Development Management – Delegated Officer Report

Application Number: AWDM/1425/15 Recommendation – APPROVE

Site: 48 Adur Avenue Shoreham

Proposal: Application for Lawful Development Certificate for use of existing outbuilding as mortgage business ancillary to the residential use of the main dwelling.

Date of site visit: 17.11.15

Neighbours checked: Y

Additional neighbour notifications: N

Proposal, Site and Surroundings

The application site is a semi-detached bungalow within a street of similar style properties within the built up area of Shoreham-By-Sea. There is a front garden and driveway to the side of the bungalow leading to a garage set back to the rear of the dwelling. In the rear garden adjacent to the rear boundary is a flat roof garden style building with uPVC doors and windows. The building is currently being used as an office for a Mortgage Business which is owned and run by Mr and Mrs Dunks the occupier/owners of the main dwelling no. 48 Adur Avenue. Also employed are two further members of staff who work full time at the premises. Also forming part of the outbuilding is a toilet/shower room.

An application for a lawful development certificate has been made for the use of the existing outbuilding as a mortgage business ancillary to the residential use of the main dwelling. The proposal is supported by a statement by the applicant's agent. This states that the outbuilding has been used for the operation of the business 'Number One Mortgages Ltd' since October 2012. The business is open during the hours of 8:30am and 6:30pm Monday to Friday and on the occasional Saturday to catch up with paperwork. The applicants employ two additional members of staff, only one of which drives and it states that only one staff vehicle is stationed at the application site during office hours. So within the outbuilding during normal working hours are Mr and Mrs Dunks and their two employees. The office space has a work station with P.C for each member of staff, space/storage for files and paper work and ancillary photocopying facilities etc as would be the case in a normal office environment.

Client meetings are not held at the application site. Service deliveries for stationary are made approximately once a week.

There is no advertising at the premises and clients do not visit the site.

This application has been made following an enforcement investigating relating to the potential change of use of the building. This application states that the use being

carried out does not represent a material change of use and it is incidental to the enjoyment of the property.

There is no planning history relating to the outbuilding and it appears to have been permitted development built ancillary to the main dwelling.

Representations: -

Two representations have been made: -

Owner/Occupier of no. 50 Adur Avenue: -we have no objection to mortgage business application by the present owners of 48 Adur Avenue however we would object to any change of business by any future owner/occupier of 48 Adur Avenue.

Owner/Occupier of no. 52 Adur Avenue: - I am concerned about parking in the street from people working at the address. I am now overlooked from their building in their garden, they can see directly into my sunroom.

Assessment

The determination of application for Certificates of Lawfulness is restricted to consideration of the lawfulness of the proposal. Effectively the issue for consideration is whether the proposal needs planning permission by means of an application, or alternatively may be carried out without any such need because it is not development or is permitted development or is *de minimis* or is not a material change of use or is immune from enforcement and so has achieved lawfulness. The otherwise planning merits or de-merits of a proposal are outside of the scope of the determination and to this extent the representations received on such matters should be disregarded except as where they illuminate whether the nature of the use is incidental to the enjoyment of the dwellinghouse (i.e. a material change of use has occurred.) In this case there are no representations that counter any of the information submitted by the applicant or any observations made by the case officer at the time of visiting the site.

The relevant test for such an application is whether on the balance of probabilities the applicant has proven the proposed use if lawful. The onus us upon the applicant to demonstrate proof.

The current property has C3 Dwellinghouse use and despite the use of the outbuilding it still remains primarily a dwellinghouse and therefore no change of use is considered to have occurred. The C3 use remains the primary use where the applicants reside and enjoy the garden and main dwelling house. The use of the outbuilding is ancillary and incidental to the main use.

Government Guidance in Circular 03/2005 advises.

78. A fact and degree approach is also needed in determining when the carrying on of business activities in a dwelling house requires planning permission. The amended Order does not alter the current position: Planning Permission for working

at home is not usually needed where the use of part of a dwelling house for business purposes does not change the overall character of its use as a residence.

In this case however the business is not contained within the main dwelling house itself however it is within the curtilage of the dwelling house.

Consideration must be given to the scale of the business. It is considered on balance, as it functions as existing, as outlined in the supporting information, Statutory Declaration and witnessed when visiting the site, the business is of such a scale that it is ancillary to the primary residential use of the dwellinghouse. Therefore planning permission is not required as the residential character of the dwellinghouse has not been changed.

