LIST OF RECOMMENDATIONS UNDER DELEGATED POWERS 14/04/2015

REPORT FOR CONSIDERATION UNDER DELEGATED POWERS

1. APPLICATION DETAILS

Reference No: HGY/2015/0515 **Ward:** Bruce Grove

Date received: 18/02/2015

Drawing number of plans: JS/SP/823/00, 01, 02 & 03

Address: 174 Philip Lane N15 4JN

Proposal: Certificate of Lawfulness for use of property as two flats.

Applicant: Mr Muzammal Ahmad

Ownership: Private

Officer contact: William Story

2. RECOMMENDATION

GRANT CERTIFICATE

3. PROPOSED DEVELOPMENT AND LOCATION DETAILS

Certificate of Lawfulness for use of property as two flats at 52 Oakfield Court Haslemere Road N8 9QY

4. RELEVANT PLANNING AND ENFORCEMENT HISTORY PLANNING APPLICATION HISTORY

Planning HGY/1990/0176 WDN 22-10-90 174 Philip Lane London Erection of ground floor extension to house and construction of garage in rear garden.

Planning VOID/2015/0671 PENDING --- 174 Philip Lane London Conversion of residential property from two self-contained flats into 3 self-contained flats comprising 1 x 2 bedroom flat on the ground floor and 2 x 1 bedroom flats on the first and second floors. Removal of chimney stack from main roof, addition of 6 no. rooflights to main roof and single storey side and rear extension and the construction of a first floor balcony on the flank elevation.

5. RELEVANT LEGISLATION AND GUIDANCE

The application has been made under section 191 of the Town and Country Planning Act 1990 (as amended).

Section 191 of the 1990 Act provides for anyone to apply to the local planning authority (LPA) for a lawful development certificate (LDC). A certificate is a statutory document

certifying the lawfulness, for planning purposes, of existing operations on, or use of land, or some activity being carried out in breach of a planning condition.

By virtue of section 191 (2), uses and operations are "lawful" if no enforcement action may be taken against them and they are not in contravention of any enforcement notice which is in force. And, by virtue of section 191(3), a failure to comply with any condition or limitation subject to which planning permission has been granted is "lawful" if the time for taking enforcement action in respect of the failure has expired and it does not constitute a contravention of any enforcement notice or breach of condition notice which is in force.

Development or other activity on land is lawful for planning purposes if it is within one of the following categories and does not involve a failure to comply with a condition or limitation subject to which planning permission has been granted:
(1) it is not within the definition of "development" in section 55(1) and (1A) of the 1990 Act. (This might be because it is so insignificant that it can be disregarded (a "de minimis" operation, use or activity); or because it involves a change of use which is not, as a matter of fact and degree, materially different, for planning purposes, from a previous lawful use of land.); or
(2) it is specifically excluded from the definition of development by section 55(2) (for example, a use of land for the purpose of "agriculture"); or
(3) it is within the definition of "development" in section 55, but is exempted from the need for planning permission by the provisions of section 57; or
(4) it benefits from an extant grant of planning permission under Part III of the 1990 Act (or the equivalent Parts of preceding Acts); or
(5) it benefits from a general planning permission granted by the Town and Country Planning (General Permitted Development) Order 1995 (SI 1995/418), or by a simplified planning zone or enterprise zone scheme; or
(6) it benefits from deemed planning permission, whether under section 90 or by virtue of compliance with the requirements of an effective enforcement notice; or
(7) it took place before 1 July 1948 (the "appointed day" Country Planning Act 1947); or
(8) it is development by or on behalf of the Crown; or
(9) the time for taking enforcement action has expired.

“Taking enforcement action" is defined in section 171A of the 1990 Act. It is the issue of an enforcement notice or the service of a breach of condition notice. The section also defines a "breach of planning control" (against which it is possible to take enforcement action) as the carrying out of development without the required planning permission, or failing to comply with any condition or limitation subject to which planning permission has been granted.

Section 171B of the 1990 Act specifies the time-limits for taking enforcement action which are as follows:
(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

(2) Where there has been a breach of planning control consisting in 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 of four years beginning with the date of the breach.

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

(4) The preceding subsections do not prevent—
(a) the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect; or taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach.

6. ANALYSIS/ASSESSMENT OF THE APPLICATION

This is not a planning application and the planning merits are not relevant to this submission. Rather the applicant seeks to prove by the submission of evidence that the two flats have been in place for a period in excess of 4 years and is therefore immune from enforcement action.

The relevant test of the evidence is "the balance of probability" 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.

