Development Management - Delegated Officer Report

Application Number: **Recommendation – Refuse**
AWDM/0990/12

Site: **142A Brighton Road, Lancing, West Sussex BN15 8LN**

Proposal: **Application for a Certificate of Lawfulness for the existing use of ground-floor as a self-contained two bedroom flat**

Date of site visit: 21.10.11 (In association with AWDM/0814/11)

Neighbours checked: Y

Additional neighbour notifications: N

Proposal, Site and Surroundings
The application relates to a large detached building which was formerly a single dwelling, located on the south side of the road, backing directly onto the Widewater Lagoon. The building fronts Brighton Road and has the appearance of being three-stories with vehicular access and integral garage from the front, and to the rear, two-storeys with access directly out onto a patio garden which steps down over the flood defence bank, to the Widewater.

The property is in use as a ground floor two-bedroom self contained flat, and a first and second floor four-bedroom maisonette.

A Lawful Development Certificate is sought for the continued use of the ground floor flat, which the applicant feels has been in use for more than four years since enforcement action was initiated on 15.06.12. The self-contained flat is currently occupied and Council Tax has been collected since 1st April 2010. The flat is arranged with two bedrooms on the west of the floor plan, lounge to the front with window looking north, and bathroom and kitchen on the east side.

Retrospective permission has previously been refused for the creation of a self contained two-bedroom ground floor flat, with west side covered way and entrance lobby under AWDM/0814/11. The reason for refusal was:-
The application site lies within Flood Zone 3 defined by Planning Policy Statement 25 – "Development and Flood Risk" (PPS25) as having a high probability of flooding. In the absence of an FRA, the flood risks resulting from the proposed development are unknown, and an informed decision on the proposed development cannot therefore be made. The absence of an FRA is therefore sufficient reason in itself for a refusal of planning permission. This reflects the precautionary approach to development in flood risk areas set out in paragraphs 10 and E9 of PPS25.

The upper maisonette is now accessed via the existing east side staircase, which leads to the rear garden. The integral garage remains in the control of the upper maisonette.

Relevant site history

- ABC/0457/06 – Garage conversion (part) and internal alterations to create bathroom and 3 additional bedrooms. Work completed 18.07.07
- CP/ABC/0086/07 – Rewiring of dwellinghouse with one or more new circuits. Work completed under Competent Person Scheme 15.02.06
- CP/ABC/1585/07 – Installation of gas boiler. Work completed under Competent Person Scheme 29.03.07
- AWEN/0154/11 – Unauthorised Use – Letter to occupier regarding conversion to 2 flats dated 12.08.11.
- AWEN/0154/11 – Enforcement Notice issued 15.06.12.
- AWDM/0814/11 - Retrospective application for conversion of ground floor to self contained flat. Refused 23.02.12.

Submitted supporting evidence

Council letter to Mr Holman regarding termination of caravan licence. Dated 21 January 2005.
Builders quotation letter. Dated 06 June 2006
Building Regs Fee receipt (ABC/0457/06). Dated 06 November 2006
Howdens joinery certificate for work clamps. Dated 16 September 2008
HM Revenue & Customs letter to Mr Holman. Dated November 2008
Building Regulations Completion Certificate. Dated 22 January 2008
Personal tenancy reference for Ms White. Dated 02 May 2010
Personal tenancy reference for Mr White. Dated 03 May 2010
Rent book for 142A Brighton Road. Start Dated 08 May 2010
Council letter confirming postal address 142A. Dated 12 October 2010
Letter from Virgin Media to Mr White to 142A. Dated 25 November 2010
Bank letter to Mr & Mrs White to 142A. Dated 31 December 2010
Council Tax summons for No. 142A. Dated 07 October 2011

Statutory Declaration from Mr Holman dated 09 August 2012

Domestic electrical installation certificate for entire flat, including kitchen. Undated.

Consultations

Adur and Worthing Councils: Legal services have commented that the interpretation provided in paragraph 2.81of Circular 10/97 has been applied in subsequent case law thus:-

Skerritts of Nottingham Ltd v Secretary of State for the Environment, Transport and the Regions and Harrow London Borough Council 1999 JPL 932 Held:
"A flat, as defined in the GPDO, was a separate and self contained set of premises constructed for the purpose of a dwelling and forming part of a building from some other part from which it is divided horizontally. This implied some degree of severance and self-containment which could be shown by physical separation, separate facilities and services for each unit and by legal

separation such as separate letting arrangements. In this case [Skerritts v SoS] the ground and first floors had been physically separated with each having living, sleeping and bathroom accommodation. However, the first floor was not properly equipped with a kitchen, and facilities such as meters, central heating and burglar alarms were shared. There was no evidence of legal/administrative separation. The balance of evidence was that the premises had come close to physical separation, but that this had not actually taken place".

On the information the applicant has provided, It is the view of Legal Services that the applicant's evidence is not sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability. On the balance of probability, I would advise the LDC application is refused.

Lancing Parish Council: No objections.

Representations - *Third Parties:* No third party comments received.

