Expiry Date - 08/04/2024

Development Control – Delegated Officer Report

Application Number: AWDM/0203/24 **Recommendation – ISSUE CERTIFICATE**

Site: **54 Rowlands Road Worthing West Sussex**

Proposal: **Application for a Lawful Development Certificate for an Existing use as 10 self-contained flats (1 x 1 bedroom flat and 9 x studio flats) since 18th May 2018.**

Site and Surroundings

The site is located on the north side of Rowlands Road just outside the Town Centre designation.

The property is a double-fronted mid-terrace Victorian villa with double height bay windows either side of a central entrance door at the front. There is a brick and flint wall to the frontage and the front garden is laid to paving. There is a 2-storey rear off-shoot set in from the side boundaries, with a shallow pitched, hipped roof. There is a garden/yard to the rear and pedestrian access to Nursery Lane to the rear.

The adjoining properties on either side are in residential use, as are the properties to the north on the opposite side of Nursery Lane. There is a designated shopping parade on the opposite (south) side of Rowlands Road, with mostly residential flats above ground-floor.

Proposal

A Certificate of Lawfulness is sought to confirm the existing lawful use of the building as consisting of 10 self-contained flat units comprising 1 x 1-bedroom flat and 9 x studio flats through the passage of time under Section 171B of the Town & Country Planning Act 1990.

The submitted floor plans show the existing accommodation as comprising of 4no studio flats on the ground-floor (each consisting of a living/sleeping area with kitchenette and a separate shower room); plus a 1-bedroom flat consisting of an entrance lobby off the main hallway leading to a living room and separate WC. A kitchen leads of the living room. A bedroom with en-suite bathroom leads of the kitchen. The GF plan shows external access from the 2no rear studio flats and the 1-bedroom flat to the fenced yard/garden at the rear.

At first floor the submitted plans show 5no studio flats (each consisting of a living/sleeping area with kitchenette and a separate shower room); plus a separate shared bathroom and shared laundry room.

Relevant Planning History:

Timeline

WB/0374/73/EU Application for established use certificate for use of property as 10 bed-sitting room units. Issued 15.05.1973.

An Initial Notice was received under the Building Regulations (AWBC/1631/17) on 08.12.2017 for internal alterations consisting of expanding rear flat, re-location of kitchen and addition of bathrooms. Works were completed on 20.08.2018.

A planning application for single-storey rear extension, loft conversion including dormers to north, east and west elevations and alteration from door to window in the east elevation to create 3 additional bedsit flats. AWDM/1976/17 was received on 22.12.2017. The Existing Floor Plans submitted with this application showed 4no bedsits (each with shower rooms and kitchen facilities) and 1x1-bedroom flat on the ground floor, and 5no bedsits (each with shower rooms and kitchen facilities) on the first-floor. These plans did not show any shared facilities on the first-floor. The application AWDM/1976/17 was withdrawn by the Applicant's Agent on 15.03.2018.

A Planning Enforcement investigation under AWEN/0062/18 was opened on 28.02.20218 following a complaint relating to the self-containment of the former bedsit units. A site visit was undertaken by the Planning Enforcement Officer and a member of the Council's Private Sector Housing team on 09.03.2018. At the time of the visit the building was not occupied and works were taking place to convert some bedsit rooms into self-contained flats each with kitchen area in the main room and separate shower room. It was noted that some rooms were taking place whilst others were stripped down. Rewiring and water works were being developed.

An Enforcement Notice was served on 27 June 2019 requiring the development to revert back to the previous layout of 10 bed sitting flats, or to permanently remove one or more basic amenities from each unit and create shared facilities.

Following an appeal the Enforcement Notice was quashed by an Inspector on 10.03.2020 owing to inconsistences in the alleged breach and the requirements of the Notice (which were considered to exceed the works necessary to remedy the breach).

AWDM/0894/20 Application for LDC for existing use for nine bedsitting rooms, one self-contained flat and communal facilities comprising bathroom and laundry room. The submitted Existing Floor Plans show the layout of accommodation as described in 'Proposal' above. The LDC AWDM/0894/20 was refused on 04.09.2020 on the grounds that the provision of en-suite bathroom WC/shower facilities to each room resulted in a material change use of the building from a house in multiple occupation to self-contained flats for which planning permission was required. In arriving at this decision it was

determined that the provision of en-suite shower/bathroom/WC facilities had provided each unit with all of the basic amenities (as determined by the Housing 2004) for the exclusive use of its occupants required for day-to-day private domestic existence behind a closed door.

