

APPLICATION FOR THE MODIFICATION OR DISCHARGE OF PLANNING OBLIGATIONS

1 Applicant (in block capitals)

Name: MESSRS. B. & S. VANSTONE

Address: TAN-Y-GRAIG,
DRUIDS ROAD,
MENAI BRIDGE,
ANGLESEY

Post Code LL59 5BY

Tel. No:

2 Agent (if any)

Name: IAN PRYCE PROPERTY SERVICES

Address: PRINCES SQUARE,
PRINCES STREET,
MONTGOMERY, POWYS.

Post Code SY15 6PZ

Tel. No: 01686 665584

3 Address or exact location of the land to which this application relates:

DAY COTTAGE, SARNAU, LLANDYMYNECH, SY20 6QL

Describe here and enclose a map identifying the land to which the obligation relates.

SITE PLAN ATTACHED TO SECTION 53 AGREEMENT.

4 Nature of applicant's interest in the land (eg owner, lessee, occupier):

OWNER

5 Please give sufficient information to enable the authority to identify the planning obligation which you wish to have modified or discharged:

PLANNING PERMISSION M18308

6 Please state your reasons for applying for the modification or discharge of the planning obligation identified in paragraph 5 above :

THE PLANNING OBLIGATION NEEDS TO BE DISCHARGED BECAUSE THE OCCUPANCY RESTRICTION IT SEEKS TO IMPOSE ON THE PROPERTY NO LONGER SERVES EITHER A USEFUL OR PROPER PLANNING PURPOSE AND IS UNREASONABLY RESTRICTIVE FOR THE REASONS DESCRIBED IN THE ATTACHED PLANNING REPORT.

7 Please give the following information, which the authority considers necessary to enable it to determine the application, namely:

PLEASE REFER TO SUPPORTING STATEMENT.

8 Please give any other information you consider relevant to the determination of this application (continue on a separate sheet if necessary)

PERMITTED DEVELOPMENT RIGHTS HAVE NOT BEEN REMOVED THE SIZE OF THE DWELLING AND OUTBUILDINGS TOGETHER WITH THE AREA OF THE RESIDENTIAL CURTILAGE NO LONGER COMPLIES WITH POWYS COUNTY COUNCIL'S ADOPTED POLICIES.

I/We hereby apply for the modification or discharge of a planning obligation under section 160A of the Town and Country Planning Act 1990 in respect of an existing planning obligation described in this application and the documents and map which accompany it. I/We have completed the Certificate A, B or C, attached to this application, as appropriate.

Signed:



(on behalf of)

MESSRS. B. & B. VANSTONE

(insert name of applicant if signed by agent)

Date

4/4/2022

Planning Statement

April, 2022

Application for Discharge of Planning Obligations

Day Cottage, Sarnau, Llanymynech, SY22 6QL

Background

This statement supports an application for the discharge of Planning obligation in relation to the dwelling now known as Day Cottage, Sarnau, Llanymynech, SY22 6QL.

The plot on which the dwelling stands was formerly known as Land, Bryn, Sarnau. The property is a detached dwelling with accommodation over two floors, set within an expansive 0.1 ha private garden plot, and with its own driveway, parking and outdoor living space.

Full Planning permission was granted for the dwelling under application ref. M18308 on 18th August, 1989. Householder 'permitted development rights' (PDRs) for alterations, extensions and outbuildings were not removed as part of the permission. However, the development is subject to a number of Planning obligations which seek to control occupancy contained within a Planning Agreement made under Section 52 of The Town and Country Planning Act 1990. A stable block was also permitted.

The Applicant is now seeking the discharge of all the Planning obligations, i.e. the entire Planning Agreement.

The Planning Agreement

The Planning Agreement stipulates that (1) initial occupation of any dwelling built on the land shall be restricted to and for the sole benefit of the Applicant, and that any subsequent occupation shall be limited to (2) a person(s) who has either been resident in the former district of Montgomeryshire for a period of at least three years or is/was/will be employed within the district.

The agreement is silent on a gross floor area.

Statutory Position

Section 106A of the Town and Country Planning Act 1990 allows for Planning obligations to be discharged and states at sub-section 3 that a person against whom a Planning obligation is enforceable may at any time after the expiry of the relevant period, apply for the obligation to be discharged. Sub-section 4 sets the relevant period as five years by default. In sub-section 6 it states that where such an application is made, if the obligation no longer serves a useful purpose, it shall be discharged.

The Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992 prescribe the way in which such applications shall be made, to include a completed application form, a map identifying the land to which the obligation relates and such other information as the Applicant considers relevant to the determination of the application.

The Community Infrastructure Levy Regulations 2010 (as amended) set out a statutory limitation on the use of Planning obligations and at Article 122(2) stipulate that a Planning obligation may only constitute a reason for granting Planning permission for the development if the obligation is necessary to make the development acceptable in Planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development.

Policy and Guidance

Available guidance on the extent to which the Planning obligations continue to serve a useful purpose is contained within Welsh Office Circular 13/97 - Planning Obligations. Also relevant is Welsh Government Circular 016/2014 - The Use of Conditions for Development Management.

Circular 13/97 states that Planning obligations should be a) necessary, b) relevant to Planning, c) directly related to the proposed development, d) fairly and reasonably related in scale to the proposed development and e) reasonable in all other respects.

Circular 016/2014 states at paragraph 5.83 that Planning controls are concerned with the use of land rather than the identity of the user and that the question of who is to occupy a dwelling is normally irrelevant. The paragraph concludes by saying that conditions should not be imposed which provide for a system of vetting by the Local Planning Authority or the use of a vague test such as 'needing to be located in the area'. In terms of avoiding onerous requirements, the Circular also states at paragraph 3.42 that any restriction putting a severe limitation on the freedom of owners to dispose of their property should be avoided and, at paragraph 5.87, that extreme care should be taken when applying restrictions affecting the saleability of property to ensure that an individual's human rights are not harmed.

Also relevant is the Powys Local Development Plan (LDP) and the Council's associated Supplementary Planning Guidance (SPG) on Affordable Housing, adopted in October 2018. The SPG states at paragraph 8.27 that in assessing applications to discharge or modify section 106 Agreements, the Council will consider whether the obligations meet the tests specified in Welsh Office Circular 13/97. It says that a Planning obligation will be considered to meet the tests where it is aimed at ensuring that the dwelling remains as an affordable dwelling and accessible to those who cannot afford open market housing.

At paragraph 8.28, it says that this will include obligations which take account of the financial circumstances of any prospective occupiers and their need for affordable housing. It gives the example of where occupancy is restricted to first-time buyers, stating that this is aimed at meeting the housing needs of those people in the community who are at a disadvantage within the housing market. It also says that obligations which include mechanisms relating to affordability, such as size restrictions and/or restrictions on sale and/or rental prices, also ensure that the dwelling remains affordable and accessible to those in local need.

At paragraph 8.29, the SPG states that if the Planning obligations meet these tests, the Council will consider whether they continue to serve a useful purpose, and that the usual way to test this is to market the dwelling for sale and rent for a reasonable period of time and at a price that realistically reflects the occupancy restriction. The process for this testing is set out in Appendix C of the SPG, it says that if an occupier has not been found after a twelve month period, the Applicant may consider applying to discharge/modify the Planning obligation, providing evidence of the marketing of the dwelling on this basis.

The SPG additionally sets out relevant affordability criteria in relation to matters such as values, tenure and scale. At paragraph 4.2.1, it states that, on average, households in Powys are able to afford houses of values up to £126,676 which is £48,650 below the average house price paid. At paragraph 4.2.2, it explains that this figure is referred to as the 'Affordability Level', and that it is also used as the basis for calculating the percentage discount on open market value applied to intermediate affordable housing for sale. At paragraph 8.20, the SPG sets a percentage discount to be applied to the sale and future re-sale of intermediate affordable housing such as this at 28% below market value.

For future homes approved as affordable dwellings, the SPG at paragraph 8.16 also sets a maximum floorspace of 115 sqm, to include garages where integral to the dwelling, as in this case. The total floorspace of Day Cottage on this basis is 130m² plus stable outbuilding. At paragraph 8.18, the SPG also says that PDRs for future extensions or alterations (including ancillary buildings) will be withdrawn by way of a separate Planning condition attached to the Planning permission, to "ensure that properties are not extended or altered in a way so as to increase the value beyond an affordable level". PDRs were not removed in this case. At paragraph 8.19, it additionally seeks to limit plot sizes ranging from 0.04 ha in towns and large villages through to 0.1 ha in rural settlements. The plot size in this case is in excess of 0.1 ha.