The applicant must prove that the two flats referred to in the application were lawful for planning purposes on the date of the application. In this instance the relevant period commences on 10/03/2000

Information Provided

Information provided	Date and method of verification	Officer's comments
Council Tax Bill for Ground Floor Flat dated 10/03/2000	Original copy provided	
Council Tax Bill for Ground Floor Flat dated 12/03/2001	Original copy provided	
Council Tax Bill for Ground Floor Flat dated 24/05/2006	Original copy provided	
Council Tax Bill for Ground Floor Flat dated 03/03/2012	Original copy provided	
Council Tax Bill for Ground Floor Flat dated	Original copy provided	

28/02/2009		
Council Tax Bill for Ground Floor Flat dated 20/04/2011	Original copy provided	
Council Tax Bill for Ground Floor Flat dated 03/03/2012	Original copy provided	
Council Tax Bill for Ground Floor Flat dated 08/12/2014	Original copy provided	
British Gas enquiry for upper and lower floor flats dated 04/01/2015	Original copy provided	
E-on letter for Ground Floor dated 24/01/2015	Original copy provided	
E-on letter for First Floor dated 24/01/2015	Original copy provided	
British Gas Bill Ground Floor dated 15/05/2012	Original copy provided	
British Gas Bill Ground Floor dated 13/05/2010	Original copy provided	
British Gas Bill Ground Floor dated 13/08/2012	Original copy provided	
British Gas Bill Ground Floor dated 14/08/2008	Original copy provided	
British Gas Bill Ground Floor dated 11/11/2008	Original copy provided	
British Gas Bill Ground Floor dated 08/08/2009	Original copy provided	
British Gas Bill Ground Floor dated 13/11/2009	Original copy provided	
British Gas Bill Ground Floor dated 23/02/2009	Original copy provided	
British Gas Bill Ground Floor dated 12/02/2013	Original copy provided	

British Gas Bill Ground Floor dated 19/02/2012	Original copy provided	
British Gas Bill Ground Floor dated 17/11/2012	Original copy provided	
Powergen Bill Ground Floor dated 25/02/2007	Original copy provided	
Powergen Bill Ground Floor dated 6/09/2007	Original copy provided	
Powergen Bill Ground Floor dated 21/06/2007	Original copy provided	
Powergen Bill Ground Floor dated 29/11/2008	Original copy provided	
Powergen Bill Ground Floor dated 06/06/2009	Original copy provided	
Powergen Bill Ground Floor dated 03/09/2009	Original copy provided	
Powergen Bill Ground Floor dated 08/05/2008	Original copy provided	
Powergen Bill Ground Floor dated 01/06/2007	Original copy provided	
Council Tax Bill for First Floor Flat dated 03/03/2013	Original copy provided	
Council Tax Bill for First Floor Flat dated 03/03/2012	Original copy provided	
Council Tax Bill for First Floor Flat dated 19/07/2012	Original copy provided	
Council Tax Bill for First Floor Flat dated 08/12/2014	Original copy provided	
British Gas for First Floor dated 12/05/2009	Original copy provided	
British Gas for First Floor	Original copy provided	

dated 5/06/2007		
British Gas for First Floor dated 13/11/2009	Original copy provided	
British Gas for First Floor dated 03/08/2012	Original copy provided	
British Gas for First Floor dated 18/02/2012	Original copy provided	
British Gas for First Floor dated 16/06/2012	Original copy provided	
British Gas for First Floor dated 12/02/2013	Original copy provided	
British Gas for First Floor dated 3/08/2012	Original copy provided	
British Gas for First Floor dated 12/02/2013	Original copy provided	
British Gas for First Floor dated 12/05/2010	Original copy provided	
British Gas for First Floor dated23/02/2010	Original copy provided	
British Gas for First Floor dated18/02/2012	Original copy provided	
British Gas for First Floor dated 15/05/2012	Original copy provided	
British Gas for First Floor dated 13/05/2008	Original copy provided	
British Gas for First Floor dated 16/08/2008	Original copy provided	
British Gas for First Floor dated 8/08/2009	Original copy provided	
Powergen bill for First Floor dated 03/03/2010	Original copy provided	
Powergen bill for First Floor dated 27/03/2010	Original copy provided	

Powergen bill for First Floor dated 28/08/2008	Original copy provided	
Powergen bill for First Floor dated 05/06/2008	Original copy provided	
Powergen bill for First Floor dated 29/11/2008	Original copy provided	
Powergen bill for First Floor dated 28/03/2014	Original copy provided	
Powergen bill for First Floor dated 08/03/2012	Original copy provided	
Powergen bill for First Floor dated 3/09/2009	Original copy provided	
Powergen bill for First Floor dated 5/12/2009	Original copy provided	
Powergen bill for First Floor dated 18/02/2010	Original copy provided	

9. SUMMARY AND CONCLUSION

The Council have no evidence which would contradict that which has been provided by the applicant therefore it is considered that 'on the balance of probability' that the property has been in use continuously as 2 self-contained flats for a period of at least 4 years.

10. RECOMMENDATION

GRANT CERTIFICATE

Registered No. HGY/2013/0221

Applicant's submissions: