

<b>PLANNING COMMITTEE</b>	<b>DATE: 14/05/2018</b>
<b>REPORT OF THE SENIOR PLANNING AND PUBLIC PROTECTION MANAGER</b>	<b>CAERNARFON</b>

**Number: 3**

**Application Number: C17/1094/36/LL**

**Date Registered: 22/11/2017**

**Application Type: Full - Planning**

**Community: Dolbenmaen**

**Ward: Dolbenmaen**

**Proposal: Change of use from public house to dwelling house.**

**Location: The Cross Foxes, Garndolbenmaen,  
Gwynedd, LL519TX**

**Summary of the Recommendation: TO APPROVE WITH CONDITIONS**

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## 1. Description:

- 1.1 This application was deferred at the 16 April 2018 committee in order to ask representatives of the Garndolbenmaen Community Group to submit further information in the form of a realistic financial package for the proposal, including evidence of a reasonable financial offer to purchase the property.
- 1.2 Since this decision to defer, the application is now the subject of a formal appeal to the Planning Inspectorate regarding a lack of decision within the specified timetable.

It is noted here that there is a formal procedure to deal with an appeal regarding a lack of decision. Relevant regulations within Planning Legislation note the following:

- For Planning appeals where an appeal has been made regarding the Local Planning Authority's failure to come to a decision on the application within the specified period, there is a period of four weeks from the receipt of the appeal where a Local Planning Authority has an opportunity to continue to determine the application.

In this case, the appeal was submitted to the Planning Inspectorate on 18 April and four weeks from this date takes us to 16 May, namely two days after the Planning Committee meeting.

- 1.3 Members are reminded that this application was also deferred at the Planning Committee dated 26 February 2018 in order to give a local community group the opportunity to submit evidence of their intention to purchase the building in order to keep its use as a public house. Following the above deferral, the group was asked, via e-mail on 27 February, to submit the following information:

- Firm information/evidence is needed about the purchase arrangements including information/evidence of:
  - A public meeting
  - Registering as a charity
  - Business plan
  - Work programme
  - Any offer

- 1.4 As a result of this request for information, further information was received in order to assess the application in accordance with the recommendation of the Planning Committee. These matters are discussed further on in this report.

- 1.5 A full application for the change of use from public house to one dwelling house at Cross Foxes, Garndolbenmaen. The existing building provides a public house facility on the ground floor and a living unit on the first floor. The proposal as shown would involve making minor internal changes to create one living unit within the building. For clarity, the existing internal arrangement and proposed changes are as follows:

- Present: Ground floor - two bar areas, kitchen, toilets, storage  
First floor - lounge, kitchen, study, bathroom, two bedrooms
- Proposed: Ground floor - lounge, dining room, kitchen, storage, toilet, utility room

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First floor - lounge, kitchen, study, bathroom, three bedrooms

1.6 No changes would be made to the external structure, other than the removal of the existing sign. The building ceased to be used as a public house in March 2017. According to the applicant, this is briefly the history of the building during her ownership:

- The Cross Foxes was bought in April 2007 and was run as a public house until the end of March 2017.
- The public house was initially put on the market in May 2011 with a national agent
- The agent was changed in 2013 to another national agent
- In 2014, they reverted to the original agent, who still works on their behalf
- The building has been marketed on the website of a specialist sales company, Sidney Phillips, who often sells public houses in Gwynedd; and in publications such as Daltons Weekly and Morning Advertiser
- It is claimed that local residents are aware that the business is for sale, no one visited the building as a result of the marketing
- A website was set up, leaflets were produced, a brown tourism sign was purchased and installed at the junction to the village on the nearby highway
- The different offers and activities held in conjunction with the business were also noted

1.7 The building is located in a fairly prominent site at the centre of Garndolbenmaen. A car park and beer garden are to the rear of the building with the entrance to the side. The whole site is within the development boundary of the village of Garndolbenmaen, and the National Park boundary is directly opposite the public road that runs past the front of the building. It is surrounded by a mixture of buildings in terms of size and appearance as well as use, but the majority are residential.

