Development Management – Delegated Officer Report

Application Number: AWDM/1051/22 Recommendation: Refuse

Site: 35 Buckingham Road, Shoreham-by-sea

Proposal: Application for a Lawful Development Certificate for a Proposed amalgamation of three dwellings into two dwellings

Proposal, Site and Surroundings:

The application relates to a semi-detached property on the west side of Buckingham Road. It is arranged as 3no. separate flats over 4no. floors as follows:

• 35a: Lower ground Floor - Self-contained two-bedroom flat – own entrance at lower ground.
• 35b: Ground Floor - Self-contained two-bedroom flat – accessed via front door at raised ground.
• 35c: First and Second (roof) floors – Self-contained two / three-bedroom maisonette – accessed via external stairs to side.

A Certificate of Lawfulness is sought for the proposed amalgamation of 3no. self-contained dwellings into 2no. Dwellings.

The Statement submitted with the application explains:

"The Applicant proposes the amalgamation of the two existing self-contained flats within the upper parts of the building (flats B & C) into a self-contained dwelling. The maisonette over ground, first and second floors will be occupied by the Applicant's family. The Lower Ground Floor Flat (A) will remain as a self-contained two-bedroom flat. No external alterations are required for the proposed amalgamation to be achieved. Minor internal alterations are proposed. A staircase from ground floor to first floor would be reinstated. The resultant five-bedroom maisonette would provide residential accommodation over three floors. The maisonette would be accessed via the main front door at raised ground with a secondary entrance to the side at first floor. At ground floor there would be dining room, kitchen, living room, WC and lobby. To the first floor there would be three bedrooms – one with en-suite, and a bathroom. At second floor there would be two bedrooms, a snug and bathroom."

The submitted plans show the first floor flat to have 1 bedroom and an "uninhabitable room" while the second floor (loft space) has only uninhabitable space at the moment and would have 2 bedrooms and a snug. The amalgamation of the first and second floors would create a 5 bed flat and the loss of 2 no. ½ bed flats.

Planning History:

AWDM/1083/15 - Change of use of 4-bedroom maisonette to one 1-bedroom flat and one 2-bedroom flat on first and second floors - 35C - approved

Planning Assessment

Despite the 2015 permission referred to above, Council Tax records indicate that the property currently contains 3no. Flats. As the works relate only to the interior they do not constitute development requiring planning permission. However, it is also necessary to assess whether the amalgamation of 3 flats to 2 flats constitutes a material change of use requiring planning permission.

Section 55 of the TCPA 1990 specifically refers to the subdivision of residential units (from 1 to 2 or more units) being a material change of use that requires planning permission. However, the Act does not specify that the amalgamation of dwellings from two into one involves a material change of use.

Case law in the form of Richmond-upon-Thames LBC v SSETR [2001] found that the amalgamation of residential units may, in certain cases, amount to a significant planning consequence that would be considered a material change of use. The judgement held that a planning decision has to be made as to whether an amalgamation of planning units has as a ‘matter of fact and degree’ resulted in a change to the character and impact of the use that would constitute a material change of use in planning terms.

In that case, the conversion of seven flats into one dwellinghouse was proposed resulting in a loss of six residential units which was considered to have a significant planning consequence. In this case one unit is being lost.

A subsequent case in 2016 R(Kensington and Chelsea RBC) v SSCLG [2016] found that the amalgamation of two units into one dwelling can constitute a material change of use, in circumstances where the frequency of such conversions in an area have led to an adverse impact on housing supply and the local provision of housing types.

Both cases suggest that whether a change of use has occurred depends on the circumstances of the individual case and is a matter of fact and degree.

A further case in 2016 (APP/K5600/X/16/3149451 Site at: 3 Egerton Gardens, London SW3 2BS) dismissed an appeal for the amalgamation of 2 flats, similar to that proposed here. The Council had argued that “*the loss of small dwellings through amalgamation makes it harder for young people in particular to live in the area,*

leading to reduced choice in the private rented sector and to increased commuting. A reduction in the supply of small dwellings also makes it more difficult for housing supply targets to be met. Looked at in terms of numbers of households, the proposed amalgamation would provide a dwelling for one household, compared with the present situation accommodating two households."

The Inspector considered that "*the existing use with the two one-bedroom flats fulfils a legitimate and recognised planning purpose by contributing to the stock of such dwellings in the Borough. Therefore it is reasonable and appropriate to consider the wider effects of this proposal, and the cumulative impact of numerous small-scale changes, when assessing materiality from a planning viewpoint*."

In conclusion the Inspector stated:

"Although the residential nature of the use of these flats would not be altered, I find that their amalgamation would have significant planning consequences and that the proposal would cause a material change of use. Therefore the proposal would constitute development for the purposes of planning law. I conclude that the council's refusal to grant a certificate of lawfulness was well-founded."

In the current case the application would see the loss of 2no. 1/2 bed flats in place of a single 5 bed flat. This would see the loss of two smaller units of accommodation with a much larger property. In the preamble to Policy 20 of the Local Plan it states:

"Future housing provision in Adur should be focused on delivering two and three bedroom houses both for younger households and older households wishing to downsize. There is a modest demand for dwellings with four or more bedrooms. The provision of smaller dwellings should be focused in and around the town centres and Shoreham Harbour although consideration should be given to the provision of one, two and three bedroom homes as part of a higher density development at Shoreham Harbour."

It is considered that, as with the Egerton Gardens appeal above, the existing use with the two smaller flats fulfils a legitimate and recognised planning purpose by contributing to the stock of such dwellings in the District. Their loss to a larger unit would have significant planning consequences and would cause a material change of use. Therefore the proposal would constitute development for the purposes of planning law and the Certificate of Lawfulness should be refused.

Recommendation

REFUSE the application for the following reason:

The amalgamation of 2no.1-2 bedroom flats into a larger 5 bedroom unit would have significant planning consequences in terms of the loss of 2no. smaller units of accommodation and would cause a material change of use. The proposal therefore constitutes development requiring planning permission.

Case Officer: Peter Barnett Date: 1 August 2022

Authorised by: Gary Peck Date: 4 August 2022