PLANNING COMMITTEE	DATE: 13/12/2021
THE REPORT OF THE SENIOR PLANNING AND PUBLIC PROTECTION SERVICE MANAGER	

Number: 8

Application Number:	**C21/0569/35/AC**
Date Registered:	**15/06/2021**
Application Type:	**Removal of condition**
Community:	**Cricieth**
Ward:	**Cricieth**
Bwriad:	**Removal of condition 4 on permission C16/0292/35/LL limiting occupation of the units (apart from warden and staff accommodation) to people over 55 years of age only or those who form an individual home with such a person**
Location:	**George IV Hotel, 23-25, High Street, Cricieth, Gwynedd, LL52 0BS**
Summary of the Recommendation:	**TO REFUSE**

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1. Description:

1.1 This application before you is to remove condition 4 on planning permission C16/0292/35/LL. The condition states:-

"With the exception of the warden and staff accommodation units each residential unit hereby permitted shall be occupied only by:

(i) Persons over 55 years old;

(ii) Persons living as part of a single household with such a person or persons;

(iii) Persons who were living as part of a single household with such a person or persons who have died".

1.2 Existing permission C16/0292/35/LL, was approved subject to the conditions on 2 August 2016. The application was to amend condition 3 of planning permission C13/0028/35/AM in order to extend the time granted to submit reserved matters. The description of application C13/0028/35/AM was to renew planning permission C08D/0478/35/AM for the erection of 34 sheltered housing units for the elderly, warden accommodation, two staff units, communal facilities and parking for residents, staff and George IV Hotel together with landscaping. Prior to this planning permission C08D/0478/35/AM had a similar description namely Construction of 37 residential units to include 34 sheltered housing units for the elderly, warden accommodation and two staff residences, parking provision for residents and staff, separate parking for visitors to the George IV Hotel and landscaping. The descriptions of applications to develop this site have been consistent and refer to sheltered housing for the elderly and a condition was attached to limit use to persons over 55 years of age.

1.3 Therefore condition 4 on permission C16/0292/35/LL currently limits occupation of the units to persons over 55 years of age only or those who lived as part of a single household with such a person. This application under Section 73 of the Town and Country Planning Act 1990 seeks to remove this condition that would mean that the units could be occupied by any person of whatever age.

1.4 Section 73 enables the applicant to submit an application to develop land without complying to conditions attached to an extant planning permission. Under this section the Local Planning Authority may amend or remove conditions, but may not amend any other part of the permission. A successful s.73 application results in the grant of a new planning permission and therefore the original permission remains intact. When determining a s.73 application, the LPA may impose conditions beyond those proposed in the application. However, the conditions imposed should only be ones which could have been imposed on the original permission. Previously, it was held that the amendments permitted should not amount to a "fundamental alteration" of the proposal put forward in the original application.

1.5 The only information submitted as part of the application for the need to remove the condition is that the development originally was supposed to go to a company specialising in retirement homes and there were efforts to ensure another specialist provider, however, these had failed.

1.6 The site lies within the Cricieth development boundary and within the conservation area. The class 1 highway that runs through Cricieth is located to the north of the site. Currently, the site has been cleared with a security fence erected along the site's boundary with the adjacent road. There are signs on the security fence that advertise 'Luxury Apartments for Sale'.

1.7 The application is submitted to the Committee as it involves five or more houses.

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

ISA 5 - Provision of open spaces in new housing developments

PS 4 - Sustainable transport, development and accessibility

TRA 2 – Parking standards

TRA 4 – Managing transport impacts

PS 5 – Sustainable developments

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 16 - Housing provision

PS 17 - Settlement Strategy

TAI 2 - Housing in Local Service Centres

TAI 8 - An appropriate mix of housing

TAI 15 - Threshold of Affordable Housing and their Distribution

PS 19 - Conserving and where appropriate enhancing the natural environment

AMG 5 – Local Biodiversity Conservation

PS 20 - Conserving and where appropriate enhancing cultural assets

AT 1 – Conservation areas, world heritage sites and landscapes, parks and registered historic gardens

Supplementary Planning Guidance - Maintaining and Creating Distinctive and Sustainable Communities

Supplementary Planning Guidance - Housing Mix (October 2018)

Supplementary Planning Guidance – Affordable Housing (April 2019)

Supplementary Planning Guidance – Planning obligations

2.4 **National Policies:**

Future Wales: The National Plan 2040

Planning Policy Wales, Edition 11, February 2021.

