Development Management - Delegated Officer Report

Application Number: **Recommendation – REFUSE**
AWDM/0265/13

Site: **142A Brighton Road, Lancing**

Proposal: **Application for certificate of lawfulness for existing use of ground floor as a self-contained two bedroom flat (Re-submission of AWDM/0990/12)**

Date of site visit: n/a – property has been viewed from outside

Neighbours checked: n/a

Additional neighbour notifications: n/a

Proposal, Site and Surroundings

The subject building is located on the southern side of Brighton Road backing directly onto Widewater Lagoon. As with a number of properties in Brighton Road, the building is of 3 storey appearance at the front and 2 storeys at the rear.

This application seeks a Certificate of Lawfulness for existing use of the ground floor as a self-contained two bedroom flat. A similar proposal was refused in 2012 and therefore this revised application has been submitted with additional information.

Relevant site history

Retrospective planning permission was refused in February 2012 (AWDM/0814/11) for the retention of the self contained flat on the grounds of unacceptable flood risk.

An application for a Certificate of Lawful Use was refused in October 2012 (AWDM/0990/12) since it was not proven on the balance of probabilities that the operational works to create the self contained unit had occurred more than 4 years prior to the initiation of enforcement action in June 2012.

Supporting information submitted with previous application

Council letter to Mr Holman regarding termination of caravan licence. Dated 21 January 2005.
Builders quotation letter. Dated 06 June 2006
Building Regs Fee receipt (ABC/0457/06). Dated 06 November 2006
Howdens joinery certificate for work clamps. Dated 16 September 2008
HM Revenue & Customs letter to Mr Holman. Dated November 2008
Building Regulations Completion Certificate. Dated 22 January 2008
Personal tenancy reference for Ms White. Dated 02 May 2010
Personal tenancy reference for Mr White. Dated 03 May 2010
Rent book for 142A Brighton Road. Start Dated 08 May 2010

Council letter confirming postal address 142A. Dated 12 October 2010
Letter from Virgin Media to Mr White to 142A. Dated 25 November 2010
Bank letter to Mr & Mrs White to 142A. Dated 31 December 2010
Council Tax summons for No. 142A. Dated 07 October 2011

Statutory Declaration from Mr Holman dated 09 August 2012

Domestic electrical installation certificate for entire flat, including kitchen. Undated.

Supporting information submitted with current application

Letter from Mrs Oldridge dated 28 February 2013
Letter from Oakwood Carpentry & Joinery Ltd dated 25 February 2013

Statutory declaration from Mr Holman dated 21 February 2013

Consultations

Adur & Worthing Councils:

Legal Services provided 2 responses:

i) On the balance of probability, given Mr Holman's second statutory declaration, it would appear that the use is lawful, BUT FOR the inconsistent earlier statements of the owner made in her letter of 13 August 2012.

In particular, one reason the Council considered on balance that separation had not been truly achieved was because the internal staircase had not been removed. Mr Holman says in March 2008 he blocked off the staircase and Ms Oldridge paid for the plaster boarding.

Ms Oldridge in her letter of 13 August 2012 says in March 2010 when Mr Holman moved out, the staircase had remained but there were doors at each end to separate the unit, and at that time she had to block the door at the bottom to fit a new workshop.

I am less clear on the position with the kitchen. Was Ms Oldridge merely updating an existing kitchen in 2010? Given Mr Holman's second statement he claims for all intents and purposes a kitchen was fully installed in March 2008, but Ms Oldridge states in her letter that she upgraded it in 2010 because it only consisted of a sink, microwave, toaster and kettle, and March 2010 she put in kitchen worktops.

I do think this matter is now more finely balanced.

Evidence has been provided to show that the flat was not self-contained: - Meter shared, council tax just for one property, address shared, internal staircase shows physically the flat was not severed (inconsistent evidence as to when the staircase was blocked up).

