solicitor, Tewkesbury Borough Council.]

DETERMINATIONS WHETHER DEVELOPMENT REQUIRING PLANNING PERMISSION INVOLVED

Whether residential use of cottage had been abandoned where last occupied 23 years previously

Section 53 determination in respect of building operations: need for plans and drawings

Ref. APP/5146/G/76/42
 October 5, 1977.

Appeal against determination under section 53 of the Town and Country Planning Act 1971 by Cheshire County Council that the modernisation of Oaks Cottage, Badgers Rake Lane, Wirral and provision of a kitchen/bathroom extension not

JPL 1986

Ministerial Planning Decisions*

Extracts from planning decisions given by the Secretary of State for the Environment, or Secretary of State for Wales in the case of decisions relating to land in Wales, or by an Inspector of the Department of the Environment or Welsh Office, as the case may be.

DETERMINATIONS WHETHER DEVELOPMENT REQUIRING PLANNING PERMISSION INVOLVED

Abandonment of use: cottage not used for residential occupation for 30 years

Ref. P14/241, 244
June 23, 1986

Appeals against: (1) a determination under section 53 of the Town and Country Planning Act 1971 by the Glyndwr District Council that the resumption of the residential use of the disused dwelling known as Eglwys Wen farm cottage, Whitchurch Road, Denbigh would constitute development for which planning permission would be required; (2) the refusal of the council to grant planning permission for the conversion of a disused dwelling and vacant attached former agricultural outbuilding into a dwelling, construction of new septic tank, alteration of existing access and demolition of existing grain silo on land at Eglwys Wen, Whitchurch Road, Denbigh.

"In his report the Inspector concluded:

'45. It seems to me that the main factors to be considered in relation to the appeal against the section 53 determination are the physical condition of Eglwys Wen farm cottage: the period of discontinuance of residential use; whether it was used for any other purpose; and the owner's intentions in respect of the property.

'The former farm cottage has suffered from neglect and lack of maintenance but it still retains all the inherent character and appearance of a dwelling. The external walls of brick and stone are in reasonable condition but require some renovation work. The slate roof is intact and only requires minor repair but the chimney stack needs major repair or replacement. All the doors and windows need renewing. A considerable amount of internal repair and renovation work is required to make the dwelling fit for human habitation. Nevertheless I am of the opinion that all the repair and

* We are indebted to correspondents for copies of decision letters and trust that a copy of any decision involving a point of law or of general interest will be sent to the Editor with a view to publication.

renovation work needed to restore the cottage to a satisfactory standard for residential occupation can be carried out within the provisions of section 22(2)(a) of the 1971 Act without involving development requiring planning permission.

'Although the cottage was last used for residential occupation in about late 1955 and has remained vacant since that date, it is accepted by the Council that it has not been used for any other purpose.

'Despite the period of non-use of over 30 years, it seems to me that this was primarily because the cottage was surplus to the requirements for residential accommodation for farm workers following farm amalgamations and a reduction in manpower. The cottage was kept as secure as possible and there is no evidence of any positive action to abandon or prevent its future use for residential occupation.

'It is clear that the adjoining farm buildings were in agricultural use until about 1984 when it was decided to dispose of the cottage and outbuildings as being surplus to the requirements of the Bryn Bella Farm Estate of which they formed a part. Having regard to all the above circumstances, I am of the view that the residential use of Eglwys Wen farm cottage has never been intentionally abandoned and the building operations needed to bring the property to a reasonable standard for residential occupation to enable a resumption of its use for residential purposes do not constitute or involve development requiring planning permission.'

"The application before the Secretary of State on appeal is to establish whether resumption of the use of the cottage for residential purposes requires planning permission. The application was not accompanied by plans to show what works are proposed to be carried out to refurbish the building and although he notes the Inspector's view that any necessary repair and renovation work could be carried out within the provisions of section 22(2)(a) of the 1971 Act it is not open to the Secretary of State to formally determine whether the property can be renovated without the need for specific planning permission. The decision given is solely on the basis of the terms of the application and in this respect the Secretary of State is satisfied from the evidence that residential use has not been abandoned.

"On the planning merits of the appeal made under section 36 of the 1971 Act, the Inspector has concluded:

'50. Turning to the planning merits of the proposal to convert the disused cottage together with the attached former agricultural outbuilding into a dwelling and involving the construction of a new septic tank, the alteration of the existing access, and the demolition of the reinforced concrete silo, it is my opinion that due regard must be paid to the existing residential element contained in the proposal and to the impact of the proposed development on the character and setting of its surroundings. I consider that the Eglwys Wen farm cottage already has residential potential which can be resurrected without planning permission and the proposed development cannot be rigidly regarded as new residential development in the countryside

wherein the necessary strict planning policies against such proposals can be applied with impunity. It would not be appropriate in my view to apply Policy 10 of the approved Clwyd County Structure Plan to the proposal since I consider that the cottage should not be regarded as a non-residential building. Even if that policy were applied to the conversion of the adjoining outbuildings, they are in the main structurally sound and capable of conversion without extensive rebuilding tantamount to the erection of a new dwelling and the submitted sketch scheme retains the inherent characteristics of merit in the existing building. The proposal would not in my opinion result in an undesirable intrusion in the landscape, a new access is proposed in accordance with the County Highway Authority's requirements and all domestic services are available or can be provided at no public cost. Furthermore it is my view that the buildings do form a natural part of the rural landscape and their improvement and refurbishment would make a valuable contribution to the visual amenity of the local scene. Moreover the farm complex lies in close proximity to St Marcellus's Church which is a Grade I Listed Building. In my opinion the proposed development, which would desirably improve the physical appearance of the farm complex whilst retaining the attractive stone wall along the frontage of Whitchurch Road and also contains as an integral element the demolition and clearing away of the visually obtrusive reinforced concrete silo, would enhance the overall setting of that church in the interests of the general public at large. Such a proposal would in my view be in accord with Structure Plan Policies 86 and 92 which relate to the retention of structurally sound buildings which contribute to the character of an area as an important part of the rural scene and have a bearing on the character and setting of a listed building.'

The Inspector recommended that the appeal be allowed subject to conditions.

"The Secretary of State agrees with the Inspector's conclusion and accepts his recommendation.

Formal Decisions

"For the reasons given above the Secretary of State hereby:

- i. allows your client's appeal and hereby determines under section 53 of the 1971 Act that the proposed re-occupation for residential purposes of the dwelling known as Eglwys Wen farm cottage, Whitchurch Road, Denbigh, would not, in itself, constitute development for which planning permission would be required under Part III of the 1971 Act;
- ii. grants planning permission for the conversion of a disused dwelling and vacant attached former agricultural outbuilding for the purpose of use as a single dwelling, together with the construction of a new septic tank, the alteration of existing access and the demolition of existing grain silo on land at Eglwys Wen, Whitchurch Road, Denbigh in accordance with application 1/7324 dated November 28, 1984 subject to the following conditions [as to approval reserved matters, commencement of the development, construction of an access, retention of a wall, and demolition of a silo]."

[By courtesy of the Welsh Office.]

Abandonment of use: cottage where no residential use for 26 years and significant degree of demolition with 10-year period without work to remaining structure

Ref. APP/J3910/G/85/63

July 31, 1986

Appeal against the determination given under section 53 of the Town and Country Planning Act 1971 by the North Wiltshire District Council that a proposal to exercise a residential use at Blindmill Cottage, The Hillocks, Lyneham, would constitute development for which planning permission is required.

"Your client was particularly concerned to show that a residential use remained and could be exercised. There had been a dwelling on the site probably for as long as 150 years and it was believed to have been last occupied in 1960, when a Demolition Order was served by the Council and the occupant rehoused. Your client had purchased the land in 1972/3 and had begun repair works which involved the demolition of parts of the structure that particularly needed repair—no demolition had taken place prior to this. This work had stopped after the Council pointed out that planning permission was required. Since then, the work had not been continued since your client had been unable to see a clear way forward. A 1964 planning application was made only four years after the Demolition Order—planning permission was sought mainly because new development was proposed. There was no evidence of an intention to abandon the use or of the land being put to some agricultural purpose, it had in fact been fenced off from the neighbouring field. There was an appointed day use here and a decision not to exercise that use in the past did not extinguish it—the *Pioneer Aggregates* judgment was quoted in support. It was also mentioned by way of analogy that property subject to war damage could be rebuilt without hindrance.

"The Council, on the other hand, argued that residential use of this land would involve a material change of use. Not long after the Demolition Order in 1960, the building had been demolished to the extent that only a few feet of walling remained. In a planning application in 1964 the use of the land had been described as 'disused cottage'. The land appeared to have been used as grazing land in recent years and may well have acquired an agricultural use. The *Pioneer Aggregates* judgment was referred to, but this was not regarded as relevant, as no planning permission had ever been granted. The matter to be decided was whether the residential use had been abandoned and this would depend on considerations of physical condition, the period of disuse, whether any other uses had been introduced and any evidence of intention on the part of the owner. In connection with the Demolition Order, it was pointed out that once the order had been made there was an obligation on the owner to proceed with demolition regardless of whether or not this was actively progressed by the Council.

"It was made clear from the start that your client accepted that planning permission would be required to carry out works necessary to produce a habitable dwelling on the site. His case was simply that the site retained a residential use which could now be exercised. Reference was made to the

judgment in *Pioneer Aggregates*. Although this judgment is clearly authority for the proposition that a planning permission cannot be abandoned in normal circumstances, the Secretary of State does not accept that it can be applied to appointed day uses where no planning permission was ever granted. In the present case, therefore, it is considered that the residential use of the site was *capable* of being abandoned; it is a matter for decision whether residential use had been so abandoned.

"In looking at the question of abandonment, the view is taken that the considerations set out by the Council and which have been summarised above, would need to be taken into account. The Council have suggested that an alternative use for agriculture had been introduced, but on the balance of probability of the evidence, including the views expressed by the Inspector following his site visit, the Secretary of State would not accept that this was the case. Not long after he acquired the property in 1972/3 there is evidence that your client intended to resume the residential use and began work on a partial rebuilding from which he was dissuaded by the objections of the Council. However, the Secretary of State considers that he must decide whether the residential use had already been abandoned before your client ever acquired the land. The evidence of the Council was that not long after the Demolition Order was made in 1960, the building was demolished to the extent that only a few feet of walling remained. On the other hand, your client submitted that having purchased the site, he then demolished part of the structure that was most in need of repair as part of a rebuilding operation that was never completed. There is a clear conflict of evidence on when demolition took place. A planning application for a new dwelling, made in 1964, referred to the site as a disused cottage; this has been noted, but it is not considered that it would be reasonable to deduce from the phrase used any information about the extent of demolition that may have occurred. On an assessment of the evidence of both sides, the Secretary of State would take the view, again on the balance of probabilities, that while your client did carry out a good deal of demolition prior to commencing rebuilding after 1973, a significant amount of demolition apparently took place in the early 1960s following the Demolition Order, which although not total at least made residential use impracticable. In arriving at this conclusion, the Secretary of State takes note, as was pointed out by the Council, that when a property is subject to a Demolition Order there is an obligation on the owner to actually carry out demolition, even though the Council might not be formally following up the matter to ensure this is done. On the basis of the probability of significant demolition having taken place in the early 1960s and a period of at least 10 years passing when nothing was done to the remaining structure, the Secretary of State feels that he must take the view that the residential use of the land had been abandoned already by the time your client acquired the land and that from that time, an attempt to resume residential use would have been development requiring planning permission. Your client's appeal must therefore fail.

