DELEGATED APPLICATIONS

ASSESSMENT SHEET

APPLICATION NO./ADDRESS

WB/11/0202/CLE

84B Ham Road (known as 84A in Council records)
Worthing

DESCRIPTION OF DEVELOPMENT

Application for a Lawful Development Certificate for existing self contained detached one bedroom single storey dwellinghouse to rear of 84 Ham Road.

The proposal is supported by a site and location plan; hand drawn elevation and floorplans; photos of the dwelling and environs; and a signed (3rd May 2011) solemn declaration by Russell Satchell and witnessed by a solicitor/commissioner that he has lived continuously at the dwelling (therein referred to as 84B) as his sole residence from November 2006 and supplies gas, electricity and satellite TV bills for 84; 84B; flat 7 84; flat 3 84; and flat 1a 84 Ham Road covering various periods between 31st October 2006 and 15th January 2008. The statement refers to the willingness of the owner and developer Mr Ian Dixon to prepare a similar statement if necessary.

I have also visited the site and seen the interior of the dwelling.

DATE OF SITE VISITS: 8.6.11 & 30.6.11

SITE AND SURROUNDINGS:

The property which is the subject of this application is a one bedroom detached bungalow at the very back of the rear yard of the property 84 Ham Road. No 84 forms part of a linear Neighbourhood shopping centre set on this busy distributor road in an early /mid twentieth centre residential suburb East Worthing.

No 84 is a vacant (for at least 5 years) and now boarded shop at the end of a parade of mainly single unit shops with flats above and, often at the rear, as a result of later conversions and extensions. A path runs between the northern gable of the parade at this point providing independent access to the rear yard form Ham Road. It appears that this served as a vehicular access at one point to a garage on the site of the application dwelling. The gap is partly screened by a 1.5 metres tall timber fence at the back edge of the pavement and a taller timber boundary fence to the application dwelling's very small curtilage. The dwelling comprises a lounge/kitchen, bedroom and bathroom and outlooks westwards. It benefits from a 2 metres deep curtilage space laid out as a patio with small shed. The given measurements are 6 metres wide; 4 metres deep; 2.5 metres to the eaves and 3.9 metres to the ridge of the dual pitched roof.

No 84 was granted planning permission for the *Erection of single and three storey extension (including rooms in roof) to create 5 x 1 bedroom flats with associated external alterations in January 2006* (WB/05/1309/FULL). The approved flats were built out by September 2006 according to Building Regulations inspection records. There is no record of any of the four pre-commencement or pre-occupation conditions having been approved or being discharged in accordance with the approved drawings, as appropriate. Indeed, the application dwelling actually sits on the site of, but is substantial larger than, a smaller single storey building at the

very back of the rear yard of the shop. This is shown in the approved scheme as providing compensatory retail storage for the shop and cycle storage for the new flats. It was required by condition 3 of the planning permission to be built prior to occupation of the development and retained thereafter.

The approved flats are served by an existing independent access in Ham Road and the side access serving the application dwelling. The furthest single storey extension approved under WB/05/1309/FULL sits very close to and overlooks the plot of the application boundary, separated and is separated from it by a 1.8 metres tall timber fence.

The application dwelling physically abuts and forms the boundary between a twitten at its rear and is set off the yard's northern boundary with the neighbouring property at No 86 by less than 0.5 metre and just less than a metre from it southern neighbour at No 82. Both Nos 82 and 86 are vacant shops with flats above and in the converted and extended rear yards as follows:

No 86 *;Erection of single storey rear extension and construction of dormer windows in connection with the conversion of existing shop and flat into 5 x self contained flats and one self contained shop* approved WB/05/571/FULL approved July 2005. The approved scheme showed a similar arrangement to that approved at No 84 in respect of a single storey building at the very rear providing retail storage for the shops and cycle storage for the flats. Investigations have subsequently indicated that the aforementioned building may be used as an independent dwelling in much the same way as alleged for the application property by the applicant. This is the subject of an independent enforcement investigation.

No 82; *Extension alterations and conversion to three bed-sittingroom flats (resubmission of WB/08/0045/FULL)* approved in June 2008 (WB/08/0332/FULL) and built out. The rear yard remains open as an amenity space for the residents.

The address of the application property is the subject of considerable confusion. Corporate records (including Council tax and Electoral Register) register the application dwelling as 84A and the shop as 84B. The converted flats are formally assigned addresses flats 1 to 4. The signing of the property at No 84, however, differs on the ground. The rear lower ground floor flat accessed off the path to the north of the property is signed as No 84A in the actuality. The only signage for 84B is on the front of the property at 84 and the gate entrance to the curtilage of the application property from Ham Road contains no signage. The main entrance to the flat at No 84 variously signs the flats as flats 1,2, 3 and 4 84 and 1, 2, and 2A 84.

RELEVANT PLANNING HISTORY:

Planning applications

Application Number	Development Description	Decision	Decision Date	Appeal Decision	Appeal Decision Date
05/1309/FULL	Erection of single and three storey extension (including rooms in roof) to create 5 x 1 bedroom flats with associated external alterations.	GRANT CONDITIONAL CONSENT	23-01-2006		
50/48	VERANDAH AT REAR. 84 HAM ROAD.	APPROVED WITH CONDITIONS	09-09-1948		
635/79	NEW SHOPFRONT. 84 HAM ROAD.	APPROVED WITH CONDITIONS	09-07-1979		

709/67	NEW SHOPFRONT. 84 HAM ROAD.	APPROVED WITH CONDITIONS	03-10-1967
97/0384	RE-ROOF USING MARLEY-LUDLOW TILES COLOUR SLATE GREY WITH RED SEGMENTAL HIPS AND RIDGES. 84 HAM ROAD	APPROVED WITH CONDITIONS	16-06-1997

Building Control Applications for 84B Ham Road, Worthing, BN11 2QY

Reference Number	Location	Proposal	Decision	Decision Date
06/70155/OTH	84 Ham Road Worthing West Sussex Bn11 2qy	Single & Three Storey Extension (inc Rooms in Roof) & Internal Alterations to Change of Use to 5 Flats	PLANS APPROVED	23-03-2006
13844	84 Ham Road Worthing Bn11 2qy	ADDN	PLANS APPROVED	07-10-1947
14261	84 Ham Road Worthing Bn11 2qy	VERANDAH	PLANS APPROVED	06-09-1948
3926*2	84 Ham Road Worthing Bn11 2qy	SHOP ETC	PLANS APPROVED	16-02-1925
4017	84 Ham Road Worthing Bn11 2qy	GARAGE	PLANS APPROVED	13-05-1925
45721	84 Ham Road Worthing Bn11 2qy	SHOPFRONT & ALTS	PLANS APPROVED	11-06-1979
97/62640/BN	84 Ham Road Worthing West Sussex Bn11 2qy	RE-ROOFING	RECEIVED	
CP/NICEIC/06/02051	84 Ham Road Worthing West Sussex	New installation rewire or partial rewire New consumer unit One or more new circuits Main/ supplementary equipotential bonding Ring/ radial power circuit Lighting circuit Flat	RECEIVED	28-09-2006
CP/NICEIC/06/02052	84 Ham Road Worthing West Sussex	New installation rewire or partial rewire One or more new circuits Ring/ radial power circuit Lighting circuit Fire/ security/ environmental control system Common area of block of flats	RECEIVED	28-09-2006

There are no separate planning or Building Regulations records for the property registered as 84A in the council records (ie the application property presented as 84B)

REPRESENTATIONS AND RELEVANT CONSULTATION RESPONSES :

Immediate neighbours consulted by letter. No responses received.

HUMAN RIGHTS:

Article 8 (Right to Respect of a Private and Family Life) and Article 1 of the First Protocol (Protection of Property) of the Human Rights Act 1998 are relevant to this application and have been fully considered. Accordingly it is considered that it is acceptable with regard to Article 8 and Article 1.

PLANNING ASSESSMENT:

The determination of applications 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.

The relevant test for such an application is whether, on the balance of probabilities, the applicant has proven the proposed use is lawful. The onus is upon the applicant to demonstrate proof as paragraph **8.12 of Circular 10/97 explains:**

The onus of proof in a LDC application is firmly on the applicant. While the LPA should always co-operate with an applicant seeking information they may hold about the planning status of land, by making records readily available, they need not go to great lengths to show that the use, operations, or failure to comply with a condition, specified in the application, is, or is not, lawful

The main issue is whether it has satisfies S191 of the Planning Act 1990 which states that

2)For the purposes of this Act uses and operations are lawful at any time if—

(a)no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and

b)they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

(3)For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if—

(a)the time for taking enforcement action in respect of the failure has then expired; and

(b)it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

Clearly, the proposal is development under S.55 of the Act as it involves operational works and material change of use to form an independent dwelling with its own curtilage and access. The proposal does not benefit from any Permitted Development tolerances and falls firmly outside the scope of the implemented planning permission *Erection of single and three storey extension (including rooms in roof) to create 5 x 1 bedroom flats with associated external*

alterations; January 2006 (WB/05/1309/FULL). Indeed, as discussed below, it materially conflicts with and is mutually incompatible with this planning permission, occupying the same site as the approved building for shop and cycle storage.

