LIST OF RECOMMENDATIONS UNDER DELEGATED POWERS 22/04/2016

REPORT FOR CONSIDERATION UNDER DELEGATED POWERS

1. APPLICATION DETAILS

Reference No: HGY/2016/0618 **Ward:** Northumberland Park

Date received: 29/02/2016

Drawing number of plans: DRG/001/251115; OS Map; BT Bill for 84 Brantwood Road dated 16/12/2010; Benefit Decision Notice adressed to 84 Brantwood Road dated 21/09/2009; Benefit Decision Notice adressed to 84 Brantwood Road dated 02/04/2010; AST start date 09/08/2009 (address and names not legible and unsigned); Tenancy Agreement Front Room 1st Floor Flat dated 09/08/2010 (unsigned); Tenancy Agreement Front Room 1st Floor Flat dated 09/08/2011 (unsigned); Tenancy Agreement Front Room 1st Floor Flat dated 09/08/2012 (unsigned); Tenancy Agreement Front Room 1st Floor Flat dated 09/08/2013 (unsigned); Tenancy Agreement Front Room 1st Floor Flat dated 09/08/2014 (unsigned); Tenancy Agreement Front Room 1st Floor Flat dated 09/08/2015 (unsigned); Tenancy Agreement BackRoom 1st Floor Flat dated 05/08/2009 (unsigned); Tenancy Agreement BackRoom 1st Floor Flat dated 12/08/2010 (unsigned); Tenancy Agreement BackRoom 1st Floor Flat dated 12/08/2011 (unsigned); Tenancy Agreement BackRoom 1st Floor Flat dated 12/08/2012 (unsigned); Tenancy Agreement BackRoom 1st Floor Flat dated 12/08/2013 (unsigned); Tenancy Agreement BackRoom 1st Floor Flat dated 12/08/2014 (unsigned); Tenancy Agreement BackRoom 1st Floor Flat dated 12/08/2015 (unsigned); Tenancy Agreement Ground Floor Flat dated 05/02/2013 (unsigned); Tenancy Agreement Ground Floor Flat dated 10/09/2013 (unsigned); Landlord Gas Safety Certificate 84 Brantwood Road Flat A dated 15/10/2011; Landlord Gas Safety Certificate 84 Brantwood Road Flat B dated 15/10/2011; AST Front Room 1st Floor Flat 84 Brantwood Road dated 02/08/2009 (unsigned); Comfirmation of completion of works dated 25/10/2008; Affidavit by Alexandru Balint dated 29/02/2016; 2 pages from Landlord'sTenancy Agreement with no address (signed but not dated).

Address: 84 Brantwood Road N17 0EU

Proposal: Use of property as 2 self-contained flats

Applicant: Mr David Dowling

Ownership: Private

Site Visit Date: 22/04/2016

Officer contact: Fortune Gumbo

2. RECOMMENDATION

GRANT CERTIFICATE

3. PROPOSED DEVELOPMENT

Certificate of Lawfulness for use of property as two self contained flats.

4. RELEVANT PLANNING AND ENFORCEMENT HISTORY PLANNING APPLICATION HISTORY

HGY/2007/0263 PERM DEV 27-02-07 84 Brantwood Road Tottenham London Erection of rear dormer to facilitate a loft conversion. (Certificate of lawfulness proposed).

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.

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, continuously, 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 29/02/2016. The relevant period in this instance runs from 29/02/2012 to 29/02/2016.

Section 191 (2) (a) of the TCPA 1990 indicates that a use is lawful if the time limit for enforcement action has expired. The time limit for enforcement action relating to the conversion of a property into flats and the new development as set out in section 171B of the Town and Country Planning Act 1990 is four years of continuous/existing use.

This being the case, reasonable evidence must be provided by the applicant to demonstrate that on the balance of probability the flats have been in existing or in continuous use and available for occupation for at least the last four years.

The Courts have held that the relevant test of the evidence on such matters is "the balance of probability". As this test will accordingly be applied by the Secretary of State in any

appeal against their decision, a Local Planning Authority (LPA) should not refuse a certificate because the applicant has failed to discharge the stricter, criminal burden of proof, namely "beyond reasonable doubt". Moreover, the Court has held (see *F W Gabbitas v SSE and Newham LBC* [1985] JPL 630) that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the LPA have no evidence of their own, or 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 "on the balance of probability". The LPA should proceed on the basis that neither the identity of the applicant (except to the extent that he or she may or may not be able personally to confirm the accuracy of any claim being made about the history of a parcel of land), nor the planning merits of the operation, use or activity, are relevant to the consideration of the purely legal issues which are involved in determining an application'.

Council Tax

The Council Tax valuation list (www.voa.gov.uk) has confirmed the individual flats known as:

FLAT GND FLR AT 84, BRANTWOOD ROAD, LONDON, N17 0EU; and
FLAT 1ST FLR AT 84, BRANTWOOD ROAD, LONDON, N17 0EU;

have been liable for council tax since at least 10/09/2013.

