Development Management – Delegated Officer Report

Application Number: AWDM/1760/15 Recommendation – APPROVE

Site: 37 King George Road, Shoreham-by-Sea

Proposal: Application for a Lawful Development Certificate for an existing self-contained room.

Date of site visit: 16.08.16

Neighbours checked: Y

Additional neighbour notifications: N

Site and Surroundings

The application relates to a detached property in a residential area. In early 2015 prior approval was sought (and not required) for the construction of a single storey rear extension measuring 6m from rear wall of the original dwelling, maximum height 2.976m and maximum height of eaves 2.9m. Following the construction of this extension the property was converted into a 5 room House in Multiple Occupation (HMO). The way in which this property is used has been the subject of an enforcement investigation (AWEN/0145/15 refers).

Representations:

None received.

Consultations:

None

Planning Legislation

Town and Country Planning Act 1990 (As amended)
Town and Country Planning (General Permitted Development) (England) Order 2015.

Planning Assessment

In its current use as an HMO the property is laid out as follows:-

Rooms 1-3 are on the ground floor with the communal kitchen. No-one was available to access to rooms 1 or 3 at the time of the site visit. Room 2 provides a single bed, en suite bathroom and small kitchenette comprising cupboards, worktop and sink with addition of the tenants own microwave and counter top burner.

Rooms 4 and 5 are to the first floor. Room 4 provides a double sofa bed, ensuite bathroom and kitchenette as before however no cooking equipment has been added. The current occuper states that they only use the communal kitchen for cooking.

Room 5 provides a single bed, en suite and kitchen as before with toaster. The current tenant occasionally uses the communal kitchen

The key issue for consideration is therefore whether this degree of self containment constitutes a material change of use from the lawful use of the property as a C4 HMO for which planning permission should be obtained.

The applicant's agent refers, in their supporting statement, to a number of recent appeal decisions where it has been the view of inspectors that planning permission is not required following the provision of such facilities. Despite repeated requests these appeal decisions have not been provided.

Circular 08/2010 defines Class C4: HMO's as providing accommodation for 3-6 occupants and states that this class covers small shared houses or flats occupied by unrelated individuals who share basic amenities. Planning legislation in England now employs the definition of an HMO set out in section 254 of the Housing Act 2004, which essentially defines a house in multiple occupation as two or more households who share basic living accommodation.

There is no single criteria to decide if a single household is present (class C3) or whether the permitted change of use to C4 has occurred. Prior to the Housing Act 2004 definition, the Barnes v Sheffield City Council 1995 case identified nine 'helpful indicators' to help an assessment:
a) whether the persons living in the house came to it as a single group or whether they were independently recruited;
what facilities were shared;
b) whether the occupants were responsible for the whole house or just their particular rooms;
c) whether individual tenants were able to, or did, lock other occupiers out of their rooms;
d) whose responsibility it was to recruit new occupiers when individuals left;
e) who allocated rooms;
f) the size of the property;
g) how stable the group composition was; and
h) **whether the mode of living was communal**.

(emphasis added)

It has for some time been thought that if units of accommodation within a property are self-contained they cannot be defined as an HMO. The definition of an HMO requires some sharing of basic facilities or for the units of accommodation to not have all necessary facilities for self-contained living.

However in 2012 the owners of a property successfully overturned an enforcement notice. The house had been split into six units and each had its own shower room with five having small kitchen units containing a built-in sink, a two ring hob, a small

fridge and a microwave oven. In addition, there were two separate kitchens which were shared between the occupiers. It was argued that under Class 1 of Schedule 2 of Part 3 of the GPDO 1995, this was permitted development. The inspector noted that section 254 of the Housing Act 2004 defined a house in multiple occupation as essentially two or more households who shared basic living accommodation. A dwellinghouse use was defined by the Use Classes Order as a person or persons living together as a single household. The issue, therefore, was whether the units within the building comprised self-contained and separate dwellings which meant that it did not function as a HMO. The Inspector noted that all the individuals living within it were unrelated to one another and the building was managed by a single company who oversaw the cleaning and upkeep of the premises. There was only one set of main services and there were communal kitchens and refuse bins. Taking into account the type of residents, the management regime, the shared services and limited accommodation within each unit, the building comprised a single planning unit which was used as a HMO. Since this was permitted development there had not been a breach of planning control and the notice was quashed. (Brent 24/07/2012 DCS No 100-078-134)

In Norwich 16/03/1994 DCS No 057-611-090 enforcement action had been taken against conversion of a house with a history of multiple occupation to 3 flats. An inspector felt that the mere fact that a planning unit had been subdivided did not of itself bring about a material change of use, quoting Winton v SoS & Guildford DC 27/01/1982. He considered that there were no planning consequences flowing from the change to flats. The external appearance and character of the property was not affected and there were no implications for car-ownership. It was concluded that in this case there had been no material change. The inspector claimed to be supported in his conclusion by the appeal decision of Brighton 31/10/1991 DCS No 041-652-276.

In the Brighton case, a determination had been issued by a local authority that a change from multiple occupation to self-contained bed-sitting rooms was material. The SoS concluded that the change would not be materially different in character and scale from the present mode of occupation.

In Brent 30/08/1994 DCS No 036-073-611 an enforcement notice was served alleging a material change of use from a house in multiple occupation to a house in six self-contained flats. It was held that the planning unit was the whole house which was lawfully occupied as a house in multiple occupation by reason of a LDC. The mere self-containment of the units did not create a material change, especially where there had been no overall increase in the number of these units. The notice was quashed accordingly.

A similar conclusion to that reached in the foregoing cases was also found more recently by an inspector in Camden 25/07/2013 DCS No 200-000-736. Here reversal of self containment was accepted as a fallback in an appeal case regarding a change of use from 26 lawful bed-sits to 31 self contained single bedroom flats. The appellant argued that doors could be swapped so en-suites could only be accessed from the outside of each unit and then available to all. The inspector considered that it was clear that each flat was capable of independent living, however this did not necessarily mean that separate planning units had been created as the ‘mere’ act of

self containment did not trigger a material change but was a matter of fact and degree where policies and external impacts were to be considered. The inspector concluded that the building as a whole would still be an HMO and the impact of increased comings and goings from five additional units in an area of similar housing, was insufficient to trigger a material change of use.

Given the above appeal precedent and the similarities of the current accommodation to those considered in the relevant decision the recommendation is to approve the application as below. The number of current occupants (5) and the provision (and use) of a communal kitchen are key in arriving at this recommendation.

Recommendation

That Worthing Borough Council hereby certify that on27/09/16 the matter described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of Section 191 of the Town and Country Planning Act 1990 (as amended), and is APPROVED for the following reason: -

The use of 37 King George Road as an HMO within use class C4 and with the provision of facilities as set out in the application is lawful and does not require planning permission.

Is recommendation contrary to letter(s) of representation? N

Case Officer: Claire Pink Date: 27/09/16

Authorised by: Gary Peck Date: 27 September 2016