The chief question in this case is whether the proposal has achieved immunity from enforcement action due to it being built and occupied continuously without material interruption for 4 years or more form the time of the submission of the current application (i.e. 16th March 2011 as the relevant "time " test for a residential dwelling and allied operational works) and whether the development is otherwise lawful by virtue of not being in breach of the planning permission WB/05/1309/FULL.

Firstly, I deal with the 4 year residential occupation. The applicant primarily relies on the solemn declaration by Russell Satchell as the occupier of the application property and witnessed by a solicitor/commissioner. Indeed, the supplementary utilities/satellite TV bills evidence submitted is of very limited value as these relate to several different addresses and cover only a short part of the 4 year plus period. No other independent corroborative evidence is offered by the applicant at all, despite repeated requests.

The applicant's own case therefore hinges on the declaration.

Circular 10/97 advises that such as declaration does have particular weight regardless of the absence of independent corroboration. This is especially the case as it is witnessed by a commissioner;

"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".

For completeness, the Council has undertaken its own investigations of the claims. No Building Regulations records exist for the application dwelling as the records relate solely to the approved scheme WB/05/1309/FULL. These show the approved scheme last visited in September 2006 and the scheme signed off for completion in. The relevant building inspector states the application dwelling did not exist at that time.

Corporate records show the address for dwelling known to them as 84A as registered on 8th November 2006. From their description it is apparent that this is the application dwelling 84B.

Council tax record show the dwelling known to them as 84A as banded from 1st October 2006

The one piece of potentially conflicting evidence is the records of the Electoral Register. They report that there is no record of a Russell Satchell resident at either 84A or 84B at any time since 2006. Records indicate 84A was occupied by someone else.

Records are as follows:

We have no records for 84B Ham Road but 84A are as follows:-

2010 to date – Shirin Stratford is registered
2009 – no-one registered
2008 – no-one registered
2007 – no-one registered
2006 – 84A did not exist – it was just 84 Ham Road and that year Shelley Dodman & Anne Lumber were removed from that address presumably because it was changing to 84A.

However, this is not considered to be determinative. Whilst the Electoral Register is a usually reliable source, it is not exhaustive and transient flat dwellers in such locations can and so sometimes remain unregistered. The presence of another person resident at 84A (which corresponds to 84B on the application) for one year is a conflict but it does not necessarily follow that Russell Satchell was not resident. Nor is his absence critical to the case as the test is of unbroken residential use not residency by any one person. Certainly, it does cast some doubt on the submitted declaration and the absence of any independent corroborative evidence such as tenancy agreements or neighbours' testimony does add to this. However, in the absence of firm contradicting evidence, the declaration evidence remains persuasive.

On this basis it appears that the application dwelling has, on the balance of probability, been occupied as a dwelling continuously without material interruption for more than 4 years prior to the submission of the current application.

I turn now to whether the development is otherwise lawful by virtue of not being in breach of the planning permission WB/05/1309/FULL. The concern here is that none of the approved pre-commencement conditions have been discharged. The current applicant for the certificate of lawfulness – Mr Dixon- explains he is unable to help here as he reports that he sold the development some time ago. Unfortunately, the site cannot be properly surveyed without the consent and cooperation of the relevant occupiers/owners to verify matters.

It is apparent that, although one or more of the conditions attached to the planning permission WB/05/1309/FULL have been breached, the development has achieved immunity from enforcement action by virtue of being built out for 4 years or more.

As such, it is concluded that the proposal is, on the balance of probabilities, lawful. A Certificate of lawfulness should accordingly be issued.

RECOMMENDATION:

Issue Certificate

REASONS FOR RECOMMENDATION:

This decision has been made on the basis of the evidence available at the time. If circumstances of the development change materially or any evidential submission proves to have been made falsely, the judgement herein may be reviewed and the development liable to formal enforcement action by the Local Planning Authority.

This certificate only makes lawful the development referred to above, namely a self contained detached one bedroom single storey dwellinghouse to the very rear of 84 Ham Road shown in the submitted plans and photographs and does not provide immunity from enforcement for any other activity, use or development.

DELEGATED

Case Officer sign.....Date.....5.7.11.....

Authorising Officer sign.....Date.....5/7/11.....