LIST OF RECOMMENDATIONS UNDER DELEGATED POWERS

REPORT FOR CONSIDERATION UNDER DELEGATED POWERS

1. APPLICATION DETAILS

Reference No: HGY/2015/2383 **Ward:**

Date received: 14/08/2015

Drawing number of plans: Applicant's submissions: Annotated photographs of previous and existing condition of the basement flat, Covering letter, YVA Solicitors confirming the purchase of the basement flat, Litchfields letter confirming the self-contained unit in January 2014, L&L Builders

Address: 3C Wolseley Road N8 8RR

Proposal: Use of property as a flat (certificate of lawfulness for an existing use)

Applicant: Mr Christakis Charalahbous London Provincial Ltd

Ownership: Private

Site Visit Date: 27/03/2015

Officer contact: Aaron Lau

1. RECOMMENDATION

GRANT CERTIFICATE

2. PROPOSED DEVELOPMENT AND LOCATION DETAILS

This application is for use of property at 3C Wolseley Road as a lower ground floor 2 bedroom flat located on the southern side of Wolseley Road.

3. RELEVANT PLANNING AND ENFORCEMENT HISTORY PLANNING APPLICATION HISTORY

HGY/2015/0694 - Use of property as a flat (certificate of lawfulness for an existing use) – refused 30/04/2015

HGY/2014/3353 – Extension to a ground floor flat, changes to the fenestration and internal amendments – approved 20/01/2015

OLD/1987/2171 - Digging out of basement area to create additional habitable rooms together with insertion of new windows at basement level. – approved 13/03/1987

4. CONSULTATION RESPONSE

5.1 The following were consulted regarding the application:

No consultees

6. LOCAL REPRESENTATIONS

6.1 The following were consulted:

No consultees

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 the use of the flat has been in continuous use 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 August 2011.

Information Provided

Information provided	Date and method of verification	Officer's comments
Previous evidence		
Affidavit from Mr Steven Dilley	22 October 2014	Alleged occupation of the basement flat for the period 2007 to October 2014
Southern Electric utility bill	10 February 2015	Gas bill period covering 10 December 2014 to 9 February

		2015 at 3C Wolseley Road
Tenancy agreement between Mr David Lee and London Provincial Limited	22 October 2014	
New evidence submitted under this certificate application		
Annotated photographs of previous and existing condition of the basement flat		
Covering letter	8 May 2015	
YVA Solicitors confirming the purchase of the basement flat	5 May 2015	
Litchfields letter confirming the self-contained unit in January 2014		
L&L Builders invoice	14 March 2006	

The VOA website confirms that the upper portion of the property has been registered as a single dwelling property known as MAIS UPPER 3A, WOLSELEY ROAD, HORNSEY, LONDON, N8 8RR (ref. 838501001) since 1997. The rest of the property which comprises the ground and lower ground floors (ref. 838500905) is currently exempt from council tax as it is deemed unfit for habitation whilst works are being carried out on the site.

Notwithstanding the CTAX records, there is sufficient evidence based on the previous and current submission and as a whole to demonstrate the lower ground basement floor flat known as 3C Wolseley Road has been in occupation for a continuous period of 4 years or longer.

9. SUMMARY AND CONCLUSION

The applicant has demonstrated that on the balance of probability that basement flat at No. 3C Wolseley Road has been in existence for a period of 4 years and has become immune from enforcement action and is therefore lawful.

10. RECOMMENDATION

GRANT CERTIFICATE

Registered No. HGY/2015/2383

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