Relevant Legislation
Town and Country Planning Act 1990 – Section 171B(2); 191; 191(2); 191(4).
Circular 10/97 ' Enforcing Planning Control – Legislative Provisions and Procedural Requirements'

Section 171B (2) of the Act states where there has been a breach of planning control consisting the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period four years beginning with the date of the breach.

Section 191 of the Act states a person can apply for a LDC to ascertain if the existing use is lawful.

Section 191(2) of the Act states the use/operations are lawful if no enforcement action may be taken against them, and they do not constitute a contravention of the requirements of any enforcement notice then in force.

Section 191(4) of the Act states the LPA must be satisfied of the lawfulness at the time of the application of the use/operations. If the LPA is satisfied they shall issue a certificate, if not they shall refuse the application.

Circular 10/97 'Annex 8 paragraph 8.12 states the onus of proof in a LDC application is firmly on the applicant. Just because the onus of proof is not discharged by the applicant and the LDC is refused, does not preclude the submission of a further application if better evidence is subsequently available.

Circular 10/97 Annex 2 paragraph 2.81 provides guidance on the interpretation of use as a single dwelling house. "It is considered that the criteria for determining use as a single dwellinghouse include both the physical condition of the premises and the manner of the use. Where a single, self-contained set of premises comprises a unit of occupation, which can be

regarded as a separate “planning unit” from any other part of a building containing them; are designed or adapted for residential purposes, containing the normal facilities for cooking, eating and sleeping associated with use as a dwellinghouse; and are used as a dwelling, whether permanently or temporarily, by a single person or more than one person living together as, or like, a single family, those premises can properly be regarded as being in use as a single dwellinghouse for the purposes of the Act.”

Planning Assessment

The power to take enforcement action is four years (from the date of the breach) in respect of the unauthorised change of use of any building to use as a single dwelling house (*section 171B(2), TCPA 1990*). Therefore given that enforcement notice was served on 15.06.12 the onus is on the applicant to prove that the site property was sub-divided into two before 14.06.08.

The evidence that has been submitted covers a wide date range from 2005 until October 2011 (a Statutory Declaration (SD) from August 2012 has also been submitted).

It is evident from the SD by Mr Holman that the ground floor of 142 Brighton Road has been occupied in some form since conversion works were undertaken by the applicant in July 2007. This would be prior to the current tenants who have been paying rent since 08.05.10. The declaration made by Mr Holman does state that his occupation was from13.10.07 until 30.03.10, which is prior to the 4 year date of 14.06.08.

It can be assumed that the ground floor of the building may have been in separate occupation however the property itself might not have been split physically until later on, some time after the tenancy started. Mr Holman does not state in his SD that there was complete self containment, only that the flat had “its own entrance”.

The Legal interpretation of sub-division into a separate planning unit is based upon planning case law, where it has been held that where there was no evidence of legal/administrative separation; no proper kitchen, and meters and central heating remained shared across the building, that, ‘The balance of evidence was that the premises had come close to physical separation, but that this had not actually taken place’.

In this instance there is relevance with the above legal case law.

Works for conversion of the ground floor into three bedrooms were completed with the issuing of a completion certificate by Building Control on 22.01.08. (Initial payment for Building Regs having been on 06.11.06). The builders quote and Building Regulations submission (ABC/0457/06) both refer to three bedrooms and a bathroom rather than a separate flat, and the inference would be that the building operation initially resulted in rooms which were ancillary to the existing home, with connecting staircase still intact.

The applicant states in their supporting letter that at the time of Mr. Holman’s occupation the ‘kitchen’ consisted of only ‘a microwave oven, kettle, toaster and sink’. The builders quote for the conversion works from 06.06.05 also

states that the price ‘allows for the creation of three bedrooms and a bathroom allowing a separate area for a future kitchen’. This further confirms that the kitchen was not in place after the initial building works.

The staircase connecting the ground floor to the first floor would still have been practicably useable and there would have been the potential for some sharing of facilities, up until the kitchen as currently exists was installed. There is no evidence provided by the applicant that shows this before 15.06.08.

Furthermore the applicants supporting letter states that the flat still does not have its own electricity supply, as there is only one meter for the entire building and that the bill is included in the monthly rental sum.

A separate address for the ground floor was not given until 2010, and Council Tax was not paid individually from the lower flat until 31.05.10.

It is considered that the evidence that has been submitted is not sufficient to undoubtedly prove the separation of the building into two planning units, four years before enforcement action was initiated by the Council. Whether it is expedient for the Council to proceed with enforcement action will be determined on the basis of the merits of the case.

REFUSE for the reason(s):-

The operation to split No.142 Brighton Road into two self-contained and independent planning units is clearly operational development as defined by s.55 of the Town and Country Planning Act 1990, however, on the balance of probability the application does not provided evidence that the operation did happen more than 4 years prior to the initiation of enforcement action on 15th June 2012.

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

Case Officer: C. Hone Date: 08.10.12

Authorised by: Gary Peck Date: 8 October 2012