The Planning Inspectorate

Appeal Decision

Site visit made on 23 August 2021

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 November 2021

Appeal Ref: APP/M3835/X/20/3265481
54 Rowlands Road, Heene, Worthing BN11 3JT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Babbayan Investments Limited against the decision of Worthing Borough Council.
- The application Ref AWDM/0894/20, dated 5 June 2020, was refused by notice dated 4 September 2020.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is: Nine bedsitting rooms, one self-contained flat, and communal facilities comprising bathroom and laundry room.

Summary of Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse a certificate of lawfulness is well founded.

Reasons

3. In matters such as this the onus is on the appellant to demonstrate their case on the balance of probabilities. My assessment is therefore very fact specific, based upon the evidence before me.

4. The appellant purchased the site in 2016. It is said that there is no access to any detailed information relating to the previous uses/layout of the site prior to that time.

5. A floor-plan has however been provided by the appellant which is said to evidence the pre-existing layout with 4 bedsitting rooms with kitchen facilities and a self-contained flat on the ground-floor, and, 3 bedsitting rooms with kitchen facilities on the first-floor. There were no communal kitchen facilities. There were however communal bathroom and toilet facilities, as, aside from the flat, the rooms did not have such facilities.

6. It is said that access to the two remaining first-floor bedsitting rooms were unavailable, but clearly there has been opportunity since. There is also very limited photographic evidence before me of the rooms at the time of the

appellant's purchase, or since, and therefore the evidence before me concerning the extent of the kitchen facilities in the rooms is limited.

7. The appellant then undertook internal works said to improve the standard of accommodation. These works comprised the formation of en-suite bathroom facilities with toilet, sink and shower as well as new kitchen fittings. The previous communal facilities were then replaced with a single bathroom with a bath, toilet and sink as well as very small laundry room with two washing machines and a drier. These facilities available in the rooms therefore differ to that which existed previously. I however accept that these internal works do not amount to development for the purposes of Section 55 of the Act.

8. The Council then considered that the works facilitated the use of the rooms as self-contained flats. The Council considers the use of the site to have been as a large HMO, but do not place evidence before me to demonstrate this on balance of probabilities.

9. The appellant states that the site does not operate as ten self-contained flats nor is there any intention for this to be the case as it operates more as a communal shared house with private quarters for occupants. It is now said the site has previously been used, and remains in use as, temporary accommodation for primarily vulnerable women and children. The bedsitting rooms provide temporary accommodation but are not used as a long-term accommodation solution and there is no intention for them to serve this purpose. However, this is not evidence to demonstrate on the balance of probabilities that they are used as bedsits.

10. During my site visit I was able to inspect 9 of the 10 rooms as well as the flat at the rear. The flat comprised a separate bedroom, bathroom, kitchen and lounge, albeit the lounge was also being used as a bedroom. The other rooms, whilst not containing kitchens and bedrooms as separate rooms, had all the necessary fixtures and fittings to afford private domestic existence; the same as the flat.

11. Indeed, they appeared to me to be functioning as independent units of accommodation with fully functioning washing and toilet facilities and kitchens that facilitated, and were then equipped, with all the necessary fixtures and fittings for private day-to-day existence, including an additional large free-standing fridge in most rooms. Whilst the appellant then asserts about who may occupy the rooms and that their occupation is temporary, there is limited evidence of the contractual arrangements before me or evidence from occupiers as to how they actually use their rooms, as opposed how merely the appellant wishes me to consider their use.

12. Moreover, whilst I appreciate that my site visit only represents a snap-shot in time, the single communal bathroom contained very limited evidence that it was being used. Even ignoring my own observations, the fact that each of the rooms consists of perfectly adequate, modern and functioning washing and toilet facilities means that the use of the communal bathroom is likely to be extremely limited and so I do not find it a determining factor in my assessment. Neither do I find the provision of the very small laundry room to be determinative given one did not exist previously. It is also said that there are communal accessways, but this is no different to any other building where there are flats or units of accommodation accessed by hallways.

13. As I have stated, there is limited evidence to demonstrate on the balance of probabilities the actual previous use in planning terms and moreover whether that use was then immune from enforcement action. Section 191(2) of the Act is therefore instructive where it states that uses and operations are lawful at any time if no enforcement action may then be taken in respect of them, whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason.

14. However, the appellant does not provide me with evidence to consider immunity. The site may therefore have been used as a large HMO, bedsits or independent units of accommodation prior to the appellants purchase, but the appeal application seeks certification for continued use of the building for nine bedsits and one flat, along with single communal bathroom and laundry room. In the absence of the necessary evidence pursuant to s191(2) of the Act to demonstrate this on the balance of probabilities, I am unable to certify the position pursuant to the date the appeal application was made.

15. Even if the previous planning position had been demonstrated, the appellant provides very little evidence to demonstrate on the balance of probabilities that there has not been a change in the character of a bedsit use and therefore that separate planning units have not been created. Even if the occupancy only amounts to a series of temporary occupants, this does not evidence that the use of the rooms is not an independent one. I am also not persuaded that there has not been an increase in occupancy, as very limited evidence is before me in this regard, and thus consequent increases in parking pressures that may arise, or other relevant factors, cannot be adequately assessed. It has therefore not been demonstrated on the balance of probabilities that the rooms are not used in a self-contained manner.

16. The appellant outlines a hypothetical fallback position in terms of making changes to the internal layout of the site. However, proposed works are not before me and so do not fall to be determined. Neither do they have a bearing on the existing use of the site. The appellant has also brought to my attention other decisions and caselaw that they consider are comparable. Whilst they have informed my assessment, I do not have the full details of those matters and given my assessment is very fact specific, they do not outweigh my findings.

17. It remains the case that the appellant's own evidence needs to be sufficiently precise and unambiguous to justify the grant of a certificate. As a matter of fact and degree, based upon the evidence before me, the appellant has not discharged the necessary burden of proof to demonstrate on the balance of probabilities that the existing use of the site is for nine bedsitting rooms and merely one self-contained flat with the other facilities then described.

Conclusion

18. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Formal Decision

19. The appeal is dismissed.

Paul T Hocking

INSPECTOR