LIST OF RECOMMENDATIONS UNDER DELEGATED POWERS 24/07/2015

REPORT FOR CONSIDERATION UNDER DELEGATED POWERS

1. APPLICATION DETAILS

Reference No: HGY/2015/1609 **Ward:** Muswell Hill

Date received: 01/06/2015

Drawing number of plans: Email from Haringey Council Tax; Email from Thames Water; Tenancy Agreement for Ground Floor flat; Tenancy Agreement for First Floor flat; Location Plan; Floor Plans

Address: 15 Muswell Hill Road N10 3JB

Proposal: Certificate of lawfulness for use of property as two flats

Applicant: Mr Steven Webster

Ownership: Private

Officer contact: Adam Flynn

2. RECOMMENDATION

GRANT CERTIFICATE

3. PROPOSED DEVELOPMENT AND LOCATION DETAILS

The application is for a certificate of lawfulness for the existing use of the property as two self-contained flats.

The property is a three-storey semi-detached property located on the western side of Muswell Hill Road. The property is in use as flats.

4. RELEVANT PLANNING AND ENFORCEMENT HISTORY PLANNING APPLICATION HISTORY

No relevant history.

5. CONSULTATION RESPONSE

5.1 No consultees were required as part of this application.

6. LOCAL REPRESENTATIONS

6.1 No neighbour consultees were required as part of this application.

7. 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.

8. 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 residential use has 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 use referred to in the application were lawful for planning purposes on the date of the application. In this instance the relevant period commences on 01/06/2015.

Information Provided:

Information provided	Officer's comments
Email from Haringey Council Tax stating properties have been billed as separate dwellings since 1993	The information provided demonstrates that the conversion occurred some time during the 1990s, which is well in excess of the required 4 years.
Email from Thames Water stating two flats have had separate water accounts since 1998 and 1999	
Tenancy Agreement for Ground Floor flat dated January 2011	
Tenancy Agreement for First Floor flat dated February 2008	

The Council Tax valuation list (www.voa.gov.uk) has confirmed the individual flat has been liable for council tax for a number of years.

On balance, the Council considers the supporting evidence in conjunction with the council tax records, is compelling to demonstrate that the establishment of the flats occurred over 4 years ago. Whilst there is no information confirming the continous use of the property as flats for this period, there is no evidence to the contrary to justify refusal.

As such, the application proves that the two flats on the balance of probability have been in continuous use and available for occupation for more than the last 4 years as set out in section 171B of the Town and Country Planning Act 1990.

9. SUMMARY AND CONCLUSION

The applicant has demonstrated that on the balance of probability that the two flats have been in use for a period of 4 years and has become immune from enforcement action and is therefore lawful.

10. RECOMMENDATION

GRANT CERTIFICATE

Registered No. HGY/2015/1609

Applicant's submissions: Email from Haringey Council Tax; Email from Thames Water; Tenancy Agreement for Ground Floor flat; Tenancy Agreement for First Floor flat; Location Plan; Floor Plans