Development Management – Delegated Officer Report

Application Number: AWDM/0957/15 Recommendation – APPROVE

Site: 56 Orient Road, Lancing, West Sussex

Proposal: Application for Lawful Development Certificate for a detached annex in the garden occupied by family member.

Date of site visit: 10.11.15

Neighbours checked: Y

Additional neighbour notifications: N

Site and Surroundings

The application site is located to the far eastern end of Orient Road in Lancing. It comprises a semi-detached bungalow (no. 56) with rooms in the roof. There is a large front driveway with access via the turning head at Orient Road. This driveway provides parking and access for the occupiers of the bungalow, no. 56. There are double gates to the eastern side of the bungalow frontage which lead to a further access drive to the rear of the bungalow. There are two detached buildings to the rear. One is a garage/outbuilding and is adjacent to the southern boundary. Adjacent to the western boundary is a hipped roof detached structure with wooden cladding, a tiled roof and uPVC windows. This building is currently occupied and lived in by the applicant and his partner. The applicant's daughter and son- in law occupy the main bungalow, 56 Orient Road. The building occupied to the rear has a separate postal address 56A and the garden has been sub-divided by close-boarded fencing and gates to form a separate driveway and amenity space in relation to no. 56A. The entire property (56/56A) is under a single Land Registry title in the daughter's name.

The building has an open plan living space with dining, kitchen and lounge; there is a double bedroom and bathroom. The building is single storey. It is 11.7 metres in length and 5.8 metres wide, it is 2.6 metres high to eaves and 4 metres high to the ridge.

A Certificate of Lawfulness is sought for the detached building as a residential annexe occupied by a family member.

Representations:

One representation has been received stating that as far as is known the building 56A has been used as a single dwelling house for at least 4 years.

Consultation:

***Adur and Worthing Council*:**

Based on the initial submission the Council's Solicitor advised that evidence of the use of the building as a single dwelling house would need to be given for a 10 year period. This followed the advice from Ivy Legal that if a building is constructed for the purpose of a dwelling house more than 4 years ago, but less than 10, action can be taken against the material change of use of the land on which the building has been constructed, to use as a single dwelling house, on the basis that it constitutes "any other breach of planning control". The 4 year rule does not apply because this is limited to the "*change of use of the building".* Ivy Legal argue that in such circumstances there has not been a change of use because the building has *always* been used as a dwelling house.

Following on from this Council's Solicitor has supported the view that the occupation of the building as living accommodation by a family member is incidental to the use of the host dwelling and a Lawful Development Certificate could be issued on this basis.

Planning Legislation

Town and Country Planning Act 1990 (As amended)
Town and Country Planning (General Permitted Development) (England) Order 2015.

Planning Assessment

This case was brought to the Council's attention following the investigation of an enforcement complaint in 2015. After some time a valid application was submitted applying for a Lawful Development Certificate for an existing use of a former garden building as a single dwelling house. Evidence was provided in support of the application by the applicant and occupier of the building. This was in the form of Vehicle registration documents, telephone bills, electricity bills, TV licence and Council tax bills some dating back to 2006. However on the whole they provide evidence only of the postal address being 56A and that the building had separate service providers.

It was considered following submission of the evidence and a site visit that on the balance of probability there was not sufficient evidence to accept the lawful use of the building a single dwelling house independent of the original dwelling on the site. This was discussed with the applicant and advice given that the view was that this accommodation was more akin to an annex owing to the nature of its occupation and ownership. The outcome of this discussion was that it had not been the applicant's intension to argue that a separate planning unit had been created, only that the building is lawfully occupied as residential accommodation. The current application for a Lawful Development Certificate has therefore been amended on this basis.

The provisions of Class E, Part 1, Schedule 2 of the Town & Country Planning General Permitted Development Order allow for a building to be erected within the curtilage of a dwelling house as 'permitted development', that is, without planning permission, subject to certain limitations including that such a building is only permitted if it is "required for a purpose incidental to the enjoyment of the dwellinghouse as such". In this case, the applicant has stated that the building has

always been occupied as habitable living occupation, and this was his intention from the outset. Consequently the erection of the building in question could not have been 'permitted development' when built.

