

## Planning, Taxi Licensing and Rights of Way Committee Report

**Application Number:** 22/0384/REM

**Grid Ref:** E: 306269  
N: 302477

**Community Council:** Dwyriw Community

**Valid Date:** 30.03.2022

**Applicant:** Gabrielle Prince

**Location:** Hill View, Fron Grian, Cefn Coch, Welshpool, SY21 0AG

**Proposal:** Section 73 application to vary condition no's 4 & 5 attached to outline planning approval M96539 (to allow occupancy restriction rewording)

**Application Type:** Removal or Variation of Condition

### Reason for Committee determination

The Elected Member for Dwyriw called the application for Committee determination as follows:

I wish to call in the above planning application due to the potential loss of an agricultural farm dwelling going outside of a local agricultural occupancy and feel it would benefit from a committee decision.

I reserve the right to withdraw the call in if I feel circumstances warrant it.

### Consultee Responses

#### Consultee

#### Received

Community Council

9th Apr 2022

The council object to this proposal as they do not want the property price to go beyond the reach of those the restrictions were originally intended for.

The council would welcome an investigation by the planning department into the current valuation and recent 'for sale' and offer details on the property.

PCC-(M) Highways

1st Apr 2022

Based on the information provided, the Highway Authority does not wish to comment on this application.

Hafren Dyfrdwy

5th Apr 2022

As the proposal has minimal impact on the public sewerage system I can advise we have no objections to the proposals and do not require a drainage condition to be applied.

## Representations

Following the display of a site notice on 4<sup>th</sup> May 2022, no public representations have been received.

## Planning History

App Ref	Description	Decision	Date
M/1996/0539	Erection of an agricultural bungalow (outline) and installation of a septic tank	Conditional consent	01/11/1996
M/1997/0284	Erection of an agricultural bungalow and installation of a septic tank (Details)	Conditional consent	06/05/1997

## Principal Planning Constraints

Right of Way 236/75/1  
Mineral Safeguarding Sand Gravel

## Principal Planning Policies

Policy	Policy Description	Year	Local Plan
NATPLA	Future Wales - The National Plan 2040		National Policy
PPW	Planning Policy Wales (Edition 11, February 2021)		National Policy
TAN2	Planning and Affordable Housing		National Policy
TAN6	Planning for Sustainable		National Policy

	Rural Community	
SP1	Housing Growth	Local Development Plan 2011-2026
SP5	Settlement Hierarchy	Local Development Plan 2011-2026
SP6	Distribution of Growth across the Settlement Hierarchy	Local Development Plan 2011-2026
SP7	Safeguarding of Strategic Resources and Assets	Local Development Plan 2011-2026
H1	Housing Development Proposals	Local Development Plan 2011-2026
DM8	Minerals Safeguarding	Local Development Plan 2011-2026
DM13	Design and Resources	Local Development Plan 2011-2026

### **Other Legislative Considerations**

Crime and Disorder Act 1998

Equality Act 2010

Planning (Wales) Act 2015 (Welsh language)

Wellbeing of Future Generations (Wales) Act 2015

Marine and Coastal Access Act 2009

### **Officer Appraisal**

#### Section 38 (6) of the Planning and Compulsory Purchase Act 2004

This application has been considered in accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004, which requires that, if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.

### Site location and description

Hill View is a detached 3-bedroom brick bungalow with an approximate floor area of 106m<sup>2</sup>. The dwelling is located on the northern side of the U2373 unclassified highway approximately 480 metres east of Llanllugan. Outline permission for erection of an agricultural bungalow and installation of a septic tank was granted conditional consent under reference M/1996/0539 on 1<sup>st</sup> November 1996.

The application seeks to vary condition no's 4 and 5 attached to the outline approval M/1996/0539 to allow occupancy restriction rewording. Conditions 4 and 5 are as follows:

4. The occupation of the proposed dwelling shall be limited to a person solely or mainly employed, or last employed prior to retirement, in the locality in agriculture or forestry, or a widow or widower of such a person, and to any dependents normally residing with such a person.

Reason: It is the approved policy of the local planning authority not to permit residential development outside settlements in the absence of special agricultural needs and this permission is granted specifically to provide accommodation for a person employed in agriculture.