Technical Advice Note 2: Planning and Affordable Housing

Technical Advice Note 12: Design

Technical Advice Note 18 – Transport

3. Relevant Planning History:

3.1 C04D/0392/35/LL – Erect a building to provide 41 retirement flats together with additional provision, and form a car park and landscaping. Withdrawn 16/02/09.

3.2 C05D/0211/35/LL – Erect a building to provide 41 retirement flats together with additional provision, and form a car park and landscaping. Refused 25/07/05.

3.3 C08D/0478/35/AM – Construction of 37 residential units to include 34 sheltered housing units for the elderly, warden accommodation and two staff residences, parking provision for residents and staff, separate parking for visitors to the George IV Hotel and landscaping. Refused 28 April 2009 – Approved on appeal 15/03/10.

3.4 C13/0028/35/AM - Renewal of planning permission C08D/0478/35/AM for the erection of 34 sheltered housing units for the elderly, warden accommodation, two staff units, communal facilities and parking for residents, staff and George IV Hotel together with landscaping - Approved 16/05/2013.

3.5 C16/0292/35/LL - Application to amend condition 3 of planning permission C13/0028/35/AM in order to extend the time granted to submit reserved matters - approved 02.08.16.

3.6 C17/066636/AM - outline application to erect new buildings for a mixed development of 13 urban houses, 24 flats, associated bin storage area, bicycle storage area, car park, new shop units and a garden - Withdrawn 5 July 2019.

3.7 C18/0559/35/MG - Erection of 34 sheltered housing units for the elderly, warden accommodation, two staff units, communal facilities, parking provision for residents, staff and George IV Hotel together with landscaping (reserved matters application under permission C16/0292/35/LL) - Approved 5 September 2018.

4. Consultations:

Cyngor Cymuned/Tref: Object to the application on the grounds of the points summarised below:

1. The Planning History of the Proposed Development

Looking at the current application in the context of the planning history that is relevant to the extant permission, the most important documents are those that are associated with the planning application in 2008 and the Appeal Decision in 2010.

A. The application in 2008

Amongst the documents relevant to the 2008 application is the 'Supporting Statement'. The purpose of this detailed document was to try and justify the planning application. The main argument throughout the entire document is that there is a demand for a development of dwelling units to satisfy the need for housing and flats for persons over 55 years old in Cricieth. There are several references to a vast number of official documents from this time and these acknowledge that there is an increasing need for more dwelling units for the older population. In this context, the document refers to policies formed at that time to deliver this. The intention in referring to these documents and policies was to use them as a justification and basis for the application and that they give a seal of approval. When analysing the 'Planning Statement' the clauses that best summarise the applicant's viewpoint when justifying the application is the following:-

1.1.9 ‘’And this is why we believe that this proposal would help to alleviate the demand for sheltered housing within the County of Gwynedd and furthermore would ensure that the needs and desires of the ageing population are fulfilled….’’

1.1.2 ‘‘Cricieth and the wider catchment area does not currently offer an attractive range of housing supply for the older population and, due to this, a large number of Gwynedd’s settlements are losing their older population as they have to move out of the area against their wishes to look for a suitable home elsewhere.’’

8.1.4 ‘This proposal would help to fulfil this vision by offering greater

choice to older people in terms of where they wish to live, in what type of property and the level and care and support they wish to receive. The proposal will enable people to live full and independent lives with support as necessary.'

It is quite obvious that the above viewpoints are totally contrary to what the applicant is trying to achieve in making the current application. Although Gwynedd Council supports the above arguments regarding the use of the units the application was refused due to other matters.

B. Appeal Decision 2010

Following Gwynedd's resolution to refuse the application the applicant took the matter to appeal and managed to get permission. In his resolution the Inspector noted several conditions on the permission including the following:

"With the exception of the warden and staff accommodation units each residential unit hereby permitted shall be occupied only by:

- Persons over 55 years old

- Persons living as part of a single household with such a person or persons;

- Persons who were living as part of a single husehled with such a person or persons who have died".