"Although the question of rebuilding was not at issue in the inquiry, your client did make reference to a possible analogy, arguing that property subject to war damage could still be rebuilt even after an extended period. For the avoidance

of doubt it is pointed out that the statutory provisions that might apply to war damaged property cannot be taken as a guide for the case currently before the Secretary of State, when such a consideration does not apply.

Formal decision

"For the reasons given above, the Secretary of State hereby dismisses the appeal and determines that the proposed exercise of a residential use at Blindmill Cottage, The Hillocks, Lyneham, will amount to development requiring planning permission under Part III of the Town and Country Planning Act 1971."

[By courtesy of the District Secretary, North Wiltshire District Council.]

Use of one ground floor room of dwelling-house for chiropody: use "de minimis"

Ref. APP/W5780/G/85/68
August 4, 1986

Appeals against the London Borough of Redbridge Council's decision: (1) in accordance with section 53 of the Town and Country Planning Act 1971, that the use of one ground floor room for chiropody at 35 Spratt Hall Road, Wanstead, London E11, constitutes or involves development and an application for permission in respect thereof is required and (2) to refuse planning permission for the use.

Summary of the decision

"The formal decision is set out [below]. As the section 53 appeal was withdrawn at the inquiry, no formal determination is being given on that appeal. The first appeal under section 36 succeeds and conditional planning permission is granted for the use to which it relates. No further action is being taken on the second appeal under section 36.

Reasons for the decision

The appeal under section 53 of the 1971 Act

"At the outset of the inquiry held on June 3, you stated that your client's appeal under section 53 of the 1971 Act was being formally withdrawn; and you presented to the Inspector an undated manuscript note (which is Document 3 annexed to the Inspector's report), confirming the appeal's withdrawal but reserving "the right to present arguments concerning Ground 1 (namely that the use did not constitute development requiring planning permission, being ancillary to the appellant's residential occupation of the premises) in each of the section 36 appeal cases". Nevertheless, submissions were made on behalf of both parties to the section 53 appeal; and the Inspector has given his conclusions on those submissions in paragraphs 43 and 44 of his report to the Secretary of State. Because your client's appeal under section 53 of the 1971 Act was formally withdrawn at the inquiry, that appeal cannot now be determined. However, it is considered that it would be helpful, in the circumstances, to both parties to give an informal view of what the Secretary of State's determination would have been, had the appeal not been withdrawn.



Llywodraeth Cymru
Welsh Government

Plas Carew, Uned 5/7 Cefn Coed
Parc Nantgarw, Caerdydd CF15 7QQ
Ffôn 01443 33 6000 Ffacs 01443 33 6001
Ebost cadw@cymru.gsi.gov.uk
Gwefan www.cadw.cymru.gov.uk

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Tel 01443 33 6000 Fax 01443 33 6001
Email cadw@wales.gsi.gov.uk
Web www.cadw.wales.gov.uk

Sue Bayliss
Case Officer
The Planning Inspectorate
Crown Buildings
Cathays Park
Cardiff
CF10 3NQ

Eich cyfeirnod Your reference	APP/R6830/C/3203539
Ein cyfeirnod Our reference	qA1355026
Dyddiad Date	19 July 2018
Llinell uniongyrchol Direct line	03000 259017
Ebost Email:	philip.hobson@gov.wales

Dear Ms Bayliss

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTIONS 20 & 78
APPEAL BY: ASHLEY TREGOVE
SITE AT: LAND AT AND ADJACENT TO BWLCH DU, CERRIG ROAD, NANTGLYN,
DENBIGH LL16 5RN**

Thank you for your letter of 21 June 2018, giving notice of an appeal against the issuing of an enforcement notice for unauthorised works at the above site. The building is listed grade II.

The enclosed Cadw questionnaire related specifically to listed building and conservation area matters and was returned to you on 6 July. This letter is intended to supplement that questionnaire.

The Welsh Government's policies for the protection of designated historic assets are set out in Planning Policy Wales (PPW) and TAN 24 and this appeal should be considered in the context of those documents. PPW explains that where development proposals affect a listed building or its setting, the primary consideration is the statutory requirement to have special regard to the desirability of preserving the building, or its setting, or any features of special architectural or historic interest which it possesses.

Cadw's Inspector of Historic Buildings has considered the information available and, on this basis, has offered the following comments:

Bwlch Du is a late eighteenth century dwelling – part of a humble vernacular smallholding farmstead built high up on the edge of the moors, on land that would have been considered barely viable for agriculture. Although unoccupied for many years, the dwelling appears to

Mae'r Gwasanaeth Amgylchedd Hanesyddol Llywodraeth Cymru (Cadw) yn hyrwyddo gwaith cadwraeth ar gyfer amgylchedd hanesyddol Cymru a gwerthfawrogiad ohono.

The Welsh Government Historic Environment Service (Cadw) promotes the conservation and appreciation of Wales's historic environment.

Rydym yn croesawu gohebiaeth yn Gymraeg ac yn Saesneg.
We welcome correspondence in both English and Welsh.



BUDDSODDWR MEWN POBL
INVESTOR IN PEOPLE
BUDDSODDWR MEWN POBL
INVESTOR IN PEOPLE

 Cadw

have survived surprisingly intact – with only the original thatched roof replaced with corrugated sheets in an attempt to keep out the weather.

The structures that have been erected on the site – the timber chalet, solar panels, wind turbine, poultry shed and kennel are all likely to require planning permission rather than listed building consent but they inevitably affect the setting of the listed building and should be designed accordingly. It may be that temporary accommodation is required during the renovation process but it should still be carefully sited to minimise its impact in the short term. Once the listed building is restored and habitable, such structures will presumably go and the setting of the dwelling reinstated to its original upland feel.

Some permanent storage may be needed but any new outbuilding should be subservient to the listed cottage and be designed in the vernacular tradition to contribute positively to the overall composition. Solar panels or wind turbines are rarely a good combination with a listed building and are only likely to be acceptable if there is a part of the site where they can be positioned so as not to be damaging to its character or setting.

It would appear that, presently, there is an accumulation of mismatched, insensitive additions to the site that need to be addressed. Ideally, a conservation plan for the site should be produced to create an informed, holistic approach, specifying temporary and permanent new structures, ensuring the character and setting of the listed building is protected and enhanced.

This advice is provided without prejudice to consideration of the appeal, or any associated matter, by officials of the Welsh Government or the Welsh Ministers.

If you require any further information, please contact me.

Yours sincerely



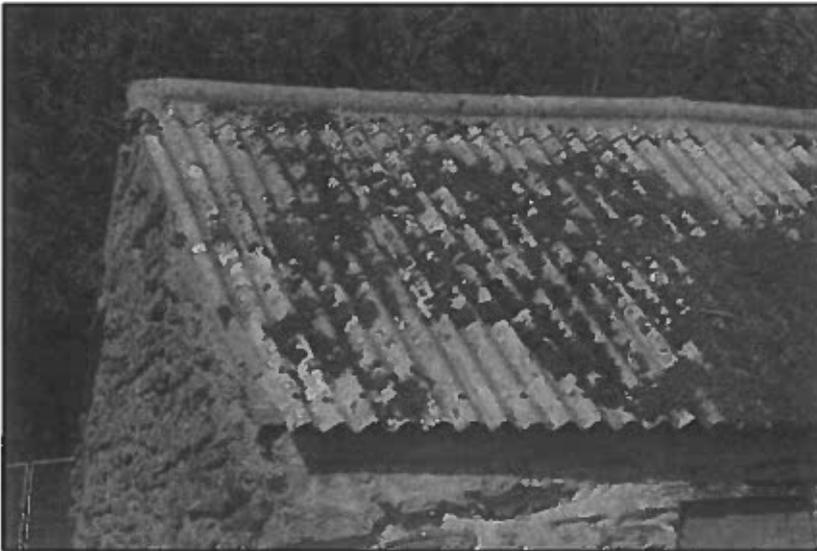
P R Hobson
Protection & Policy

Appendix 2 – Site Photos

Front elevation



Asbestos roof panels



End and rear elevation



Asbestos panels are sealed at eaves level with mortar above the wall plate



Sealed at the rear



Chimney is sealed with no gaps



Gable end is sealed



Sealed around the purlins and beneath the asbestos sheets



Scaled around the ridge beams



Front and end elevation



The ridge panel is all intact and secure



Scaled at eaves level



Sealed at eaves level with the asbestos sheets placed on a bed of mortar



Rear elevation



period between 1993 and 2015?

Many thanks for your help!

Regards,

Adam Turner Planning and Compliance Officer · Swyddog Cynllunio a Cydymffurfiaeth

From: (redacted)

Sent: **01 September 2017** 10:31

To: Adam Turner

Subject: RE: Bwlch Du ref 421550698576500 (Deleted Property)

Hi Adam,

I am so sorry I wasn't able to reply sooner. I only work until 3 every day (unless I'm staying on late) and I completely forgot to put the Out of Office on... sorry!

I have just taken a closer look at the 2 accounts that have been registered at this property. When the VO state the

property was in the 1993 list we only have the charge information from 01.09.1995 when we merged with Glyndwr to form DCC, so our records only start from 01.09.1995.

01.09.1995 – 01.05.1996 – The property was occupied by a sole resident lady and Council tax was paid.

01.05.96 – 09.08.2014 – She vacated and the property was empty. Council Tax was payable for a part of this period

as the discount didn't apply for the whole period. So Council Tax was paid when the discount expired.

09.08.2014 – 02.10.2015 – The previous occupant passed away and so a Class F Exemption was applied to the property for this period, no Council tax was payable.

02.10.2015 – 03.11.2015 – The Class F Exemption expired and so Council tax was payable for this period and payments were received.

9

03.11.2015 – 03.11.2016 – The property was sold to new owners and during this period the new owners claimed a

Class A Exemption as the property was requiring/undergoing major renovation to render it habitable. No Council tax was payable for this period. Please let me know if I can help further or clarify any information

Regards

Swyddog Refeniw Revenues Officer

From: Gareth Evans [mailto:g.evans@denbighshire.gov.uk]

Sent: **04 September 2017** 10:23

To: Alison Lessels <alison.lessels@denbighshire.nwalescls.com>

Cc: Adam Turner <Adam.Turner@denbighshire.gov.uk>

Subject: RE: Electoral Roll

Hi Alison

We've recently have a person register at this property, the application was made on 15/05/2017 in time to vote at

the general election. However, previously to that we didn't have the property on the system.

Looking back at the historical paper registers for Glyndwr DC back to 1974 we don't have anybody registered at that

address, prior to 1974 the registers are held in Denbighshire Archives at the Old Gaol and you would do some research.

Appendix A – Email Correspondence

From: (redacted)

Sent: 02 March 2017 12:32

To: Chris Evans

Subject: Please Ring

Hi Chris,

Ashleigh Trengove rang wanting to speak to you, Re: Her Grade 2 Listed Building – Bwlch Du, Cer
rig Road, Nantglyn, Denbigh, LL16 5RN. Please can you ring her back on Tel: 07403116144.

Kind regards,

-Original Message-----

From: Joseph Welch

Sent: 22 March 2017 22:49

To: Paul Mead <Paul.Mead@denbighshire.gov.uk

Subject: Bwlch du

Hi Paul, >>

>> Sorry to bother you but ai have a quick query. The owners of Bwlch Du (a derelict cottage up on
the moors on the
edge of the Brenig reservoir) in Nantglyn have put a caravan on site and have said they now have pl
anning
permission to build. Can you let me know if there is any permission on this site or not as I did not th
ink anything had been granted recently. >> >> Thanks >> Joe

Original Message----- >

From: Paul Mead >

Sent: 23 March 2017 09:24

To: Denise M. Shaw <denise.shaw@denbighshire.gov.uk

Subject: FW: Bwlch du

Hi Denise,

Please can you check this out for on your duty day today? Let me know if there are any issues and
copy Adam and me into any response.