5. The occupation of the existing dwelling Fron Green, shall be limited to a person solely or mainly employed or last employed prior to retirement, in the locality in agriculture or in forestry, or a widow or widower of such a person, and to any dependents normally residing with such a person.

Reason: The dwelling referred to needs to be used in connection with the agricultural unit, and the local planning authority considers it necessary to restrict the occupation for the purposes specified to protect the countryside against the risk of pressure for new dwellings.

The application seeks a variation of the wording of the conditions to the broader occupancy condition recommended within Technical Advice Note 6 and the associated Rural Enterprise Dwellings Practice Guidance.

### Variation of occupancy conditions

Section 73 of the Town and Country Planning Act 1990 (as amended) provides for applications to be made for planning permission to develop land without complying with conditions previously imposed on a planning permission i.e. to vary or remove a condition. The local planning authority can grant such permission unconditionally or subject to different conditions, or they can refuse the application if they decide the original condition(s) should continue.

As stated above, the application seeks to vary the occupancy conditions relating to the dwellings, Hill View and Fron Green which are both subject to the historic 'agricultural

occupancy condition'. At the time that permission was granted for the construction of Hill View, the dwellings were in the open countryside, outside of any settlement boundary and that position remains the same.

Any new dwellings constructed outside of settlement boundaries currently, would be considered under Policy SP7 and Criterion 4 of Policy H1 of the Powys Local Development Plan which require that new housing developments in the open countryside are only permitted where the development relates to a need for housing which meets current national policy on housing in the open countryside. Current national planning policy on housing in the open countryside contained within Planning Policy Wales (Edition 11) and Technical Advice Note (TAN) 6 strictly control new dwellings in the open countryside, however it has been recognised that, within this policy of general restraint of development, there are particular circumstances of housing need which can only be met through the provision of individual dwellings in the countryside. Historically such circumstances were limited to agricultural and forestry enterprises. However, Welsh Government has recognised that there is a wider concern in respect of access to appropriate and affordable housing on the part of the rural community. The TAN6 Practice Guidance advises that shortage of affordable housing to buy or rent is recognised as one of the greatest challenges facing many communities in Wales. Consequently, a range of policy measures has been introduced to improve access to housing in rural areas.

As part of this package of measures, the Welsh Government reviewed the scope of the exception to policy which enables individual dwellings to be in the countryside where there is an essential need. As a consequence of the review, the exception which was historically available to agricultural and forestry workers was extended to a wider range of workers in rural enterprises. This extension applies primarily to land-related businesses which, directly or indirectly, need to be located in the countryside rather than in existing settlements and the five groups of enterprises which are covered by the TAN 6 policy are:

- agriculture and forestry;
- activities which obtain their primary inputs from the site;
- land management related activities;
- land related tourism and leisure; and
- support services related to rural-based activities.

To control the occupancy of permitted dwellings and their potential transfer to meet general affordable housing needs, TAN 6 currently advises that all new rural enterprise dwellings should be subject to the following rural enterprise dwelling occupancy condition:

“The occupancy of the dwelling shall be restricted to:

- a) a person solely or mainly working, or last working on a rural enterprise in the locality, or a widow, widower or surviving civil partner of such a person, and to any resident dependants; or, if it can be demonstrated that there are no such eligible occupiers,

b) a person or persons who would be eligible for consideration for affordable housing under the local authority's housing policies, or a widow, widower or surviving civil partner of such a person, and to any resident dependants.”

This application seeks to vary the original agricultural occupancy conditions to the newer occupancy condition advised by TAN6 above. Paragraph 4.13.5 of TAN6 states, 'where planning applications are received to lift existing agricultural occupancy conditions, the planning authority should consider replacing the existing agricultural occupancy condition with the rural enterprise dwelling condition. This will often be justified to ensure that the dwelling is kept available to meet the housing needs of rural workers and local people in need of affordable housing'.

Therefore, it is considered that the proposed variation of the conditions to limit the occupancy of the dwellings which were considered necessary at the time of the original application and continues to be necessary is in accordance with the approach set out within TAN6. It should also be clarified that where proposals for dwellings are permitted on enterprises where there are already dwellings occupied in association with them, local planning authorities still can restrict not only the future occupancy of the new dwellings but of others on the enterprises whose occupancy is not currently controlled. As such, given the reason for the occupancy condition relating to Fron Green (the existing dwelling at the time permission was granted for Hill View), it is still considered appropriate to restrict occupancy of that property.

