Expiry Date - 14/02/2024

Development Control – Delegated Officer Report

Application Number: AWDM/1749/23 Recommendation – APPROVE

Site: 5 - 7 Warwick Gardens Worthing West Sussex

Proposal: Application for a Lawful Development Certificate for an Existing Residential use of former loft space, creating a new dwelling known as 'Flat 14'

Date of site visit: 06.02.23

Neighbours checked: y

Additional neighbour notifications: N

Site and Surroundings

The property is a pair of semi detached houses on the west side of Warwick Gardens. The property is an older style property set back from the road with flint and brick wall to the street boundary. There is an informal parking area off Warwick Gardens. The entrance for flat 14 is through a staircase though 7 Warwick Gardens.

The submitted drawings show the properties in 15 one bedroom and studio flats all with their own kitchen and bathroom facilities. Flat 14 is a studio within the roof space with three rooflight windows.

Proposal

The application is for a Lawful Development Certificate for existing use of the former loft space as a separate self contained dwelling known as flat 14.

Supporting information:

1. Statutory Declaration by Ian Boyd of Flat 3, 32 Sussex Square, Brighton, BN2 5AB, signed and dated 20th April 2023.

It states that Mr. Boyd purchased the property known as 5-7 Warwick Gardens, Worthing, BN11 1PE jointly with his partner, Geoffrey Kenneth Hutchinson on 28th February 2013 and they owned it continuously until 5th November 2021, when they sold it to Johns' Yard Limited. Mr Boyd confirms that throughout their period of ownership, they let the individual flats within the Property on assured shorthold tenancies for the rental income.

It goes on to state that the property originally comprised Flats 1-13 and 13a. Mr. Boyd and Mr. Hutchinson created an additional flat ('Flat 14) in the loft of the

property, and the works required to make this flat fully self-contained were completed in early February 2019.
An EPC assessor inspected Flat 14 on 15th February 2019, once the loft conversion works had been completed, and an EPC with a D rating was granted to Flat 14 on 18th February 2019.

Mr. Boyd confirms that they granted an assured shorthold tenancy on Flat 14 to Toby Doyle on 19th February 2019. This continued until Mr Doyle moved out. Mr Boyd subsequently granted an assured shorthold tenancy to a new tenant, Scott Catterson, on 8th May 2021. Scott was still in occupation of Flat 14 under the terms of this tenancy when Mr Boyd sold the Property to John's Yard Limited on 5th November 2021.

2. Statutory Declaration by John Blake of Ratoath House, Hazlewood Close, Storrington, West Sussex, RH20 3HX, signed and dated 25th October 2023

John Blake is the Director of Johns'Yard Limited. It states that on 5th November 2021, Johns' Yard Limited purchased the property known as 5-7 Warwick Gardens, Worthing. Mr Blake confirms that the previous owner of the Property, Ian Boyd, has provided a statutory declaration setting out the relevant history of the Property from when he purchased it in 2013 until its sale to Johns' Yard Limited.

Following Johns' Yard Limited purchase of the property, Scott Catterson remained in occupation of Flat 14.

Mr. Blake confirms that the whole property needed considerable modernisation. He states that normally this would involve terminating the tenants' tenancy agreements and then refurbishing the flats. However, Flat 5 became vacant and was immediately refurbished. Following this refurbishment, Scott Catterson vacated Flat 14 and moved into Flat 5. This took place in November 2022.

The declaration confirms that this meant that Flat 14 could be temporarily occupied by various other existing tenants of the building whilst they refurbished their individual flats. It is confirmed that none of the tenants who were already in situ in the Property lost their homes. For almost 10 months a team of builders worked at the property modernising the individual flats and the fabric of the building.

Since 15th October 2023, Unit 14 has been occupied by Mr Goncalo Amorim

3. Assured Shorthold Tenancy Agreements

Scott Catterson

An Assured Shorthold Tenancy Agreement, issued by the Residential Landlords Association. The agreement is dated 8th May 2021. It is an agreement between Ian James Boyd & Geoffrey Kenneth Hutchinson of Flat 3, 32 Sussex Square, Brighton, BN2 5AB (the landlord or landlords) and Scott Catterson. The agreement confirms that the property being rented was Flat 14, 5/7 Warwick Gardens, Worthing, BN11 1PE. The agreement was between 7th May 2021 and 6th May 2022. The agreement is signed by the landlords and tenant. The agreement is accompanied by an email chain between Ian Boyd and Scott Catterson on 2nd May 2021, referring to the 'swapping' of flats 6 and 14, 5/7 Warwick Gardens.

Toby Michael Doyle
An Assured Shorthold Tenancy Agreement, issued by the Residential Landlords Association. It is an agreement between Ian James Boyd & Geoffrey Kenneth Hutchinson of Flat 3, 32 Sussex Square, Brighton, BN2 5AB (the landlord or landlords) and Toby Michael Doyle. The agreement confirms that the property being rented was Flat 14, 5/7 Warwick Gardens, Worthing, BN11 1PE. The agreement is between 15th February 2019 and 14th August 2019.

4. Builder's invoice

Email chain between Ian Boyd and John Blake, dated 25th November 2023. It refers to an invoice from Przemek for the works to convert/ reinstate the loft at Warwick Gardens to form Flat 14. The invoice is in email form, and is dated 22nd February 2019.