## 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 Act (Wales) 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 2011-26 adopted 31 July 2017**

ISA 2: Community Facilities

TRA 2: Parking Standards

TRA 4: Managing transport impacts

PCYFF 1: Development Boundaries

PCYFF 2: Development criteria

MAN 4: Safeguarding shops and pubs in villages

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PS 16: Housing Provision  
PS 17: Settlement Strategy  
TAI 4: Housing in Local, Rural and Coastal Villages

2.4 **National Policies:**

Planning Policy Wales, Edition 9 (2016)

3. **Relevant Planning History:**

3.1 C06D/0500/36/LL - change of use of public house to residential house - refused  
01.11.06

C04D/0294/36/LL - change of use of public house to residential house - refused  
20.08.04

4. **Consultations:**

Community/Town Council: Object, in order to give time to purchase it and retain it as a village resource

Transportation Unit: No observations

Natural Resources Wales: No objection

Welsh Water: Standard advice

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Public Consultation: A notice was posted on the site and nearby residents were notified. The advertisement period has expired and several letters/correspondences were received as well as a petition, objecting on the following grounds:

- It would be contrary to local and national policies
- Loss of community resource
- There is a local campaign to purchase it
- It brings economic benefit
- No other similar resources nearby
- Detrimental impact on the Welsh language
- The business could be viable
- General detrimental impact on the area
- Sale price too high
- No local marketing
- Shop and post office already closed
- Lack of consultation on the planning application
- Historical applications have been refused

As well as the above objections, objections were received that were not material planning objections and these included:

- Fall in house prices
- Detrimental impact on existing holiday accommodation businesses

## 5. Assessment of the material planning considerations:

### The principle of the development

5.1 As a starting point to assess the principle of this application, policy ISA 2: Community Facilities of the Local Development Plan, must be considered. The policy aims to protect existing facilities and encourage the development of new facilities where appropriate. For the purpose of the policy, community facilities are defined as facilities used by local communities for the health, leisure, social and educational purposes and they include schools, libraries, leisure centres, health care provisions, theatres, village halls, cemeteries, places of worship, public houses and any other facility that provides a service for the community.

5.2 The policy states that change of use of a community facility should be withstood unless it is possible to comply with one of three options. Part iii. is relevant in this case, as it involves a facility that is commercially run, and evidence of the following must be presented:

- *That the current use has ceased to be financially viable*  
The fact that the public house has closed suggests that the use as a public house is not viable. Information submitted with the application from an accountancy firm confirms a decline in the turnover of the business over a number of years. It must be noted that this reflects national trends where a high number of public

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houses are closing due to a lack of custom and/or profitability. On this basis, it is deemed reasonable to consider the use to be inviable.

- *That it could not reasonable be expected to become financially viable*  
Information submitted states that the chances of this property reopening as a public house are very slight considering the current national trend; namely, that four public houses close every week; and despite marketing through sellers specialising in this type of business, and despite reducing the price, no interest was expressed and no offers were received. It is noted that an attempt was made to present special offers and evenings in an attempt to attract business, that a website was created, leaflets published and a brown sign placed on the highway to try to attract customers. Considering the arguments and the fact that the building has been empty for some time despite an attempt to sell it since 2011, it can be accepted that it is unlikely that the use as a public house can be viably reinstated. Observations received claim that the way the business was run deliberately affected the business; but whatever the current owner's behaviour or business experience, it is very possible that the size of the population of Garndolbenmaen and catchment area is insufficient to maintain a business of this type at a time of financial constraint throughout the year.
- *That no other community use can be established*  
The building has been marketed but the seller does not propose to create another community use in its place. It appears that no interest was expressed whilst the building was on the market and no offers were received. The information submitted states that losing the public house would neither deprive nor affect the community in its entirety as there is convenient access to the nearby village hall that already hosts activities such as parties, and so on.
- *That there is evidence of genuine attempts to market the facility, which have been unsuccessful*  
The information shows that the estate agent has tried to market the property as a public house but that efforts had proved to be unsuccessful. Confirmation of the public house's marketing details can be found in the information submitted with the application. It appears that the owner bought the property early in 2007 and had later instructed a specialist company to market the building in 2011 to be sold. It shows that the owner turned to another company in 2013 to market it at a lower price than the original price. It can be seen that this owner had returned to the original estate agent that again marketed it at a lower price than the original price and the second price. The property remains on this company's web site and has been included in specialist seller publications such as Daltons Weekly and Morning Advertiser. The applicant has stated that she had begun to inform the patrons of the public house approximately two years before it closed that the business was not viable and that they were considering selling but that no interest had been shown directly to the owners of an intention to try to buy it. It, therefore, appears, despite the marketing undertaken, that there was a lack of interest in retaining the use as a public house.

5.3 Having weighed up the evidence submitted against policy ISA 2 and the fact that it is highly unlikely, based on the information to hand, that the building's use as a public house will be reinstated on account of the costs and nature of the community, it is believed that justification has been shown for the change of use. Bringing a disused building back to appropriate use is encouraged, especially in a fairly prominent site at the centre of Garndolbenmaen and in an area with a mostly residential character.

