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| PLANNING COMMITTEE | DATE: 15/06/2026 |
| REPORT BY ASSISTANT HEAD OF DEPARTMENT | |

Number: 3

Application Number: C26/0057/33/RC

Date Registered: 02/02/2026

Application Type: Discharge of 106 Agreement

Community: Buan

Ward: Efailnewydd

Proposal: Re-submission of an application previously refused to remove a 106 agreement relating to the erection of an affordable house permitted under reference C10D/0017/33/LL on part of a field near Penboncyn, Boduan, Pwllheli.

Location: Part of field near Penboncyn, Boduan, Pwllheli, LL53 6DR

Summary of the Recommendation: TO REFUSE

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1. Description:

- 1.1. This is a re-submission of a previously refused application, which is an attempt to remove a 106 agreement attached to planning permission C10D/0017/33/LL. This agreement was drawn up to ensure and protect the use of the property as an affordable unit with a discount of up to 40%. The previously refused application, and the current application were submitted as the current owners do not consider the house to be an affordable house, even at a discounted rate. The applicants have argued that the value of the property exceeds what would be reasonable to call affordable as the open market value shows a considerable difference between what is considered to be an affordable price and the assumed current open market value.
- 1.2 The house as permitted has not been built, but due to historical work carried out to create the entrance, confirmation has been given in the past that a material start has been made on the development, and therefore that the planning permission stands.
- 1.3 The built property would be in line with the plans permitted for a one-storey 4-bedroom detached house with a living room, kitchen/diner, bathroom, foyer and an attached garage. The site is located within the rural area of Boduan which is far outside of any current development boundary and therefore in open countryside.
- 1.4 In such a case, usual planning considerations are not assessed as in common cases. Therefore, attention is not given to matters relating to design, impact on amenities, transport, biodiversity, language etc.
- 1.5 For clarity purposes as regards the planning history, the applicant at the time of submission of the original application (not the current applicants) had been assessed and had proved the need for an affordable house. However, the size of the property was significantly larger than usual for a 4-bedroom affordable house, therefore, the recommendation made by officers then was to refuse the application. The application was discussed at the planning committee and the members decided to go contrary to the recommendation and allow the application subject to the completion of a 106 agreement. The obvious difference since the original application was determined is that Boduan is no longer defined as a rural village, therefore, it is a site in open countryside in terms of this relevant planning consideration.
- 1.6. The application is being submitted to the Planning Committee for a decision at the local member's request, with the reasons given referring to the size of the dwelling approved being significantly larger than the size permitted for current affordable units and that it would, consequently, not be considered as an affordable unit.

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 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 Act (Wales) 2015 places a duty on the Council to take reasonable steps in exercising its functions to meet the 7 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.

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2.3 **Anglesey and Gwynedd Joint Local Development Plan 2011-26, adopted 31 July 2017**

PS 17: Settlement strategy

PS 18: Affordable housing

TAI 15: Affordable housing threshold and distribution

PCYFF 1: Development boundaries

Also relevant in this case are the following:

Supplementary Planning Guidance (SPG): Affordable housing

SPG: Planning Obligations

2.4 **National Policies:**

Town and Country Planning (Modification and Discharge of Planning Obligations) Act 1992

Future Wales: The National Plan 2040

Planning Policy Wales (Edition 12 - February 2024)

Wales Circular 13/97 Planning Obligations

Technical Advice Note (TAN) 2: Planning and Affordable Homes

TAN 6: Planning for sustainable rural communities

3. **Relevant Planning History:**

- 3.1 Application C25/0044/33/LL - An application to discharge the 106 agreement relating to an affordable house permitted under reference C10D/0017/33/LL on part of field near Penboncyn, Boduan, Pwllheli - Refused 13/08/25.
- 3.2 Application C10D/0017/33/LL - A single-storey affordable house together with septic tank and soakaway - Permitted - 13/06/11.
- 3.3. Also of relevance in this case is the enquiry presented under reference Y24/0578 by the current applicant. Making modifications to the building were discussed, including transforming it into a dormer bungalow and extending the garage. In response, their attention was drawn to the property's restriction as an affordable house and the requirements involved. It was confirmed that the 106 agreement still applied and restricted the property as an affordable house for an eligible person with a price that would be at least 40% less than the general value on the open market. The 106 agreement was said to define eligibility requirements for the property, and the requirement was therefore that the requirements of this legal agreement were fully met, including proving the need for an affordable house.

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4. Consultations:

Community/Town Council: On behalf of Buan Community Council, we wish to support application: C26/0057/33/RC - part of field near Penboncyn, Boduan to discharge the 106 agreement relating to the erection of an affordable house permitted under reference C10D/0017/33/LL.

Housing Strategic Unit: **Information about the need**

The following indicates the number of applicants who wish to live in the area:-

6 options on the Tai Teg register for intermediate properties in Boduan.

27 applicants from the common housing register waiting for a social property in the area of Boduan and Rhydyclafdy.

