

Reference:	16/00232/UNAU_B	
Ward:	Leigh	
Breaches of Control	Without planning permission, the replacement of the existing side hung timber windows at ground and first floor level in the front elevation with Upvc windows. (Article 4 Direction)	
Address:	6 New Road, Leigh on Sea, Essex. SS9 2EA	
Case Opened:	15 th December 2016	
Case Officer:	Steve Jones	
Recommendation:	AUTHORISE ENFORCEMENT ACTION	

6 New Road, Leigh on Sea, Essex



This item was deferred from the 12 September 2018 Development Control Committee at staffs' request to verify the report content. The report is unchanged.

1 Site and Surroundings

- 1.1 No 6 is a two storey mid terraced cottage constructed sometime between 1875 and 1897, lying to the north side of New Road facing across the C2C railway line towards Old Leigh. It forms part of a wider stretch of cottages where some have lost their original windows to inappropriate styles and materials. The majority of these were replaced over 4 years ago and are now immune from enforcement action. The property lies within the Leigh Conservation Area and is subject of an Article 4 Direction controlling window alterations to a dwelling house.

2 Lawful Planning Use

- 2.1 The lawful planning use is as a dwelling house within Class C3 of the Town and Country Planning Use Classes Order 1987 (as amended)

3 Present Position

- 3.1 A complaint was received on 13th December 2016 concerning the alleged installation of replacement windows with Upvc frames.
- 3.2 A site inspection was carried out on 16th December 2016 by Enforcement Staff which confirmed that Upvc framed replacement windows had been installed to the front elevation of the property at ground and first floor level.
- 3.3 On 16th December 2016, a letter was sent to the property owner advising that the Upvc framed windows did not benefit from Permitted Development rights and advised that a retrospective planning application should be submitted by 27th January 2017.
- 3.4 On 10th January 2017 Enforcement Staff received an email from the property owner advising of their intention to submit a retrospective planning application.
- 3.5 On 31st January 2017 a retrospective planning application was received by the Local Planning Authority (LPA) but on submission was invalid.
- 3.6 The owner was informed that the planning application was invalid and following this there was an exchange of communication between the owner and the Planning Service concerning the requirements in order to validate the application.
- 3.7 On 11th May 2017 Enforcement Staff emailed the owner advising that the application had still not been validated and that the matter would be referred to the Development Control Committee to seek authority to issue an Enforcement Notice.
- 3.8 On 11th May 2017 the owner emailed Enforcement Staff advising they thought everything required had been submitted.

- 3.9 On 11th July 2017 a retrospective planning application to retain two windows to the front elevation under Ref 17/00140/FULH was refused. (A copy of that report is attached at appendix 3)
- 3.10 On 26th July 2017 Enforcement Staff emailed the property owner reminding them that the application had been refused and requesting clarification of whether it was their intention to lodge an appeal.
- 3.11 On 30th July 2017 the property owner advised they would be lodging an appeal against the LPA decision.
- 3.12 On 24th October 2017 Enforcement Staff emailed the property owner asking if an appeal had been lodged as they would otherwise be out of time.
- 3.13 On 24th October 2017 the owner emailed Enforcement Staff advising they didn't submit an appeal due to family circumstances.
- 3.14 On 13th November 2017 Enforcement Staff received an email from the owner advising that an appeal had now been lodged.
- 3.15 On 13th November 2017 Enforcement Staff emailed the owner advising the enforcement case would pend the outcome of the Planning Inspectorate decision.
- 3.16 On 13th April 2018 Enforcement Staff emailed the owner requesting an update on the appeal progress.
- 3.17 On 18th April 2018 the owners emailed Enforcement Staff advising they were waiting a decision from the Planning Inspectorate.
- 3.18 On 26th June 2018 Enforcement Staff made enquires with the Planning Inspectorate to discover the appeal had been 'turned away' as the property owners had not supplied the required information within the required time limits.
- 3.19 On 26th June 2018 Enforcement Staff emailed the owners advising there was no appeal pending and that an application would now be made to the Development Control Committee seeking authority for an enforcement notice.
- 3.20 On 26th June 2018 an email was received by Enforcement Staff from the owners advising they had not received any communication from the Planning Inspectorate and asking what avenues were available to them.
- 3.21 On 10th July 2018 Enforcement Staff received an email from the owner suggesting that the Councils processes had been breached therefore rendering enforcement action null and void.
- 3.22 On 10th July 2018 Enforcement Staff emailed the owner asking for clarification concerning the alleged process breach so that further investigation could take place as relevant.
- 3.23 On 11th July 2018 Enforcement Staff emailed the owner reminding them that a fresh planning application to replace the current Upvc windows with a more appropriate material and design should be received by the LPA by 26th July 2018.

