

PLANNING COMMITTEE	DATE: 22/05/2023
REPORT OF THE ASSISTANT HEAD OF DEPARTMENT	

Attachment 1

Number: 4

Application Number: C23/0148/17/LL

Date Registered: 07/02/2023

Application Type: Full

Community: Llandwrog

Ward: Tryfan

Proposal: Construction of rural enterprise house and associated works.

Location: Uwchlaw'r Rhos, Penygroes, Caernarfon, LL54 7UE

Summary of the Recommendation: TO REFUSE

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1. Description:

- 1.1 Full application to construct a rural enterprise house and associated work. The house would be in the form of a dormer bungalow and would measure 115 square metres and would include a porch, office, toilet, multi-purpose room, sitting room, dining room and kitchen on the ground floor and three bedrooms and a bathroom on the first floor. It is intended to cover the exterior walls in white render and timber boards and install slates on the roof.
- 1.2 The site is located far away from the development boundary in open countryside in the corner of a field to the north-east of the farm buildings. The applicant states that it is intended to demolish a ruin in order to create a clear site for the construction of the new house. Also, it is intended to resurface the track that leads to the plot, should the application be approved. The site is in an open and prominent location above the original farm buildings and farmhouse and it is served by a public track (restricted byway), which leads to a class 3 county road to the west.
- 1.3 It is understood from the application that the house would be occupied by the applicant, who currently lives in Penygroes. There are three partners to the business at Uwchlaw'r Rhos, namely the applicant and his two sons. The applicant is the main worker on the farm and one son provides occasional labour support to the agricultural activities. The other son works as an agricultural contractor.
- 1.4 The applicant states that the farm has been in the family's tenancy for 3-4 generations, however he bought the land in 2018 and the house was sold separately. The business was not in a position to buy the house at the same time. The evidence submitted by the applicant confirms that the applicant's son owns the house at Uchlaw'r Rhos, who is a partner in the company and who also provides occasional labour support at the farm.
- 1.5 The farm extends to 84ha; the applicant owns 59ha and rents out 24.3ha on a long tenancy. 84ha are used as grazing land, 20ha for silage (one cut) and 8ha for silage (two cuts) and is used as grazing land. The farm includes 118 cows with calves, 120 sheep, and 4 sows and 12 boars and 27 piglets. The applicant is also in partnership with Natural Resources Wales for grazing 1,618ha of common land. The business has grazing rights for 10 cows.
- 1.6 A Design Statement and the business' accounts were submitted as a part of the application.
- 1.7 The application was submitted to the Planning Committee at the Local Member's request.

2. Relevant Policies:

- 2.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 and paragraph 2.1.2 of Planning Policy Wales emphasise that planning decisions should be made in accordance with the Development Plan, unless material considerations indicate otherwise. Planning considerations include National Planning Policy and the Local Development Plan.
- 2.2 The Well-being of Future Generations (Wales) Act 2015 places a duty on the Council to take reasonable steps in exercising its functions to meet the seven well-being goals within the Act. This report has been prepared in consideration of the Council's duty and the 'sustainable development principle', as set out in the 2015 Act. In reaching the recommendation, the Council has sought to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.
- 2.3 **Anglesey and Gwynedd Joint Local Development Plan 2011-2026, adopted 31 July 2017**

PS 1 The Welsh Language and Culture
 PS 2 Infrastructure and developer contributions
 ISA 1 Infrastructure Provision
 PS 4 Sustainable Transport, Development and Accessibility
 TRA 2 Parking Standards

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TRA 4 Managing transport impacts
 PS 5 Sustainable development
 PS 6 Mitigating the effects of climate change and adapting to them

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

Supplementary Planning Guidance: Tourist Facilities and Accommodation (March 2021)
 Building Rural Houses in the Countryside

2.4 National Policies:

Future Wales: The National Plan 2040

Planning Policy Wales (Edition 11 - February 2021)

Technical Advice Note 6 - Planning for Sustainable Rural Communities

3. Relevant Planning History:

3.1 Application number C18/0800/17/LL - Erection of a two-storey rear extension - Approved subject to 28/11/201

Application number - C18/0801/17/CR - Listed Building Consent to erect a two-storey rear extension and internal alterations - 17/12/2018

Application number - C21/0811/17/LL - Engineering work for the construction of two agricultural buildings with a slurry lagoon on the floor of one building - Refused on 27.07.2022

C21/0518/17/LL - Application to erect a rural enterprise house as well as associated works - Refused on 07.02.2022

4. Consultations:

Community/Town Council: Council's decision - to support the application

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Transportation Unit: I refer to the application above and wish to state that I do not intend to submit a recommendation as it is assumed that the proposed development will not have a detrimental impact on any road, or proposed road.