In respect of the Local Member's concerns, the variation of the conditions would not result in the loss of a dwelling or dwellings which are available to members of the agricultural community, as the rural enterprise occupancy condition permits persons employed in agriculture to occupy the dwelling as well as other persons working in qualifying rural enterprises in the locality.

#### Value and marketing of property

The Community Council has raised concerns because they do not want the property price to go beyond the reach of those the restrictions were originally intended for. In addition, they have requested that investigations into the current valuation and recent for sale and offer details.

In terms of the value of the property, the Rural Enterprise Practice Guidance advises that the value of any property subject to an occupancy restriction will be less than its value on the open market. Traditionally agricultural dwellings have been marketed at prices generally between 70 and 75% of their open market value. With the wider range of compliant rural enterprise workers and local affordability constraints, this will continue to be the case. The valuation of properties will require professional advice and, in the case of affordability criteria, assistance from the local authority.

In terms of the concerns over valuation and marketing efforts, no marketing details accompany the application, apart from stating that there have been failed marketing

attempts. However, as stated above, given that the variation of the conditions is considered appropriate and in compliance with national planning policy, no marketing evidence is required at this stage. If an application is submitted to remove the rural enterprise occupancy condition(s), there will be a need to demonstrate, with supporting evidence, that there is no longer a rural enterprise need for the dwellings or a local affordable housing need in the area. The longstanding mechanism for demonstrating the absence of need has been market testing. Evidence of effective market testing will be required over a reasonable period, usually at least 12 months. The critical aspects of market testing are that:

- the availability of a property is advertised in such a manner that compliant purchasers or tenants are likely to be made aware of it; and
- the price or rent attached to a property reflects the restrictive occupancy requirement.

Therefore, whilst the comments from the Community Council are noted, at this stage, no marketing information or consideration of the valuation of the property are required to determine the proposed variation of the conditions to the rural enterprise occupancy condition recommended within TAN6.

#### Review of other conditions

The outline consent included other conditions relating to the submission of the reserved matters, the roofing materials, the submission, approval and implementation of a landscaping scheme and the submission, approval, and implementation of the foul drainage details. Given the age of the consent and that the development has been constructed and occupied for some years, it is not considered necessary to reattach the conditions.

#### Other matters

It is noted that a public right of way has been identified within the application site. Public right of way 236/75/1 appears to exit the unclassified highway via the access to the property and curve up the land to the north of the property and around the edge of the property boundary. Given that the property is already in existence, there will be no further adverse impact upon the use of the right of way arising from the alteration to the occupancy conditions in compliance with LDP Policies SP7 and DM13.

It is also noted that the site is located within a minerals safeguarding area for sand and gravel (category 2). Again, given that the construction of Hill View has occurred, the requirements of LDP Policy DM8 are not applicable.

#### Placemaking and Wellbeing Goals

Planning Policy Wales has been amended following the introduction of Well-being of Future Generations Act. PPW plays a significant contribution to the improvement of well-

being in all its aspects as defined by the statutory well-being goals. It embeds the spirit of the Well-being of Future Generations Act, through moving us towards a low carbon, resilient society, of providing secure and well-paid jobs, and of building well-connected environments for everyone in Wales that improves our lives and health and enhances our well-being.

PPW also promotes placemaking and states the following;

Productive and Enterprising places are those which promote our economic, social, environmental and cultural well-being by providing well-connected employment and economic development in pleasant surroundings. These places are designed and sited to promote healthy lifestyles and tackle climate change by making them easy to walk and cycle to and around, access by public transport, minimising the use of non-renewable resources and using renewable and low carbon energy sources.

Ministers advised in June 2019 that placemaking should form part of all decisions and have considered measures to call in applications where strategic placemaking has not been considered.

Placemaking is a holistic approach to the planning and design of development and spaces, focused on positive outcomes. Placemaking considers the context, function and relationships between a development site and its wider surroundings. This will be true for major developments creating new places as well as small developments created within a wider place.