Drolch/Thanks,

Paul Mead BA(Hons) Dip TP MRTPI

On 23 Mar 2017, at 10:39,

Denise M. Shaw <denise.shaw@denbighshire.gov.uk> wrote: >> >>

Morning Cllr Welch, >> >>

Paul has asked me to look into Bwlch Du (I'm assuming this is the

>> derelict cottage opposite the Brenig windfarm access) >>

>> The Bwlch Du farmhouse is a Grade II Listed building and it's also

>> within the boundary of the Mynydd Hiraethog SSSI >>

>> The property has an address point on our system, so whilst it is derelict, from a planning perspec
tive we would

need to demonstrate the residential use has been abandoned before requiring a planning application
to re-establish

the residential use. I don't know the condition of the house, but providing it's habitable in its current
form, I would assume it still has a residential use. >>

>> On the assumption that the residential use as not been abandoned, providing the caravan is sited
within the

residential curtilage, and providing it's being used by the same household and not as a separate dwelling, the caravan would not require planning permission (sorry, a lot of assumptions here I know).
>> >> From our records however, there isn't any planning consents for any re-building or refurbishment of this property, and as it's a Listed Building, they would need planning permission and listed building consent before they can carry out any extensions or alterations to the building (including internal alterations). Given its listed, we would need to ensure no works are carried out that would be detrimental to the buildings special qualities, so please let us know if any works to the building have been carried out. >>
>> The site is also within a SSSI, so we would need to consult with Natural Resources Wales on any development proposals to ensure the works would not have a detrimental impact on any protected habitat or species, and they may also need separate consent from NRW to carry out activities in a SSSI (I think this depends on the nature of the works proposed - but I would imagine if they are carrying out any groundworks such as creating new driveways or soakaways etc, NRW will need to give consent in advance). >>
>> Paul has asked me to copy in Adam Turner, our Compliance Officer to investigate if necessary. To help Adam assess whether or not there is a need to intervene at this stage, could you send further details of what activities have been carried out at the site to date (with photos if possible) and also contact details of the site owner. >> >> Diolch/Thanks >> >> Denise Shaw MRTPI

> -----Original Message----- >

From: Joseph Welch >

Sent: 23 March 2017 21:34 >

To: Denise M. Shaw <denise.shaw@denbighshire.gov.uk>

> Cc: Adam Turner <Adam.Turner@denbighshire.gov.uk>; Paul Mead

> <Paul.Mead@denbighshire.gov.uk>

> Subject: Re: Bwlch du - unauthorised caravan / listed building > > Hi Denise, >

> Many thanks for your thorough email. You are correct in the address. It is still a building with a roof but you would

not call it habitable in a normal sense but in planning law it may be. It has no water or electricity connection (does this matter). >

> I will go and have a look tomorrow and get back to you about what is actually going on. I think they are paying

council tax which I imagine suggests it counts as habitable but will require extensive building work to make it habitable for a 21st century family. > > Joe

From: North Planning

To: (Redacted)

Sent: 30th March 2017 13:57

Subject: DCO Clocaenog Forest Windfarm v3 – NRW response NRW: 01141128

Bwlch Du Outside LDP development boundaries in open countryside.

Grade II Listed, within Clocaenog Forest SSSA (TAN8) and within SSSI Adjacent to Brenig Way.

Appears to have been listed in 1998, was not occupied as a dwelling at the time of listing.

No planning history for the site other than enforcement investigations relating to condition of listed building.

Your Ref: CD/TURNERTRENGOVE/004618/DD
Our Ref: AEB/AEB/120449/0001
Date: 27 September 2015

Berry & Berry Solicitors
DX 721410
Walkden 2

Dear Sirs

Our Clients: Neil Hebblethwaite and Christine Hebblethwaite
Your Clients: Dean Turner and Ashley Trenogoue
Sale of Bwlch Du Nant Glyn Denbighshire

We thank you for your e-mails dated 10th and 25th September in the above matter.

As requested, we enclose an engrossed contract and transfer deed.

Turning to the enquiries attached to your letter dated 10th September and adopting the same numbering:-

1. We enclose an extract from the British Listed Buildings website which confirms the nature of the listing.
2. Confirmed.
3. Residential. Occupation has not been permanent but full residential council tax has been continuously paid.
4. The selling executors are not aware of any.
5. As above.
6. Confirmed.
7. Not to the sellers knowledge.
8. No.
9. No.
10. The sellers do not know. We enclose our Land Registry Map search results and copies of the titles referred to. The spring and well are located on one or both of these titles.
11. No.
12. The Sellers believe that in the past water has been taken from both the spring and the well. They understand that the lower supply is the more reliable and has been tested in the past and confirmed as suitable for drinking. We attach the following correspondence in relation to the water supply:-
 - Letter dated 23rd June 1970 from Ruthin Rural District Council
 - Letter dated 18th February 1970 from the owner of Llewesog
 - Letter dated 14th June 1970 addresses to The Public Health Inspector from Mr Hebblethwaite deceased.
 - Letter dated 17th August 1973 from Dee and Clwyd River Authority
 - Letter dated 16th June 1970 from Dee and Clwyd River Authority
 - Letter dated 27th January 1970 from the solicitors for the Estate

We realise that these are poor copies and apologise, we hope that you can make out the text.

13. We enclose a draft policy for your approval and will take instructions on this point.
14. The water pipe runs underneath the road. When the road was built the Dee and Clwyd River Authority agreed to lay a threader pipe. See the letter dated 17th August referred to above.
15. The integrity of the water pipe supplying the property is uncertain and the property was advertised as such. No repairs have been made to the sellers knowledge but no warranties are given or implied as to the suitability of the water pipe. The buyers must rely on their own inspection and survey.
16. There is no wayleave agreement, the seller is confusing this with the right to lay a water pipe granted in the 1970 Conveyance.
17. No, see above.
18. There is no EPC as this is a Listed Building.
19. Confirmed.
20. Plan enclosed. In addition we enclose a letter from Ruthin District Council dated 4th March 1970 regarding the installation of the septic tank. We do not have a copy of the attachment referred to.
21. The Seller believes ground water but the buyers should make enquiries with their surveyor in this regard.
22. Confirmed.
23. Within the boundaries of the Property.
24. 24.1 Confirmed, the septic tank has not been used for some time.
24.2 Not applicable.
24.3 Confirmed.
24.4 Not as far as the Sellers are aware but no enquiries have been made and no warranties are given or implied.
24.5 Septic tank which comprises a 3 stage figure glass tank treatment to ground drainage soak away.
24.6 Not applicable.
24.7 Not as far as the Sellers are aware but no enquiries have been made and no warranties are given or implied.
24.8 Believed to be, but the deceased installed the tank in 1970 so we have no means of checking.
24.9 As above.
24.10 No maintenance has been required or carried out.
24.11 Confirmed.
24.12 We are not sure what you require here. We would remind you that this is an executor sale and the executors do not have a detailed knowledge of the workings of the sewerage system. The buyers must rely on their own inspections and investigations.
25. Confirmed.
26. Enclosed.
27. Certified copy enclosed.

the seller
- will pay
for this

Yours faithfully

Anna Burgess
for Lanyon Bowdler
T: 01691 663762
E: anna.burgess@lblaw.co.uk



The Coal
Authority

Issued by:

The Coal Authority, Property Search Services, 200 Lichfield Lane, Berry Hill, Mansfield, Nottinghamshire, NG18 4RG
Website: www.groundstability.com Phone: 0345 762 6848 DX 716176 MANSFIELD 5

SHAROW LEGAL SERVICES LTD
91 ALBERT ROAD
WIDNES
CHESHIRE
WA8 6JS

Our reference:	51000997901001
Your reference:	14275
Date of your enquiry:	28 September 2015
Date we received your enquiry:	28 September 2015
Date of issue:	28 September 2015

This report is for the property described in the address below.

Residential No Search Certificate

**BWLCH DU, B4501 BRENIG ROAD GROESFFORDD XRDS TO CERRIG ROAD JCT,
NANTGLYN, DENBIGH, LL16 5RN**

The Coal Authority certify that, according to the information at present available to them, there are no known past, present or proposed workings of coal within the zone of likely physical influence of the property, and no entries regarding this site were found in the Cheshire Brine Subsidence Compensation Board's records.

Please note this certificate is based upon the geography of the property boundary supplied by you when the report was ordered.

Insurance is included as part of this Residential No Search Certificate to cover loss in property value arising from any changes in the information contained herein. Please refer to the attached Certificate of Insurance for the terms and conditions of this insurance. The insurance does not cover non-residential property nor interpretive reports.

Carter Jonas

Carter Jonas Rural, Bangor Rural Sales
The Estate Office, Port Penryhn, Bangor, LL57 4HN

01248 548004 local call rate

rightmove

www.rightmove.co.uk/property/52622390

This property has been removed by the agent.
It may be sold or temporarily removed from the market

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Detached house for sale

Cerrig Road, Nantglyn, Denbigh, Denbighshire, LL16

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£80,000



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Overseas

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Property Description

Full description

Tenure: Freehold

A rare opportunity to purchase a traditional stone Grade II listed single storey residential property with derelict outbuildings, set within the Denbigh Moors. The property has four rooms with lots of character and original features including two open fire places, one with a traditional bread oven. The total external area of the house equates to approximately 74 square metres. Set within approximately 4.25 acres of grassland, the property has far reaching country views over the Denbigh Moors and provides an exciting opportunity as a renovation project.

This property is for sale by Informal Tender. Tenders must be received by the selling agents by 12 noon on Friday 31st July. The guide price is £80,000.

The Land

This property is located in a glorious, peaceful rural setting sitting in approximately 4.25 acres, situated to the front and side of the property and is ideal for use as amenity/ grazing land.

Additional information

Services

Bwlch Du - is served by a private spring water source and a private drainage system. Interested parties are asked to make their own investigations into the working order of these services. The property currently does not benefit from electricity or heating. Interested parties should make their own enquires regarding the connection of services.

Council Tax - Band D

Local Authority: Denbighshire County Council. Tel: 01824 706101

Wayleaves, easements and ROW: The property will be sold subject to and with the benefit of all existing wayleaves, easements, covenants and ROW whether mentioned in these particulars or not.

Viewing: Strictly by telephone appointment with the sole selling agents, Carter Jonas. This property is for sale by Informal Tender. Tenders must be received by the selling agents by 12 noon on Friday 31st July.

More information from this agent

To view this media, please visit the on-line version of this page at www.rightmove.co.uk/property-for-sale/property-52622390.html

Listing History

Added on Rightmove:

05 June 2015

Sent: 21st June 2017 14:03
To: Adam Turner
Subject RE: Bwlch Du

I will have a proper look into this property for you again and let you know any more info I find. I'll get back to you soon.