Appraisal

The Planning obligation set out at (1) above merely seeks to control initial occupation of the dwelling and therefore has no long-term relevance or continued land-use Planning purpose in terms of ensuring the property remains as an affordable dwelling in perpetuity. As such, it should now be discharged.

Insofar as the Planning obligations set out at (2) above are concerned, it has been found in other cases, in line with the policy and guidance set out above, that such obligations do not relate to housing need in that they do not in themselves take account of the financial position of any prospective future occupiers. For example, on appeal, previous cases in Powys include APP/T6850/Q/10/2133484 (Dunroamin, Llandyssil - VAR/2009/0006) and APP/T6850/Q/11/2151836 (Llys Hendy, Pentre Llifor - VAR/2010/0003). The following extract from the appeal decision at Dunroamin sets out the pertinent points:

"16 ... In any event, the terms of the S106 Planning obligation do not address the claimed local need for affordable housing, as they make no reference to affordability. Its terms would be satisfied by a wide range of persons including those who would be able to compete for dwellings in the open market. The legitimate aim of national and local Planning policies is to seek to meet the housing needs of the whole community, particularly those persons in greatest housing need. But this obligation fails to do that, since it merely restricts occupancy to anyone who has lived or worked in the area for the previous three years, or is coming to the area to work, with no reference to housing need. I therefore consider that it neither fulfils a proper Planning function nor is it an appropriate obligation.

Turning to the tests in PPW of June 2010, I find that the obligation has neither a relevant nor necessary planning function. It is not fairly or reasonably related in scale and kind to the development. Furthermore, as the obligation serves no useful Planning function based upon a legitimate local or national policy objective, it fails a fundamental test of Circular 13/97 and is by definition unreasonable. For the same reasons it cannot serve a legitimate land use Planning purpose, and I conclude that it should be discharged."

The effect of this decision is that the obligations at (2) can likewise no longer be held to serve a legitimate land-use Planning purpose. They are not related to housing need, take no account of the financial position of future occupiers and are not concerned with affordability. The restrictions they impose, therefore, are demonstrably at odds with all available Planning policy, guidance and advice, and should now be discharged.

It is recognised, however, that the obligations above are in part concerned with housing need in that in broad terms, they seek to ensure the property is only available to first time buyers. In normal circumstances, therefore, it would be appropriate to include marketing information, as required by the Council's SPG, in order to demonstrate a lack of ongoing need for the dwelling to remain available only to those in local housing need. Of particular note though, even when applying the required 28% reduction on open-market values, a reasonable asking price in this case would still be over the region of £300,000, and a likely rental level set at over £800 pcm. Both are considered to be significantly beyond the affordability level for the locality, which in terms of sale exists somewhere between the £126,676 figure quoted in the SPG and the Acceptable Cost Guidance (ACG) figure for the locality, which for a four-person, three-bed house (4P3B H) in Montgomery (Band 3) is £184,100.

In addition, as set out above at paragraph 4.8, the size of the dwelling and its associated plot are well beyond the upper limits set out within the SPG with no removal of PDRs for alterations, extensions and outbuildings allowing further additions without the need to apply for Planning permission or indeed the conversion of the attached garage.

As far as Planning obligations are concerned, therefore, there is considered to be little merit in marketing the property to demonstrate its lack of affordability to those in local housing need, for either sale or rent, because the circumstances already outlined show that to be the case in any event. This was a matter rehearsed recently in another appeal in Powys, APP/T6850/A/14/2229039 (Derwen Fach, Trefnanney, Meifod - P/2014/0666). The Inspector found that the ACG figure for the property used to assess its affordability level was significantly below that of the discounted asking price. The same can be said in this case. In terms of the rental market, the Inspector also noted that even though this had not been tested, the circumstances meant that any discounted rental valuation would still be out of reach of the overwhelming majority of tenants who might satisfy the occupancy restriction. This too can be said of this case.

As such, Planning obligations can similarly no longer be held to serve a legitimate land-use Planning purpose because of the circumstances of this particular case. Whilst they are arguably related to housing need, and seemingly take account of the financial position of future occupiers, they cannot reasonably be said to be concerned with affordability. The restrictions they impose therefore are at odds with the aspirations of Planning policy, guidance and advice, will not deliver and/or retain long-term affordable housing in the area and should now be discharged.