Evidence the flat was self-contained - separate rent book; kitchen electrics completed June 2007 and Mr Holman's statement that he occupied the unit, he was self-sufficient in that unit, kitchen completed in March 2008 - unit contained the normal facilities for cooking, eating and sleeping. (Question mark over whether the kitchen was properly equipped in 2008 or 2010.)

Clearly there is an inconsistency in the evidence relating to blocking the staircase, the position is less clear cut as to the status of the kitchen.

Given the inconsistencies arise following further evidence being requested, and given that further evidence makes the position finely balanced, I am of the view to advise refusal of the certificate and to have the evidence tested at inquiry.

ii) Circular 10/97 Annex 8 para 8.15 states 'Moreover, the Court has held (see F W Gabbitas v SSE and Newham LBC [1985] JPL 630) that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the LPA have no evidence of their own, or from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate "on the balance of probability".

I have highlighted what I consider are the main evidentiary points for and against grant below, I consider based on the evidence that the decision is finely balanced. However given the applicant's evidence in her letter of 13 August 2012 is contradicted by Mr Holman's second statutory declaration in relation to the timing when the door was boarded up from the rest of the property, I have concerns about the reliability of Mr Holman's evidence, and given it is his evidence that has made the decision more finely balanced, I would suggest refusal so that his evidence can be tested on appeal at inquiry.

Representations

None

Relevant Legislation

Town and Country Planning Act 1990 – Section 171B(2); 191; 191(2); 191(4). Circular 10/97 ' Enforcing Planning Control – Legislative Provisions and Procedural Requirements'

Section 171B (2) of the Act states where there has been a breach of planning control consisting the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period four years beginning with the date of the breach.

Section 191 of the Act states a person can apply for a LDC to ascertain if the existing use is lawful.

Section 191(2) of the Act states the use/operations are lawful if no enforcement action may be taken against them, and they do not constitute a contravention of the requirements of any enforcement notice then in force.

Section 191(4) of the Act states the LPA must be satisfied of the lawfulness at the time of the application of the use/operations. If the LPA is satisfied they shall issue a certificate, if not they shall refuse the application.

Circular 10/97 'Annex 8 paragraph 8.12 states the onus of proof in a LDC application is firmly on the applicant. Just because the onus of proof is not discharged by the applicant and the LDC is refused, does not preclude the

submission of a further application if better evidence is subsequently available.

Circular 10/97 Annex 2 paragraph 2.81 provides guidance on the interpretation of use as a single dwelling house. "It is considered that the criteria for determining use as a single dwellinghouse include both the physical condition of the premises and the manner of the use. Where a single, self-contained set of premises comprises a unit of occupation, which can be regarded as a separate "planning unit" from any other part of a building containing them; are designed or adapted for residential purposes, containing the normal facilities for cooking, eating and sleeping associated with use as a dwellinghouse; and are used as a dwelling, whether permanently or temporarily, by a single person or more than one person living together as, or like, a single family, those premises can properly be regarded as being in use as a single dwellinghouse for the purposes of the Act."

Planning Assessment

The previous planning assessment in relation to AWDM/0990/12 set out the relevant factors of consideration and, in particular, noted that there was not sufficient evidence to prove that the building had been separated into two planning units, four years before enforcement action was initiated by the Council.

Having regard to the previous assessment, it does not appear that the additional evidence submitted has resolved those concerns, indeed the further evidence appears contradictory. Having regard to the comments of the Legal Services Officer, therefore, it is considered that the application should be refused.

Recommendation

REFUSE for the reason:

The operation to split No.142 Brighton Road into two self-contained and independent planning units is clearly operational development as defined by s.55 of the Town and Country Planning Act 1990, however, on the balance of probability the application does not provided evidence that the operation did happen more than 4 years prior to the initiation of enforcement action on 15th June 2012.

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

Case Officer: Gary Peck Date: 21 June 2013

Authorised by: [redacted] Date: 21st June 2013