From: [mailto:@denbighshire.gov.uk]
Sent: 21 June 2017 14:29
To: @voa.gsi.gov.uk>
Subject: Bwlch Du ref 421550698576500 (Deleted Property)

Hi

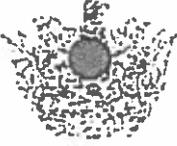
I wonder if you can help me? Planning Enforcement have contacted me regarding this property asking for banding details back as far as possible. I can only see back to 01.09.95 when we took over following a Council merge. Can you please confirm the band of this property from start to finish?
Many thanks

From: Adam Turner
Sent: 21st June 2017 18:54
To: 'Alison Lessels'
Cc: Graham Boase, Denise M. Shaw, Ian Weaver
Subject: Bwlch Du, Cerrig Road, Nantglyn, Denbigh, LL16 5RN

Hi Alison,

Just in case you weren't completely sick of me ... Graham Boase has asked me to bring a case (ref: C25/2017/00079) regarding the aforementioned location to your attention. Bwlch Du (pics here) is a grade II listed building that was formally lived in; it has not been inhabited since circa 1971. In recent years planning applications for windfarms have been approved within very close vicinity of Bwlch Du on the assumption that the dwelling was abandoned (the attached message contains further information regarding the process involved in these decisions). The owners of Bwlch Du, who acquired the site in 2015, have recently sited a caravan adjacent to the building. Their intention is to refurbish the building in order to reside in it. They are insistent that council tax has been paid at the property without interruption (I am cross-checking the situation with the Revenues section as we speak), and that the building should not therefore have been deemed to be abandoned. I have asked the owners to formally prove that the dwelling has not been abandoned by submitting an application for a Certificate of Lawful Existing Use or Development, but they have so far refused to adhere to this request. I am aware that there are four 'tests' of abandonment, namely: 1) the physical condition of the building; 2) the length of time for which the building had not been used; 3) whether it had been used for any other purposes; and 4) the owner's intentions. I am not convinced that all four tests (if any) are passed in this case, though it is difficult to be certain without having had a CLEUD submitted. It may be noteworthy that the Authority deemed the building to be undergoing neglect around ten years ago, and sought remedial measures from the owner at that time accordingly. In light of all of the above, Graham has asked me to seek the legal opinion of a barrister on the matter. He has had dealings with and before, and would be happy to work with them again. That said, he would like to know the fee involved before making a firm decision. Could you please make the necessary arrangements? Please also let me know if you need any further info.

Cheers,
Adam Turner



CYNGOR DOSBARTH
 GLYNDWR
 DISTRICT COUNCIL

SWYDDFEYDD Y CYNGOR,
 RHUTHUN, CLWYD, LL15 1AT
 COUNCIL OFFICES,
 RUTHIN, CLWYD, LL15 1AT

Water Samples
 W2 A14

ENVIRONMENTAL
 HEALTH DEPARTMENT

WATER INDUSTRY ACT 1991
PRIVATE WATER SUPPLY REGULATIONS 1991

Date you should return this form by: 23 JUN 1992 Ref. No. Q0416

PLEASE READ THE ENCLOSED LETTER BEFORE FILLING IN THE FORM.

1. NAME AND ADDRESS

(a) Name of Occupier(s) [REDACTED]

Address BWLCH DU, LERRIG ROAD

NANTGLYN
DENBIGH
CLWYD

PostCode LL16 5RG (RN) Telephone No. [REDACTED] (contact on)

(b) Are you the Owner/Joint Owner of this property? Yes Yes/No

If not - please give name and address of Owner(s) -

Name _____

Address _____

Post Code _____ Telephone No. _____

2. TYPE OF WATER SUPPLY

Is this Property supplied -

(a) by a private water supply (Not Water Company Mains)? No Yes/No

(b) from Water Company untreated supply? No Yes/No

We await connection to Welsh Water supply. This should have been early 1992 but so far has not occurred.

(c) from Water Company Mains Public Supply? _____ Yes/No

- Welsh Water/Dwr Cymru
- Wrexham and East Denbighshire Water Company
- Severn Trent Water
- North West Water

If answer to (c) is yes, please indicate Company above and give approximate date of connection to mains water, _____ and proceed to Question 9

(d) If no piped supply of water to this property, please indicate how water is obtained -

Transported in water carriers when property is in use, pending above connection to Welsh Water

3. INFORMATION ABOUT THE PRIVATE WATER SUPPLY

Please provide -

(a) Name and address of the Owner(s) or Occupier(s) of the premises where the SOURCE of this water supply is situated, if not located on your property.

Name _____	Name _____
Address _____	Address _____
_____	_____

(b) Name and address of the Owner(s) or Occupier(s) of any other land containing pipes or installations for the supply.

Name _____	Name _____
Address _____	Address _____
_____	_____

(c) Name and address of any person who exercises powers of management or control in relation to this supply.

Name _____	Name _____
Address _____	Address _____
_____	_____

(d) If this is a shared water supply, please give the names of all properties on this shared supply (Continue on another sheet if necessary).

Hi Sarah,
Bwlch Du again! - Adam has been in contact with the new owners and he's asked them to submit a CLEUD application to demonstrate the residential use was not abandoned, but they have said that Council Tax has continually been paid on the house which they believe is sufficient to demonstrate the residential use was never abandoned (despite the derelict state of the building).
Can you ask your friend in Council Tax to check if we have historical records of Council Tax payments on the Bwlch Du property itself, not just the caravan which they registered with Council Tax earlier this year?
Bwlch Du, Cerrig Road, Nantglyn, LL16 5RN Diolch/Thanks Denise Shaw MRTPI

From: Sarah Stubbs
Sent: 17 May 2017 10:17
To: @denbighshire.gov.uk> Cc: Denise M. Shaw <denise.shaw@denbighshire.gov.uk>
Subject: FW: Bwlch Du (again)
Can you help Denise out with this query again at Bwlch Du please hon?
Ta Sarah
Sarah Stubbs BA (Hons) MSc MRTPI

From: Sarah Stubbs
Sent: 17 May 2017 10:17
To: @denbighshire.gov.uk>
Cc: Denise M. Shaw <denise.shaw@denbighshire.gov.uk>
Subject: FW: Bwlch Du (again)
Hiya - how are you feeling after the weekend? You did good, lots of wonga raised for an amazing cause! Can you help Denise out with this query again at Bwlch Du please hon?
Ta
84
Sarah
Sarah Stubbs BA (Hons) MSc MRTPI

From: (redacted)
Sent: 17 May 2017 10:50
To: Denise M. Shaw <denise.shaw@denbighshire.gov.uk>
Subject: RE: Bwlch Du (again)

Hi,
From our records I can see that the main property 'Bwlch Du' was a banded Council tax property from 01.09.1995 to 03.11.2016. It wasn't always occupied for that whole period but it was definitely deemed to be a residential dwelling for that period
Let me know if you need any other info

From: Denise M. Shaw
Sent: 17 May 2017 10:53
To: Adam Turner <Adam.Turner@denbighshire.gov.uk>
Subject: FW: Bwlch Du (again)

Hi Adam,
FYI - response from Council Tax. The previous owners did pay Council Tax on the property from 1995 - 2016, but I'm not sure what bearing that has on the property if it remained in a derelict state and wasn't in a state of habitation?
Diolch/Thanks

Adam Turner Planning and Compliance Officer · Swyddog Cynllunio a Cydymffurfiaeth

From: Denise M. Shaw
Sent: 12 September 2017 10:22
To: Sean Awbery <sean.awbery@denbighshire.gov.uk>
Subject: FW: Brenig - Blasting
Hi Sean, FYI – Blasting is scheduled at Brenig windfarm site for week starting 18th September.
Diolch/Thanks

From: Sean Awbery
Sent: 12 September 2017 18:16
To: Denise M. Shaw
Cc: Philip Caldwell
Subject: RE: Brenig - Blasting
OK Denise, Cheers for that. Are they monitoring the situation?
We will see if we get any complaints.
I hope that they have let the dog owner at Bwlch Du know or the dogs will be doing their nut.
Cheers, Sean.

From: Denise M. Shaw
Sent: 13 September 2017 09:54
To: Sean Awbery
Subject: RE: Brenig - Blasting
Hiya
I don't know if they are going to inform local residents, but I'll let Cllr Joe Welch know in case he starts getting phone calls!
Diolch/Thanks

Denise Shaw MRTPI

From: Adam Turner
Sent: 10 October 2017 10:52
To: Paul Mead
Subject: FW: 389748 - Denbighshire County Council and Bwlch Du, Cerrig Road, Nantalyrn Hi Paul, Could you advise me how to proceed on this one?
Thanks, Adam Turner

From: Paul Mead
Sent: 10 October 2017 11:24
To: Adam Turner
Subject: RE: 389748 - Denbighshire County Council and Bwlch Du, Cerrig Road, Nantalyrn
Adam, Have we had a legal opinion through? Can I have a read?
The costs code to pay this for Alison is P16 001 4515.
Diolch/Thanks,

From: Adam Turner
Sent: 10 October 2017 11:30
To: Paul Mead Subject: RE: 389748 - Denbighshire County Council and Bwlch Du, Cerrig Road, Nantalyrn Follow Up Flag: Follow up Flag Status: Completed
Hi Paul, We've not had anything in writing but the opinion was, in light of the case law on this matter, that the use of the dwelling has not been abandoned. I'll send the cost code through to

Alison. Cheers, Adam Turner

From: ashley trengove [mailto:ashley_trengove@hotmail.com]

Sent: 20 October 2017 00:05

To: Sian Foster

Subject: Bwlch Du REF planning application 25/2017/0734

Dear Sian,

Please find attached all the amended documents and additional drawings. Apologies it's taken so long, I hired an architect and it took longer than I anticipated.

Kind regards,

A. Trengove

From: Sian Foster

Date: 31/10/2017 16:51 (GMT+00:00)

To: 'ashley trengove'

Cc: "Denise M. Shaw"

Subject: RE: Bwlch Du REF planning application 25/2017/0734

Dear Ashley

We have now had opportunity to review the amended details.

Please refer to the attached letter which requests further information/clarification.

Regards

Sian

From: ashley trengove

Date: 02/11/2017 01:13 (GMT+00:00)

To: Sian Foster

Subject: Re: Bwlch Du REF planning application 25/2017/0734

Hi Sian,

Just thought I'd clarify that the rectangular shape next to Bwlch Du is the historic outline of the old slate coal/out house that was attached to the main cottage before it partially fell down. It is not an extension or anything we have erected require permission or Listed Building Consent for. *please see black and white photos of Bwlch Du that were attached with my application to clarify further*

Kind regards, Ashley

From: Joseph Welch >>

Sent: 09 November 2017 20:29

>> To: Denise M. Shaw <denise.shaw@denbighshire.gov.uk>; Adam Turner

>> <Adam.Turner@denbighshire.gov.uk> >> Subject: Bwlch Du >> >>

Hi both, >>

>> I was up at the Brenig yesterday and there seemed quite a lot of activity going on at Bwlch Du.

There is now a dog

kennel (large), garden shed, gypsy caravan and a lodge / wooden chalet type building being built. D

oes any of this require planning permission? >>

>> The wooden chalet/lodge is the one I am assuming would be most likely to need some kind of p

ermission. It seems quite static in nature! >> >> Thanks >> Joe

Project:
**Proposed Wind Farm at
 Brenig, Denbighshire**

Title:
**Figure 6.4 Representative
 Residential Properties &
 Small Clusters**

- Key**
- Tir Mostyn turbine layout
 - Proposed Brenig turbine layout
 - Property within 2-3km of Brenig*
 - Settlement within 4-5km of Brenig*
- Note:** * see Appendix 6.6

Note:

1. Information on this map is directly reproduced from digital and non-digital material from Ordnance Survey. Where discrepancies may therefore occur, Ordnance Survey's authoritative information shall prevail.
2. The boundary of the site is shown on the map. The boundary of the site is shown on the map. The boundary of the site is shown on the map.
3. The site is shown on the map. The site is shown on the map. The site is shown on the map.
4. The site is shown on the map. The site is shown on the map. The site is shown on the map.
5. The site is shown on the map. The site is shown on the map. The site is shown on the map.