With regards to the size and area of the dwelling, it is clear that the site not only exceeds the absolute maximum stipulated in the Council's newly adopted SPG but that, the actual size is already way beyond the restriction. Taken together, the size of the dwelling as it stands along with the lack of any PDR restrictions, has a further significant bearing on the continued affordability of the dwelling to those in local housing need to the extent that future affordability cannot reasonably be maintained.

Option to Vary the Planning Agreement

The application is for the discharge of the Section 52. The Planning Authority must therefore take a view on the application as it stands and make a decision on this basis.

The obligations held within it have been shown to have no continued bearing on land-use Planning matters. As such, the application should succeed, meaning that there is also no basis on which to vary the Agreement, and no clauses justified in being retained.

As stated in the Council's SPG, a Planning obligation will be considered to meet the tests where it is aimed at ensuring that the dwelling remains as an affordable dwelling and accessible to those who cannot afford open market housing, and that take account of the financial circumstances of any prospective occupiers and their need for affordable housing. The existing Planning Agreement does not do this.

As such, the availability of the dwelling only to those in local affordable housing need cannot be secured. This aptly highlights the fact that the existing obligations are not necessary or relevant to Planning and why other possible considerations such as marketing are not appropriate in this case, and why there is therefore no reasonable basis either on which to seek any variation of the Agreement.

Conclusions

The statutory provisions and guidance mean that the Planning Authority must consider the extent to which the existing Planning obligations continue to serve a useful purpose. If deemed that they are no longer relevant to Planning, it follows that they shall be discharged, as set out in statute.

In terms of a realistic assessment of the continuing need for the Planning Agreement, it has been demonstrated how the individual obligations held within it concerning future occupancy cannot reasonably be said to relate to housing need and do not properly control occupation as an affordable dwelling. On this basis, the restrictions have been shown not to meet the Planning policy objective of securing affordable housing in perpetuity for people with a local need. As such, the Planning Agreement has no continued bearing on land-use Planning matters. There is equally, therefore, no reasonable basis on which to vary it.

Whilst the SPG says at paragraph 8.29 that the usual way to test whether Planning obligations continue to serve a useful purpose is to market the dwelling for sale and rent for a reasonable period of time, and at a price that realistically reflects the occupancy restriction, no such information is evidently considered necessary given the circumstances of the case.

In summary, therefore, the Planning obligations contained within the existing Planning Agreement relating to the restricted occupation of Day Cottage are considered to no longer serve any useful land-use Planning purpose. Such circumstances mean that they should now be completely discharged, in accordance with the tests in Circular 13/97 and the requirements of The Community Infrastructure Levy Regulations 2010.

This is considered to be the only sensible and pragmatic way forward in this case and will additionally allow the dwelling to be available more widely to those able to afford it within the locality.

Signe



Ian H. Pryce MCIQB

Date: 15/4/2022

Phillips

DATED

1989

MONTGOMERYSHIRE DISTRICT COUNCIL

AND

SHARON DENISE PHILLIPS

SECTION 52 AGREEMENT

relating to land near

Bryn Sarnau, Llandrinio
Montgomeryshire

C. EDWARDS

Deputy Clerk/Solicitor to the Council
Montgomeryshire District Council

Severn Road

Welshpool

Montgomeryshire

SY21 7AS

T H I S A G R E E M E N T is made the day of
1989 between MONTGOMERYSHIRE DISTRICT COUNCIL, Council
Offices, Severn Road, Welshpool in the County of
Montgomeryshire (hereinafter called "the Council") of
the one part and SHARON DENISE PHILLIPS of Burgedin
Farm Sarnau Llanymynech (hereinafter called "the
Applicant") of the other part.

W H E R E A S

- (1) The Council is the local planning authority for the purpose of the Town and Country Planning Act 1971 ("the Act") for the area within which the land more particularly described in the First Schedule hereto and shown in red (the land) on the attached plan is situated.
- (2) The Applicant is the owner of (inter alia) the land.
- (3) The Applicant has by written application (reference no. M17868⁸³⁰⁸) applied to the Council for the erection of a dwelling and stable block and the formation of a vehicular access and installation of a septic tank and the Council is satisfied that the development described in the application is such as may be approved subject to conditions imposed by the Council under the 1971 Act, and subject to the Applicant entering into this Agreement.
- (4) The Applicant has agreed to enter into this Agreement for the purpose of restricting or regulating the development and use of the land.