C. Different Applications and Planning Resolutions from 2010 to 2018

Moving forward from 2010 to 2018, several planning applications and decisions were made, however, none of these sought to amend the restriction on the use of the residential units from the Appeal decision in 2010. Therefore, the current application is the first to try and remove the condition that the use of the building is to be limited to persons over 55.

In considering the current application in the context of the above history it is evident that it is totally contrary to the argument made in 2008 and 2010 when permission was given. Indeed, this application totally undermines the justification made at that time.

When looking at the existing housing and flats market in Cricieth, it is obvious that the demand for houses and flats for people over 55 has increased considerably between 2008 and now. On average the age of the population has increased and social resources for older people are more centralised in local towns such as Cricieth. Furthermore, when preparing a supply of dwellings for older people the result will be to release housing for the use of young people in the area.

2. Other Planning Matters

A. Number of flats and density of the development

Undoubtedly planning permission would not have been given to so many flats unless their use was limited to persons over 55. Otherwise, so many units would have been seen as an over-development of the site.

Looking at Pwllheli and Porthmadog, which have some similar features to Cricieth, the only intensive residential developments in town centre sites permitted are those with restrictions regarding use.

In 2016, in Pwllheli permission was given for a 3 floor building to comprise 31 flats where the use of the residential units was restricted to persons aged 60 and over. Then in 2019 a 3 floor building for 28 flats for extra care was permitted.

Another example is the building completed in Porthmadog that is used as sheltered units for the elderly.

B. Supply of Parking Spaces for the Development

To comply with Gwynedd policy requirements for the development and flats without any age restriction there would need to be over 70 parking spaces on the site. Therefore, as the proposed development only has 18 parking spaces, only about 25% of the spaces would be available.

The parking needs of people over 55 are very different to the parking needs of younger persons and it may be possible that this is sufficient for the needs of older persons. Indeed, as people get older couples who used to own a vehicle each often cut down to one vehicle, and as they get older they have no vehicle at all.

However, the needs and expectations of younger persons are completely different with each adult owning their own vehicle.

Therefore, if the restriction on the use of the units did not exist to be able to comply with Gwynedd parking policies a totally new application would have to be made to re-design the development to increase the parking spaces or to reduce the number of units.

The applicant may offer to buy a number of the parking spaces on the car park that borders the site. Gwynedd Council owns the car park and there is no certainty that the Council will be willing to do this. Furthermore, with the number of visitors that come to Cricieth the demand for parking spaces is high especially for buses that park on a section of the car park bordering the development.

In this context, the Town Council is very aware that the current number of parking spaces on the High Street is insufficient. During

the summer, when the number of vehicles that traverse back and forth through Cricieth increases significantly and this is often due to insufficient parking spaces on the High Street. Without a sufficient supply on the site for the change of use of the flats a situation that is already problematic would be dire.

3. Current Gwynedd Policy 'Anglesey and Gwynedd Joint Local Development Plan 2011-2026

From looking at the existing policy, Policy Tai 8 (pages 141 and 112) and Policy Tai 11 (pages 148 and 19) are relevant.

Policy TAI 8 - AN APPROPRIATE MIX OF HOUSING

The Councils will work with partners to promote sustainable mixed communities by ensuring that all new residential development contributes to improving the balance of housing and meets the identified needs of the whole community. Proposals should contribute to creating sustainable mixed communities by:

1. Maximising the delivery of affordable housing (including for local need) across the Plan area in accordance with Strategic Policy PS 18;

2. Contributing to redress an identified imbalance in a local housing market;

3. Ensuring the sustainable use of housing land, ensuring an efficient density of development compatible with local amenity in line with Policy PCYFF3;

4. Ensuring the correct mix of housing unit types and tenures to meet the needs of the Plan area's current and future communities;

5. Making provision, as appropriate, for specific housing needs such as student accommodation, homes for the elderly, Gypsy & Travellers, supported accommodation, nursing, residential and extra care homes, needs of people with disabilities;

6. Improving the quality and suitability of the existing housing stock;

7. Ensuring high standards of design that create sustainable and inclusive communities in line with Policy PCYFF3;

The housing market in Cricieth and the lack of affordable,purposeful housing, to satisfy he needs of local people is a matter of concern for the Town Council and to the town's residents.