The relevant test is whether the building which is occupied as living accommodation in conjunction with use of 56 Orient Road as a single dwelling has existed on the site and been occupied on this basis for 10 or more years and has thereby become exempt from planning enforcement action. This is on the basis that Section 55(2)(d) of the Town and Country Planning Act, provides that the use of any buildings or other land within the curtilage of a dwelling-house for any purpose incidental to the enjoyment of the dwelling-house as such, is not to be taken for the purpose of the Act to involve development of the land.

It is unclear precisely when the existing structure was built. The applicant has stated that it dates from "around 2005". [An investigation in 2004 by the Council's Enforcement Officer in respect of a complaint about an "unauthorised building" at the property resulted in no action being taken. The Officer reported at the time that the building was 'permitted development'. However, it is not clear whether that complaint related to the building the subject of this application or some other building at the property.]

It was around this time that ownership of 56 Orient Road transferred from the applicant to his daughter and son in law as confirmed by a Land Registry title deed dated 26/5/2004. The entire property remains in one single title.

Evidence in the form of the Council's aerial photographs show the building clearly existed on the site in 2007.

Although the applicant states that the building was occupied as habitable living accommodation from the outset (c.2005), there is no *solid* evidence dating back to this time to confirm that it was occupied as such. The array of submitted evidence comprises:

- Vehicle Registration documentation addressed to No.56A (undated);
- Phone Bill addressed to No.56A dated December 2005-6;
- New power supply letter addressed to No.56A dated 2013-14;
- TV licence addressed to No.56A valid until January 2012;
- Vehicle Insurance documentation addressed to No.56A valid from May 2012;
- Sundry bills/invoices/receipts dated from 2009.

The building was given the address by Royal Mail in March 2012 and the occupiers started paying Council Tax in April 2012 as a result of a site visit by the relevant department. The criteria used to establish whether the occupiers are required to pay Council Tax relates to the nature of the accommodation i.e. if it provides kitchen and bathroom facilities and is therefore capable of being an independent unit of accommodation then Council Tax is payable. [It should be pointed out that this is not evidence that the building is a separate dwelling unit.]

It is accepted that the building to the rear of 56 Orient Road, addressed 56A Orient Road is occupied by Mr Voak and his partner and that Mr Voak's daughter and son

in law occupy the main dwelling, no. 56. Although there is a family link in terms of occupation there is not currently a dependency relationship between the occupiers of the building and the main dwelling that is apparent or that has been put forward as part of the evidence.

This aside, there is a dependent physical link between the building (No.56A) and the main dwelling (No.56), with the latter relying on access from the public highway via the frontage of the main dwelling, No.56.

From the variety of evidence submitted, the Case Officer's site visit and in the absence of any conflicting evidence (following notification of adjoining neighbours of the application) it can be accepted 'on the balance of probability' the building (No.56A) has existed and been used by the applicant as primary living accommodation incidental to the occupation of 56 Orient Road as a dwelling, as shown on the submitted floor plan and location plan received 2nd October 2015 is lawful and does not require planning permission.

If in the future the annex building (No.56A) was to be occupied by someone other than a family member or at any time becomes severed in ownership from the host dwelling (No.56) then a material change of use would be deemed to have occurred involving the creation of a separate planning unit and would be subject to enforcement action by the Council as a breach of planning control.

Recommendation

The Adur District Council hereby certify that on (date of decision) the matter described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of Section 191 of the Town and Country Planning Act 1990 (as amended), and is APPROVED for the following reason: -

The use of the detached garden building (No.56A) shown on the submitted floor plan and location plan received as valid on 2nd October 2015 as living accommodation by a family member incidental to the use of 56 Orient Road as a single dwelling is lawful and does not require planning permission.

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

Case Officer: Hannah Barker Date: 29th February 2016

Authorised by: Jo Morin Date: 02.03.2016