LIST OF RECOMMENDATIONS UNDER DELEGATED POWERS

REPORT FOR CONSIDERATION UNDER DELEGATED POWERS

1. APPLICATION DETAILS

Reference No: HGY/2015/3055 **Ward:** Hornsey

Date received: 16/10/2015

Last amended date: N/A

Drawing number of plans: 201481.P.2100, 201481.P.2101 (existing floor plans for 10A and 10D High Street), Letter from Bracewells dated 4 December 2014 advising letting details for 10A, 10C and 10D High Street, Domestic Electircal Installation Condition Report for 10A High Street, dated 10/10/2009, Domestic Electircal Installation Condition Report for 10D High Street, dated 10/10/2009, Unsigned lease agreement for 10a High Street dated 3 January 2010 for a term of 3 years, Unsigned assured shorthold tenancy for 10A High Street dated 11 February 2013 for a term of 6 months, Unsigned assured shorthold tenancy for 10D High Street dated 22 January 2010 for a term of 12 months

Address: Land to rear of 10 High Street, N8 7PB

Proposal: Certificate of Lawfulness for use as two self contained flats

Applicant: Mr Peter Apicella

Ownership: Private

Officer contact: Tobias Finlayson

2. RECOMMENDATION

REFUSE CERTIFICATE

3. PROPOSED DEVELOPMENT AND LOCATION DETAILS

The application seeks a certificate of lawfullness for the existing use of property as two self contained flats.

4. 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.

5. 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 use of the property as 2 self-contained flats 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 was lawful for planning purposes on the date of the application. In this instance the relevant period commences on 16 October 2011.

6.1 Evidence submitted

The evidence submitted does not show that the property has been in continual use for a period of at least 4 years from the date the application was made. Firstly, the letter from Bracewells dated 4 December 2014 only confirms that flat 10A has been let since February 2013. Secondly, the tenancy agreements provided do not cover all of the required 4 year period. Furthermore, they are also unsigned or witnessed and therefore carry very little evidential weight. It is also noted that no utility bills or sworn affidavits have been provided, which would otherwise assist in giving evidential weight to the application.

Furthermore, there is evidence to the contrary to the claim that the 2 flats have been in use for at least 4 years prior to the application date. The first piece of contrary evidence is the VOA Council tax details showing the 2 flats with effect from 20/09/2014. The second piece of evidence is an online aerial photograph record dated 26/05/2012 that shows, as of that date, no building having been built on the application site.

6.2 Summary and conclusion

The applicant has failed to demonstrate that on the balance of probabilities and in the presence of information to the contrary that the application site has been in continual use

as 2 self-contained flats for a period of at least 4 years from the date of this application and is therefore unlawful.

6. RECOMMENDATION

REFUSE CERTIFICATE
Registered No. HGY/2015/3055

Applicant's submissions: 201481.P.2100, 201481.P.2101 (existing floor plans for 10A and 10D High Street), Letter from Bracewells dated 4 December 2014 advising letting details for 10A, 10C and 10D High Street, Domestic Electircal Installation Condition Report for 10A High Street, dated 10/10/2009, Domestic Electircal Installation Condition Report for 10D High Street, dated 10/10/2009, Unsigned lease agreement for 10a High Street dated 3 January 2010 for a term of 3 years, Unsigned assured shorthold tenancy for 10A High Street dated 11 February 2013 for a term of 6 months, Unsigned assured shorthold tenancy for 10D High Street dated 22 January 2010 for a term of 12 months

The application has failed to demonstrate that on the balance of probabilities and in the presence of information to the contrary that the application site has been in continual use as two self-contained flats for a period of at least 4 years from the date of this application and is therefore unlawful.