Evidence submitted

DRG/001/251115; OS Map; BT Bill for 84 Brantwood Road dated 16/12/2010; Benefit Decision Notice adressed to 84 Brantwood Road dated 21/09/2009; Benefit Decision Notice adressed to 84 Brantwood Road dated 02/04/2010; AST start date 09/08/2009 (address and names not legible and unsigned); Tenancy Agreement Front Room 1st Floor Flat dated 09/08/2010 (unsigned); Tenancy Agreement Front Room 1st Floor Flat dated 09/08/2011 (unsigned); Tenancy Agreement Front Room 1st Floor Flat dated 09/08/2012 (unsigned); Tenancy Agreement Front Room 1st Floor Flat dated 09/08/2013 (unsigned); Tenancy Agreement Front Room 1st Floor Flat dated 09/08/2014 (unsigned); Tenancy Agreement Front Room 1st Floor Flat dated 09/08/2015 (unsigned); Tenancy Agreement BackRoom 1st Floor Flat dated 05/08/2009 (unsigned); Tenancy Agreement BackRoom 1st Floor Flat dated 12/08/2010 (unsigned); Tenancy Agreement BackRoom 1st Floor Flat dated 12/08/2011 (unsigned); Tenancy Agreement BackRoom 1st Floor Flat dated 12/08/2012 (unsigned); Tenancy Agreement BackRoom 1st Floor Flat dated 12/08/2013 (unsigned); Tenancy Agreement BackRoom 1st Floor Flat dated 12/08/2014 (unsigned); Tenancy Agreement BackRoom 1st Floor Flat dated 12/08/2015 (unsigned); Tenancy Agreement Ground Floor Flat dated 05/02/2013 (unsigned); Tenancy Agreement Ground Floor Flat dated 10/09/2013 (unsigned); Landlord Gas Safety Certificate 84 Brantwood Road Flat A dated 15/10/2011; Landlord Gas Safety Certificate 84 Brantwood Road Flat B dated 15/10/2011; AST Front Room 1st Floor Flat 84 Brantwood Road dated 02/08/2009 (unsigned); Comfirmation of completion of works dated 25/10/2008; Affidavit by Alexandru Balint dated 29/02/2016; 2 pages from Landlord'sTenancy Agreement with no address (signed but not dated).

Conclusions

There is more information submitted since the last refused certificate application. However, even though the additional evidence does is unsigned tenancy agreements, the LPA has no evidence to the contrary or make the applicant's version of events less than plausible.

This property has been investigated by planning enforcement for the unauthorised material change of use to two flats in 2013 and based on the evidence submitted by the owner, it was considered that the development was immune from enforcement action.

The application proves that the residential units, 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 and it has been demonstrated to the satisfaction of the Local Planning Authority that the continued use of the 2 self-contained units at 84 Brantwood Road N17 0EU is lawful within the meaning of S191(2)(a) of the Town and Country Planning Act 1990.

7. RECOMMENDATION

GRANT CERTIFICATE

Registered No. HGY/2016/0618

Applicant's submissions: DRG/001/251115; OS Map; BT Bill for 84 Brantwood Road dated 16/12/2010; Benefit Decision Notice adressed to 84 Brantwood Road dated 21/09/2009; Benefit Decision Notice adressed to 84 Brantwood Road dated 02/04/2010; AST start date 09/08/2009 (address and names not legible and unsigned); Tenancy Agreement Front Room 1st Floor Flat dated 09/08/2010 (unsigned); Tenancy Agreement Front Room 1st Floor Flat dated 09/08/2011 (unsigned); Tenancy Agreement Front Room 1st Floor Flat dated 09/08/2012 (unsigned); Tenancy Agreement Front Room 1st Floor Flat dated 09/08/2013 (unsigned); Tenancy Agreement Front Room 1st Floor Flat dated 09/08/2014 (unsigned); Tenancy Agreement Front Room 1st Floor Flat dated 09/08/2015 (unsigned); Tenancy Agreement BackRoom 1st Floor Flat dated 05/08/2009 (unsigned); Tenancy Agreement BackRoom 1st Floor Flat dated 12/08/2010 (unsigned); Tenancy Agreement BackRoom 1st Floor Flat dated 12/08/2011 (unsigned); Tenancy Agreement BackRoom 1st Floor Flat dated 12/08/2012 (unsigned); Tenancy Agreement BackRoom 1st Floor Flat dated 12/08/2013 (unsigned); Tenancy Agreement BackRoom 1st Floor Flat dated 12/08/2014 (unsigned); Tenancy Agreement BackRoom 1st Floor Flat dated 12/08/2015 (unsigned); Tenancy Agreement Ground Floor Flat dated 05/02/2013 (unsigned); Tenancy Agreement Ground Floor Flat dated 10/09/2013 (unsigned); Landlord Gas Safety Certificate 84 Brantwood Road Flat A dated 15/10/2011; Landlord Gas Safety Certificate 84 Brantwood Road Flat B dated 15/10/2011; AST Front Room 1st Floor Flat 84 Brantwood Road dated 02/08/2009 (unsigned); Comfirmation of completion of works dated 25/10/2008; Affidavit by Alexandru Balint dated 29/02/2016; 2 pages from Landlord'sTenancy Agreement with no address (signed but not dated).

REASON: The application has demonstrated that the residential units, 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 and it has been demonstrated to the satisfaction of the Local Planning Authority that the continued use of the 2 self-contained units at 84 Brantwood Road N17 0EU is lawful within the meaning of S191(2)(a) of the Town and Country Planning Act 1990.