Furthermore, the result of discharging the clause that limits the use of the flats to persons over 55 would be to open the floodgates for luxury flats, that may be holiday homes let to persons on short-breaks (including AirBnB) or as second homes and would significantly increase the town's percentage of holiday accommodation.

Therefore, this would not 'promote sustainable mixed communities by ensuring that all new residential development contributes to improving the balance of housing and meets the identified needs of the whole community' in Policy 8.

It would be an inappropriate over-development and there is no demand for the type of development that would not satisfy the needs of local people.

4. The vision and position of Cricieth Town Council regarding the housing market in the town:

The vision of Cricieth Town Council is to ensure that Cricieth continues to be a pleasant and welcoming place for people of all ages to live, and to feel safe, have opportunities to be physically and mentally healthy and to socialise and work in a quality environment. The importance of tourism for the area needs to be recognised and that the local economy is dependent on this. Cricieth continues to be a place that welcomes visitors and can easily live with them.

However, during the last few years there have been increasing concerns about the growth of second homes in the town, and also the conversion of residential homes into self-contained units will send property prices through the roof and price local people out of the housing market.

Cricieth Town Council recognises that the problem is not in the town and there are similar problems in Llŷn and Eifionydd and are experienced throughout Wales and it is a regional problem with no one simple solution. However, it considers these tendencies in the town with serious concerns. In addition, Cricieth Town Council have supported the position of Nefyn Town Council on the matter and have written to the Welsh Government to confirm this.

The Town Council's view is that:

1. Planning acts should be amended to ensure that planning permission is required to convert residential property into second homes or self-contained holiday units.

2. Permit local authorities, in consultation with the local community, to set a threshold on the number of second homes in each ward.

3. Ensure a change in the law so that it cannot be stated that self-contained holiday units are businesses avoiding liability to pay for council tax.

4. Control of short-term holiday accommodation including AirBnB via a licensing system by county councils.

5. Double the higher-rate of the Land Transaction Tax on houses

bought as second homes.

6. Maintain Gwynedd Council's authority to raise the tax premium on second homes up to 200%.

7. Develop and implement a framework that has been incorporated in law that warrants more development in affordable housing retained for local residents only.

The Town Council has written to the Welsh Government to convey the views of the Town Council and to press on the Government to deal with the crisis of a surplus of second homes as a priority and to ensure a systematic and coordinated method to get to grips with the issue. As a starting point the recommendations in the report by Dr Simon Brooks, "Second Homes - Developing Policies' should be implemented and to consult with the principal councils regarding their implementation.

On the grounds of the above points, Gwynedd Council should object to this application.

Transportation Unit: I refer to the above planning application, and confirm that I have no objection to the removal of the age limit condition. It is not assumed that the application will have any further impact on the local highway network.

Welsh Water: Not received.

Strategic Housing Unit: Not received.

Public Consultation: A notice was posted on the site and nearby residents were notified. The advertisement period has expired and objections were received to the application on the following grounds:

- The proposal would change the nature and purpose of the development.
- Previous applications placed a focus and importance on accommodation to persons over 55 and sheltered accommodation.
- Without the condition the proposal will create luxury flats.
- The units will be sold as second homes.
- Plenty of second homes /holiday units in Cricieth already.
- The prices of the units are beyond local people.
- Creating more holiday units.
- Difficulties locally to get property for local people and not many local people could afford these units.
- Creating problems locally in terms of the loss of the Welsh community, lack of affordable housing and pressure on the medical centre.

5. Assessment of the material planning considerations:

The principle of the development

5.1 Condition 4 on permission C16/0292/35/LL currently limits occupation of the units to persons over 55 years of age or those who lived as part of a single household with such a person. The wording of the condition is as follows:-

"With the exception of the warden and staff accommodation units each residential unit hereby permitted shall be occupied only by:

(iv) Persons over 55 years old;

(v) Persons living as part of a single household with such a person or persons;

(vi) Persons who were living as part of a single household with such a person or persons who have died".

The application proposes to remove the above condition.

5.2 Section 73 of the Town and Country Planning Act 1990 is applicable when determining applications for land development without complying with the condition that was subject to the approved planning permission. It specifies;

"(2) On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—

(a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and

(b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application".