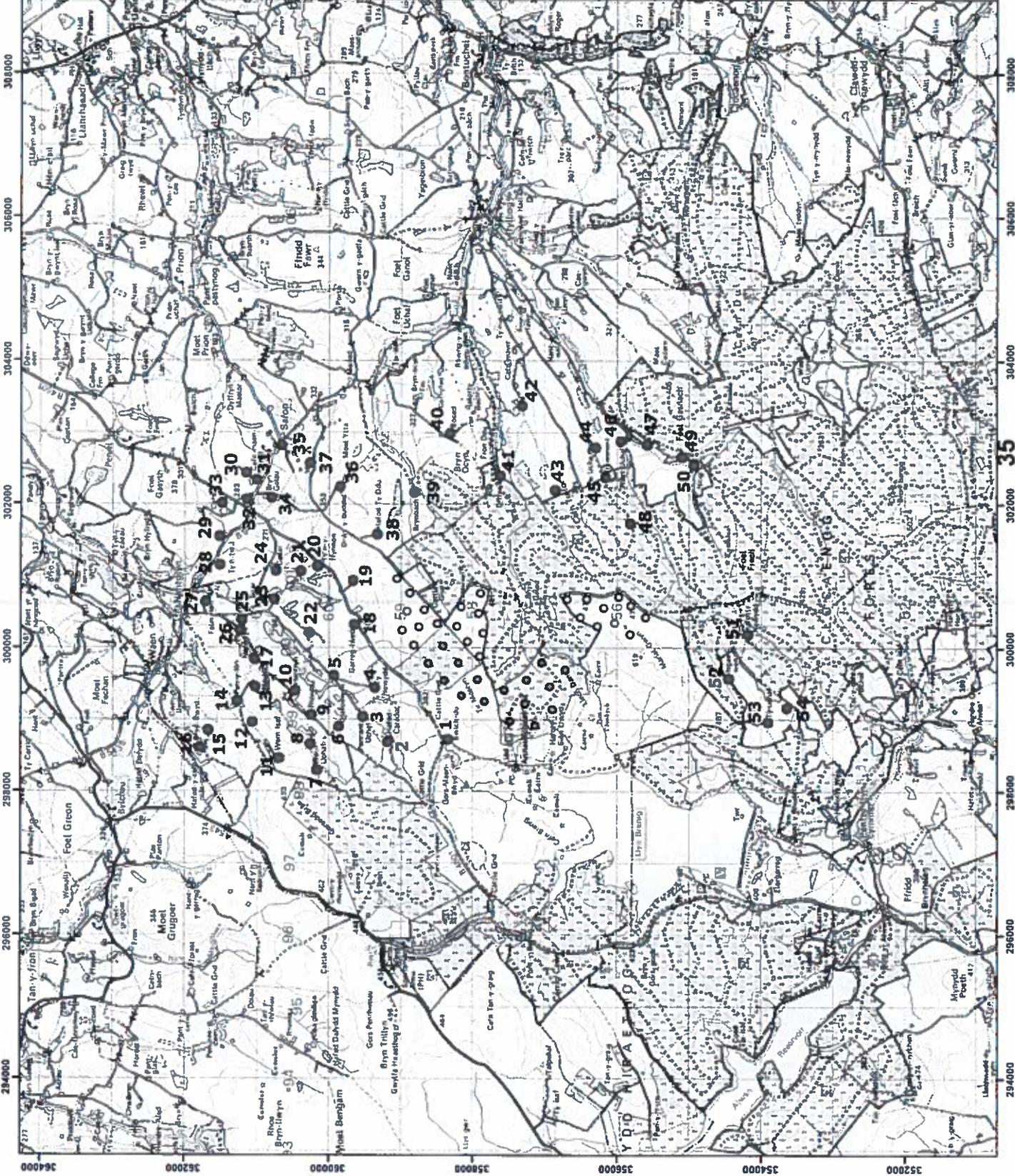
Scale: 1:50,000

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0 0.5 1 2 km

N

Date: 21-03-07	Prepared by: DHJ	Layout: 260107_161
Ref: 140 M_053	Rev. No.	
Client:		
Brenig Wind Ltd c/o Natural Power Consultants Ltd Natural Power Marina Terrace Aberystwyth SY23 2AZ Tel: 01447 410009 Email: post@naturalpower.com www.naturalpower.com		



From: Denise M. Shaw

Sent: 10 May 2017 11:18

To: Adam Turner Subject: RE: Bwlch Du, Nantglyn - response from Council tax (confirming they are living in caravan)

Hi Adam, I think so,

It's really tricky one as we need to balance the need to safeguard the listed building, against windfarm impact? Diolch/Thanks

Denise Shaw MRTPI

From: Denise M. Shaw

Sent: 10 May 2017 11:42

To: Sarah Stubbs <sarah.e.stubbs@denbighshire.gov.uk>; Ian Weaver <ian.weaver@denbighshire.gov.uk>;

; Paul Griffin <Paul.Griffin@denbighshire.gov.uk>; David Roberts <david.a.roberts@denbighshire.gov.uk>; Adam Turner <Adam.Turner@denbighshire.gov.uk>

Cc: Paul Mead <Paul.Mead@denbighshire.gov.uk>

Subject: Case conference suggestion - new houses in TAN8 SSA??

Hi all,

Adam is currently investigating a static caravan at Bwlch du, Nantglyn which is currently being lived in. It's next to a

derelict Listed Cottage (Bwlch Du) which we have always assumed to be a derelict cottage and the residential use

has long since been abandoned, so it was never included in cumulative noise assessments for SSA windfarm development.

We are of the understanding that the occupier of the caravan has recently bought Bwlch Du, with a view to renovating it and reinstating it as dwelling, which then opens a can of worms, as it is likely to be blighted by windfarm development, and we need to ensure the property is capable of providing adequate amenity standards in itself.

Sean Awbery has big concerns, and has advised that he'd expect a cumulative noise assessment / shadow flicker

analysis to be submitted with the application to convert the building into a dwelling to demonstrate it is not

adversely affected by existing / consented windfarm development. The issue would be that if we grant consent, and

then the noise experienced at the property exceeds statutory noise nuisance levels, Sean would have to intervene and it could result in windfarm development being curtailed, leading to multi-million pound losses for windfarm

operators and undermining the strategic objectives of TAN8 - I'd also query if there is any scope for the windfarm

operators to take legal action against the Council for granting a prejudicial use in such close proximity to windfarms??

Anyway, I'm just concerned that this could also be an issue for any other barn conversion / agricultural workers

dwelling etc. development in the SSA area (or even development within development boundaries in Cloceanog /

Clawddnewydd area, as they could also be affected by noise), and I'm just wondering whether this is something worth discussing?

Should we be at the very least be consulting with Public Protection on any new dwelling in the SSA boundary as

noise impact may not be obvious until the windfarms are actually built out? (could we have a new

memo template

so its clear the consultation response sought is in relation to residential development in the SSA?)

Sean also touched on the wider issue of granting residential uses next to existing noise generating enterprises (bars,

clubs, as well as business uses) as it's something his Environmental Health group has discussed recently, but there's no specific case in Denbighshire he has a problem with.

Diolch/Thanks

Denise Shaw MRTPI

From: Denise M. Shaw

Sent: 10 May 2017 12:58

To: Adam Turner <Adam.Turner@denbighshire.gov.uk>

Subject: RE: Bwlch Du, Nantglyn - response from Council tax (confirming they are living in caravan) Hiya,

Here's Bwlch du in relation to the windfarms... it really close to Brenig windfarm in particular.

Griff suggested we contact Cadw to get some background on the Listing, as it seems to have been listed in the 80's when it was already derelict and didn't have an obvious existing use.

Diolch/Thanks

Denise Shaw MRTPI

From: Adam Turner

Sent: 10 May 2017 13:11

To: Denise M. Shaw

Subject: RE: Bwlch Du, Nantglyn - response from Council tax (confirming they are living in caravan)

OK, do we have a contact?

Cheers

From: (redacted)

Sent: 10 May 2017 15:29

To: Denise M. Shaw; Adam Turner

Subject: Fw: Enq- Bwlch Du, Nantglyn Attachments: n bwlch du.pdf

Hi Both, FYI I think you have some info on this Adam?

Thanks!

Planning Officer / Swyddog Cynllunio Planning & Public Protection Services / Gwasanaethau Cynllunio a Gwarchod y Cyhoedd Denbighshire County Council / Cyngor Sir Ddinbych Caledfryn, Smithfield Road / Ffordd y Ffair Denbigh / Dinbych, LL16 3 RJ Phone / Ffon: 01824 706727 E-mail / E-bost: @denbighshire.gov.uk Website / Gwefan: www.denbighshire.gov.uk /

www.sirdinbych.gov.uk ----- Forwarded by /EN/DCC on 10/05/2017 15:27 ----- From: /EN/DCC

To: @btinternet.com Date: 21/07/2015 11:40 Subject: Enq- Bwlch Du, Nantglyn

Regarding your enquiry you are advised of the following:

Site constraints:

- Bwlch-du is a Grade II Listed Building (List Description attached). It is also on the Councils

Appendix 2

Minutes of the 4th September 2019 committee for the item.

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

8 APPLICATION NO. 25/2018/1216 - BWLCH DU, NANTGLYN, DENBIGH

An application was submitted for alterations and a rear extension to the existing building, demolition of curtilage structure, erection of an ancillary building, retention of a log cabin (for a temporary period), boundary fencing and gates, and provision of on-site parking and turning area at Bwlch Du, Nantglyn, Denbigh.

The Vice Chair, Councillor Alan James took the Chair for agenda items 11 and 12 relating to Bwlch Du, Nantglyn because the Chair, Councillor Joe Welch was the Local Member.

Public Speaker –

Mr Mark Davies (**For**) – reminded members that the application was submitted by two residents of the ward who had bought the property for residential use, and wanted to use Bwlch Du as a residential dwelling. Although he acknowledged that this was not a material planning consideration he asked the Committee to bear this in mind

Mr Davies drew attention to paragraph 2.7 of the Supplementary Officer Report to the Committee, where the report contradicted the applicants' Counsel's advice that there would need to be 'positive steps' taken to demonstrate abandonment. Mr Davies countered that it was possible to take positive steps to abandon something. He added that the Council needed to show with evidence, that on the balance of probabilities, there had been an absence of residential use, which was not the case here. Referring to case law outlined in the Committee's documents, Mr Davies highlighted the Secretary of State's determination that where the design of the structure was so closely determined by the use and where much of the structure was still standing, then abandonment must rely on evidence of more positive actions. With Bwlch Du being clearly recognisable as a dwelling the Council had to look to more positive evidence of abandonment.

In turning to the officer recommendations for refusal Mr Davies highlighted the use of Policy PSE4 of Denbighshire's Local Development Plan to support refusing the application. PSE4 related to the re-use and adaptation of a rural building in open countryside for use as a dwelling. Mr Davies advised the Committee that as Bwlch Du was still and always had been a residential dwelling, Policy PSE4 did not apply. Mr Davies also stated that reasons 2 and 3 for refusal were not valid. He particularly highlighted reason 4 as being irrelevant – the safeguarding of wind farm sites from other developments which could sterilise them – as again, it relied on the building not already having residential use status.

General Debate - The Development Manager, Planning and Public Protection, referred the Committee to significant information circulated on the addendum report to the main agenda report together with supplementary information submitted by the applicants' solicitors.