5. Tenant Emails

Email correspondence between Rosie Victory (on behalf of Toby Doyle) and Ian Boyd The email chain dates between 14th August 2019 and 17th August 2019 and relates to the payment of rent on behalf of Toby Doyle. The email confirms that Toby's 6 month rental ended on Sunday 18th August 2019 and recommenced on Monday 19th August 2019. The email confirms that 3 months' rent was paid in advance (£2,020). The following 3 months was due to be paid in mid-November 2019.

Email correspondence between Ian Boyd and Toby Doyle, dated between 7th September 2018 and 25th November 2023. The emails confirm the terms of the tenancy, including 6 months' rent being paid

6. Energy Performance Certificate (EPC), dated 18th February 2019, and specifically refers to Flat 14, a top floor flat at 5-7 Warwick Gardens
7. Gas Safety Certificate, dated 4th February 2019

8. A floor plan showing flat 14 within the roof space with separate staircase from the first floor landing of No 7

Relevant Planning History:

04/01060/FULL-Change of use from Guest House (Use Class C1) to 2 single Dwelling Houses (Use Class C3).-REFUSED

06/0016/WORKS-Site visited and photo's taken of property. Various emails to Environmental and Fire Officer. July 2007 discussed with DCM who agreed not expedient for Council to pursue matter. File closed.

Consultations:

Legal Advice

I've had a look at this, including the Statement of Case from Rodway Planning. I've not seen the supporting documents referred to within it (statutory declarations, tenancy agreements, EPC and gas safety certificate) but I presume they reflect what is said about them in the Statement of Case.

On that basis, I agree with your view that the certificate should be granted. On the balance of probability, Flat 14 appears to have been in continuous use for over 4 years (from Feb 2019 onwards) and we have no evidence to the contrary.

Business Rates

Confirmed 1-13 (banded since 2009) and 13A are banded since (2015)
No 14 is not banded

Environmental health PSH(edited)

Inspected the building in August 2018 and can categorically state there was no flat 14 then.

First inspected in 2016, and at some point since then one of the flats number 13 was added. At this time we did not deal with small flats in the same way,

but most of the units, if not all, would not meet the Nationally Described Space Standard and we might have to look at whether or not this constitutes a hazard. Looking at the plans, I can see there are no lobbies, for example, which there should be for flats over three storeys, and so there is an increased risk of injury in the event of a fire.

Representations:

None received

Relevant Planning Policies

National Planning Policy Framework (HCLG 2023)
National Planning Practice Guidance

Worthing Local Plan 2020-2036 (WBC 2023:
SP1 (Presumption in Favour of Sustainable Development)
SS1 (Spatial Strategy)
DM1 (Housing Mix)
DM2 (Housing Density)
DM5 (Quality of the Built Environment)
DM16 (Sustainable Design)
DM22 (Pollution)

Planning Assessment

The applicant seeks to establish that the roof space of the property is a separate dwelling and is lawful in planning terms and no enforcement action may be taken on the basis it has become immune from such action through the passage of time. The planning merits of the case are not material considerations. In order for a Certificate of Lawfulness to be issued the Local Planning Authority must be satisfied that on the balance of probability the loft space of the property has been used as a separate unit of residential accommodation for 4 years or more.

1. Statutory Declaration by Ian Boyd of Flat 3, 32 Sussex Square, Brighton, BN2 5AB, signed and dated 20th April 2023.

2. Statutory Declaration by John Blake of Ratoath House, Hazlewood Close, Storrington, West Sussex, RH20 3HX, signed and dated 25th October 2023

3. Assured Shorthold Tenancy Agreements

4. Builder's invoice

5. Tenant Emails

6. Energy Performance Certificate (EPC), dated 18th February 2019, and specifically refers to Flat 14, a top floor flat at 5-7 Warwick Gardens

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Assessment of the evidence

There is no relevant planning history associated with the property, the property appears to have been incrementally converted and although inspected by the planning enforcement team in 2006 no further action was taken. Public Sector Housing have also visited the property although the subject property (flat 14) was not converted at that time, the property was in 14 units. This is also confirmed by business rates with 14 units being rated.

The statutory declarations for flat 14 suggests that the work was carried out in February 2017 after Environmental Health visited the property. The statutory declarations are from two separate owners. There is evidence from tenants, with dated email exchange indicating the flat number and in 2017 that it was newly converted. Even during refurbishment it would appear from evidence that the unit was continually used. There is a builder's invoice which although not specific to flat 14 suggests work which would be carried out to form a unit in the loft space dated February 2019. There is also an energy performance certificate and boiler inspection for this property.

Legal advice indicates that on the balance of probability, Flat 14 appears to have been in continuous use for over 4 years (from Feb 2019 onwards) and we have no evidence to the contrary.

The evidence submitted does show that loft space known as flat 14 has been in continuous separate occupation for four years or more.

Conclusion

It is considered that there is sufficient evidence on the balance of probability to corroborate the claim that flat 14 in the loft space has been in separate residential occupation for 4 years or more and is therefore immune from enforcement action by the Council.

Recommendation

Issue LDC

The Local Planning Authority is satisfied on the basis of the evidence submitted with the application for the former loft space, creating a new dwelling known as 'Flat 14' has existed for 4 years or more and is lawful in planning terms

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

Case Officer:	Jackie Fox	Date: 24.01.24
Authorised by:	Louise Prew	Date: 08/02/2024