NOW THIS AGREEMENT made in pursuance of the provisions of Section 52 of the Town and Country Planning Act 1971 and Section 33 of the Local Government (Miscellaneous Provisions) Act 1982

WITNESSETH as follows:-

1. This Agreement is conditional upon the grant and implementation of planning permission granted in pursuance of application reference no. M178660. ¹⁸¹⁰⁸ *pl*
2. The Applicant for himself and his successors in title hereby covenants with the Council with intent to bind the land and each and every part thereof into whosoever hands the same may come and to the intent that this covenant may be enforced by the Council against persons deriving title under the applicant pursuant to Section 52 of the 1971 Act as if the Council were possessed of adjacent land and this covenant had been expressed to be made for the benefit of such land (but so that no person shall be liable for any breach of this covenant occurring after he shall have parted with all interest in the land or any part thereof in respect of such breach occurring) as follows:-
 - (1) The occupation of the said dwelling shall (subject to sub-clause (2) hereof) be restricted to and for the sole benefit of the applicant.
 - (2) Upon any disposal or demise by the applicant or owner of the said dwelling occupation thereof shall at all times be limited to a person or persons ("the occupier") who at the date of the said

disposal or demise have either been resident within the district of Montgomeryshire ('the District') for a period of not less than three years or are employed or are coming into the district to take up full time employment or were last employed within the District.

(3) To develop the land in strict conformity with the planning permission hereinbefore referred to and observe the conditions attached thereto.

IT IS HEREBY AGREED AND DECLARED as follows:

3. (i) In this Agreement (except insofar as the context otherwise requires) the Council includes its successors or any local authority to which pursuant to the provision of any Act of Parliament power to control the development of the land shall pass and the Applicant includes his respective successor or successors in title assigns or any person deriving title under him.

(ii) It shall be taken as conclusive proof that a person or persons are 'resident within the District of Montgomeryshire' for the purpose of clause 2(2) hereof if such person or persons were at the time of the said disposal or demise entered or listed for a minimum period of three consecutive years preceding the said disposal or demise in the current electoral register of Montgomeryshire which is maintained by the Council.

(iii) In this Agreement:-

(a) reference to 'the initial occupier' or 'the occupier' shall include the dependence of such a person or persons residing with him/her, and the widow/widower of such a person or persons;

(b) a dependant of such a person shall be limited to a member of that persons family which shall be the persons:-

- (i) spouse
- (ii) parent or child
- (iii) parent of the spouse

and for the purposes of (b)(i) - (iii)

above the following shall apply:-

a relationship by marriage shall be

treated as a relationship by blood

and

the stepchild of a person shall be treated

as the persons child and

an illegitimate child shall be treated as

the legitimate child of his/her mother and

reputed father and

an adopted child shall be treated as the

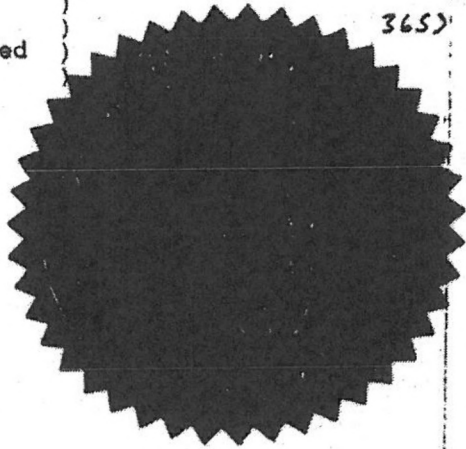
persons child.