An appeal against refusal of the LDC AWDM/0894/20 was dismissed on 8 November 2021 following a site visit by the Inspector undertaken on 23.08.2021. The Inspector had the opportunity to inspect 9 of the 10 rooms including the 1-bedroom flat. He noted that: *"The other [*studio] *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."*

"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-today existence, including additional large, free-standing fridge in most rooms……".

"……..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 bathrooms 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 a very small laundry room to be determinative given one did not exist previously…".

The Inspector concluded "*It has not been demonstrated on the balance of probabilities that the rooms are not used in a self-contained manner*."

AWDM/1339/23 Conversion of 3 No existing bedsits into 2 No 1 person, 1 bedroom flats (class C3). The addition of a single storey extension with a room in the roof to form a 1 bed, 2 person flat (class C3) and the conversion of the loft space at second floor into a 1 bed, 1 person flat (class C3). Retention of 6 self-contained bedsits. The submitted Existing Floor Plans show the layout of accommodate as described in 'Proposal' above. The application was refused on 12.12.2023 on the grounds:-

1. *The size and layout of accommodation shown on the proposed plans would provide an unacceptably poor standard of amenity for the occupiers, which would be below minimum internal space standard set out in the Government's Technical Housing Standards - nationally described space standard (March 2015), together with poor standards of outlook and privacy, and lack of external amenity space. The development is therefore be contrary to policies SP3, DM1, DM2 and DM5 of the Worthing Local Plan, the Council's 'Space Standards and 'Guide for Residential Development' SPDs and the relevant policies of the National Planning Policy Framework.*

2. *The proposed dormers, by reason of their unsympathetic scale, proportions, detailed design and position on the roof would be an*

unsympathetic and ungainly addition to the roof scape, detracting from the character and appearance of the existing building and the architectural composition of the terrace of which it forms part. The proposal is therefore contrary to policy DM5 of the Worthing Local Plan, and the relevant policies of the National Planning Policy Framework.

Consultations:

Private Sector Housing:

"We received an application for an HMO licence on 10th May 2018. At this point all units were self-contained, although a communal facility remained. The floor plan submitted with that application is attached - '54 Rowlands Rod - 1795.03.C Proposed Plans received 10.05.18'
The date of self-containment and occupancy appears to align with the information you have.

At some point, between then and an inspection on 13th October 2022, the ground floor rear flat (flat 5) layout was reconfigured. The annotated plan made by Bruce and I during that inspection is attached - 'Building floor plan with measurements and amendments to layout'

We are not time-barred from taking action to address the hazards created by the small size of the accommodation units, and have only held off taking action as we thought that it may be addressed through a planning application. The application submitted did not address the issues and in fact created some others as well, and so we will still look to take enforcement action."

The Agent has confirmed in writing that the submitted floor plans are accurate and that no external alterations have taken place.

Business Rates Officer/Revenues & Benefits:

We had 54 Rowlands Road banded for Council Tax purposes from 1st April 1993. Flat 5 was split from 54 Rowlands Road & banded separately from 15th May 2015.

A further split took place on 18th May 2018 when the property at 54 Rowlands Road was split into nine self-contained flats (Flats 1-5 & Flats 6-10).

Representations: 3 representations have been received from residents of Nursery Lane commenting:-

- Current owners have allowed the property to get into a dreadful state, with broken fence panels and rubbish piled up at the rear spilling into Nursery Lane. It is a health & safety issue for cars and ambulances that use Nursery Lane to support the assisted living properties. There has been scaffolding outside for months.

- The Planning Department is not looking into the general state an upkeep of properties, there is another HMO at the bottom of Nursery Lane and the rubbish and mess is making Nursery Lane a dumping ground enabling fly-tippers.
- Noise pollution is excessive in the Summer when residents have their windows open, spoiling the enjoyment of their gardens for other residents of Nursery Lane.
- Whilst I believe the whole house needs redevelopment this development proposal is not beneficial to the area; what the area needs is nice 1 and 2-bedroom flats not studio flats.