Local member Councillor Joseph Welch addressed the following points:

- Natural Power's representations that local residents had not raised Bwlch Du as being a residential dwelling during the wind farm application process, was irrelevant. Whether the building had been abandoned or not depended on the 4 tests of abandonment not on local views about it.
- The report outlined the 4 relevant factors to be taken in to consideration when determining whether the use of a dwelling had been abandoned and Councillor Welch commented as follows:
 - Physical condition of the building: the building at 1,400 feet above sea-level was very high for buildings in Wales. Despite this it had a roof, a chimney, four walls in good condition and overall was in pretty good condition.
 - Whether the building had been utilised for any other purposes: It was clear that this building had only been used for residential purposes.
 - Length of time for which the building had not been utilised for residential purposes: there was uncertainty and confusion here but it was certain that the building had been lived in in the 1960s and that there was reliable witness testimony that it had been used as a weekend cottage much more recently.
 - The intentions of the owners: The previous owner had continued to pay council tax on the property which suggested that it was regarded as still being residential. The Committee would have to decide this point. In addition, that owner had driven to attend a wind farm consultation event.
- He believed that the Committee could and should overcome the reasons given for viewing the building as being abandoned.
- In respect of the proposed reasons for refusal, reason 2 related to the log cabin and the scale of the proposed ancillary building. Councillor Welch advised that the log cabin would be removed once the work requested had been completed so was not an issue. He added that any adverse visual impact from the ancillary building had to be put in the context of the visual impact of the 16 turbine wind farm situated some 400 metres from the property.
- In relation to reason 3 the facts relating to ecological matters were unclear, but mostly related to the protection of bats in the area, of which there was no evidence of any being there. Councillor Welch quoted research which found that 80,000 bats were killed each year by turbines making it an unlikely site for them.

Councillor Welch acknowledged that while permission for a new residential dwelling in the vicinity of a wind farm would not be granted, as Bwlch Du was there before the wind farm he proposed that the application should be granted with appropriate conditions.

The Development Manager, Planning and Public Protection (DM) referred to the deferment of this application from the July 2019 meeting of the Committee to allow consideration of late information submitted on behalf of the applicants. He advised that Counsel for the Council viewed the July committee report to be sound and came to reasonable conclusions. Expert legal advice had also been sought for the Supplementary Officer report and Planning officers had been told that they had assessed matters correctly and the four reasons proposed for refusal were correct.

The DM outlined the risks to the Council should the Committee grant planning permission contrary to officer advice. He reminded members that there was a consented wind farm next to the property which the Council had given planning permission for, and part of that process was the acceptance that Bwlch Du had been abandoned. He reported that officers were confident that their position for refusing permission was legally correct but a decision to grant the application could become the subject of a judicial review.

The Council's Legal Officer advised the Committee that its role was to weigh the evidence presented relating to abandonment and to come to a decision on it. There were legal arguments presented for both sides and the issue of whether the property had been abandoned was for members to assess on the evidence before them. She added that any planning decision made by the Committee was potentially at risk of being judicially reviewed indicating the importance of taking appropriate decisions.

The Head of Planning and Public Protection summarised this part of the discussion as being about ensuring correct, robust decision making with an appreciation of risks.

The DM reported the recent enforcement notice on Bwlch Du, upheld on appeal that required the removal of some of the structures on the site. Councillor Merfyn Parry welcomed the applicants' interest in investing in a listed building.

Councillor Mark Young queried the criteria for an empty building to lose its residential use status, citing one in his ward which had been empty for many years but that had retained its residential status. The DM advised that applications for works to empty properties in rural areas hinged on whether the building had an existing lawful use as a dwelling, and it was officers' opinion that Bwlch Du did not.

Further to this point, the DM advised that the application under consideration was not for a certificate of lawfulness so the judgement on abandonment had to be made holistically on the four relevant factors outlined in the report. The Legal Officer added that the Planning Officer dealing with this application had addressed the four criteria, analysing the relevant factors in the report.

Councillor Tony Thomas advised that he was in favour of following officers' recommendations and refusing the application. There would be the option of appealing the decision which the Welsh Government's Planning Inspector would determine, and this could reduce the Council's liability in the event of an associated judicial review.

The DM, responding to questions by members, confirmed that the identification of Bwlch Du as an abandoned dwelling had been made in the wind farm operator's application. This information had been published and was part of the extensive wind farm planning application process. The building's status as an abandoned dwelling had not been disputed by any of the parties at that time. He advised that the normal procedure from there would be to seek a certificate of lawfulness of use.

Proposal - Councillor Alan James, chairing, confirmed that a proposal by Councillor Welch to grant planning permission had been seconded by Councillor Ellie Chard.

Councillor Welch confirmed that the reasons proposed for granting the application were based on the relevant factors to be taken into consideration when determining whether the use of a dwelling had been abandoned, as he had outlined earlier in the debate. These were that the building was in a reasonably good condition, it had only ever been used or intended for use as a residential dwelling, there was evidence that residential use of the building had continued until relatively recently, and this evidence pointed to the building having an existing lawful use as a residential dwelling.

In respect of objections to the proposal having an adverse effect on visual amenity, this was negligible owing to the significantly greater impact of the adjacent wind farm. Finally, the welfare of bats had been raised but there had been no evidence presented either for this application or during the wind farm process of bats being on this site.

VOTE:

GRANT – 8

REFUSE – 5

ABSTAIN – 0

RESOLVED that permission be **GRANTED** (subject to appropriate planning conditions to be agreed by officers with the local member) contrary to officer recommendations, on the grounds that the building has an existing lawful residential use and would have a negligible adverse impact on the visual amenity or ecological welfare of the area.

■

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Appendix 3

Holding Direction letter from Welsh Government (18th September 2019) - preventing the Council from determining the application.



Llywodraeth Cymru
Welsh Government

Mr P Mead
Chief Planning Officer
Denbighshire County Council
Caledfryn
Smithfield Road
Denbigh
Denbighshire
LL16 3 RJ

By Email: paul.mead@denbighshire.gov.uk

Ein Cyf/Our ref: qA1404198
Eich Cyf/Your ref: 25/2018/1216/PF
Dyddiad/Date: 18 September 2019

Dear Mr Mead

**TOWN AND COUNTRY PLANNING ACT 1990- SECTION 77 CALL-IN REQUEST
ALTERATIONS AND REAR EXTENSION TO EXISTING BUILDING, DEMOLITION OF
CURTILAGE STRUCTURE, ERECTION OF ANCILLARY BUILDING, RETENTION OF
LOG CABIN (FOR TEMPORARY PERIOD), BOUNDARY FENCING AND GATES, AND
PROVISION OF ON-SITE PARKING AND TURNING AREA AT BWLCH DU NANTGLYN
DENBIGH LL16 5RN
PLANNING APPLICATION 25/2018/1216**

The Welsh Ministers have been asked to call in the application, referred to in the heading to this letter, for their own determination.

Article 18 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 enables the Welsh Ministers to give Directions restricting the grant of permission by a Local Planning Authority. I am authorised by the Minister for Housing and Local Government to issue such Directions and, in exercise of this authority, I hereby direct

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

your Council, with effect from the date of this letter, not to grant planning permission in respect of:

- (a) application no. 25/2018/1216 referred to in the heading to this letter; or
- (b) any development of the same kind which is the subject of the application on any site which forms part of, or includes, the land to which the application relates;

without the prior authorisation of the Welsh Ministers.

I issue this Direction to enable further consideration to be given to whether or not the application should be referred to the Welsh Ministers for their determination.

The Direction prevents your Council only from granting planning permission; it does not prevent it from continuing to process or consult on the application. Neither does it prevent it from refusing planning permission.

Your attention is drawn to Article 31 of the above Order which provides for the Welsh Ministers to vary or cancel this direction in respect of both the land and type of development covered.

I will ensure you are informed of the Welsh Ministers' decision on whether the application is being called in as soon as it is made.

A copy of this letter has been sent to Richard Buxton Solicitors, agents for the applicant.

Yours sincerely



T Davies
Head of Decisions Branch
Planning Directorate

Arwyddwyd o dan awdurdod Y Gweinidog Tai a Llywodraeth Lleol, un o Weinidogion Cymru.

Signed under authority of the Minister for Housing and Local Government; one of the Welsh Ministers.

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Appendix 4

Letter issued by Welsh Government (18th October 2019) - confirming they did not intend to 'call in' the application for determination.



Llywodraeth Cymru
Welsh Government

Mr P Mead
Chief Planning Officer
Denbighshire County Council
Caledfryn
Smithfield Road
Denbigh
Denbighshire
LL16 3 RJ

By Email: paul.mead@denbighshire.gov.uk

Ein Cyf/Our ref: qA1404198
Eich Cyf/Your ref: 25/2018/1216/PF
Dyddiad/Date: 18 October 2019

Dear Mr Mead

**TOWN AND COUNTRY PLANNING ACT 1990 - SECTION 77 CALL-IN REQUEST.
ALTERATIONS AND REAR EXTENSION TO EXISTING BUILDING, DEMOLITION OF
CURTILAGE STRUCTURE, ERECTION OF ANCILLARY BUILDING, RETENTION OF
LOG CABIN (FOR TEMPORARY PERIOD), BOUNDARY FENCING AND GATES, AND
PROVISION OF ON-SITE PARKING AND TURNING AREA AT BWLCH DU, NANTGLYN,
DENBIGH LL16 5RN.
PLANNING APPLICATION 25/2018/1216.**

Issue

The Welsh Ministers have been asked to call in the above application for their own determination. I am authorised by the Minister for Housing and Local Government to consider whether the application should be called in for determination by the Welsh Ministers.

Policy

The Welsh Government's policy on calling in planning applications is set out in Planning Policy Wales Edition 10, December 2018 (PPW). The Welsh Government considers Local Planning Authorities (LPAs), as elected bodies, should be left to make decisions about development proposals wherever possible. The Welsh Ministers do not, in practice, call in many planning applications and will only do so where the proposal raises issues of more

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

than local importance. The consideration of a request to call in an application is not about the acceptability of the development and whether planning permission should be granted; it is concerned with who should make the decision.

The request for the application to be called included concerns which are summarised as follows:

- Conflict with national planning policy (Planning Policy Wales, TAN 8, TAN 24 and section 66 of the Planning (Listed Buildings Conservation Areas) Act 1990);
- The proposal could have wide effects beyond the immediate locality (amenity of future occupiers due to proximity of wind farm, risk of future legal action against adjacent existing use, effect on designated land and protected species); and
- The proposal raises novel planning issues (the building was deemed as abandoned; this status is central to consideration of the application and officer's advice on this matter has been set aside).

Consideration

Consideration has been given to the concerns expressed in the call-in request, the contents of the planning officer's reports to the Planning Committee, Committee minutes and any other available relevant information. The only request for call-in is related to the potential impact of, and on, the nearby consented wind farms. Consideration of this call-in request is constrained to whether the development raises issues which warrant the intervention of the Welsh Ministers. Each application must be considered on its own merits.

The application relates to the alteration and extension of an existing building. The site is located within the open countryside and is an isolated building not located within a designated settlement boundary in the extant LDP. The officer's report of 17 July refers to Planning Policy Wales Edition 10 (PPW) as providing the national policy framework for the consideration of the application. It makes reference to TANs 5, 24, and 8, which are concerned with nature conservation, the setting of historic assets and renewable energy issues. Some of the reasoning in the report is overtaken by the subsequent rejection by the Planning Committee of the planning officer's conclusions on the issue of the abandonment of use. In general, however, the relevant national policies, including in relation to designated land, protected species, listed buildings and renewable energy installations appear to have been identified and given reasoned consideration.