IN WITNESS HEREOF the Council has caused its Common Seal to be hereunto affixed and the owner to set his hand and seal the day hereinbefore written

FIRST SCHEDULE

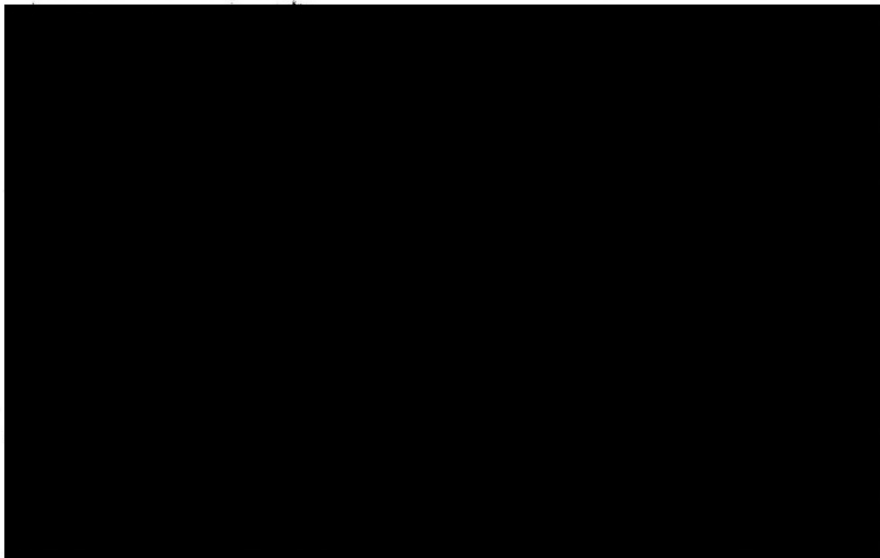
ALL THAT LAND which is part of Enc. OS 2485 and near
the Bryn Sarnau Llandrinio in the County of
Montgomeryshire and shown edged red on the attached
plan

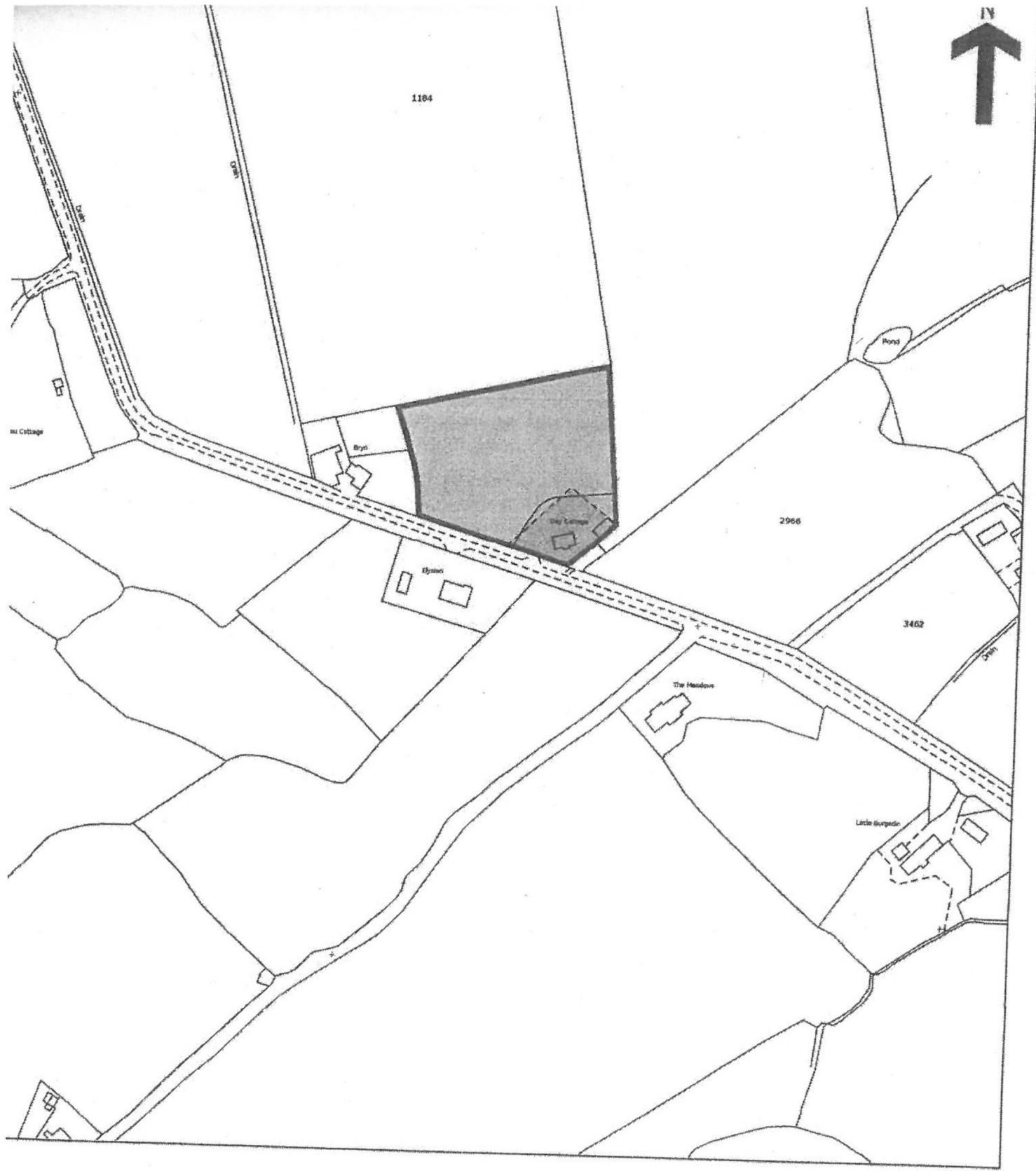
THE COMMON SEAL of
MONTGOMERYSHIRE DISTRICT
COUNCIL was hereunto affixed
in the presence of:-