- 3.24 On 11th July 2018 an email was received by Enforcement Staff from the owner stating they would 'do their very best' to submit a new planning application and asked what the consequences of an Enforcement Notice were.
- 3.25 On 11th July 2018 Enforcement Staff emailed the owner explaining the consequences of having an Enforcement Notice issued against their property.
- 3.26 There followed a series of emails concerning the issue raised by the owners about the Council not following procedures but it transpired that the Planning Inspectorate did not accept the appeal from the initial submission as it was 'out of time'.
- 3.27 On 10th August 2018 Enforcement Staff emailed the owners advising that as no planning application had been received a report will be presented to the next available Development Control Committee seeking authority for an enforcement notice.

4 Appraisal

- 4.1 Policy CP4 of the Core Strategy requires development to safeguard and enhance the historic environment, including Conservation Areas. Policy DM5 of the Development Management Document also requires that all new development within a Conservation Area should preserve or enhance its character.
- 4.2 Planning permission is required for this development because the property lies within the Leigh Conservation Area (See Appendix 1) and is subject to an Article 4 Direction, (See Appendix 2) confirmed in 1989.
- 4.3 The Article 4 Direction for Leigh Conservation Area requires that planning permission be obtained for the alteration or replacement of windows because they are considered to be important to the historic character and significance of the conservation area. Applications for replacement windows will therefore need to demonstrate that the proposed replacements would preserve or enhance the historic character of the conservation area. If this can be justified then replacement windows would be acceptable. This is unlikely to be justified if the existing windows are an original feature in good condition but if they can be shown to be poor quality later additions then appropriate replacements using appropriate materials may be agreed.
- 4.4 The area is characterised by older two storey cottages which, originally, would have been fitted with timber framed windows of the sliding sash style. Some of the houses retain this style of window although others have also been replaced over time.
- 4.5 Leigh Conservation Area has generally retained a good proportion of its original features including timber windows and these make an important contribution to the special character and significance of the conservation area. Unfortunately there are some in New Road which were lost many years ago but where they have been recently changed the Council is seeking reinstatement to stop the erosion of the historic character of the conservation area.

- 4.6 6 New Road has replaced side hung timber casement windows with top hung upvc casement windows. Whilst the previous windows were not original to the property they were made of traditional materials and used a traditional opening method. As such they were judged to have a neutral impact on the character and appearance of the conservation area.
- 4.7 The unauthorised replacement windows are manufactured of Upvc with a false horn detail and stuck on glazing bars. They are also top hung casements which is a non-traditional form of opening. These are considered to be a poor design and harmful in terms of their materials, detailed design and opening mechanism when compared to the previous timber casements. As such it is considered that the replacement windows do not preserve or enhance the character of the designated heritage asset which is the conservation area. Rather they cause demonstrable harm.
- 4.8 Successful enforcement action has been taken in respect of several cases of unauthorised replacement Upvc framed windows in local Southend conservation areas. More recently, on 7th February 2018, the DCC resolved that enforcement action, in the form of the issue of an Enforcement Notice, against the installation of a Upvc French window to the front elevation of a property at 3 New Road, Leigh (Agenda Item 721). This property is 3 doors away from the property subject of this report. Some Enforcement Notices have been challenged at appeal but, to date, these have been dismissed by the Planning Inspectorate and the Notices upheld.
- 4.9 It is acknowledged that there are a number of Upvc window installations in the area which were carried out many years ago and are now immune from enforcement by virtue of the time constraints imposed by Section 171B of the Town and Country Planning Act 1990 (as amended). As these gradually become due for replacement, the Council will seek to ensure that appropriate frame styles and materials are used. In any event, the presence of other, unsuitable replacement windows does not justify the insertion of additional harmful examples which further dilute the character of the area.
- 4.10 In order to prevent the current unauthorised installation of Upvc windows becoming immune from enforcement action it is considered necessary that an Enforcement Notice is issued before the development can be claimed to be over 4 years old. The owner would have the right to appeal.
- 4.11 It is therefore considered expedient to pursue enforcement action to secure the removal of these unauthorised windows.
- 4.12 Taking enforcement action in this case may amount to an interference with the owner/occupiers Human Rights. However, it is necessary for the Council to balance the rights of the owner/occupiers against the legitimate aims of the Council to regulate and control land within its area. In this particular case it is considered reasonable, expedient and proportionate and in the public interest to pursue enforcement action to require the removal of the unauthorised Upvc windows.