As noted above, 6 individuals on the Tai Teg register have noted Boduan as their area of choice and are in need of an affordable property.

Public Consultation: A notice was posted on the site and nearby residents were notified. The advertisement period has expired, and two letters / items of correspondence have been received objecting on the following grounds:

- The application is flawed because the argument that a local person/family could not afford the property is incorrect as the figures given in relation to a mortgage lending sum is misleading and in fact local residents would be able to afford to buy the property.
- The site planning history and the restrictions were fully known to the owners before they bought it in an auction
- It would prevent local residents from buying a house in their home area
- The 106 agreement was issued for a reason and removing it would set a precedent and dishonour the planning system

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5. Assessment of the relevant planning considerations:

The principle of the development

- 5.1 The principle regarding the circumstances under which an application for removing a legal agreement under Section 106 may be made is explained in detail in Circular 13/97 *Planning Obligations*. In addition to the above-mentioned circular, the Town and Country Planning (Modification and Discharge of Planning Obligations) Act 1992, is relevant to this application together with recent similar applications to remove legal agreements.
- 5.2 These documents (including Regulations 122 and 123 of the Community Infrastructure Levy Regulations, 2010) state that a legal agreement under Section 106 must be valid and meet the five relevant tests that are relevant, whether it is a new agreement or a previous application to remove or amend an agreement. The five tests state:-
1. *That the obligation is relevant to planning;* - a 106 obligation is an acceptable manner in planning terms to tie the property to the person with an affordable need. Therefore, it is believed that the agreement is still relevant in terms of this test.
 2. *That it is necessary that the proposal is acceptable in planning terms;* - the site is located outside any existing development boundary and therefore in open countryside. The site was originally in a location directly near a building coloured on the Gwynedd Unitary Development Plan proposals map which defined Boduan as a Rural Village and, therefore, without an affordable housing policy at the time it would not have been granted planning permission in the first place. It is well-known that there is still a need for affordable units in the area of Boduan and the surrounding areas. The information submitted by the Housing Strategic Unit confirms current numbers on waiting lists. Also in this case, given its location outside of any current development boundary and therefore in open countryside, the property could be considered as a rural enterprise unit for eligible persons. The statement presented notes that the site was sold by the previous owners in an auction, however, no information is disclosed in terms of the details of the sale and whether it would have been marketed as a rural enterprise house, for example. Therefore, it is believed that there is sufficient up-to-date information to confirm the need for local affordable housing in the area of Boduan, and the agreement is therefore still considered as being relevant in terms of this test.
 3. *That it is directly related to the proposed development;* - the agreement refers directly to the provision of an affordable unit. The agreement is still relevant in terms of this test.
 4. *That it is fairly and reasonably related in scale and kind to the proposed development;* - The agreement is relevant to the property that was the subject of the application and ties it to property for those in need of affordable housing. The discount has been set at 'a minimum of 40%' and there is no suggestion that this is not relevant for the area. There is a further assessment on this matter below. The agreement is still relevant in terms of this test.
 5. *Reasonable in all other aspects;* - There is no other way to ensure that the unit is provided as an affordable house without a 106 agreement.
- 5.3 Paragraph 4.2.25 of Planning Policy Wales states “...*The community's need for affordable housing is a material planning consideration when formulating development plan policies and determining relevant planning applications...*”.
- 5.4 As there is still a need for affordable units and units that address the local community, it is reasonable to continue to retain affordable units in the area and, therefore, to keep this 106 Agreement as it is.