365

SIGNED, SEALED AND DELIVERED
by the said SHARON DENISE PHILLIPS
in the presence of:-





Town and Country Planning Act 1971
Town and Country Planning General Development Order 1977

D.C.H. Jones
Broom Bank
Guilsfield
Welshpool

Acting on behalf of:-
Miss Sharon Phillips
Burgedin Farm
Sarnau, Llanymynech

In pursuance of its powers under the above-mentioned Act and Order the MONTGOMERYSHIRE DISTRICT COUNCIL (hereinafter called "the Council") as Local Planning Authority hereby give you notice that FULL PERMISSION IS GRANTED for the following development, namely:-

Erection of a dwellinghouse with outbuilding, formation of vehicular access and installation of septic tank, Pt. O.S. Enc. 2485, Burgedin Farm, Sarnau

in accordance with the application and plan submitted to the Council on 28 June 1989

subject to the conditions specified hereunder:-

1. The development to which this permission relates must be begun not later than five years beginning with the date on which this permission is granted.

The date on which this permission is granted is 4 August 1989

2. Unless agreed in writing with the local planning authority the development hereby permitted shall not be carried out otherwise than in complete accordance with the details of the drawings as received on 26 June 1989.

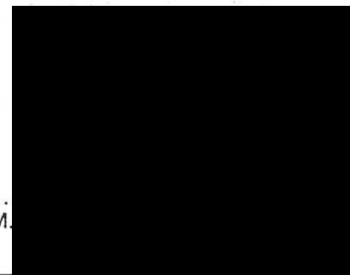
3. Details of the type, colour, and texture of all external materials shall be submitted to and approved by the local planning authority prior to any work commencing.

4. The septic tank and any ancillary soakaway drainage system shall be sited a minimum of 10 metres from any watercourse.

5. No development shall take place until there has been submitted to and approved by the local planning authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of those to be retained, together with measures for their protection in the course of the development.

Conditions continued overleaf

DATED the 18th day of August 1989





Montgomeryshire District Council

Severn Road Welshpool Montgomeryshire SY21 7AS
Telephone: 0938-552828 Fax: 0938-555010

Cyngor Dosbarth Maldwyn

Ffordd Hafren Y Trallwng Sir Drefaldwyn SY21 7AS
Teliffôn 0938-552828 Facs: 0938-555010

This matter is being dealt with by
Delir â'r mater hwn gan

Mr S J Greenland

Our Ref: P/SJG/M18308/MW
Ein Cyf:

on extension number
ar rhif ymestyniad

231

Your Ref:
Eich Cyf:

19th February 1993

Dear Madam

STABLE AT DAY COTTAGE, SARNAU

Thank you for your letter dated 15th February 1993.

I confirm that the proposed materials of the stable block are acceptable to the local planning authority under the terms of the planning permission dated 18th August 1989.

Yours faithfully

S J Greenland
Principal Planning Officer

Ms S D Phillips
Day Cottage
Sarnau
Llanymynech
Oswestry
Shropshire
SY22 6QL