5 Relevant Planning History

- 5.1 Reference 17/00140/FULH – Retain two windows to Front Elevation (Retrospective) – Refused. *‘The two windows, by reason of their detailed design, materials and opening mechanism, are harmful to the character and appearance of the individual property and the street scene in the wider Leigh Conservation Area of which it forms a part.’*

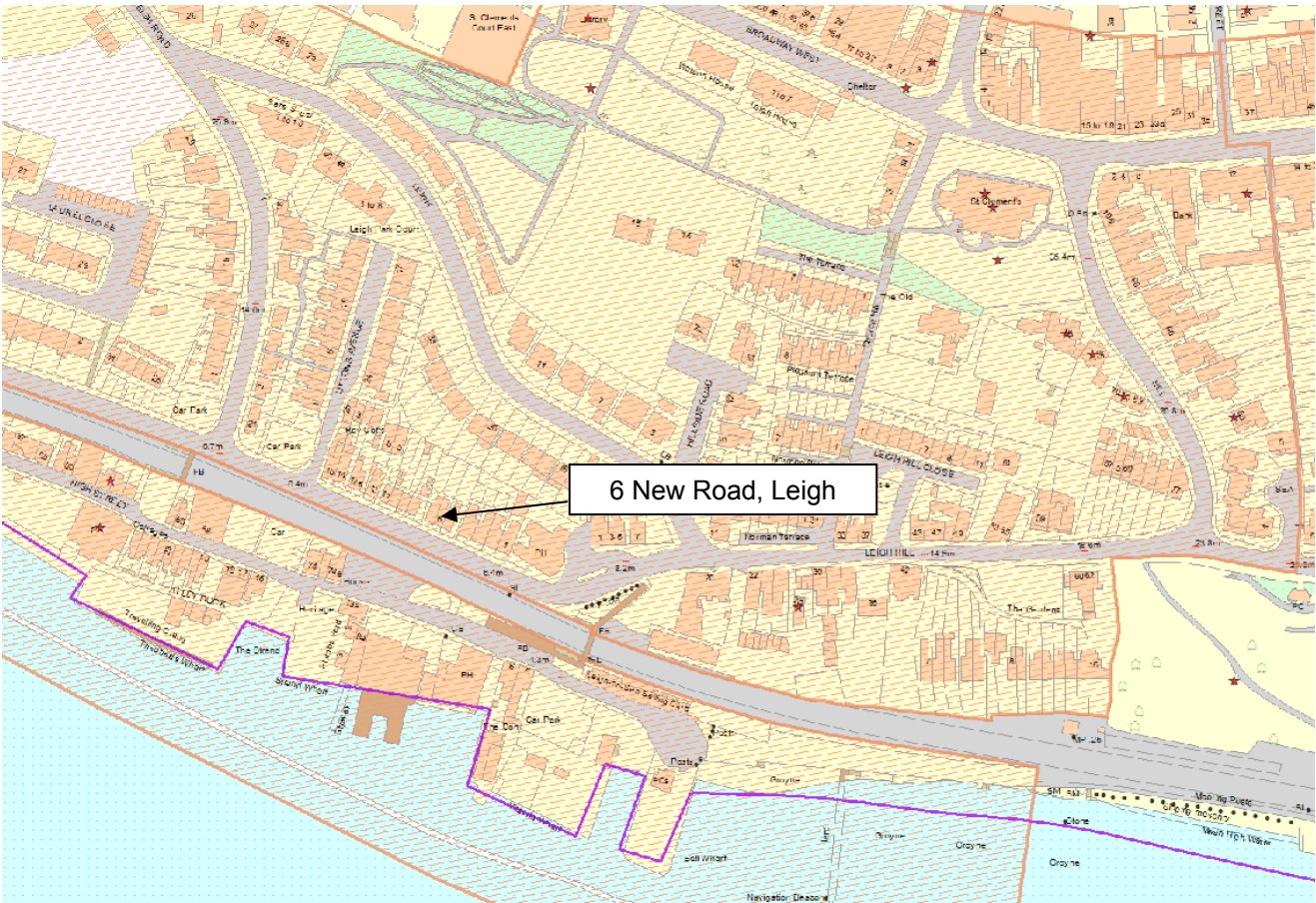
6 Planning Policy Summary

- 6.1 The National Planning Policy Framework (NPPF) 2018.
- 6.2 Core Strategy (2007) Policies KP2 (Development Principles) and CP4 (The Environment and Urban Renaissance).
- 6.3 Development Management Document (2015) Policies DM1 (Design Quality), DM3 (Efficient and Effective Use of Land) and DM5 (Southend-on-Sea’s Historic Environment).
- 6.4 Design and Townscape Guide (2009).

7 Recommendation

- 7.1 **Members are recommended to AUTHORISE ENFORCEMENT ACTION** to secure the removal of the unauthorised Upvc framed windows installed to the ground and first floor front elevation of this property on the grounds that they harm the appearance of the property.
- 7.2 The authorised enforcement action to include (if/as necessary) the service of an Enforcement Notice under Section 172 of the Town and Country Planning Act 1990 and the pursuance of proceedings whether by prosecution or injunction to secure compliance with the requirements of said Notice.
- 7.3 When serving an Enforcement Notice the local planning authority must ensure a reasonable time for compliance. In this case, any delay in manufacture and installation is likely to be dictated by the suppliers lead time. A compliance period of 3 months is deemed reasonable.

Appendix 1 – Leigh Conservation Area Boundary



Appendix 3 – Officer report refused retrospective planning application to retain the Upvc windows.

Reference:	17/00140/FULH
Ward:	Leigh
Proposal:	Retain two windows to front elevation (Retrospective)
Address:	6 New Road, Leigh-On-Sea, Essex SS9 2EA
Applicant:	Mrs Kerstin Barnes
Agent:	n/a
Consultation Expiry:	27.06.17
Expiry Date:	11.07.17
Case Officer:	Abbie Greenwood
Plan No's:	Location plan, photos of windows installed, Application form dated 13.5.17, Design and Access Statement
Recommendation:	REFUSE PERMISSION

1 The Proposal