5.3 Wedi derbyn cais ar gyfer caniatâd cynllunio dan Adran 73 o Ddeddf 1990, rhaid i'r Awdurdod Cynllunio Lleol ystyried y cynllun datblygu a'r ystyriaethau cynllunio materol, ond wrth wneud hyn, bydd ond yn ystyried cwestiwn yr amodau y dylai'r caniatâd cynllunio fod yn ddarostyngedig iddynt ac ni ellir mynd yn ôl at y penderfyniad gwreiddiol i roi caniatâd.

5.4 Case law planning has established that: "a permission under section 73 can only take effect as an independent permission to carry out the same development as previously permitted, but subject to the new or amended conditions." Furthermore, it is well-settled law that a condition on a planning permission will not be valid if it alters the extent or the nature of the development permitted. Therefore, there is a distinction between the "operative part" or grant of the planning permission on the one hand, and the conditions to which the operative part or grant is subject to, i.e. the grant identifies what can be done — what is permitted — so far as use of land is concerned; whereas conditions identify what cannot be done — what is forbidden.

5.5 In accordance with this, Section 73 of the Town and Country Planning Act 1990 contains no power to grant a new planning permission with a different operative part from that contained in the original and it would also be unlawful for an LPA to impose a new or amended condition on a planning permission under s.73 which was inconsistent with the operative part of the permission.

5.6 A fundamental and important part of the development description, or 'operative part of the permission' allows for: " ...the erection of 34 sheltered housing units for the elderly, warden accommodation, two staff units, communal facilities and parking for residents, staff and George IV Hotel together with landscaping".

5.7 Condition 4 supports the description of the development and the proposal's purpose appears fundamentally clear. The description should be considered in its entirety and the Authority's position therefore is that the current application under Section 73 changes the "extent or the nature of the development", previously approved to provide sheltered units for the elderly with the condition elaborating on the persons who can occupy the units to persons over 55 years of age or those who lived as part of a single household with such a person. Therefore, when the original application was determined, the Local Planning Authority would not have been in a position to approve the application without the inclusion of the condition. Indeed, when the condition was originally imposed on appeal to the refusal of application C08D/0478/35/AM the Inspector noted that it was appropriate to include a condition to control the tenure of the units to address the proven need for such units in the area. Apart from the condition there is nothing else available to limit the tenure of the units as sheltered units for the elderly as noted in the application description. In accordance with this, the Authority considers that condition 4 should not be removed and therefore it will be necessary to recommend refusal in accordance with Section 73(2) (b) of the Town and Country Planning Act.

5.8 It is therefore considered that the removal of the condition would change the extent and nature of the approved development and it is considered that if the applicant's intention is to provide residential units without an age restriction that the appropriate way of doing so is via a new full planning application for a residential development on the site and where it would be possible to assess this proposal fully against current local and national planning policies.

Conclusions:

6.1 Section 73 of the Town and Country Planning Act 1990 contains no power to grant a new planning permission with a different operative part from that contained in the original and it would also be

unlawful for an LPA to impose a new or amended condition on a planning permission under s.73 which was inconsistent with the operative part of the permission. A fundamental and important part of the development description, or 'operative part of the permission' allows for; "erection of 34 sheltered housing units for the elderly, warden accommodation, two staff units, communal facilities and parking for residents, staff and George IV Hotel together with landscaping".

6.2 The description should be considered in its entirety and the Authority's position therefore is that the current application under Section 73 changes the "extent or the nature of the development", previously approved. Therefore, the Authority considers that condition 4 should not be removed from permission C16/0292/35/LL and there is no alternative wording to the condition and therefore it is recommended that the application is refused in accordance with Section 73(2) (b) of the Town and Country Planning Act.

7. Recommendation:

7.1 To refuse -

1. The proposal will change the extent or nature of the development previously approved for the "erection of 34 sheltered housing units for the elderly, warden accommodation, two staff units, communal facilities and parking for residents, staff and George IV Hotel together with landscaping" and the Authority therefore considers that condition 4 of planning permission C16/0292/35/LL should not be removed in accordance with Section 73(2) (b) of the Town and Country Planning Act.