Development Management – Delegated Officer Report

Application Number: AWDM/1047/22 Recommendation: Grant Certificate

Site: 73 The Gardens, Southwick

Proposal: Application for a Certificate of Lawfulness for Existing Use of outbuilding at the end of the garden as a 2 bedroom annexe for relatives

Date of Site Visit: 12 October 2022

Neighbours Checked: Y

Additional neighbour notification: N

Proposal, Site and Surroundings:

The application relates to an outbuilding at the rear of 73 The Gardens. A Certificate of Lawful Existing Use or Development (CLEUD) is sought for the use of the building as a self-contained annexe.

The supporting information states that that building has 2 bedrooms and is now occupied by a relative of the occupier of 73 The Gardens who is now caring for the elderly occupier who themselves previously lived in the annexe. The annexe is self-contained and capable of independent occupation.

The building appears to have been a garage or other outbuilding originally and, from looking at several aerial photos going back to 2007, it was converted and extended, around 2012-2015. The applicant claims that the building has been occupied for at least 10 years and statutory declarations have been submitted which confirm that between January 2015 and April 2022 it was occupied by a Mr Patrick Whelan Junior and then from April 2022 onwards it has been occupied by Bridget Shaw.

Further evidence states that the building started to be occupied in 2011/12 when a small section was made into a bedroom when a son moved back home after a breakup. Patrick Whelan Junior then left in October 2012, during this time the entire garage was converted into an entire living space.
Bridget Shaw moved in with her husband In October 2012 until June 2014 and Patrick Whelan Junior moved back in in June 2014 until March / April 2022.
Bridget Shaw and her family then moved back in April 2022 until present.

Bridget Shaw and Patrick Whelan Junior are the daughter and son of Patrick Whelan Senior who has lived at 73 The Gardens for over 30 years. He is 90 years old and requires full time care.

Consultations:

Legal Advice: First Comments: I would advise that the Applicant is written to in order to elicit further information that may clarify the application one way or the other. In particular they should be asked to provide information and/or evidence of:

- What period they say occupation has been for, with supporting evidence of the dates. Householders usually have correspondence and documentary evidence of when habitation of the new unit started such as utility bills, letters from the occupier notifying companies of their address change, council tax bills, etc
- Who has occupied the accommodation across the whole period with dates and supporting statements.
- Evidence of the construction of the annexe and the different stages of it.

Second Comments: The application states that the “rear building at the end of the garden has been used as a dwelling to care for elderly parents for over 10 years”

It is understood Mr Whelan Snr still lives in the main house whereas Bridget Shaw states her family live in the two bedroom annexe

There is clear evidence that Bridget and Martin Shaw moved to 73 The Gardens in April 2022. The RAC insurance documents are of limited value without a supporting statement as they are in the name of ‘P Whelan’ which is both the father and son’s name.

However, what I think is still missing is evidence they are living in the annexe rather than the main building. My opinion is that Patrick Whelan Jnr and Bridget Shaw or Martin Shaw should provide a statutory declaration detailing their dates of accommodation in the annex which should then be sufficient for the CLEUD.

Third Comments: I would agree that the statutory declarations in conjunction with the evidence already submitted is sufficient to enable the CLEUD to be granted

Planning Assessment

Following the submission of more evidence during the course of the application it has been demonstrated who has occupied/is currently occupying the building and for how long. It is evident that the building has been used as an annexe by a family member since at least January 2015. Pursuant to section 171B of the Town and Country Planning Act 1990, whether the Annexe was purpose-built for, or whether

the Annexe was converted for, occupation, the time limit for the Council to take enforcement action is four years from the date of the breach.

The evidence suggests that it has been occupied for at least 8 years and is therefore exempt from enforcement action.

Recommendation

Grant Certificate for the following reason:

The annexe has been occupied by a family member for more than 4 years and is therefore exempt from enforcement action under section 171B of the Town and Country Planning Act 1990

Case Officer: Peter Barnett Date: 28 July 2023

Authorised by: Jo Morin Date: 01.08.2023