- 1.1 The application seeks planning permission to retain two upvc top hung casement windows on the front elevation of 6 New Road which were installed without planning consent.
- 1.2 The windows replace white painted side hung timber casement windows which had fanlights and leaded glass.

2 Site and Surroundings

- 2.1 The application property is the centre property in a terrace of 3 cottages facing onto New Road. These form part of a wider stretch of cottages. Historic mapping show that the cottages were constructed between 1875 and 1897. Unfortunately some of the cottages have lost their original windows to inappropriate styles and materials although the majority of these were undertaken many years ago. Where this loss has occurred within the last 4 years the council is seeking reinstatement of more appropriate styles/materials.
- 2.2 The application property is within Leigh Conservation Area and falls within the Leigh Article 4 Direction which seeks to protect this unique character. The Direction removes householder permitted development rights in relation to:
 - The alteration or replacement of any window
 - The rendering of brickwork
 - Re-roofing with different materials
 - Construction of a hardstanding adjacent to the highway
 - Painting brickwork
- 2.3 This means that planning permission would be required for these works.

New Road is within a residential area and is located at the bottom of the cliffs adjacent to the railway and facing Leigh Old Town which is also a conservation area.

3 Planning Considerations

- 3.1 The main considerations for this application are the principle of the development, and the design including the impact of the proposed works on the character and appearance of the conservation area. It is not considered that there would be any impact on neighbours or highway implications arising from this proposal.

4 Appraisal

Principle of Development

National Planning Policy Framework (2012); The Core Strategy (DPD1) Policies KP2 (Development Principles) and CP4 (Environment and Urban Renaissance); Development Management Document (DPD2) Policies DM1 (Design Quality), DM3 (The Efficient and Effective use of land) and DM5 (Southend's Historic Environment) and Design and Townscape Guide SPD1 (2009).

