LIST OF RECOMMENDATIONS UNDER DELEGATED POWERS

REPORT FOR CONSIDERATION UNDER DELEGATED POWERS

1. APPLICATION DETAILS

Reference No: HGY/2016/0804 **Ward:** Fortis Green

Date received: 11/03/2016

Drawing number of plans:

Address: Ground Floor Front Flat 111-113 Fortis Green N2 9HR

Proposal: Use of property as self-contained residential unit

Applicant: Mr Vincent Summers

Ownership: Private

Officer contact: Sarah Madondo

2. RECOMMENDATION

GRANT CERTIFICATE

3. PROPOSED DEVELOPMENT AND LOCATION DETAILS

The application site is located on Fortis Green, and is situated close to the corner with Fortis Green Avenue. The application site lies within the Fortis Green Conservation Area. The property is a semi-detached property adjacent to a Police Station. The site comprises of three-storeys with the ground floor front and rear converted into residential.

4. RELEVANT PLANNING AND ENFORCEMENT HISTORY PLANNING APPLICATION HISTORY

HGY/1989/0298 REF 15-08-89 111 Fortis Green London Erection pf three storey office block together with five car parking spaces and erection of one 2 storey,3 bedroom and one 2 storey, 2bedroom house together with 2 car parking spaces.

HGY/1989/0300 GTD 27-02-90 Fortis Green Brewery 111 Fortis Green London Erection of three storey office block together with 5 car parking spaces and the erectiion of one 2 storey 3 bedroom house and one 2 storey 2 bedroom house together with 2 car parking spaces.

HGY/1989/0460 REF 15-08-89 111 Fortis Green London Conservation area consent for demoltion of exisiting unlisted buildings and garages

HGY/1991/0263 GTD 20-08-91 111 Fortis Green London Erection of single storey rear extension.

HGY/1994/0927 PNR 09-08-94 Side of 113- 117 Fortis Green Road London Installation of Cable TV junction box cabinet.

HGY/1995/1266 GTD 09-01-96 111 Fortis Green London Details pursuant to Condition regarding materials attached to planning permission HGY43335 for erection of single storey rear extension.

HGY/2004/1857 REF 05-10-04 111-113 Fortis Green London Erection of a single storey to existing two storey building to provide additional floor comprising of three bedroom flat.

OLD/1962/0215 GTD 19-12-62 111-113 Fortis Green Alterations and new, shopfront.

OLD/1980/0913 REF 04-11-80 111-113 Fortis Green 2/9/88 Rebuilding of garages 1-8 with offices over. (No.111).

OLD/1986/0383 GTD 11-03-86 111-113 Fortis Green London 15/1/86 Erection of single storey rear extension to provide ancillary office floor space. (No.111).

OLD/1986/1142 WDN 31-10-86 Datasound 111-113 Fortis Green London 28/7/86 Use of site for parking in connection with commercial van.

OLD/1986/1143 WDN 31-10-86 Datasound 111-113 Fortis Green London 29/7/86 Listed Building Consent for demolition of 7 garages.

OLD/9999/1793 111 Fortis Green 17/5/89 Erection of three storey office block together with five car parking spaces and erection of one 2 storey, 3 bed house and one 2 storey, 2 bed house togther with 2 car parking spaces.
OLD/9999/1794 --- 111-113 Fortis Green

OLD/9999/1795 111-113 Fortis Green Demolition of 7 garages and erection of portacabin to be used as office.

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 ground floor front 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 01/08/2011

Information Provided

Information provided	Date and method of verification	Officer's comments
Council Tax	Emailed Council Tax department 3/5	The VOA website shows that Council tax shows was paid from 2011 which reflects more than 4 years
Sworn Declaration from builder Zelltec Contruction Services	Telephone call 05/05	Sworn declaration confirms that Zelltec Construction Services Ltd carried out the works to convert the ground floor front into a self contained flat. The works were carried out in February 2011. Also the same company has provided an invoice

		with details of the work carried out. This shows evidence of more than 4 years
Invoice from ZellTec	Invoice dated 31/08/2011	As above invoice is dated more 4 years ago
Tenancy Agreement dated 1/09/2011		The agreement reflects more than 4 years
Thames Water bill dated		This bill does not cover the 4 years 4/09/2013
BT Bill dated 12/09/2013		This bill does not reflect 4 years
Electricity bill dated 31/12/2011		The address on this bill just shows 111-113 Fortis Green and not the flat
Sworn declaration director of V & K properties Ltd	Google maps history shows that the ground floor front elevation was an active shopfront from 2008 and in 2012 this changed to non active shofront	The property was purchased in 2010 and planning permission was obtained to convert the rear into residential and then work to the front also commenced without planning permission to convert the property from B1 (office) to residential. Evidence from google map history shows it was an active shop front from 2008 and then changed to non active in 2012. This reflects more than 4 years

9. SUMMARY AND CONCLUSION

The applicant has demonstrated that on the balance of probability that residential use has been in use for a period of 4 years and has become immune from enforcement action and is therefore lawful.

10. RECOMMENDATION

GRANT CERTIFICATE

Registered No. HGY/2016/0804