Development Management - Delegated Officer Report

Application Number: **Recommendation – Refuse**
AWDM/1025/12

Site: **2 Broad Reach, Shoreham-By-Sea, West Sussex BN43 5EY**

Proposal: **Application for a Certificate of Lawfulness for existing use of former live/work unit as a dwelling only.**

Date of site visit: N/A

Neighbours checked: N/A

Additional neighbour notifications: N/A

Proposal, Site and Surroundings

This is an application for a Certificate of Lawfulness where the planning merits of the development cannot be taken into account. The application is seeking a Certificate in respect of the use of a three storey live-work unit as a dwelling only.

The use of the property as a live-work unit is required by Condition 35 of the original permission for the Ropetackle development in 2002. The applicant has submitted a Statutory Declaration which states that he purchased the property in June 2005 with the intention of using it in connection with his accountancy business. However, for health reasons, he sold his share in the business in December 2005 and the use of the office on the ground floor of the property was no longer required. The property appears to have not been occupied by the applicant but was used as occasional 'guest' accommodation for friends and family between 2005 and 2009. Between August 2010 and March 2011 the house was occupied by a couple who are friends of the applicant.

It appears that the dwelling was occupied only intermittently between 2005 and 2009, as a dwelling, and more regularly between August 2010 and March 2011. While there was only intermittent use, the office area was left open as a lounge/living room and was not used for business purposes. This is backed up by emails and letters from the friends referred to in the Declaration.

Relevant site history

SU/216/02 - Mixed Use Development Inc. Residential, Retail, Office, Community Facility Cafe/Bar; Car Parking, Access Rd & River Walk/Cycleway. Condition 35 restricts the property to use as a live-work unit.

ADC/0259/09 – 10 Broad Reach - Application for certificate of lawfulness for existing use of live-work unit wholly and exclusively as a dwellinghouse (use Class C3) approved

AWDM/0425/12 – 8 Broad Reach - Change of use from a live-work unit to a single dwellinghouse (retrospective) approved

AWDM/0790/12 – 9 Broad Reach - Change of use from a live-work unit to a single dwellinghouse (retrospective) approved

Consultations

None

Representations

None received

Relevant Planning Policies

Not applicable

Planning Assessment

Under section 191 of the Town and Country Planning Act 1990 (as amended), the Council is obliged to grant a Certificate if, on the balance of probability, the use of the building wholly and exclusively as a dwellinghouse commenced more than 4 years ago and has continued since then (thereby being outside the scope of enforcement action under section 171B of the Act).

The submitted evidence shows that the building was never used as an office or live/work unit by the applicant since he purchased it in 2005. However, the property has not been continuously occupied since then; being only regularly occupied as wholly residential between Feb-March 2009 and August 2010 - March 2011. There are substantial periods of time when the condition was not breached as the property was not in use as a dwelling (it was empty). This is evidenced by the statutory declaration that states that bills were low, which suggests guest visits for the occasional day were infrequent and the property was mainly empty. Those periods cannot count towards the rolling period of years which give rise to the immunity.

For an unlawful use to obtain immunity from enforcement action and become lawful, it must be exercised continuously and without significant interruption, in this case, for the whole of the 4 year period. The applicant has not shown on the balance of probability that the property has been in continuous use as a single dwelling house for four years from the date of the breach and a Certificate cannot be issued.

Recommendation

REFUSE for the reason:-

1. The applicant has not shown on the balance of probability that the property has been in continuous use as a single dwelling house for four years from the date of the breach and therefore has failed to satisfy the

requirements of section 191 of the Town and Country Planning Act 1990 (as amended).

Case Officer: Peter Barnett Date: 16 October 2012

Authorised by: Gary Peck Date: 17 October 2012