The key principles for ensuring 'Right Development in the Right Place' according to PPW are as follows;

- i. Growing our economy in a sustainable manner – the planning system should enable development which contributed to long term economic well-being, making the best use of existing infrastructure and planning for new supporting infrastructure and services.
- ii. Making the best use of resources - The planning system has a vital role to play in making development resilient to climate change, decarbonising society and developing a circular economy for the benefit of both the built and natural environments and to contribute to the achievement of the well-being goals.
- iii. Facilitating accessible and healthy environments - Our land use choices and the places we create should be accessible for all and support healthy lives. High quality places are barrier-free and inclusive to all members of society. They ensure everyone can live, work, travel and play in a way that supports good physical and mental health.
- iv. Creating and sustaining communities - The planning system must work in an integrated way to maximise its contribution to well-being. It can achieve this by creating well-designed places and cohesive rural and urban communities which can be sustained by ensuring the appropriate balance of uses and density, making places where people want to be and interact with others.



- v. Maximising environmental protection and limiting environmental impact - Natural, historic and cultural assets must be protected, promoted, conserved and enhanced. Negative environmental impacts should be avoided in the wider public interest.

PPW provides guidance on the national sustainable placemaking outcomes and their relationship to PPW themes and Well-being Goals. It is considered that the proposed development is in accordance with both the placemaking and well-being goals on the following grounds:

- The proposal will retain the occupancy of an existing rural dwelling to those persons employed in suitable rural enterprises in the locality; thereby assisting in sustaining the economy and local communities;
- If no occupiers can be found for the rural enterprise part of the condition; the occupancy will be broadened to persons in need of affordable housing; thereby assisting in supporting local communities.
- There are no other adverse planning impacts arising from the proposal.

### Climate Change

PPW states that the planning system has a vital role to play in making development resilient to climate change, decarbonising society and developing a circular economy for the benefit of both the built and natural environments and to contribute to the achievement of the well-being goals. The Environment (Wales) Act 2016 sets a legal target of reducing greenhouse gas emissions in Wales by at least 80% in 2050 with interim targets set for 2020, 2030 and 2040. Welsh Government also have a legal commitment to net zero by 2050 and an ambition to achieve this sooner if possible.

There are two parts to the issue of climate change within planning, these being the extent a development contributes towards the generation greenhouse gasses and the extent a development has considered and adopted means to make the operation resilient to the effects of climate change.

Given that the properties have been constructed and are occupied and the proposal does not seek to change this situation, it is considered that there will be no or a very limited impact upon climate change arising from the proposal.

### Conclusion

Whilst the comments from the Local Member and Community Council are noted, the replacement of the historic agricultural occupancy condition with the rural enterprise occupancy condition is in accordance with the approach recommended within TAN6. Therefore, the recommendation is one of approval as set out below.

## **RECOMMENDATION**

Approve

## Conditions

1. The occupancy of the dwelling known as Hill View shall be restricted to:
  - a) a person solely or mainly working, or last working on a rural enterprise in the locality, or a widow, widower or surviving civil partner of such a person, and to any resident dependants; or, if it can be demonstrated that there are no such eligible occupiers,
  - b) a person or persons who would be eligible for consideration for affordable housing under the local authority's housing policies, or a widow, widower or surviving civil partner of such a person, and to any resident dependants.
2. The occupancy of the dwelling known as Fron Green shall be restricted to:
  - a) a person solely or mainly working, or last working on a rural enterprise in the locality, or a widow, widower or surviving civil partner of such a person, and to any resident dependants; or, if it can be demonstrated that there are no such eligible occupiers,
  - b) a person or persons who would be eligible for consideration for affordable housing under the local authority's housing policies, or a widow, widower or surviving civil partner of such a person, and to any resident dependants.

## Reasons

1. The dwelling was permitted as an exception to normal housing policies and as such the occupancy is controlled to comply with Policies SP6 and H1 of the Powys Local Development Plan (2011-2026), Technical Advice Note (TAN) 6: Planning for Sustainable Rural Communities (2010) and Planning Policy Wales (Edition 11, 2021).
2. To assist in protecting the countryside against the risk of pressure for new dwellings in accordance with Policies SP6 and H1 of the Powys Local Development Plan (2011-2026), Technical Advice Note (TAN) 6: Planning for Sustainable Rural Communities (2010) and Planning Policy Wales (Edition 11, 2021).