The Council's officers took Counsel's advice on the issue of abandonment. This was taken into account in the further advice on the issue which was presented to the Committee in the form of a supplementary report before a final decision was made on the application. Both the original and the supplementary reports recommended refusal, although the Planning Committee reached a different conclusion; a decision it was entitled to make. The issues raised in relation to abandonment of use, although unusual, in our view cannot be considered to be novel or have far-reaching effects beyond this site and its environs. One request for call-in has been made and there is no other evidence before the Welsh Ministers to suggest the application has caused substantial controversy beyond the immediate locality.

Decision

Having assessed the issue associated with the call-in request and, in the light of the Welsh Government's policy on call-in, I do not consider the issue raised is of more than local importance in this instance. In view of this, **I do not consider the application should be**

called in for determination by the Welsh Ministers and it is now for your Authority to determine the application as it sees fit.

In reaching this conclusion the planning merits of the application were not taken into account and the decision not to call in the application should not in any way be taken as a reflection on the planning merits of the development.

In exercise of their functions under Part 3 of the Town and Country Planning Act 1990, the Welsh Ministers must ensure the development and use of land contributes to improving the economic, social, environmental and cultural well-being of Wales. As part of this consideration the Welsh Ministers have taken into account the ways of working set out at section 5(2) of the Well-being of Future Generations (Wales) Act 2015 (WFG Act), which is supported by Part 4 of 'Shared Purpose Shared Future 1: Core Guidance: Statutory Guidance on the WFG Act'.

It is considered this decision is in accordance with guidance issued by the Welsh Ministers under section 14 of the WFG Act and the seven well-being goals by contributing to the sustainable development principle and the well-being objectives of 'Building healthier communities and better environments' and 'Support safe, cohesive and resilient communities'. The decision not to call in the application will contribute towards these objectives by enabling your Council to proceed to determine the application.

In exercise of my powers, the Direction issued by the Welsh Ministers under Article 18 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 on 18 September 2019 for planning application 25/2018/1216 is hereby cancelled.

It would assist us if a copy of the planning decision, relating to this application, could be sent to my colleague, Nick Iles (E-mail Nicholas.iles@gov.wales).

A copy of this letter has been sent to Richard Buxton Solicitors, agents for the applicant.

Yours sincerely



T Davies
Head of Decisions Branch
Planning Directorate

Arwyddwyd o dan awdurdod y Gweinidog Tai a Llywodraeth Lleol, un o Weinidogion Cymru.

Signed under authority of the Minister for Housing and Local Government; one of the Welsh Ministers.

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi. We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Appendix 5

Letter dated 18 October 2019 from Eversheds Sutherland LLP and Counsel opinion provided by John Litton QC on behalf of Brenig Wind Limited.

Susan Cordiner
Denbighshire County Council,
Caledfryn,
Smithfield Road,
Denbigh,
LL16 3RJ

Date: 18 October 2019
Your ref:
Our ref: MAILEP\300768-000004
Direct: +44 121 232 1474
Email: paulmaile@eversheds-sutherland.com

BY SPECIAL DELIVERY

Dear Sirs

Planning Application reference: 25/2018/1216
Bwch Du, Nantglyn, Denbigh, LL16 5RN
Without Prejudice save as to costs

Following the letter received from the Welsh Government of today's date in which they declined to call-in the above application for their determination, we hereby enclose Counsel's opinion, on behalf of Brenig Wind Limited, commenting on the lawfulness of any planning permission which might be issued by the Council following proceedings at the planning committee on 4 September 2019.

The purpose of this letter is to draw the attention of the Council to potential grounds of challenge in advance of the issue of the permission to enable them to reconsider their position and potentially avoid any legal proceedings.

Yours faithfully

pp. *Eversheds Sutherland*

Eversheds Sutherland (International) LLP

Enclosures.

CC Sarah Knox-Brown, David Heelan, John Woodruff, Paul Meade

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Re Brenig Wind Farm and Bwlch Du

Opinion

Introduction

1. I am asked to advise Brenig Wind Farm Limited (“BWFL”) in relation to the lawfulness of Denbighshire County Council’s (“the Council”) decision on 4th September 2019 whereby it resolved to grant planning permission for the alteration and extension of a building at Bwlch Du, Nantglyn which would allow it to be used as a dwelling house.

Background

2. Bwlch Du is within 2km of the nearest wind turbines forming part of the Brenig Wind Farm (“the Wind Farm”), an onshore wind farm comprising 16 turbines which was granted consent by the Council in 2009 (“the 2009 Permission”). A subsequent planning permission was granted on 18th May 2016 on appeal raising the height and increasing the blade length of the turbines (“the 2016 Permission”). However, this later permission was not implemented and the Wind Farm was constructed under the 2009 Permission.
3. The 2009 Permission is subject to conditions, including a noise condition (Condition 37) which requires the noise from turbine blades not to exceed the limits set out in the table included in the condition. The first half of the table sets noise limits at 43dB for specified properties (at all wind speeds). The second half of the table sets variable noise limits ranging from 35dB to 42dB (depending on the wind speed) for “all other properties”.
4. The Wind Farm is EIA development and the original application was accompanied by an Environmental Statement (“the ES”). The scope of the ES was agreed with the Council, including sensitive receptors that might be visually affected or by noise and shadow flicker from the moving turbine blades within a 2km radius of the turbines. Although Bwlch Du was identified as being within 2km of the Wind Farm it was

uninhabited and derelict and considered by everyone at the time as having been abandoned. This is clear from, for example:-

- (1) the table of Residential Receptors Part One in Appendix 6.6 of the ES;
- (2) para. 7.6.15 of Section 7 (Ecology Assessment) of the ES; and
- (3) para. 11.3.14 of Section 11 (Cultural Heritage) of the ES,

where Bwlch Du is variously described as being not “a viable dwelling”, “derelict” and “abandoned”.

5. Consequently, Bwlch Du was not considered to be a sensitive receptor and the impact of the Wind Farm on that property was not assessed. That also appears to have been the Council’s position in relation to the larger scheme which was granted on appeal in May 2016 where the main issues were the landscape and visual impacts on the surrounding area. In his decision letter, the Inspector records as follows:-

“26 The LVIA contains an assessment of the impact on visual amenity from 23 viewpoints which include sites of statutory and non-statutory landscape designations, transport routes and long distance footpaths and residential properties within 2km of the turbines. It is understood that the locations of the viewpoints were agreed with the Council.

...

32 The Residential Visual Amenity Assessment (RVAA) considered residential properties within 2km of the site. The Council claims that in restricting the assessment to this distance several dwellings were omitted which overlook the site and are sited less than 3km from it. The Council also identified five properties which lie within the 2km envelope which have not been included in the assessment, although one of them is acknowledged to be uninhabited. However, the evidence indicates that of these properties, the owners of two declined permission for an assessment to be made, two were uninhabited at the time of the study with no signs of being renovated for habitation and one fell outside the study area.”

6. It was also the Council’s position in relation to enforcement proceedings taken by the Council in April 2018 relating to the erection of a timber dwelling house in the grounds of Bwlch Du.

7. Bwlch Du has recently been acquired by new owners and, on 16th January 2019, Miss Trengrove made an application to alter the building including the “replacement of roof covering, new windows and doors, external decoration, internal refurbishment to include installation of new services, re-plastering minor changes to partition walls and creation of new opening at the rear to access new rear extension “.
8. I am instructed that Natural Power has carried out some preliminary noise modelling which indicates that if Bwlch Du is a residential dwelling, Condition 37 of the 2009 Permission applies and may result in a potential need to curtail the operation of turbines in order to meet the noise limits at Bwlch Du which would obviously impact upon the energy generating potential of the wind farm.
9. The application was reported to the Council’s 17th July 2019 planning committee meeting. In the Report to Committee (“the July OR”) prepared by the Council’s planning officers, the application was recommended to be refused permission. One of the issues raised by the application was the lawful use of the property. At para. 4.2.1, the Report said:-

“Officers consider the critical starting point for the assessment of the application is inevitably the lawful use of the existing main building, as this dictates the key planning policies at local level and national level that should be applied.”
10. This issue arose because it was suggested in the application that Bwlch Du may have been occupied until the recent past and, although now unoccupied, it was the intention of the previous owner to re-occupy it. In determining that issue, the July OR states that:-
 - (1) there was no history of planning permission at Bwlch Du;
 - (2) the main stone building was a derelict and uninhabited farmstead;
 - (3) there was no evidence of occupation or renovation for a number of decades;
 - (4) an inspection entry on the Coflein online mapping service records that in July 2007 Bwlch Du was derelict;
 - (5) a photograph from 2008 shows Bwlch Du to have an earth floor and to have had all its windows and doors removed;
 - (6) it was unclear when permanent occupation ceased;

- (7) council tax was paid on the property from 1996 to 2016 but this does not confirm occupation, use or lawfulness of its use in planning terms;
 - (8) water supply records refer to the property as a weekend cottage in 1976 (without any bathroom or toilet) and in 2005 as being derelict and used as a sheep shelter;
 - (9) the Electoral Register does not record anyone at Bwlch Du after 1974 (until an application was made in 2017).
11. The July OR then considers the tests for the abandonment of a lawful planning use established by the Court in *Secretary of State v Hughes* (2000) 80 P & CR 397, namely (1) the physical condition of the building; (2) the length of time for which the building had not been used for residential purposes; (3) whether the building has been used for any other purposes; and (4) the owner's intentions.
12. The July OR's key findings in relation to these tests were:-
- (1) the structure was not in a dangerous state and, although Bwlch Du was clearly uninhabitable, the physical condition of the building was not conclusive of abandonment;
 - (2) the property had not been used as a permanent residential property since at least the 1950's and that its deteriorating physical condition since which had rendered it uninhabitable as a dwelling strongly supported a conclusion that its use as a dwelling house had been abandoned;
 - (3) there was no clear evidence that Bwlch Du had been used for some other intervening use notwithstanding its past use as an animal shelter; and
 - (4) there was no clear evidence that the previous owner of the property had intended to use Bwlch Du as a permanent dwelling but had allowed it to become dilapidated and totally uninhabited and, if the use had been abandoned by 2016 when the property was sold, the present owner's intentions should be given limited/no weight. This supported a conclusion that the property had been abandoned.
13. Taking all of these matters into account, the July OR concludes that:-

“a reasonable man with knowledge of all the relevant circumstances would conclude that the house has been abandoned. The property therefore has no lawful use. The proposals before the Council should therefore be considered to be for the adoption of a redundant rural building for use as a dwellinghouse.”

14. Having concluded that Bwlch Du had no lawful use, the July OR assessed the application against the development plan and national policy and considered that the development was contrary to a number of policies in the Denbighshire Local Development Plan (“the LDP”) and Planning Policy Wales (“PPW”). It also considered what the implications of the residential use of Bwlch Du would have for the Wind Farm. It said:-

“The TAN8 requirements relevant to the application as the grant of permission for the proposals to reinstate a residential use at Bwlch Du has the potential to impact on the Brenig windfarm, and potentially other in the vicinity as the introduction of sensitive developments such as residential properties in close proximity to operational and consented windfarms could prejudice the functioning of windfarms due to adverse effects from noise and shadow flicker. No information has been provided with the application to demonstrate the property is capable of achieving a satisfactory standard of amenity for future occupiers, and accordingly there is insufficient information to conclude that the future occupiers of the property would enjoy an adequate level of residential amenity, having regard to the proximity of the property to an operational wind farm. Officers have concerns the proposal would not be compatible with windfarm developments on adjoining land.

The Natural Power response explains the background to the grant of permission for Brenig (and other) windfarms in this area, and the involvement of the County Council, the Planning Inspectorate at appeal, and the Secretary of State in relation to Clocaenog windfarm. In summary, the Environmental Impact Assessments (EIAs) submitted with the windfarm applications have concluded detailed noise assessments to establish impacts at identified sensitive receptors (i.e. residential properties), to demonstrate that appropriate noise limits could be met at those properties. Bwlch Du was not recognised in any windfarm applications as a sensitive residential receptor as it was in a derelict and uninhabitable condition. This was public information open to challenge from any party with an interest in the applications (County Council, Community Council, consultees, private individuals, Councillors, and the property owner). There is no evidence this was ever challenged. Applications refused by the County Council which have been subject to appeal have been scrutinised by Planning Inspectors, and against there has been no reference to the need for inclusion of Bwlch as a sensitive residential receptor. This lack of any challenge is a relevant indicator of the abandonment of the property, although not determinative.

The relevance of this is that Bwlch Du is within 2km of a number of operational and consented windfarms including Tir Mostyn/Foel Goch windfarm, the Brenig Windfarm, Clocaenog Forest windfarm and the Pant y Maen windfarm. The property was not considered to be a residential receptor in any of the EIAs for the windfarm planning applications, and at no point did the decision makers or any party expressing their interest in the applications consider it to be residential. As noted, the decision makers of these applications have been the County Council, the Planning Inspectorate on appeal decisions, Welsh Ministers and the UK Secretary of State.

The grant of permission would run contrary to the requirement on TAN8 that consideration has to be given to safeguarding windfarm sites in making planning decisions.”

15. In conclusion, the July OR records as follows:-

- “5.1 The Bwlch Du proposals raise significant issues of principle. Officers do not consider the property has a lawful use as a dwelling house, evidenced by the background history, hence it is contended that the proposals before the Council are for the re-use and adaptation of a redundant rural building for residential use, with ancillary developments. On this basis, the development is considered to be unacceptable in principle. The ancillary developments cause visual harm to the locality, impacting adversely on the setting of the listed building.
- 5.2 ... The subject case fails to comply with the development plan as a whole, having regard to its failure to comply with Policies PSE4, VOE1 and VOE5.
- 5.3 Additionally, the grant of permission would not safeguard wind farm sites from a development which could negatively impact on them, and it has not been demonstrated that the dwelling would be capable of providing a satisfactory standard of enmity for future occupiers due to the proximity to operational and consented windfarms. The submission also fails to provide sufficient details to allow for an adequate assessment of the potential impact on protected species.
- 5.4 Whilst the benefits of the renovation and retention of the listed building are recognised, this is not in itself considered to be of sufficient strength to outweigh the harm caused when taken in the overall planning balance. It is not considered that the use of conditions would be sufficient to make the development acceptable given the objections raised within this report regarding the matters of abandonment, the conversion of the building to a dwelling, adverse visual impact and impact on the setting of the listed building, lack of information regarding protected species, and the windfarm impact. Accordingly, there are insufficient material considerations that displace the presumption in favour of the development plan in this case.”

16. The July OR then set out four recommended reasons for refusal including reasons (1) and (4) which are predicated on the residential use of Bwlch Du having been abandoned and the application requiring a change of use.
17. Shortly before the 17th July planning committee meeting, the Council received representations from the applicant's solicitors (Richard Buxton) reviewing the July OR together with an Advice from Mark Davies dated 15th July 2019 ("the Advice"). The Advice considered the reasons for refusal in the July OR focussing on the conclusion the residential use of Bwlch Du had been abandoned. It also relied on a number of other pieces of evidence to conclude, applying the four tests for abandonment against the available evidence, that the residential use of Bwlch Du had not been abandoned.
18. The late submission by Richard Buxton caused the Committee to defer consideration of the application and for the Council to seek its own legal advice.
19. The application came back before the Committee in August 2019 and was the subject of a further Officer's Report ("the August OR"). The August OR did not disclose the legal advice it had received but summarised it in section 2. In essence, it advised the Council that:-
 - (1) the question of abandonment was a matter of judgment in each case applying the correct legal tests and there was no criticism in the Advice that the July OR had misapplied the legal tests;
 - (2) the reliance in the Advice on other appeal decisions should be treated with caution; and
 - (3) while the Advice explained why Mr Davies disagreed with the conclusions reached on abandonment in the July OR, he was in no better a position to reach factual and evaluative judgments than the officers or members.
20. The August OR then considers the Advice against the four tests for abandonment taking into account the additional evidence relied on in the Advice before concluding at para. 3.4:-

"Ultimately, it is Officers' opinion that having regard to the legal advice now obtained in response to the submissions of the applicant's solicitors and their

Counsel Advice, the original Committee report correctly and reasonably undertook a robust assessment of the proposal. Officers have had to make a judgment on the issue of abandonment having regard to evidence available and form the legal advice provided, hence the recommendation to refuse remains as set out in the report to the July 2019 Committee (Appendix A).”

21. Notwithstanding the clear recommendations from officers, the August 2019 planning committee (“the Planning Committee”) resolved to grant permission. There are no formal minutes of the meeting although the meeting was webcast. I have watched the webcast and it is evident that little or no consideration was given by members to the issue of abandonment and what consideration to that issue was frequently confused with the merits of the planning merits of what was proposed by the application. It is wholly unclear why the Planning Committee resolved to grant permission.
22. No planning permission has yet been granted and the Welsh Government issued a direction preventing the Council from issuing a permission until it has reached a decision whether or not to call the application in. In a letter dated 18th October 2019, the Welsh Ministers declined to do so.
23. Against this background I am asked to consider and advise on the lawfulness of the decision.

Advice

24. In my view the Planning Committee’s decision is vulnerable to legal challenge on the following grounds:-
 - (1) reasons;
 - (2) consistency;
 - (3) a breach of s.66 of the Planning (Listed Buildings and Conservation Areas) Act 1990; and
 - (4) a failure to take into account material considerations.

Reasons

25. Although there is no statutory duty to provide reasons for the grant of planning permission, the Supreme Court held in *Dover District Council v CPRE Kent* [2018] 1 WLR 108 that a common law duty to do so might arise on the facts of particular cases where:-

“Typically... permission has been granted in the face of substantial public opposition and against the advice of officers, for projects which involve major departures from the development plan, or from other policies of recognised importance (such as the ‘specific policies’ identified in the NPPF...). Such decisions call for public explanation, not just because of their immediate impact; but also because, as Lord Bridge pointed out..., they are likely to have lasting relevance for the application of policy in the future.”

26. In my view, this is a case which requires the Council to provide reasons for its decision. First, the application raises two distinct questions which have to be addressed in the correct sequence. The first question is whether Bwlch Du had as a matter of fact and judgment been abandoned. The second question is whether planning permission should be granted applying section 38(6) of the Planning and Compulsory Purchase Act 2004 and taking into account all other material considerations. The determination of the second question is wholly dependent on reaching a clear conclusion as to the first question. If it was concluded that Bwlch Du had been abandoned (and therefore had a nil use), the application had to be considered on a different basis and against different policies in the LDP and PPW than if the Planning Committee had concluded that the use of Bwlch Du had not been abandoned and had retained its residential use.
27. However, it is wholly unclear whether the Planning Committee considered the issues discretely and/or what decisions it reached in relation to those two issues. In this regard, the webcast recording of the meeting shows no consistency of views and, moreover, that individual members frequently elided the two questions such that it is impossible to know what conclusions the Planning Committee reached in relation to those two separate questions.
28. Secondly, the decision is against officer’s clear advice on both the question of abandonment and the planning merits of the application. Although the first question

on abandonment is a matter of fact and judgment, the conclusion reached by officers that the residential use of Bwlch Du had been abandoned was one which had been considered twice before and in respect of which the Council had taken legal advice. The webcast provides no indication as to whether the Planning Committee's decision to grant permission was predicated on it concluding that the use had not been abandoned. If the Planning Committee concluded that the use of Bwlch Du had been abandoned but that planning permission should be granted, notwithstanding that it was contrary to the development plan, it is impossible to understand what matters were considered by the Planning Committee to be justify departing from s. 38(6) of the 2004 Act and determining the application in accordance with the LDP.

29. Thirdly, although the application was not itself one for significant development, the consequences of the conclusion being reached that the residential use has not been abandoned, or that it has been abandoned but planning permission for its residential use should be granted, are substantial because of the impact that it would have on curtailing the operation of the Wind Farm (and possibly other wind farms). In particular, if the Planning Committee's decision was that the residential use had been abandoned, then the grant of permission for Bwlch Du's residential use was contrary to the LDP, PPW and TAN8.

Consistency

30. Consistency in decision making is a well-established principle in planning law – see *North Wiltshire District Council v Secretary of State* [1992] 65 P. & C.R. 34. However, it is not confined to the formal decisions taken by a decision maker and extends to the reasoning underlying an earlier decision – see *R(Davison) v Elmbridge Borough Council* [2019] EWHC 1409.
31. This is clearly of relevance to the issue of abandonment in this case given the consistent position agreed to by the Council in relation to both the 2009 and 2016 Permissions and in the Council's approach to the enforcement action it took in 2018, where the Council has consistently accepted that Bwlch Du was derelict and had been

abandoned. However, nowhere has the Planning Committee explained why it has now concluded that Bwlch had not been abandoned (if that is the conclusion it has reached).

S.66 of the Listed Building Act

32. I note that the July OR concluded that the ancillary buildings proposed as part of the application would have an unacceptable impact on the setting of Bwlch Du as a listed building by failing to preserve its setting contrary to TAN24, PPW, the Historic Environment Act, policy VOE 1 of the LDP and s. 66 of the Listed Building Act. However, nowhere does either the July OR (or the later August OR) make clear that the harm to Bwlch Du as a listed building had to be given “considerable importance and weight” in determining whether any benefits outweighed the harm – see *East Northamptonshire District Council v Secretary of State* [2015] 1 WLR 45 at [22] and *R (Forge Field Society) v Sevenoaks District Council* [2015] JPL 22 at [46].
33. The failure to identify the requirement to give the harm to the setting of Bwlch Du considerable importance and weight is an error of law. Moreover, there is nothing to indicate from the webcast that the Planning Committee were aware of the statutory requirement and, therefore, if they concluded that the benefits of the proposed development outweighed the harm to the listed building they fell into legal error in not giving the harm to the listed building considerable importance and weight in undertaking that balancing exercise.

Failure to take into account material considerations

34. In the absence of any record of the reasons why the Planning Committee reached the decision that it did to grant planning permission, it is impossible to know what matters it took into account and what matters it didn't. If the Planning Committee concluded that the use had not been abandoned, an important consideration in deciding whether permission should be granted was the impact the Wind Farm would have on the amenity of the residents of Bwlch Du and on the operation of the Wind Farm. Both PPW and TAN8 set out the commitment for clean energy including generation targets for onshore wind reflected in the 7 Strategic Search Areas to which onshore wind proposals are directed (the Wind Farm falls within Area A – Clocaenog Forest). This

was drawn to the Planning Committee's attention in para. 4.2.9 of the July OR where two particular points were made. First, that there was no evidence that any resident of Bwlch Du would enjoy a satisfactory level of amenity given its proximity to the Wind Farm. Secondly, that because Bwlch Du was within 2km of the Wind Farm there would be adverse implications for the operation of the Wind Farm which would be contrary to TAN8. There is no indication from the webcast that these important material considerations were taken into account by the Planning Committee in resolving to grant planning permission and is a further error of law.

Conclusion

35. The Planning Committee's decision to grant planning permission for the residential use of Bwlch Du is plainly flawed by legal errors as set out above and any planning permission issued by the Council pursuant to the resolution to grant would be susceptible to being quashed in an action for judicial review.

Dated 18th October 2019

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