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- 5.4 An observation was received from the Economic Development service based on the information submitted with the application, which stated that a rural public house business faced a number of such challenges and that they had assessed the information submitted and that it confirmed that it was not viable in its current form.
- 5.5 The Joint Planning Policy Unit, in its response to the consultation on the application, states that the main policy that should be considered in this case is Policy MAN 4, as it involves the safeguarding of shops and public houses in villages and provides guidance on the material considerations for this type of proposal. This policy states that proposals to change the use of a public house in a village should be refused unless a similar service is available within a reasonable walking distance and that the Local Planning Authority must be satisfied by demonstrating that the use is no longer financially viable, through placing it on the market for a reasonable sale or rental price. The Policy Unit states that it is clear in the case of Garndolbenmaen, that there is no other public house within reasonable walking distance and that the proposal must, therefore, be considered in the context of the second criterion, namely, that the unit has been empty for an extended period and that it has been marketed for a reasonable price for a continuous period of 12 months. From the evidence submitted with the application, it is believed that the policy's material requirements have been adhered to, namely the information relating to marketing the building as a pub since 2011 and that there is justification for changing the use in this case, as explained above.
- 5.6 There is no specific policy for converting buildings within Local, Rural and Coastal Villages into residential houses. However, Strategic Policy PS 17: Settlement Strategy provides guidance on the way housing developments are expected to be distributed based on the level of service provision, the size and capacity of the settlement. In terms of a village such as Garndolbenmaen, the site is expected to be within the development boundary and be of a size, scale, type and design that is in-keeping with the character of the settlement. Although this application does not consist of a new development, it could be argued that it is a semi-windfall site within a development boundary and is, therefore, also acceptable from the material aspects of policies TAI 4, PS 16 and PCYFF 1. Since the proposal involves converting a public house into one house, negotiating an affordable provision will not be required in this case as, in truth, it is an extension to an existing residential unit (the flat) rather than the creation of a brand new living unit. Since the top floors of the building have been used for residential purposes for a number of years, the change from the previous situation to this situation would not be significant. It is, therefore, considered that the principle of changing the public house use to a residential house meets the aim of the strategy and brings a partly disused building back to full and appropriate use in the neighbourhood.

### **Visual amenities**

- 5.7 Other than removing the sign, there is no intention to carry out any external changes to the building; therefore, it is not believed that there would be any visual harm to the amenities of the area as a result of this use and, consequently, it is considered to be acceptable from the point of view of this element.

### **General and residential amenities**

- 5.8 It could be argued that changing the use from a public house to a residential house would be an improvement, in terms of considering the impact on the amenities of nearby residents and the general amenities of the area. There would be less disruption and less coming and going from residential use and less traffic. The proposal is,

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therefore, believed to be acceptable in terms of this aspect and meets the relevant requirements of policy PCYFF 2.

### **Transport and access matters**

- 5.9 The existing vehicular access to the site is past the gable end of the building that leads to a private car park that is at the rear. A class three county road runs past the front of the site. The Transportation Unit is satisfied with the application and on the grounds of these observations and considering the less intensive residential nature of the building compared with the commercial use as a public house, it is believed that the application satisfies the relevant requirements of policies TRA 2 and TRA 4.

### **Relevant Planning History**

- 5.10 It is acknowledged that two previous applications were submitted and refused for the exact same proposal to convert this public house into a residential house. Firstly, both these applications date back over ten years at a time when another Development Plan and policies existed. Nevertheless, both applications were refused on the grounds of non-compliance with a policy that protected public houses. What is seen from this planning history is that insufficient evidence was submitted to justify the change on both occasions and, therefore, it is believed that consideration was given at these specific times to the lack of information as submitted.

### **Response to the public consultation**

- 5.11 As previously referred to, observations/objections to the proposal had been received from local residents and a petition objecting to the proposal which raised a number of matters relating to the proposed development and recent history of the business.
- 5.12 The relevant matters are too numerous to consider one by one, but it is considered that these matters have received thorough consideration in the above assessment.
- 5.13 Matters that can be considered as material planning matters are quite specific, consideration is not given to all the matters raised in the observations such as houses losing value, detrimental impact on holiday accommodation businesses, etc. as they are not material according to planning legislation.

