

## ENFORCEMENT REPORT

**REFERENCE:** ENF/2013/00026  
C47/2013/00133  
**LOCATION:** Ty Capel, Waen, St Asaph, LL17 0DY  
**INFRINGEMENT:** Unauthorised creation of a vehicular access onto a classified road

### RELEVANT PLANNING POLICIES AND GUIDANCE

#### DENBIGHSHIRE LOCAL DEVELOPMENT PLAN

Policy RD1 – Sustainable Development and Good Standard Design

#### Government Guidance

Planning Policy Wales Edition 5 (November 2012)

Technical Advice Note (Wales) 9 – Enforcement of Planning Control

#### HUMAN RIGHTS CONSIDERATIONS

The provisions of the Human Rights Act 1998 are taken into account when considering taking enforcement action against unauthorised development, unauthorised use and other related matters.

In this particular instance, matters relate to the rights of an owner (or person with an interest in land), to convert an existing pedestrian access to a wider vehicular access, without the benefit of planning permission.

The rights of an owner (or person with an interest in the land), in this situation do not outweigh the rights of the Local Planning Authority to ensure that breaches of planning control are addressed.

No human rights issues have been raised in this particular case.

### 1. BACKGROUND INFORMATION

- 1.1 Ty Capel is located adjacent to the B5429 road in Waen, St Asaph in a position close to a blind bend in the road. It is a dwelling occupied by the caretakers of the adjacent Waen Chapel. The latter forms a separate planning unit from Ty Capel.
- 1.2 In May 2013, a Compliance Officer of the Council received information that a vehicular access had been created into Ty Capel, where previously there had been pedestrian access only (**see following photos**). The Highways Department had also been notified of its creation and reported that a section of hedge had been taken down to enable vehicular access. The purpose of the works was identified as an attempt to provide a means for the parking of cars and the turning of vehicles visiting the adjacent Waen Chapel.
- 1.3 Google images taken in 2009 clearly confirmed that prior to the unauthorised works, there had been pedestrian access only to both Ty Capel and Waen Chapel (**see following photos**)
- 1.4 A Compliance Officer wrote to the Trustees of the Chapel in June 2013 explaining that the creation of a vehicular access onto a classified road needed both planning permission and highway approval. The Compliance Officer has attempted to secure

a voluntary resolution of this serious breach of planning and highway control for the last 7 months without success.

1.5 A view was obtained from the Council's Highway's Officers in November 2013, as to whether they would look favourably if a retrospective application to retain the access were to be submitted (albeit no offer had been made by the Trustees of the Chapel to do so). The Officers response was that they would not look favourably on such a proposal as :-

- (i) The site does not provide adequate visibility at the point of access to the highway, and
- (ii) There was insufficient space within the curtilage of the site to provide for the parking and turning of vehicles.

1.6 The Highways Department were asked whether the new vehicular access represented a greater or lesser danger to highway users than the parallel parking alongside the road, which had taken place previously. The view was given that the new vehicular access was more dangerous for the reasons outlined at 1.5.

1.7 Section 330 Notices were served on 16 January 2014, in an attempt to elicit information as to which individuals had decision making powers with regard to Ty Capel and Waen Chapel. These were returned to the Legal department questioning this authority's right to serve them. The Notices were returned to the individuals for completion and return, making it clear that planning legislation allows the service of a S.330 Notice in circumstances where ownership of the land needs to be clarified; as in this case.

1.8 In an attempt to assist the Chapel and encourage voluntarily compliance, a Compliance Officer and Highway Officer have discussed possible alternative options for car parking in this location. In a letter sent to a representative of the Chapel dated 22 January 2014, two possibilities were mooted. Advice was given that both suggestions would still require planning permission. It was also stressed that whilst both options were not without potential problems which would need to be overcome, it was felt that they would form a basis for discussion, if agreement could be reached to close up the vehicular access and reinstate the pedestrian access :

Option 1 for discussion – Exploring the possibility of re-instating a hedge further back from the road; thus allowing wider roadside parking than existed previously.

Option 2 for discussion – Exploring the possibility of the landowner to the rear making a small area of land available for the purposes of creating off street parking at a safer point in the road.

1.9 The fundamental issue for consideration in this matter is the safety aspect of the current unauthorised access. The Highways Officers considers it unsafe to other highway users. However, there has been no move to make it safe and therefore it remains a very significant danger to road users.

1.10 It should be noted that after the deadline for the writing of this report had passed, the Compliance Officer was contacted by a Planning Agent, who advised that he had been appointed to act in this matter. He advised of "a possibility" of a retrospective application being submitted. Whilst it is hoped that the appointment of a Planning Agent is a promising development, there is concern that requests to remedy the breach of planning and highway control have elicited no action over the last 7 months. For this reason, the department feels it necessary to still recommend that enforcement action is authorised. However, such authorisation, if given would be held in abeyance pending submission of an application or compliance by other means within a reasonable time frame. It is stressed that such authorisation by Committee would not prejudice future applications made in respect of this matter.

## **2. REASONS FOR ISSUING AN ENFORCEMENT NOTICE**

- 2.1 The unauthorised development has occurred within the last four years.
- 2.2 Policy RD1, contained within the adopted Denbighshire Local Development Plan, aims to ensure that any development respects the site and surroundings in terms of the siting, layout, form and intensity of use. It also aims to provide safe access and to ensure that development does not have an unacceptable effect on the local highway network. When considering these policy factors, together with the opinion of the Highways Officers, which highlight the dangers of the new vehicular access, it is clear that this breach of planning and highway control cannot be remedied by the submission of a retrospective application to retain the vehicular access.

## **3. RECOMMENDATION**

- 3.1 To authorise the service of an Enforcement Notice in circumstances where application(s) attempting to regularise or address the breach of planning and highway control are **not** submitted within one month of authorisation being given. Such Notice would require that use of the vehicular access ceases and that the access be reinstated to a pedestrian access only.
- 3.2 To instigate prosecution proceedings where any person on whom an Enforcement Notice has been served, fails or refuses to comply with the requirements thereof.