This is not a planning application and the representations do not provide any new or relevant information that contradicts the evidence provided in the application submission.

Relevant Planning Policies: None

Planning Assessment

The applicant seeks to establish that the use of the building as 9no studio flats and 1no 1-bedroom flat is lawful in planning terms and no enforcement action may be taken on the basis that the use has become immune from such action through the passage of time.

Section 171B of the Town & Country Planning Act sets out the statutory time limits for enforcement action stating:-

Where there has been a breach of planning control consisting of the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

Whilst the Levelling-Up & Regeneration Act 2023 has introduced proposals to amend Section 171B to extend the relevant period to 10 years (due to be implemented at the end of this month), the '4-year rule' remains in place for now.

The evidence submitted in support of the application consists of:-

- Site Location/Block Plan 23039-P-001;
- Existing Floor Plans 23039-P-010;
- Planning Statement dated 09.02.2024 by Lewis & Co Planning;
- The Officer's Delegated report for application AWDM/0894/20;
- PINS appeal decision for AWDM/0894/20;
- The Officer's Delegated report for AWDM/1339/23.

The Planning Statement sets out the following evidence in support of the application:-

The property was purchased by the former owner [Babbayan Investments] in September 2017. At the time of purchase it is understood the property was in use as an HMO consisting of 4no bedsits (with kitchen facilities) and 1no self-contained flat on the ground-floor and 5no bedsits on the first-floor. Communal WC and shower facilities for all residents were situated on the first-floor. It is understood that internal works were undertaken to improve the standard of accommodation comprising the formation of en-suite bathroom/WC and shower facilities to each room and new kitchen fittings. At first-floor the communal WC and shower facilities were upgraded to provide a shared full bathroom and communal laundry room. It is stated that the self-contained flats were subsequently rented and occupied from 18th May 2018 onwards.

The current owner purchased the building on 15.08.2022 and continues to rent out the property as individual flats.

A link is provided demonstrating that 54 Rowlands Road has been registered as 10 separate flats (Band A) since 18 May 2028 – *this has been confirmed by the Council Tax Officer.*

The Council's Accommodation Officer has confirmed that the accommodation has been used since May 2018 as temporary housing for homeless applicants, utilising all 10 units. The Appeal Inspector (AWDM/0894/20) determined that the nature of the use as temporary accommodation did not alter his opinion that the accommodation was fully fitted out and, indeed appeared to be functioning, as independent units of accommodation.

A bank statement has been provided showing the transfer of £14,175 on 17.05.2018 from Imperial Portfolios Ltd to Whittington & Co Reference 1-10 Rowlands. [This evidence is inconclusive as it does not provide the correct address of the property.]

The Enforcement Notice served by the Council on 27.06.2019 itself refers to the breach of planning control (at Section 3) as the *conversion of the building from 9 bed-sitting rooms and 1 self-contained flat to 10no self-contained micro-flats*.

The Notice was quashed on 10.03.2020. Section 171B(4)(b) of the Act allows for further enforcement action within 4 years of the previous enforcement action in respect of the same breach (the 'second bite' provision). No further Enforcement Notice has been served since the original Notice was served no 27.06.2019.

The weight of evidence including the quashed Enforcement Notice, internal inspection of the property at different times by the PINs Inspector and the Council's Private Sector Housing team, plus Council Tax records and confirmation of the date of occupation by the Council's Accommodation Officer, support the claim on the balance of probability that the property has been in use as 10no self-contained residential flats (Class C3) comprising 1 x 1-bedroom unit and 9no studio units since 18th May 2018, and that as no

further Enforcement Notice has been served since the original and subsequently quashed Enforcement Notice was served on 27.06.2029, the existing use is immune from planning enforcement action under the 4-year rule.

Recommendation

ISSUE CERTIFICATE

On the balance of probability it is considered that the property has been used as 10no self-contained units (Class C3) comprising 1no 1-bedroom flat and 9no studio flats for more than 4 years and is immune from enforcement action by the Council and is lawful in planning terms.

Is recommendation contrary to letter(s) of representation? Y (see report)

Case Officer: Jo Morin Date: 10.04.2024

Authorised by: Gary Peck Date: 10 April 2024