LIST OF RECOMMENDATIONS UNDER DELEGATED POWERS 04/01/2016

REPORT FOR CONSIDERATION UNDER DELEGATED POWERS

1. APPLICATION DETAILS

Reference No: HGY/2015/3307 **Ward:** St Anns

Date received: 09/11/2015

Last amended date: n/a

Drawing number of plans: Site Location Plan, 1075/02 Rev #, Affidavit by the The Owner Costas Tsikkos confirming flats rented self contained since January 2004, Tenancy agreements dating back to 2004 for ground and first floor flats, Utility bills from N Power, Siemens, Voter Registration forms, VOA Council Tax record confirming payment for 2 flat dating back to 2007.

Address: 3 Abbotsford Avenue N15 3BT

Proposal: Certificate of Lawfulness fro use of property as two self contained flats

Applicant: Mr Costas Tsikkos

Ownership: Private

Officer contact: Eoin Concannon

2. RECOMMENDATION

GRANT CERTIFICATE

3. PROPOSED DEVELOPMENT AND LOCATION DETAILS

The application site is situated on the western side of Abbotsford Avenue and comprises a two storey mid terrace property subdivided into 2 flats. The property seeks a lawful certificate for its use as 2 self contained flats.

4. RELEVANT PLANNING AND ENFORCEMENT HISTORY PLANNING APPLICATION HISTORY

N/A

5. CONSULTATION RESPONSE

5.1 The following were consulted regarding the application:

No internal or external consultees

6. LOCAL REPRESENTATIONS

6.1 No representation received.

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 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 were lawful for planning purposes on the date of the application. In this instance the relevant period commences on 09/11/2015.

Information Provided

Information provided	Date and method of verification	Officer's comments
Council Tax for the 2 flats	The Council tax records for 2 flat began in 2007	This evidence with the other documents is sufficient to prove that the use has been in place for over 4 years.
Affidavit by the The Owner Costas Tsikkos confirming flats rented self contained	The site operates are flats since January 2004.	The legal document is sworn under oath and with the other evidence provided is sufficient to prove the use is established over 4 years.
Tennacy agreements for both flats	The agreements date back to	

	January 2004.	
Utility bills and voter registration forms for 2 flats.	Various dates provided pre/post Nov 2011	The dates on the utility bills are pre November 2011. The address on the letter refers to ground floor/first floor flat 3 Abbotsford Avenue.

9. SUMMARY AND CONCLUSION

The applicant has demonstrated that on the balance of probability that the property. has been subdivided into 2 flats for a period of 4 years and has become immune from enforcement action and is therefore lawful.

10. RECOMMENDATION

GRANT CERTIFICATE

Registered No. HGY/2015/3307

Applicant's submissions: Site Location Plan, 1075/02 Rev #, Affidavit by the The Owner Costas Tsikkos confirming flats rented self contained since January 2004, Tenancy agreements dating back to 2004 for ground and first floor flats, Utility bills from N Power, Siemens, Voter Registration forms, VOA Council Tax record confirming payment for 2 flat dating back to 2007.