Development Management - Delegated Officer Report

Application Number: **AWDM/1433/15**

Recommendation – Issue Certificate

Site: **31 St Richards Road Southwick**

Proposal: **Application for a Certificate of Lawfulness for Existing use as 2no. flats**

Last visited: 19 April 2016

Neighbours checked: Y

Additional neighbour notifications: N

Proposal, Site and Surroundings
The site relates to a detached house located on the east side of St Richards Road that has been divided into two flats.

As indicated on the submitted plans the application relates to flat 1 and flat 2 (addressed as 31a and 31) which have separate accesses, flat 1 at the rear and flat 2 via the original front door leading to a hall and staircase to the first floor. Both flats have their own fully equipped kitchens and bathrooms with wc's. Flat 2 has accommodation over the first floor and in the roofspace with 3 bedrooms. Flat 1 is a ground floor flat with 2 bedrooms.

The applicant has submitted evidence in support of the claim that the use as two separate flats has existed for at least 4 years and other evidence collated during the application assessment is collated below.

Relevant site history
ADC/0082/08 Application for certificate of lawfulness for proposed loft conversion with rear extension to roof. Approved 25.04.2008

ADC/0407/08 Ground floor rear extension. Approved 06.10.2008

Consultations
As detailed in the assessment below.

Representations
One representation received from the occupier of 29 St Richards Road objecting on the following grounds:

- Overlooking from existing balcony
- Current issues with shared access with rear flat/parking problems/side gas meter would restrict access
- Site is untidy/infested following failed attempt of owner to build new building at rear of site
- Loss of property value because of existing state/use of site.

Relevant Planning Policies
None relevant

Planning Assessment
The relevant test for such an application is whether the applicant has proven that on the balance of probability the flats have been in use as self-contained units of living accommodation for at least the last four years.

The matters raised in the representation do not provide any evidence to the contrary.

The applicant has provided drawings showing the existing flat layout and evidence to support the claim that the existing flats are lawful. Additional evidence has been gathered on site and from Council records and is collated below.

1. 19/5/16 – Email from Applicant confirmed electricity supply separated but one is 'pay as you go' so cannot supply electricity bills. Confirmed gas and water has been inclusive in rent and so no separate bills can be supplied.

2. 11/5/16 – Consultation response from Census Revenues:
   Confirms continuous domestic use of No.31 since 1.04.1993 to present and that their records show 31A has been set up as domestic property effective from 18.12.2015, deemed previously to be house in multiple occupation

3. Site visit on 19.04.2016 confirmed that 31 and 31A were both self-contained and furnishings indicated occupation. Gas and electricity meters located within ground floor flat (31A) and with newer separate electricity meter within porch to No.31

4. 18/3/16 – Consultation response from Electoral Services
   Records show 31 St Richards Road only, no record of 31 A

5. Invoices etc:
   11.09.2009 Invoice from Eco Rend for 'Rendering works done at 31A St Richards Road'
   18.09.2009 Invoice from RPS Carpentry for 31A – details stud walls, doors, etc
   10.10.2009 Quotation/Invoice from JA Electrical Contractor for 31A St Richards Road
   31.10.2009 Statement from Parker Building Supplied addressed to Mr Phare at 31A

6. Building Control records – no record of two dwellings ABC/0114/09 – relates to ground floor rear extension to 31 - completion 18.3.2010. Inspection 16.2.2010 refers to new staircase

7. Tenancy Agreement dated 18.12.2009 for 31A between applicant and tenant for 12 months

8. 16.3.2010 Letter from Census addressed to tenant 31A - confirming Housing benefit award for period 14.12.2009 to 08.02.2010

9. Direct payment of housing benefit re 31A (Tenant) to applicant at 31 St Richards Road for the periods:

   24.1.2011 to 01.04.2011
   01.04.2011 to 04.04.2011
   04.04.2011 to 02.04.2012

10. 18.08.2011 – letter from Revenues and Benefits confirming that Housing Benefit for tenant is suspended

11. 23.08.2011 letter to applicant confirms benefits review for tenant and award from 04.04.2011 to 22.08.2011

12. 19.11.2011 Letter from Census addressed to applicant 31 – confirming payment of Housing benefit for rent for 17.10.11 to 14.11.11

13. 20.06.2012 Payment to applicant no.31 re tenant 31A for period 28.05.2012 to 25.06.2012

14. Applicants Land Registry search shows 2 properties at time of application - 31 and 31A listed

15. Legal Services response to evidence at 10.08.2016:

Having had the chance to review my thoughts are a little clearer as to the evidence available, and whether on the balance of probabilities the request for a certificate should be issued or refused based on use over the last 4 years.