Natural Resources Wales: We have reviewed the planning application submitted to us, and from the information provided, we are not of the opinion that the proposed development impacts any matters listed on our Consultation Topics.

Welsh Water: No response

Biodiversity Unit: Having viewed the application and reviewed the Biodiversity comments on the current application and looking at the previous application. There is no need to commission environmental reports as requested in the comments of C23/0148/17/LL, but a condition is needed to improve biodiversity as noted in the 2021 application - it is suggested that a bat box and sparrow box is installed on the roof of the new building. Please note: If any protected animal or species are found on the site, there is a responsibility on you to stop the work and obtain specialist guidance, and if needed, obtaining a permit to continue work by Natural Resources Wales is the responsibility of the land owner. The applicant also needs to follow the guidelines of Pollution Prevention 5 "Works and maintenance work in or near water":

Flooding Risk and Land Drainage

Since 7 January 2019, sustainable drainage systems (SuDS) are needed to control surface water for every new development of more than 1 house or where the construction area with drainage obligations is 100m² or more. Drainage systems must be designed and constructed in accordance with the minimum standards for sustainable drainage as published by Welsh Ministers.

These systems must be approved by Gwynedd Council in its role as SuDS Approval Body (SAB) prior to commencement of the construction work.

Due to the size and nature of the development, an application will need to be provided to the SuDS Approval Body for approval before construction work commences. No drainage details have been submitted to date, and until an application is made to the SAB there is no assurance that the site plan would enable compliance with the full suite of national NDS standards. Early consultation with the SAB is recommended.

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Footpaths Unit	Public footpath number 51 (Llandwrog) must be protected during and after this development.
Cadw	Not accepted.
Gwynedd Archaeological Planning Service	Not received.
Public Consultation:	A notice was posted on the site and nearby residents were notified. No responses were received.

Assessment of the material planning considerations:

The principle of the development

- 5.1 The proposal includes erecting a rural enterprise site on a site located beyond the farmyard and outside any development boundary as defined by the LDP. Policy PCYFF1 states that outside development boundaries proposals will be refused unless they comply with other policies within the local development plan, national planning policies or that the proposal demonstrates that its location in the countryside is essential.
- 5.2 The explanation of policy PCYFF 1 states that the development boundaries were identified for all types of settlements in the Plan apart from clusters. Policy PCYFF 1 notes that development boundary amongst other things prohibits inappropriate developments from being located in the countryside, provide firm guidance and clarity in terms of where exceptions may be supported e.g. rural exception policy, identify locations where developments can be approved and promote effective and appropriate use of land and buildings. It is therefore considered that the remainder of the Plan area is the subject of more control and is mostly limited to developments which require a countryside location or that meet a local rural need, support rural diversification or sustainability.
- 5.3 In relation to protecting the countryside, it could be acknowledged that some types of developments are needed if the location of the proposal is necessary e.g. agricultural sheds and addressing the area's social, economic or environmental needs. This is an application for a rural enterprise house which is a type of development that can be justified in the countryside in exceptional circumstances.
- 5.4 As a result of the need to maintain and protect the countryside, special justification is needed to approve the construction of new houses in the countryside. Therefore, new houses in the countryside will only be approved in exceptional circumstances. The exceptional circumstances under which new houses in the countryside could be approved are included in Technical Advice Note 6: Planning for Sustainable Rural Communities - July 2010 (TAN10) prepared by the Welsh Assembly Government, and the associated Technical Guidance document.
- 5.5 Paragraph 4.3.1 of TAN6 notes that one of the few circumstances in which a new isolated residential development in the open countryside can be justified is when accommodation is required to enable a rural enterprise worker to live at, or close to, his workplace. Whether this is essential in any particular case will depend on the needs of the rural enterprise concerned and not on the personal preference or circumstances of any of the individuals involved. TAN 6 also notes

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that Local Planning Authorities should carefully assess applications for planning permission for new rural enterprise dwellings to ensure that a departure from the usual policy of restricting development in the open countryside can be fully justified by reference to robust supporting evidence.

- 5.6 The applicant states that the farm has been in the family's tenancy for 3-4 generations, however he bought the land in 2018 and the house was sold separately. He also states that there are three partners in the business, namely the applicant and his two sons.
- 5.7 Note from the site's planning history that a planning application was submitted by one of the sons to construct an agricultural shed on the land of the agricultural holding in 2021 under reference C21/0811/17/LL. The site plan and the site submitted with that application show that the plot of the proposed house is isolated separately from the rest of the farmland and those circumstances are reflected and confirmed on a location plan submitted with this current application. Furthermore, evidence was submitted in the form of a B ownership certificate, which confirms that one of the sons own the Uwchlaw'r Rhos house, i.e. the original farmhouse. Therefore, a partner in the company already lives at Uwchlaw'r Rhos at present. Please note also that the applicant has stated that Uwchlaw'r Rhos has been split into two living units, which include 1 x four-bedroom unit and 1 x three-bedroom unit. Therefore, it appears that there are two houses on the farm already, with one of them occupied by one of the farm's partners.
- 5.8 From the information submitted, it is stated that the applicant farms 84ha, but that 59.9ha only are in his ownership and the rest are rented under a long-term arrangement. An IACS map was received which shows that the land of the holding surrounds the application site. Please note the location of the rented land at Rhostryfan, Caernarfon. However, the information does not confirm the terms or length of the rental agreement. The applicant states that 20.2ha are used for silage (one cut) as well as a further 8ha (two cuts).
- 5.9 The applicant states that the business has existed for over 3 years. Business accounts for the previous three years were submitted to show that the business has made a profit in 3 of the past 4 years. Nevertheless, it appears that there is an established business on the land, and therefore in line with the requirements of TAN 6, information must be submitted that relates to the functional needs test, time, financial and alternative dwellings to prove the need and justification for the construction of a house in open countryside.

1. **The Functional Test** (Section 4.8 of Technical Advice Note 6) - The functional test is required to show that it is essential, for the proper functioning of the rural enterprise, for one or more workers to be readily available at most times.
2. **The Time Test** (Section 4.9 of Technical Advice Note 6) - The time test and the functional test are separate tests, but there must be a full-time requirement for the worker for whom there is a functional need.
3. **The Financial Test** (Section 4.10 of Technical Advice Note 6) - Dwellings will only be approved where it can be proven that a rural enterprise is sustainable, and a financial test is used to consider the enterprise's financial robustness, its projections over a reasonable period of time, and the ability of the business to fund the proposal.
4. **The Alternative Dwelling Test** (Section 4.11 of Technical Advice Note 6) - The needs of an enterprise are considered in the context of the availability of existing options for alternative dwellings to meet the noted functional need, and/or the scope to reorganise the work of managing the enterprise so that no new dwelling is needed.

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

The Functional Test and the Time Test

- 5.11 An essential functional need relates to a specific management activity or a combination of activities which means that a worker needs to be at hand for the majority of the time (and throughout the year) so as not to harm the normal operation of the existing business, and where this cannot be achieved in any other practical way such as electronic supervision, or making use of permitted development rights (e.g. siting a seasonal caravan). The time test ensures that there is a full-time requirement for the worker. Where a dwelling/dwellings is/are already a part of the enterprise, it must be demonstrated that it is *essential* to have an additional worker living on the site in order for the enterprise to operate appropriately.
- 5.12 Although lambing and calving are considered to be such activities, their seasonal nature means that it is possible to deal with the situation by means of the exceptions proposed in Part V of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended). Evidence was submitted with the application to demonstrate why it would not be possible to supervise the stock during these periods under the permitted rights.
- 5.13 The applicant's comments are noted, however, it is difficult to see how the construction of a new house in the countryside based on seasonal use can be justified, particularly bearing in mind that the applicant lives in Penygroes, which is only approximately 1.6 miles from the site. It should also be noted that the applicant's son lives on the farm permanently, works on the farm occasionally and is in a position to supervise the farm's activities during difficult hours. The Council is not convinced that robust evidence has been submitted as a specific confirmation that the applicant needs to be available permanently on the farm, considering the circumstances of the holding.
- 5.14 As the applicant's son provides natural supervision on the farm, during hours outside normal working hours, it is therefore considered that the seasonal need during lambing and calving season in itself is insufficient to prove this functional need, and that the proposal fails under the essential functional need test.
- 5.15 It also appears that the holding has been operational since 2018 (date that the business was purchased) and the applicant has been living around 1.6 miles from the site in Penygroes ever since. No information was received showing an intention to change the farming system, which would change the situation, resulting in a need for a permanent presence on the land.
- 5.16 No information has been submitted regarding the occupancy of the property in Penygroes (mortgage/unmortgaged occupancy/rent), or any evidence that this property does not meet the housing need, bearing in mind that the farm has been operating like this for three years and the partners in the business were aware of this when purchasing the land. In addition, it is obvious that the farmhouse was available to the family to purchase at the time when the land was sold, and one of the sons successfully purchased the house; there is no information or evidence regarding the applicant's circumstances at the time and why the dwelling was not purchased by the main agricultural workers.
- 5.17 This history causes concern over the actual need for a new house and paragraph 4.11.2 of TAN 6 states:

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"In cases where the Planning Authority is particularly concerned about possible abuse, it may be helpful to investigate the history of the enterprise to establish the recent pattern of use of land and buildings and whether, for example, any suitable dwellings or buildings have recently been converted. Therefore, a sale could be evidence of a lack of need."

- 5.18 Although information has been submitted to demonstrate full-time labour for 1.5 persons, the functional test has not been fully met, and therefore the proposal continues to fail.

The Financial Test

- 5.19 As it is an existing business, the applicant must provide financial details for a period of at least three years, which means providing a copy of the books/end of year statement for this period. The financial test should also assess the size and cost of the proposed dwelling in relation to the enterprises' ability to fund and maintain it without damaging the ongoing viability of the enterprise, and demonstrate reasonable likelihood that it will maintain to fund the labour costs employed for the subsequent five years. In addition the figures provided for the Financial Test should show that the business can cope with paying workers' wages and that there is residual profit to maintain the business and to build the dwelling (figure 5.18 of the Practice Guidance for Technical Advice Note 6).

- 5.20 Unless it can be proven that the existing enterprise is sustainable in the immediate short-term, it is unlikely that planning permission will be granted for a dwelling, even if there is currently a functional need to accommodate a worker, as it is unlikely that this need will be maintained.

- 5.21 A statement was received from an accountant, referring to the business' profit over the past three years; this letter makes a financial statement only and it does not confirm the position regarding funding the proposed house. It also states that the company's substantial growth is likely to slow down over the next three years; however, no explanation or logic for this was provided. Although the accounts show a profit and that the partners receive a proportion of the profit, it is unclear whether the applicant receives a salary from the business as a full-time worker. It is not clear either whether one of the sons receives a salary from the business as an agricultural contractor and the second son as a casual worker on the farm.

- 5.22 In those circumstances, it is not considered that the applicant has provided sufficiently robust information that would show that the financial situation of the business is sufficient to warrant the construction of a house, and therefore the application cannot be supported as it fails the financial test.

Alternative Accommodation

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

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- 5.24 Each of these considerations must be dealt with by submitting a rational argument or clear and robust evidence. The applicant's report states that there are no buildings suitable for conversion exist on the holding, but no information or test has been forthcoming in relation to this statement. The applicant also states that it was not possible to purchase the existing house, Uwchlaw'r Rhos, as a part of the business, however the applicant's evidence confirms that the existing house, Uwchlaw'r Rhos, is owned by the applicant's son who is a partner in the business. As discussed in paragraphs 5.15 and 5.16, the authority is concerned about the situation.
- 5.25 Please note that the applicant emphasises that no other property is available to the business on the farm, despite the fact that one son lives in the original house at Uwchlaw'r Rhos. TAN 6 states *if there is another house or suitable building to be adapted on the farm* and not a house which is a part of the business. In this case, the son (a partner in the business) owns Uwchlaw'r Rhos and therefore has a permanent home on the farm, regardless of whether the house is a part of the business or not. Therefore, it is considered that the proposal also fails the alternative accommodation test.

