

PLANNING ENFORCEMENT REPORT

REFERENCE: ENF/2012/00031

LOCATION: 45 Aquarium Street, Rhyl

INFRINGEMENT: Unauthorised development – without planning permission sub-division of single dwellinghouse to create four self-contained apartments

RELEVANT PLANNING POLICIES AND GUIDANCE

DENBIGHSHIRE UNITARY DEVELOPMENT PLAN

Policy STRAT 15 – Housing

Policy GEN 6 – Development control requirements

Policy HSG 10 – Affordable Housing within Development Boundaries

Policy HSG 13 – Sub-division of existing premises into self contained flats

Policy HSG 15 – Residential conversions in east and west Rhyl

Supplementary Planning Guidance Note 7 – Self contained flats and houses in multiple occupation

Supplementary Planning Guidance Note 22 – Affordable Housing in New Developments

HUMAN RIGHTS CONSIDERATIONS

The provisions of the Human Rights Act 1998 are taken into account when considering taking enforcement action against unauthorised development. In this instance the matter in question relates to the right of a property owner to commence development works to convert a single residential property into four self contained residential apartments without the required planning permission in place. This right is outweighed when balanced against the general public interest and the impact that the development will have on the amenity of the area. No specific human rights issues have been raised by the owner of the property or any other interested party.

1. BACKGROUND INFORMATION

- 1.1 The property known as 45 Aquarium Street, Rhyl is a large semi-detached single dwelling located in West Rhyl. The property had been used to operate a 'bed and breakfast' business. On the 21 August 2008, planning permission for the conversion of this single dwelling into four self-contained apartments was granted; code 45/2008/0412/PF. However, this was subject to compliance with a number of conditions and agreement upon a legal obligation under Section 106 of the Town and Country Planning Act 1990.
- 1.2 On the 22 August 2008, the planning officer dealing with the application forwarded a letter to the agent representing the owners, a company known as Williamson Bell Limited, detailing that the development triggered the Council policy on affordable housing. It was explained that whilst planning permission could be released it would only be so on condition that agreement was reached that one apartment would be

provided as an 'affordable house' to be sold as a low cost home for £75,867. The Section 106 agreement was to be completed within 12 months. At that time there was no policy in place to pursue a commuted sum option.

- 1.3 On the 10th October 2008, a draft Section 106 agreement was forwarded to Garner Canning Vickery, the solicitors representing the property owners. The solicitors responded stating that they considered the affordable housing policy to be onerous and required to take instructions from the owners.
- 1.4 Following an exchange of telephone calls over the following months between the solicitors and Council Legal Services, a letter dated the 15 April 2010 was forwarded to Garner Canning Vickery, questioning whether they had received instructions and whether they were able to progress the Section 106 agreement. The letter also outlined that, as it had been declared by them that the owner had commenced works without the Section 106 agreement being in place, there was a risk that enforcement action would be taken. It also stated that in such circumstances the owner did not have the benefit of any planning permission.
- 1.5 On the 10 June 2010, following legal discussion a revised Section 106 agreement was forwarded to the owners' solicitors for approval. There was no response and a formal reminder was sent on the 7 September 2011.
- 1.6 On the 26 June 2012, Garner Canning Vickery advised that they were without instructions and were to close their file.
- 1.7 On the 16 July 2012, the matter was referred to a planning compliance officer for investigation.
- 1.8 Following initial background enquiries to establish the facts the planning compliance officer undertook a site visit on the 28 August 2012, which was limited to the exterior of the building. The proposed plans within application code 45/2008/0412/PF show that the only external works to be undertaken were limited to the rear of the building. It appeared that no external works had been undertaken to the rear of the property, but it was noted that three individual door entry bells had been installed at the front door.
- 1.9 On the 11 September 2012, the officer forwarded an initial letter to the owners' of the property, Williamson Bell Limited. The officer outlined the concern from a planning control perspective and requested confirmation when development works were commenced. The owner responded stating that works commenced during 'late 2008', but that they have only been able to complete three apartments of the four proposed. A further exchange with the owner revealed that the apartments created were substantially completed 'in late 2009'.
- 1.10 Council Tax records indicate that the first of the three apartments created was first occupied on the 13 November 2009. It is understood that three of the four apartments have been occupied and the development proposal subject of the application for planning permission, code 45/2008/0412/PF, therefore implemented.
- 1.11 On the 27 September 2012, the officer forwarded a further letter to the owner detailing the breach of planning control in that unauthorised development has been undertaken and requesting that she indicate whether it was her intention to regularise matters.
- 1.12 On the 27 September 2012, the owner indicated that due to several financial pressures and poor health, she intended to surrender the property to her bank and had no wish to regularise any breach of planning control.

2. REASONS FOR ISSUING AN ENFORCEMENT NOTICE

- 2.1 Unauthorised development involving the creation of a residential unit is immune from planning enforcement four years from the date when it was substantially completed. In this case, from written comment provided by the owner and from evidence gathered from Council Tax records, the balance of probabilities suggests that the unauthorised development undertaken to create the first apartment was substantially completed within the last four years i.e. November 2009. Consequently the unauthorised development undertaken is not immune from enforcement action at this stage.
- 2.2 Whilst the proposed development for the conversion of a single dwelling house into four self-contained apartments may have been acceptable, this was only conditional to all of the circumstances meeting Council policy. In particular this development triggers Affordable Housing policies which require the completion of an agreement under Section 106 of the Town and Country Planning Act 1990. This agreement was to have been completed within 12 months of a decision to grant conditional planning permission; it was not. Consequently this unauthorised development is contrary to Policies STRAT 15, HSG 10 and Supplementary Planning Guidance Note 22.

3. RECOMMENDATION

- 3.1 That authorisation be granted for the following:
- (i) Serve an Enforcement Notice to secure the removal of all unauthorised development works and the return the property to its original use as a single residential unit.
 - (ii) Instigate prosecution proceedings, or the appropriate action under the Planning Acts against the person, or persons upon whom any Enforcement Notice, or other such Notice is served, or against whom legal action is taken should they fail to comply with the requirements of the Enforcement Notice.
 - (iii) Period for compliance 9 months.