Exp 12/9

Development Control – Delegated Officer Report

Application Number: ADC/0259/09 **Recommendation – Certificate be issued**

Site: **10 Broad Reach, Shoreham-by-Sea BN43 5EY**

Proposal: **Application for certificate of lawfulness for existing use of live-work unit wholly and exclusively as a dwellinghouse (Use Class C3)**

The Application

The application is for the use of this live-work unit wholly as a dwellinghouse.

The permission for the original Ropetackle development which included the live-work units was SU/216/02. Condition 35 of that permission states:-

> "35. The accommodation within the 'live/work units' denoted on the plans as works areas or offices shall be used solely for purposes within Use Class B1 'business' of the T&CP (Use Classes) Order 1987 and the associated residential accommodation shall be occupied solely by persons (including their dependents) working on the same premises".

The applicant states that, since he purchased the property in April 2005, the entire property has been used exclusively for residential purposes and has been occupied by a single family. He states that there has been no business or work use of any part of the property, the entire house having always been used solely by its occupants for residential use.

Accompanying the application are:-

Valuation Office – Notice of Deletion of an existing Rating List Entry for 'Offices & premises' at Groundfloor of 10 Broad Reach – Effective date of Deletion 1 April 2005

Valuation Office – Notice of Alteration to an Existing Entry in the Valuation List changing the dwelling at 10 Broad Reach from band D to E – Effective date of alteration 23 March 2005

Consultations and Representations

Adur District Council: The Assistant Solicitor states that, in view of the Court of Appeal case referred to below, provided there is sufficient evidence to show that the use has taken place for 4 years, the certificate should be granted.

Third Parties: Berkeley Homes (Sthn) Ltd point out that there is a restrictive covenant but not to prevent the unit being entirely residential and also refer to

a website *'coastsouthcharter.com'* that is revealed by Google under this address.

Planning Assessment

Under section 191 of the Town and Country Planning act 1990 (as amended), the Council is obliged to grant a Certificate if, on the balance of probability, the use of a building wholly and exclusively as a dwellinghouse commenced more than 4 years ago and has continued since then (thereby being outside the scope of enforcement action under section 171B of the Act).

Although the normal minimum period for breach of a condition is 10 years and there has been various case law, in the most recent case of *First Secretary of State v Arun DC and Brown (2006),* the Court of Appeal reversed the decision of the High Court. The result is, in fact, to re-state what is set out in Circular 10/97 Annex 2 para 2.4 (2):-

> "(2) for breaches of planning control consisting in the change of use of any building .....to 'use as a single dwellinghouse' – 4 years from the date of the breach. *This time limit applies either where the change to use as a single dwellinghouse involves development without planning permission, or where it involves failure to comply with a condition or limitation subject to which planning permission has been granted."*

As regards the evidence, the above deletion and alteration to the Valuation List are considered to be sufficient to show that, on the relevant 'balance of probability' test, the use wholly and exclusively as a dwelling took place more than the relevant 4 years ago. The Worthing Valuation Office have been contacted and the relevant officer states that, although the records are now no longer available, the likelihood is that the premises were inspected internally.

As for the website revealed by Google, this is inactive and the applicant states that it is merely a registered internet domain name – there is no company, it has never traded and is just a concept for possible future use. He re-states that the premises have never been used for business.

Recommendation

That a Certificate of Lawfulness be issued

Description: Use of live-work unit wholly and exclusively as a dwellinghouse.

Land at: 10 Broad Reach, Shoreham-by-Sea, shown outlined in red on the plan.

Reason:- The use of the live-work unit wholly and exclusively as a dwellinghouse involved a material change of use constituting 'development' as defined by section 55 of the Act and was in breach of condition 35 of the planning permission SU/216/02/TP but, because the use was commenced

more than 4 years ago, it is now outside the scope of enforcement action under section 171B of the Act.

Case Officer.. [redacted]

Date....12/8/09.....