

## Delegated Officer Report

<b>App.No:</b> 240250 (LDE)	<b>Decision Due Date:</b> 31 July 2024	<b>Ward:</b> Devonshire
<b>Officer:</b> Chloe Timm		<b>Type:</b> LD Certificate (existing)
<b>Site Notice(s) Expiry date:</b> 4 July 2024 <b>Neighbour Con Expiry:</b> 4 July 2024 <b>Press Notice(s):</b>		
<b>Over 8/13 week reason:</b>		
<b>Location:</b> 9 Barden Road, Eastbourne		
<b>Proposal:</b> Lawful Development Certificate for existing use as 5 self-contained studio dwellings		
<b>Applicant:</b> Mrs Sydney Summers Payne		
<b>Recommendation:</b> Refuse		

### **Site Description:**

The application site is a two-storey semi-detached property located on the junction of Barden Road and Latimer Road and adjoins 57 Latimer Road.

The property has a single storey extension to the rear and a detached outbuilding to the rear, there is little to no private amenity space.

### **Consultations:**

#### **Councils Planning Lawyer:**

Thank you for your instructions regarding an application for a certificate of lawful use pursuant to s191 Town and Country Planning Act 1990, as amended, in respect of 9 Barden Road

This advice is specific to this application only.

If the LPA is satisfied as to the lawfulness of the existing use then it shall issue a certificate of lawfulness. In understanding the term "lawfulness" section 191 subsection (2) provides that uses are lawful if no enforcement action may be taken or the use does not constitute a contravention of any of the requirements of an enforcement notice in force or no planning permission is required. When deciding whether to issue a certificate of lawful use you must refer to the date on which the application was validly made not the date on which it is determined.

From the evidence provided, internal photographs and five tenancy agreements ( part ) it would appear that the applicant's case is that the use has been existing for ten years and as such the time has expired for the LPA to serve an enforcement notice.

When making a decision on this application you should be mindful of the following;

- the NPPF is silent as to this type of an application, however the Planning Policy Guidance states ;

"...if a local planning authority has no evidence itself, nor any 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."

### The Evidence

I have reviewed the internal photos and the individual pages from five tenancies that have been submitted, but in themselves this is not evidence that the use has been continuous over the 10 years. These should not be afforded considerable weight.

One other document is a note from the applicant stating when she purchased the property, and she has lived in studio 5 for 7 years. This is not in the form of a statutory declaration and has no corroborating evidence, therefore should not be afforded considerable weight.

None of the evidence submitted individually or as a whole show a continuous use of 10 years

The burden of proof is on the applicant to submit sufficient information to support an application. The evidence must be sufficient and precise information, and without this, a local planning authority may be justified in refusing a certificate.

### **Neighbour Representations:**

Public notification regarding the application has been undertaken in the following ways:

- Letters have been sent to all registered properties adjoining the application site;
- A site notice has been displayed in the vicinity of the application site;
- An advert has been published in the local newspaper.

8 comments have been received following public notification regarding the application, which raise objection on the following material planning considerations:

Parking

Small dwelling size

Poor standard of accommodation

Bin Storage

State of the property

*Officer Response: The applicant is stating that the property of 9 Barden Road has been under its current use of 5 studio dwellings for 10 years or more. This application is for a lawful development certificate based on the grounds the use has been in situ for 10 or more years without prior planning permission being granted, any other matters fall outside the scope of the lawful development certificate process.*

### **Appraisal:**

This application is applying for a certificate of lawful use for a change of use of the property from 1no single dwelling to 5no studio dwellings, all within Class C3 Residential Dwellings.

Documents provided with the application include a note from the owner/applicant stating that the property was arranged into 5no studio dwellings when they purchased the property (no date of purchase provided) and that they had lived in studio 5 for 7 years. This note is titled 'Verification of Application Evidence' is typed on notepad, has no date, or signature. The note is not in the form of a statutory declaration and has no corroborating evidence.

Tenancy agreements have been provided for studios 1-5, however, the tenancy agreements only date back to 2016.

From the Council's own enforcement investigation the property was purchased by the applicant September 2015 and from house marketing details available the property was sold at that time as a single residential 3-bedroom end of terrace property with sitting room, second reception room, modern bathroom, dining room, kitchen and patio garden.

None of the evidence submitted individually or as a whole show a continuous use of 10 years.

### **Human Rights Implications:**

The impacts of the proposal have been assessed as part of the application process. Consultation with the community has been undertaken and the impact on local people is set out above. The human rights considerations have been taken into account fully in balancing the planning issues; and furthermore the proposals will not result in any breach of the Equalities Act 2010.

### **Conclusion:**

The application fails to provide sufficient information to demonstrate, on the balance of probability, that the building has been in continuous use as 5 studio dwellings for a period of 10 or more years preceding submission of this application and, as such, the existing use is not lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended)

### **Recommendation:**

Refuse

### **Appeal:**

Should the applicant appeal the decision the appropriate course of action to be followed, taking into account the criteria set by the Planning Inspectorate, is considered to be **written representations**.