The Step-By-Step Guide to Planning Permission for Small Business contains more detailed advice about the planning issues to consider in relation to working from home.

You do not necessarily need planning permission to work from home. The key test is whether the overall character of the dwelling will change as a result of the business. If the answer to any of the following questions is yes then permission will probably be needed;

1. *Will your home no longer be used mainly as a private residence?*
2. *Will your business result in a marked rise in traffic or people calling?*
3. *Will your business involve any activities unusual in a residential area?*
4. *Will your business disturb your neighbours at unreasonable hours or create other forms of nuisance such as noise or smells?*

In the light of the above guidance it would appear that the use is ancillary to the main use of the residential property as a main dwelling house. There are no members of the public visiting the site, no appointments, only 2 staff and the 2 home owners working within the outbuilding in the garden. The single car parked on the road would not give rise to parking and congestion problems within the street to an unreasonable degree.

If the Certificate of Lawfulness is granted then the certificate should be worded to ensure that the certificate details the extent of the business at the premises to ensure that the Council are protected against any unwanted intensification of the use in the future. At anytime should the business cease or expand and move to alternative premises then the outbuilding, as it is domestic and ancillary in appearance would remain as such, ancillary to the enjoyment of the main dwellinghouse. The internal fixtures and fitting could be removed along with the desks to leave an ancillary outbuilding which could be a play room, garden room, hobbies room or similar which would most definitely be ancillary.

No advertising or any other alterations related to the business use have altered the character of the building. The working hours are on the whole during the week there is mention of administration work sometimes taking place at weekends. There is no night time work or excessive coming and goings which would cause unacceptable noise and disturbance to neighbours. The key test is: Is it mainly a home or has it

become business premises? In this case yes it is mainly a home with the business being ancillary.

The street did not appear to be heavily parked at the time of the site visit. With various residential parking, trades people and visitors. Considered normal for a street in this locality during a week day, many properties have their own off street parking. One of the representation made comments in relation to the congestion and parking issues, it is however considered that one addition vehicle during working hours 5 days a week would not be such to significantly change the residential character of the property.

It is the view that no material change to the character of the dwelling house has resulted. A Certificate of Lawfulness should accordingly be issued.

Recommendation

Issue Certificate

Reasons For Recommendation

It has been accepted that on the balance of probability that the use of the outbuilding to the rear of no. 48 Adur Avenue Shoreham-By-Sea as a mortgage business is ancillary to the use of the property as a dwelling under Class C3 of the Use Classes order 1987 as Amended 1990 and 2015.

This certificate relates only to the use of the outbuilding adjacent to the rear boundary of no. 48 Adur Avenue shown as hatched on the submitted block plan and the site as outlined in red on the location plan and the precise use referred to below which is the current situation at the date of the application: -

A) The Mortgage business 'Number One Mortgages Ltd' is confined to the outbuilding at the rear of the back garden. The building has an office space with 4 work stations and a toilet and sink. Access is from the house or down the side access drive and via the rear garden. The room as furnished does not appear to be used as any other use.
B) Hours of operation are 8:30am -6:30pm Monday to Friday. On the occasional Saturday staff work to catch up on paperwork.
C) No public visit the outbuilding or main house all client meetings are at their homes or by telephone.
D) The owner and managing director of the business is Mr Kevin Dunks who lives at the main dwelling with his wife who also works for the company. Two additional members of staff are also employed.
E) There is no advertising relating to the business at the outbuilding or dwelling house.

Accordingly, use of the outbuilding to the rear of no. 48 Adur Avenue Shoreham-By-Sea is incidental to the use of the dwellinghouse within Class C3 (a) of the Town and Country Planning (Use Classes) Order 1987 (as amended).

The use is not liable to enforcement action under Section 172 of the Act. However, if any further development/intensification and change in circumstances is carried out subsequent to the issue of this certificate, it may be liable to formal enforcement action by the Local Planning Authority.

This certificate only makes lawful the uses referred to above and does not provide immunity from enforcement from any other activity.

Case Officer: Hannah Barker Date: 7th December 2015

Authorised by: Jo Morin Date: 08.12.2015