LIST OF RECOMMENDATIONS UNDER DELEGATED POWERS

REPORT FOR CONSIDERATION UNDER DELEGATED POWERS

1. APPLICATION DETAILS

Reference No: HGY/2015/3206 **Ward:** Crouch End

Date received: 29/10/2015

Last amended date: DD/MM/YYYY

Drawing number of plans: unnumbered

Address: 62 Coolhurst Road N8 8EU

Proposal: Certificate of Lawfulness for the use of garage as a studio flat

Applicant: Mr Paul Sowerbutts

Ownership: Private

Officer contact: Sarah Madondo

2. RECOMMENDATION

GRANT CERTIFICATE

3. PROPOSED DEVELOPMENT AND LOCATION DETAILS

Permission is sought for certificate of lawfulness for use of existing garage as studio flat

4. RELEVANT PLANNING AND ENFORCEMENT HISTORY PLANNING APPLICATION HISTORY

HGY/2006/0571 ref 05-07-06 r/o 62-70 coolhurst road london erection of 2 x 2 storey two bedroom dwelling houses with associated refuse storage and parking.

HGY/2006/1136 ref 25-07-06 r/o 62-70 coolhurst road london erection of 1 x 2 storey three bedroom dwelling house with associated refuse storage and parking

HGY/2008/0512 GTD 22-04-08 rear of 62-70 coolhurst road london erection of new three bedroom dwellinghouse.

HGY/2009/1045 GTD 04-08-09 r/o 62-70 coolhurst road london erection of 2 x three bedroom semi-detached dwellinghouses.

HGY/2011/1243 GTD 27-09-11 r/o 62-70 coolhurst road london erection of 6 bedroom single dwelling house

HGY/2012/0480 GTD 03-04-12 r/o 62-70 coolhurst road london approval of details pursuant to conditions 5 and 6 (protection of existing trees), conditon 7 (landscaping

scheme) and condition 10 (tree protection method statement) attached to planning permission HGY/2011/1243

HGY/2013/1923 GTD 15-10-13 land r/o 62-70 coolhurst road london approval of details pursuant to condition 3 (materials) attached to planning permission HGY/2011/1243

HGY/2015/0610 GTD 26-05-15 62-70 coolhurst road london part demolition of the existing 3 storey terrace of 5 dwelling houses, and construction of extensions and other alterations to provide a new 4 storey terrace of 5 dwelling houses with roof terraces and basement garages, including new 2 storey infill extension to no. 62

HGY/2015/3206 pending 00-00-00 62 coolhurst road london certificate of lawfulness for the use of garage as a studio flat

OLD/1978/0193 GTD 12-10-78 62-70 coolhurst road 4/7/78 increase the height of a wall for the purpose of levelling out a garden (70).

OLD/1981/0935 ref 18-08-81 62-70 coolhurst road 27/4/81 erection of new three bedroom detached dwelling (62).

OLD/1982/0960 ref 22-07-82 62-70 coolhurst road 19/4/82 erection of new dwelling house at the rear of 62.

OLD/9999/1307 --- 62-70 coolhurst road

Planning Pre/2014/0123 pasent 11-11-14 62-70 coolhurst road hornsey london extension and alteration of residential block of 5 terraced houses

Planning complaints cou/2015/00504 00-00-00 62 coolhurst road hornsey

Planning complaints dep/2015/00245 closed 00-00-00 62-70 coolhurst road london

Planning complaints unw/2014/00811 closed 00-00-00 62-70 coolhurst road london

Tree preservation orders con/2007/0218 62 coolhurst road hornsey london see specification

Tree preservation orders tpo/2014/1632 62-70 coolhurst road hornsey london london borough of haringey tree: t1 sycamore attached tpo

5. CONSULTATION RESPONSE

5.1 The following were consulted regarding the application:

State the statutory and internal consultees consulted or state no consultees

The following responses were received :

Internal:
1) Building Control

2) Housing

6. LOCAL REPRESENTATIONS

6.1 The following were consulted:

None

5.1 The received from neighbours, local groups etc in response to notification were as follows:

None

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 garage as studio flat has been in continuous use for a period in excess of 10 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 2007

Information Provided

Information provided	Date and method of	Officer’s comments

	verification	
Tenancy agreements dated from 2008 to 2014		Tenancy agreement cover more than 4 years
Sworn declaration	Phoned solicitors 11th Dec	Solicitors confirmed that this is legally document was sworn in his presence
Black Katz Estate Agent Zoopla showing the property was previously listed for rent Property has a separate front door	Estate agent confirmed via telephone 19/01/2016 Checked the Zoopla website. 19/01/2016 Checked google maps which shows that there is a separate door to access the flat.	The flat has been let and managed by the Black Katz estate agent. Also the Estate Agent have confirmed this by a sworn declaration Information from the Zoopla website shows that the property was listed for rent from 2012 which covers 4 years Google maps shows that the structure next to 62 Coolhurst Road had a separate door since 2008 indicating that this could have been used as separate unit for more 4 years.

9. SUMMARY AND CONCLUSION

The applicant has demonstrated that on the balance of probability the garage structure has been used for a period of 4 years as a self contained unit and is immune from enforcement action and is therefore lawful.

10. RECOMMENDATION

GRANT CERTIFICATE

Registered No. HGY/2015/3206

Applicant's submissions: unnumbered