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- 5.5 Part 3.9 of the Affordable Housing SPG refers to Removal of Affordable Housing Condition/Agreement. Paragraph 3.9.1 states that there could be circumstances when the current affordable units do not provide an affordable unit even with the discounted rate. In such circumstances, the Council may consider removing the condition provided that a commuted sum is paid to contribute to the provision of affordable housing in the future i.e. the difference between the discounted value and the open market value. It is noted that this is not what the applicant states with this proposal, but rather to try and remove the agreement by changing from being an affordable unit to an open market house. In fact, it is said that the contribution, namely the difference between the open market price and affordable price would be an unreasonably high amount to pay.
- 5.6 In the information submitted, it is noted that an affordable formula from the Supplementary Planning Guide: Affordable Housing has been used to calculate that £126,315 would be the affordable price in the area of Efailnewydd/Buan based on the average income, but it is believed that this is the basis for initiating discussions around valuation when developing new houses rather than being a definitive rule for the affordability level of every affordable unit.
- 5.7 The same information was submitted as with the previous application, noting that a valuation report from a local qualified valuer had been completed which noted the value of the property as being £425,000. A discount of 40% (the 106 agreement notes a minimum of 40%) would reduce the price to a maximum of £255,000. Although it is noted that the intention is to set up a home here, for completeness, no information has been submitted as to the details of the auction at the time the site was sold to show that any attempt was made to market the site locally for building an affordable unit (or a rural enterprise unit) and therefore the assumption that the site could not provide an affordable unit has not been fully proven. It must be noted that changes in the housing market mean that more households fall into the category of need/eligibility for Intermediate Affordable Housing as they could not afford a house on the open market. This is reflected by the fact that the maximum combined annual gross household income for a house in the Tai Teg criteria has increased from £45k to £60k, therefore it is considered that the affordable price could be within the reach of people eligible for affordable housing.
- 5.8 As already noted above, should the proposal be considered appropriate by accepting that it no longer provides an affordable unit, then the application must be considered against part 3.9 of the Affordable Housing SPG. This part notes when current affordable housing does not provide an affordable unit even at the discounted rate, then consideration may be given to removing the agreement provided that a commuted sum is paid to contribute to the provision of affordable housing in the future. Paragraph 3.9.3 states that the Council will seek to recover the difference in value, from the value of the house on the open market to the reduced level, as a commuted sum. As noted in paragraph 5.5 above, no offer is submitted as part of the application to put forward a commuted sum as the figure is said to be unreasonable when calculating the difference between the open market price of the property and its affordable value (£170,000).
- 5.9 A 4-bedroom house would be provided if built in line with the extant permission, but obviously to meet the requirements of the applicant as it is, a smaller house could be appropriate and could accommodate their situation whilst still meeting a specific need. It is possible that amending the size and design of the house would mean that a house that is genuinely affordable could be provided.
- 5.10 In this case, the applicant is trying to remove the agreement on the grounds that the house - built and completed - would not be in line with the original permission, even based on the discounted level in the agreement for preparing an affordable unit. The house as permitted has not been built, but a material start has been made by creating a site entrance. Given the protected planning permission, this means that a fallback situation has been created which would be a relevant consideration if a revised application was to be submitted for providing a unit that would be considered as genuinely affordable. In terms of an open market valuation, the unit notes a value of £425k with a 40% discount meaning an affordable value of £255k. At the time of the previous application, based on CACI paycheck figures in 2024, it was declared that the starting point of discussions for

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an affordable unit in this location would be around £187k. Part 3.9 of the Affordable Housing SPG states that when the affordable value is too high, consideration is given to removing the 106 Agreement if a commuted sum is paid based on the difference between the open market value and discounted level, which in this case is £170k. There is no offer of a commuted sum in this case as it is claimed to be unreasonably high.

- 5.11 Despite the information submitted, it is not believed that the proposal meets adopted policies and guidance for the reasons noted above. Taking the above assessment into account, it is considered that the contents of the agreement under Section 106 meets the five tests referred to in Circular 13/97, Planning Policy Wales, Chapter 3 "Making and Enforcing Planning Decisions" and the Town and Country Planning (Modification and Discharge of Planning Obligations) Act 1992, and that they continue to serve a useful planning purpose as they are relevant to the property and are a means of ensuring that the property continues to be an affordable dwelling initially and in perpetuity. No revised Red Book valuation has been submitted with this current application. It is noted that this affordable house has not been built, but rather permission has been protected. Considering this, it is believed that weight could be given for a revised application to prepare an affordable unit of a size that would be genuinely affordable.
- 5.12 The legal agreement is also a way of ensuring that the current policy of the Local Development Plan, as well as national policies and guidance, are not undermined as would be the case if this were removed and it could set a dangerous precedent as similar agreements apply to several other properties and other sites within the catchment area. Specifically in this case, the proposal would undermine policies PCYFF 1 and TAI 15 of the Anglesey and Gwynedd Joint Local Development Plan, 2017 along with relevant guidance found in the Supplementary Planning Guidance: Affordable Housing, Supplementary Planning Guidance: Planning Obligations and Technical Advice Note 2: Planning and Affordable Housing. For the above-mentioned reasons, it is believed that the removal of the agreement should not be agreed in this case.

Conclusion:

- 6.1 Given the relevant planning matters in this case, the proposal is not deemed acceptable for the reasons noted above.

7. Recommendation:

- 7.1 To Refuse –

It is considered that the Section 106 Agreement that limits the dwelling to an affordable dwelling for a local community need still serves a valid planning purpose and that therefore it continues to have a useful purpose in accordance with the guidance in the Community Infrastructure Levy 2010 relating to "Planning Obligations", Circular 13/97, Planning Policy Wales, Chapter 3 "Making and Enforcing Planning Decisions" and the Town and Country Planning (Amendment and Removal of Planning Obligations) Act, 1992. Removing the agreement as indicated in the application would also undermine the Council's strategy relating to securing a sufficient supply of affordable dwellings within the County and, as such, would be contrary to Policies PCYFF 1 and TAI 15 of the Anglesey and Gwynedd Joint Local Development Plan, 2017 and relevant guidance contained within Supplementary Planning Guidance: Affordable Dwellings, Supplementary Planning Guidance: Planning Obligations and Technical Advice Note 2: Planning and Affordable Dwellings.