Design Matters

- 5.26 As mentioned above, the size of the proposed dwelling is considered in relation to the ability of the enterprise to fund and maintain the dwelling, and should reflect the needs of the enterprise, but also, as the possible occupancy of the dwelling would be extended to those who qualify for affordable housing, the size of the dwelling should comply with Affordable Housing requirements.
- 5.27 To this end, the proposed dwelling proposes three bedrooms in an internal floor area of around 115m². The guidance on Affordable Housing within Supplementary Planning Guidance: Affordable Housing, restricts the floor surface area for three-bedroom affordable houses to 93m². The proposed dwelling is larger than this, and therefore does not conform to the requirements, as the dwelling could not meet affordable housing needs if its use as an agricultural house came to an end. No information has been submitted about the applicant's needs for a larger property, since it appears that the applicant's children have already left home.
- 5.28 Therefore, it is considered that the size of the property does not conform to the requirements of Technical Advice Note 6, the LDP or the Supplementary Planning Guidance: Affordable Housing.

Visual amenities

- 5.29 Policy PCYFF 3 states that proposals will be approved, including extensions and changes to existing buildings and structures, if they comply with a number of criteria including that the proposal adds to or improves the character or appearance of the site, the building or the area in terms of setting, appearance, scale, mass, the height and elevation treatment; that it respects the context of the site and its place in the local landscape; that it uses materials that are appropriate to their surroundings and incorporates soft landscaping; that it improves a safe and integrated transport and communications network; that it limits the risk and danger of flood water run-off and prevents pollution; that it achieves an inclusive design that allows access for all and helps to create healthy and vibrant environments taking into account the health and well-being of future users.
- 5.30 The site is located on a higher, open and prominent plot to the north-east of buildings and the farmhouse, where the remains of a building are currently located. The building remains has already deteriorated to the degree that it forms a natural part of the landscape. The proposal

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would create a new development in a field beyond the farm buildings and established developed area of the farm. Although there is no objection to the design of the house, concern must be expressed about the elevated and prominent location in the landscape. It is considered that the impact on the landscape would be negative as the existing farm buildings would not mitigate the impact. In those circumstances, it is not considered that the proposal would meet the objectives of Policy PCYFF 2, PCYFF 3 and PCYFF 4 of the LDP.

General and residential amenities

- 5.31 The application was advertised at the site and nearby residents were notified. No response had been received. The applicant states that the owners and occupiers of the nearby property known as Uwchlaw'r Rhos are aware of the application. The proposed site is located approximately 90 metres to the north-east of that property and it is unlikely that the proposal would have a negative impact on it. Also note that the Uwchlaw'r Rhos house is located in the midst of the farmyard and buildings. It is not considered that the proposal would have a substantial negative impact on the occupier of that property. It is not considered that the proposal is contrary to the objectives of Policy PCYFF 2 of the LDP.

Transport and access matters

- 5.32 The application site is located along a private road which also has restricted byway status, with access gained off the old road between Inigo Jones and Groeslon. The house is located to the north-east of the farm building and the proposal would use the existing track. The Transportation Unit was consulted and observations were received noting that there was no objection to the proposal. In those circumstances, it is felt that the proposal is not contrary to policy TRA 2 and TRA 4 of the LDP.

Biodiversity matters

- 5.33 The proposal involves constructing a house on a site where the remains of a building are currently located. A consultation was undertaken with the Biodiversity Unit and comments were received, which recommended imposing a condition to enhance Biodiversity on any permission - it was suggested that a bat box and swallow box should be installed on the new building. Also, the applicant would need to adhere to and follow the guidelines of Pollution Prevention 5 "Works and maintenance work in or near water". Therefore, it is considered that the proposal is acceptable in terms of the requirements of relevant policies, i.e. AMG 5 and PS 19

Archaeological Matters

- 5.34 Although no response was received to the current application, the Archaeological Service confirmed that there was historical value to the building remains to be demolished and it was recommended to impose a condition on any consent, requiring photographs to be taken as a record of the remains. In doing so, it is believed that the proposal can be acceptable on the grounds of the relevant policies, i.e. AT 1 and PS 20.

6. Conclusions:

Based on the above assessment, it is considered that this proposal does not conform to the specific criteria for erecting a house in open countryside within the criteria contained within Technical Advice Note 6: Planning for Sustainable Rural Communities for constructing agricultural dwellings. It is considered that the proposal does not conform to the principles or the

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spirit of the above policies; and that the proposal would be an intrusive characteristic within the landscape located in open countryside.

7. Recommendation:

7.1 To refuse for the following reasons:

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