

PLANNING ENFORCEMENT REPORT

REFERENCE: ENF/2013/00006

LOCATION: Y Foelas, Peakes Lane, Denbigh

INFRINGEMENT: Unauthorised Development - insertion of uPVC windows and door at dwelling within Conservation Area covered by Article 4(2) Direction

RELEVANT PLANNING POLICIES AND GUIDANCE

DENBGHSHIRE UNITARY DEVELOPMENT PLAN
Policy GEN 6 – Development Control Requirements
Policy CON 5 – Development within Conservation Areas
Policy CON 9 – Article 4 Directions
SPG 13 – Conservation Areas

GOVERNMENT GUIDANCE
Planning Policy Wales 2002
Technical Advice Note (Wales) 9: Enforcement of Planning Control
Circular 61/96 Planning and the Historic Environment

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 the owner of a dwelling to install uPVC replacement windows and a door and in so doing failing to enhance or preserve the character and appearance of the Conservation Area. 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 Y Foelas, Peakes Lane, Denbigh is a detached brick built two storey residential property located within the Denbigh Conservation Area.
- 1.2 The Denbigh Conservation Area has the additional constraint upon development provided by a Direction under Article 4(2) of the Town and Country Planning (General Permitted Development) Order 1995. This direction effectively took away householder permitted development rights for all dwelling houses located within the Conservation Area. The effect of the Direction is that planning permission is now required for any development previously permitted by Schedule 2, Part 1, 2 and 31 of the General Permitted Development Order 1995, where the works front a highway or open space.
- 1.2 On the 25 March 2010, as a result of a complaint a Planning Compliance Officer undertook a site visit which revealed that uPVC windows and a door had been installed on the front elevation of Y Foelas. The windows and door are of contemporary style.
- 1.3 This class of development requires planning permission, but no application has been submitted. However, it is considered that should such an application have been submitted, it would not have been recommended for approval on the grounds that the modern materials and design would have been out of character with the appearance

of the Conservation Area and thereby harming the intensions and principles of the Denbigh Townscape Heritage Initiative.

- 1.4 A review of a photographic survey of the Denbigh Conservation Area undertaken during October 2008, revealed that the original windows were of traditional timber sliding sash style and the door was of timber material and panelled design.
- 1.5 On the 31 March 2010, the Officer forwarded a letter to the owner of Y Foelas, outlining the breach of planning control caused by the removal of traditional style timber windows and the insertion of uPVC windows and a door. The options open to the owner were set out; either reinstate the original windows, or submit an application for planning permission, which in the case of a refusal would allow an appeal.
- 1.6 On the 14 April 2010, the owner of Y Foelas telephoned the Planning Compliance Officer, which revealed that the new windows had been inserted during December 2009. Prior to undertaking this work, the owner stated that she had sought guidance from the Council Conservation Section regarding the availability of grant aid to undertake 'like for like' replacements for the original windows. It transpired that she had been advised that no grant aid was available at that time, but her interest would be noted should additional funds become available. Having taken this course the owner was clearly aware of Conservation Area/Article 4 constraints.
- 1.7 On the 23 July 2010, a letter was received purporting to be from the owner of Y Foelas as registered with the Land Registry. The female owner stated that as the original timber windows had deteriorated and were insecure, she had installed the uPVC windows to improve her home security as a response to difficult personal circumstances. This statement was subsequently corroborated by a representative of a local Women's Aid Group.
- 1.8 On the 29 September 2010, the Planning Compliance Officer forwarded a letter to the owner advising that under the prevailing circumstances the situation would be reviewed 18 months later. The owner was advised to address the matter in the meantime if she was able to do so.
- 1.9 On the 10 May 2012, the Officer noted that the uPVC windows and door remained in situ and forwarded a letter to the owner seeking an update and whether any progress was being made towards removing the unauthorised windows and door. There was no response.
- 1.10 A further enquiry with the Land Registry revealed that ownership of Y Foelas had not changed.
- 1.11 A reminder letter was sent by the Officer on the 7 January 2013, but again there has been no response.
- 1.12 A further site visit, on the 13 February 2013, revealed that the unauthorised windows and door remained in situ. There was no answer at the front door, the front door letter box was sealed and there was no other access to the property. The property is currently advertised for sale.

2. REASONS FOR ISSUING AN ENFORCEMENT NOTICE

- 2.1 The unauthorised development has been carried out within the last four years; by the owner's admission during December 2009.
- 2.2 The use of contemporary materials and design for the windows and door in the Denbigh Conservation Area is out of character with the predominant use of traditional materials and consequently this development does not comply with Policy GEN 6 (i) and (ii).

- 2.3 The modern uPVC material and design does not preserve or enhance the character or appearance of the Conservation Area and is therefore also contrary to Policy CON 5 and SPG 13.
- 2.4 The use of conditions as part of any grant of planning permission for the retention of the unauthorised windows and door would not remove these objections.

3. RECOMMENDATION

- 3.1 That authorisation be granted for the following:
- (i) Serve an Enforcement Notice to secure the removal of the unauthorised uPVC windows and door and their replacement with traditional timber sliding sash style windows and timber panelled door similar to those removed.
(Compliance period 12 months)
 - (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.