### **The Response of the Garndolbenmaen Community Group**

- 5.14 The following was received in response to a request for further information in relation to the proposal to develop the Cross Foxes public house as a community asset:
- Business plan
  - Details of a public meeting including a petition filled in by those who attended the meeting in support of the proposal
  - Details of contact with relevant groups, organisations and individuals regarding the proposal
  - Information regarding past community activities
  - The group background and membership
- 5.15 It is acknowledged that, in accordance with the request for further information as a result of the committee's deferral, that information had been submitted by the Garndolbenmaen Community Group. What needs to be assessed is whether the

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information as submitted is sufficient as firm evidence to show that the proposal can actually be achieved.

- 5.16 There is no doubt that the Group's intentions are well-meaning, but the Planning Authority must determine the application based on current policies at the time the application is submitted and within a specified amount of time. An application cannot be refused based on a third party desire rather than a genuine plan which can be realised; that is, a decision cannot be kept open until such a desire is realised. The Business Plan is very ambitious, which should be praised, but a plan that would provide a public house, restaurant, café, self-catering accommodation, bunkhouse, post office, tourist information centre, library, access to computers and free wi-fi, will involve a substantial investment and a considerable amount of time to realise.
- 5.17 The information submitted refers to general background and information about the current situation, the history of the site and the group's future aspirations. Though what is said is praiseworthy in terms of the desire of a local community to take control and create a community asset, there is no indisputable evidence that this will happen in the near future. This Planning application has been submitted and a decision must be made on it; the owner has the right to submit such an application and expect a decision on it either within the statutory period or by agreement thereafter. An application cannot be kept open until external matters have been resolved and, therefore, though the information submitted outlines the group's desire, it is not believed that this is sufficient in this case to overturn the Planning Authority's original recommendation to approve the application to convert the public house into a residential house.

## **6. Conclusions:**

- 6.1 It is believed that sufficient evidence has been submitted to prove that the use as a public house is not viable and although reference has been made in observations received to the intention to attempt to buy it locally, there is no strong evidence to suggest that the use would be likely to be reinstated in the near future. It is, therefore, believed that in this instance there is justification for the proposed change of use. Considering the above and having considered all material planning matters, including local and national policies and guidance and all the observations received, including those of the Economic Development and Joint Planning Policy Unit, it is not believed that this application is unacceptable and that it, consequently, complies with the relevant requirements of the policies as noted above.

## **7. Appeal Matters regarding a Lack of Decision on the application within a specified timescale**

As previously explained, an appeal has been submitted to the Planning Inspectorate regarding a lack of decision on the application within a specified timescale. Despite this, it is possible for the local Planning Authority to be granted a one month period since the receipt of the appeal in order to determine the application. This period comes to an end on 16 May 2018 and therefore, the Committee is entitled to determine this application today.

Officers' recommendation on this application is clear and has been noted in paragraph 8 below. However, it must be noted that there are options open to the Committee and these are noted below starting with the option that poses the lowest risk:

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1. **To approve the application in accordance with officers' original recommendation which has been noted in paragraph 8 below.**

This would mean that the appeal would come to an end with no further action and would avoid costs to the Council.

2. **To refuse the application for a valid planning reason/reasons contrary to the officers' recommendation.**

The Committee would be required to note a valid planning reason/reasons for the refusal. This would mean that the appeal would automatically transfer to become an appeal for refusal and continue to be determined by the Planning Inspectorate. The appeal would focus on the relevant reason/reasons for refusing. The applicant has noted in the appeal documents that there is an intention to make an application for costs. Refusing the application would involve a risk of costs against the Council and it is likely that the risk would increase with the number of reasons for refusal that are offered. It is believed that there is a real risk of costs against the Council in the case as there is no robust evidence to support refusal.

3. **To refuse to determine the application.**

The Committee can refuse to determine the application which would mean that the appeal regarding a lack of decision would continue to be determined by the Planning Inspectorate. In these circumstances and in order to enable officers to deal with the appeal, the Committee is requested to confirm its stance on the application and to authorise officers to submit the appeal case on behalf of the Council. The applicant has noted in the appeal documents that there is an intention to make an application for costs. Refusing to determine the application would involve a high risk of costs against the Council and it is likely that the risk would increase if there is no valid planning reason for refusing to determine the application. Reference should be made to a relatively recent similar case in Menai Marina, Felinheli - where an appeal was submitted for a lack of decision by the Committee on the application and where the appeal's Inspector approved the application and also granted costs against the Council stating that the 'Council has unnecessarily delayed the determination of the application, which led to the Appellant submitting an appeal...I am of the opinion that unreasonable behaviour was displayed...therefore, the ruling of full costs is justified'.

## **8. Recommendation:**

- 8.1 On the above grounds, the recommendation is to approve the application (namely, option 7.1 above) with conditions:

1. Time
2. Comply with plans
3. Removal of permitted development rights