



CYNGOR
Sir Ddinbych
Denbighshire
COUNTY COUNCIL

Heading:

ENF/2013/00011
 26 BUTTERTON ROAD
 RHYL, LL18 1RF

Graham Boase
 Head of Planning & Public Protection
 Denbighshire County Council
 Caledfryn
 Smithfield Road
 Denbigh
 Denbighshire LL16 3RJ



The Site



Date 26/6/2013

Scale 1/1250

Centre = 300229 E 381092 N

Tel: 01824 706800 Fax: 01824 706709



This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office.
 © Crown copyright. Unauthorized reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. Denbighshire County Council. 100023408. 2011.

Atgynhrychir y map hwn o ddeunydd yr Ordnance Survey gyda chaniatâd yr Ordnance Survey ar ran Rheolwr Llyfrfa Ei Mawrhydi
 © Hawlfraint y Goron. Mae atgynhrychu heb ganiatâd yn torri hawlfraint y Goron a gall hyn arwain at erlyniad neu achos sifil. Cyngor Sir Ddinbych. 100023408. 2011.

PLANNING ENFORCEMENT REPORT

REFERENCE: ENF/2013/00011
LOCATION: 26 Butterson Road, Rhyll
INFRINGEMENT: Unauthorised change of use from HMO to four self-contained flats

RELEVANT PLANNING POLICIES AND GUIDANCE

DENBIGHSHIRE LOCAL DEVELOPMENT PLAN

Policy RD 1 - Sustainable Development and Good Standard Design
Policy BSC 7 - Houses in Multiple Occupation and Self Contained Flats

Supplementary Planning Guidance Note 7 - Residential Space Standards

GOVERNMENT GUIDANCE

Planning Policy Wales
Chapter 4 – Planning for Sustainable Development
Chapter 9 – Housing
TAN 11 – Noise
TAN 12 – Design
TAN 22 – Sustainable Building

HUMAN RIGHTS CONSIDERATIONS

The Human Rights Act 1998 is taken into account when considering taking enforcement action in relation to unauthorised development. In this case the matter under consideration relates to the rights of the owner of a dwelling to change the use of the premises by conversion to four self contained flats without the requisite authority to do so. These rights are outweighed by the general public interest and the need to exercise general development control. No claim has been made in respect of Human Rights.

1. BACKGROUND INFORMATION

- 1.1 The property in question is a three storey dwelling forming part of a terrace of similar buildings. The dwelling has been used as a HMO, but there is no planning history in relation to this.
- 1.2 On the 24 January 2011, it was drawn to the attention of a Planning Compliance Officer that works had commenced towards the creation of four self-contained flats at this property. Such development requires planning permission and as this was not in place the officer forwarded a letter to the owners providing appropriate guidance.
- 1.3 Eventually following agreement with the owners a site meeting was arranged for the 7 March 2011, with their local property manager. This revealed that the property was unoccupied and the works in question had advanced to a stage whereby the proposed four self-contained flats were just identifiable. Further written guidance was forwarded to the owners advising that planning permission was required and that any further works would be at their own risk.

- 1.4 In accordance with the owners' request, forms to apply for planning permission and the relevant guidance notes were forwarded to them.
- 1.5 On the 5 May 2011, an application for planning permission for the change of use and conversion of the existing HMO to four self-contained flats was submitted; code 45/2011/0569/INV refers. The application was classed as 'invalid' due to the applicant's failure to provide all of the required detail. The applicant was advised by letter.
- 1.6 The Planning Compliance Officer undertook a further site visit on the 14 December 2012, in company with a Building Control Officer. Whilst further development work had taken place, little real progress had been made.
- 1.7 Despite further attempts to encourage the applicant to validate the application, the required outstanding material was not forthcoming until the 4 February 2013. The valid application was assessed against the relevant policies in place at that time.
- 1.8 The application for planning permission was duly refused on 7 May 2013 as the scheme was contrary to the UDP Policy HSG13 and SPG7.
- 1.9 There is no relevant planning history for this site but a recent case at 50 Butterson Road reference 45/2011/0405/PF is of significance. The case proposed the change of use of a ground floor apartment to form two self-contained flats and was refused by the council on 23 May 2011 for the following reason:
- "The proposed subdivision of a ground floor apartment to form 2 self-contained apartments, would result in an unacceptable intensification of residential use within a property previously sub-divided into 3 self-contained flats and within an area already containing a high concentration of individual flats. The proposed subdivision would unacceptably affect the amenity standards of future occupiers contrary to the provisions of Policy HSG 13 of the adopted Unitary Development Plan, residential space standards set out in SPG 7 Residential Space Standards, and the aims of the Rhyl Going Forward Strategy and the West Rhyl Regeneration Strategy due to the cumulative effect such types of accommodation are having on this part of Rhyl".*
- 1.10 The decision was the subject of an appeal reference APPR6830/A/11/2150792 which was dismissed on 5 January 2012, with the Inspector endorsing the Council's decision and concluding that *"The size of the flats is substandard and they do not provide adequate living conditions for occupiers. The development undertaken fails to comply with the design standards contained within the SPG and as a result it conflicts with Policy HSG 13 of the adopted Denbighshire Unitary Development Plan which seeks to ensure that conversion schemes comply with the Council's approved floorspace guidelines".*
- 1.11 This appeal decision is therefore a material consideration for the current enforcement case.

2. REASONS FOR ISSUING AN ENFORCEMENT NOTICE

- 2.1 The unauthorised development has commenced within the last 4 years; the ongoing development appears to be sporadic and at the last site visit was some distance from being classed as substantially complete.
- 2.2 The subdivision of the property into four self-contained flats, would result in an unacceptable intensification of residential use within an area already containing a high concentration of individual flats, contrary to Policy RD 1 (i) and (vi) of the new Local Development Plan. Further to this the subdivision would not meet the requirements for floor-space, contrary to Policy BSC 7 (i) and (ii) and SPG 7.

2.3 The use of conditions as part of any grant of planning permission for the proposed subdivision could not overcome these objections.

3. RECOMMENDATION

3.1 That authorisation be granted for the following:

- (i) Serve an Enforcement Notice to secure the removal of all unauthorised works creating a subdivision of the property. (Compliance period 9 months)
- (ii) Instigate prosecution proceedings, or any other appropriate action under the Planning Acts against the person, or persons, upon whom any Enforcement Notice, or other such Notice is served, should they fail to comply with the requirements thereof.