What is clear from the documentation is that part of the premises at 31 St Richards Road was certainly converted in 2009, and on balance the likelihood was to create two separate units within the property at that time. This is supported by the invoices supplied by the applicant, and in particular the invoices of RPS Carpentry which indicates 'Building Stud Walls to form rooms', and JA Electrical which refers to installation of electrical sockets and lighting in lounge, 2 x bedrooms, kitchen, bathroom and dining room. Both were addressed to Mr K Phare at 31a St Richards Road.

Building works appear to have been completed in or around October 2009, and therefore the second question is whether or not 31a has actually been used as separate flat continuously since that time (as there is a suggestion of use as a HMO). Mr Virgo was purportedly granted an Assured Shorthold Tenancy on the 18th December 2009, with Housing Benefit being granted from the 14th December 2009 (see census letter 16th March 2010). At that stage payment of Housing Benefit was direct to Mr Virgo, although this appears to have changed at some stage during 2010, as by 24th January 2011 HB is being paid directly to Mr Phare.

I am of the view therefore that part of 31 St Richards Road was certainly let as a self-contained unit (known as 31A) from 18th December 2009, with a high probability that 31 had been altered to allow this to happen.

The evidence that we currently have however is not clear on whether that arrangement has been continuing since the 26th June 2012, or whether there has been a substantial period of time when the property was vacant or occupied by the applicant himself, or others, since that time.

The last Housing Benefit report we have indicates a rent period between 28th May 2012 and 26th June 2012. I would consider it probable, unless the tenant Mr Virgo was asked to leave, or ceased reliance on Housing Benefit, to continue to see correspondence passing between Adur DC, Census and the applicant about housing benefit. Similarly, if a new tenant was put into the property I would expect to see a fresh tenancy agreement, together with any fresh applications for housing benefit. However the fact that Mr Virgo hasn't signed a new tenancy since 2009 isn't in itself indicative of the fact he is not still there. AST tenancy's can continue in operation, statutorily, without the need to sign a new agreement each time.

If the applicant were able to show that the property had been continuously used as two separate dwelling during the period, ie through receipt of housing benefits, or rents (bank statements would show this), additional tenancy agreements etc, then I am of the view that on balance the evidence would support the applicants position and you could issue a certificate if you consider the use lawful.

However, on the basis that the applicant has failed to provide evidence of use between 26th June 2012 and 1st December 2015. I am minded, on the balance of probabilities, that the application should be refused. Quite simply we have nothing to say that 31A was being used as a separate flat between 2012-15, and the applicant has therefore not shown continuing use. I consider that if 31A had been used as a separate dwelling during this period the applicant would be in a position to supply relevant supporting evidence in the form of bank statements, housing benefits receipts or tenancy agreements (or witness evidence) to support the contention. Indeed the evidence from Census suggesting that the property was a HMO would suggest that it had not been used as multiple dwellings during this period, and I therefore find it likely that 31 was used as a single property.

Per my comment above, if additional evidence of continuing use as a separate flat were to come to light then I would consider it more probable that the premise had been used for that purpose and the certificate should be granted.

16. Additional evidence provided: Bank Statements from 28.05.2012-27.06.2015 and 07.2015, Tenancy Agreement commencing 21.9.2015, Applicant confirmed 31a was vacant in August 2015

17. 5.10.2015 Legal Services response to further evidence:

Looking at the housing benefit award letters, together with housing benefit report of the 20th June 2012 (previously supplied) the sums received by Mr Phare into his bank account on a monthly basis would be consistent with receipt of regular housing benefit. We know from the earlier evidence that his tenant at the time Mr Virgo was in receipt of benefit, and therefore the evidence would point to his continued occupation of the property as a tenant between June 2012 and 2015 when housing benefit stops, and we have new tenants coming in to the property.

Whilst we do not have specific letters from the Housing Benefit team addressed to Mr Virgo or Mr Phare for the period 2012 to 2015 I am minded that on the balance of probabilities, based on receipts from ADC, that 31A had been used as rented accommodation during that period, and was a separate property to 31. Coupled with the earlier evidence in relation to the conversion of the premises I would suggest that Mr Phare has now provided sufficient evidence to suggest that a CLUED should be granted, and that we would have limited grounds on which to object.

The supporting information demonstrates that on the balance of probability the existing use as 2 self contained flats is lawful, having been used continuously for at least 4 years.

Recommendation

Issue Lawful Development Certificate for the existing use as 2 no. flats

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

Case Officer: Rebekah Smith Date: 18 October 2016

Authorised by: Peter Barnett Date: 18 October 2016