- 4.1 This proposal is considered in the context of the Core Strategy DPD policies KP2 and CP4 and policies DM1, DM3 and DM5 of the Development Management Document DPD2. These policies and guidance support extensions and alternations to properties in most cases but require that such alterations and extensions respect the existing character and appearance of the building, preserve and enhance the character of the wider conservation area and respect the amenity of neighbours.
- 4.2 The Article 4 Direction for Leigh Conservation Area requires that planning permission be obtained for the alteration or replacement of windows because they are considered to be important to the historic character and significance of the conservation area. Applications for replacement windows will therefore need to demonstrate that the proposed replacements would preserve or enhance the historic character of the conservation area. If this can be justified then replacement windows would be acceptable. This is unlikely to be justified if the existing windows are an original feature in good condition but if they can be shown to be poor quality later additions then appropriate replacements using appropriate materials may be consented. The principle of replacement windows would therefore be acceptable on this basis.

Design and impact on the character of the existing building and the wider conservation area

National Planning Policy Framework (2012); The Core Strategy (DPD1) Policies KP2 (Development Principles) and CP4 (Environment and Urban Renaissance); Development Management Document (DPD2) Policies DM1 (Design Quality) DM3 (The Efficient and Effective use of land) and DM5 (Southend's Historic Environment) and Design and Townscape Guide SPD1 (2009).

- 4.3 The National Planning Policy Framework (NPPF) states *"The Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people."* (Paragraph 56 – 'Requiring good design').
- 4.4 Policy KP2 of the Core Strategy advocates the need for all new development to *"respect the character and scale of the existing neighbourhood where appropriate and secure improvements to the urban environment through quality design"*.

4.5 Policy CP4 of the Core Strategy states *“development proposals will be expected to contribute to the creation of a high quality, sustainable urban environment which enhances and complements the natural and built assets of Southend. This will be achieved by:*

5. maintaining and enhancing the amenities, appeal and character of residential areas, securing good relationships with existing development, and respecting the scale and nature of that development.

7. safeguarding and enhancing the historic environment, heritage and archaeological assets, including Listed Buildings, Conservation Areas and Ancient Monuments ;’

4.6 Policy DM1 of the Development Management Document advocates the need for good quality design that contributes positively to the creation of successful places. It states that:

‘In order to reinforce local distinctiveness all development should:

- (i) Add to the overall quality of the area and respect the character of the site, its local context and surroundings in terms of its architectural approach, height, size, scale, form, massing, density, layout, proportions, materials, townscape and/or landscape setting, use, and detailed design features giving appropriate weight to the preservation of a heritage asset based on its significance in accordance with PolicyDM5 where applicable;’*

4.7 Policy DM5 of the Development Management Document states that all development proposals that affect a heritage asset will be required to demonstrate the proposal will continue to conserve and enhance its historic and architectural character, setting and townscape value. In relation to development within Conservation Areas in particular policy DM5 (Historic Buildings) states that:

“Development proposals that are demonstrated to result in less than substantial harm to a designated heritage asset will be weighed against the impact on the significance of the asset and the public benefits of the proposal and will be resisted where there is no clear and convincing justification for this.”

4.8 In relation to development with conservation areas Paragraph 302 of the Design and Townscape Guide (SPD1) states that

‘New buildings, extensions and alterations visible from public places should positively enhance the character and appearance of the Conservation Area.’

4.9 In relation to Article 4 Directions Paragraph 308 of the Design and Townscape Guide states:

‘There are a number of key building features of particular significance to the character of Conservation Areas and it is important that these are preserved and respected. Where necessary the Council has introduced Article 4 Directions to give greater protection to these features.’

and in relation to windows in conservation areas para 310 states that:

'If replacement or reinstatement is necessary, purpose-made windows to match the original materials and external appearance should normally be installed. For most buildings, double glazing within timber frames is acceptable if the external appearance is unaltered and the metal frames and seals are not visible. Non-traditional materials, especially plastic, cannot match traditional timber windows and are normally not acceptable.

To safeguard the building's character, new windows should normally:

- *Be of good quality softwood or hardwood from renewable sources;*
- *Be painted (not stained);*
- *Copy the original pattern of glazing bars and horns, if any - glazing bars should be built into the window and not stuck on to the glass;*
- *Use the original method of opening;*
- *Retain or restore the dimensions of the original window opening and the position of the frame within the opening - most openings are well-proportioned and most frames in older brick buildings are well set back from the face of the wall to give weather-protection, shadow and character;*
- *Give adequate ventilation;*
- *Retain decorative surrounds - they give elegance and distinction to many Victorian and Edwardian buildings.*

- 4.10 Leigh Conservation Area has generally retained a good proportion of its original features including timber windows and these make an important contribution to the character and significance of the conservation area. Unfortunately there are some in New Road which were lost many years ago but where they have been recently changed the Council is seeking reinstatement to stop the erosion of the historic character of the conservation area.
- 4.11 6 New Road has recently replaced side hung timber casement windows with top hung upvc casement windows. Whilst the previous windows were not original to the property they were made of traditional materials and used a traditional opening method. As such they were judged in the appraisal to have a neutral impact on the character of the conservation area.
- 4.12 The replacement windows are upvc windows with false horn detail and stuck on glazing bars. They also top hung casements which is a non-traditional form of opening. These are therefore considered to be a poor design and harmful in terms of their materials, detailed design and opening mechanism when compared to the previous timber casements. As such it is considered that the replacement windows do not preserve or enhance the character of the designated heritage asset which is the conservation area.
- 4.13 The application is therefore contrary to the policies and guidance outlined above which seeks to preserve and enhance the historic character of the conservation, so although the harm in this case may be less than substantial, there are no public benefits to justify the retention of these windows and they are therefore considered to be unacceptable.

4.14 Community Infrastructure Levy (CIL) Charging Schedule.

- 4.15 The proposal for the existing property equates to less than 100sqm of new floor space, the development benefits from a Minor Development Exemption under the Community Infrastructure Levy Regulations 2010 (as amended) and as such no charge is payable.

4.16 Conclusion

Having taken all material planning considerations into account, it is considered that the proposed development is unacceptable in terms of its impact on the character of the existing property and that of the streetscene and that it would fail to preserve or enhance the character of the Leigh Conservation Area. The proposal conflicts with the development plan policies and guidance set out above and therefore is recommended for refusal.

5 Planning Policy Summary

- 5.1 The National Planning Policy Framework 2012.
- 5.2 Development Plan Document 1: Core Strategy Policies KP2 (Development Principles) and CP4 (Environment & Urban Renaissance).
- 5.3 Development Plan Document 2: Development Management Document Policies DM1 (Design Quality), DM3 (The Efficient and Effective use of land) and DM5 (Southend on Sea's Historic Environment)
- 5.4 Supplementary Planning Document 1: Design & Townscape Guide, 2009.
- 5.5 Leigh Conservation Area Appraisal 2010.

6 Representation Summary

Leigh Town Council

- 6.1 No objection.

Leigh Society

- 6.2 No comments received

Neighbours

- 6.3 6 neighbours were individually consulted and a site notice was displayed. One neighbour has objected raising the following concerns:
- Upvc is not appropriate for a conservation area
 - Other properties have replaced their windows with timber sliding sashes and the same rules should apply to all

7 Relevant Planning History

7.1 No relevant planning history

8 Recommendation

It is recommended that the application be REFUSED for the following reason:

01 The two windows, by reason of their detailed design, materials and opening mechanism, are harmful to the character and appearance of the individual property and the street scene in the wider Leigh Conservation Area of which it forms a part. The development is therefore unacceptable and contrary to the National Planning Policy Framework; Policies KP2 and CP4 of the Southend-on-Sea Core Strategy (2007); Policies DM1, DM3 and DM5 of the Southend-on-Sea Development Management Document (2015); and advice contained within the Southend-on-Sea Design and Townscape Guide (2009) and the Leigh Conservation Area Appraisal (2010).

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and determining the application within a timely manner, clearly setting out the reason(s) for refusal, allowing the Applicant the opportunity to consider the harm caused and whether or not it can be remedied by a revision to the proposal. The detailed analysis is set out in a report prepared by officers. In the circumstances the proposal is not considered to be sustainable development. The Local Planning Authority is willing to discuss the best course of action and is also willing to provide pre-application advice in respect of any future application for a revised development, should the applicant wish to exercise this option in accordance with the Council's pre-application advice service.

Informative

01 The applicant is advised that an installation of a traditional timber sliding sash windows or the reinstatement of side hung timber casement windows would be considered more acceptable but these will require a revised planning application. If you require further advice regarding this please contact the Council's Conservation Officer on 01702 215330.



6 New Road, Leigh. (Middle Cottage) View across railway line from Old Leigh



