LIST OF RECOMMENDATIONS UNDER DELEGATED POWERS

REPORT FOR CONSIDERATION UNDER DELEGATED POWERS

1. APPLICATION DETAILS

Reference No: HGY/2016/0426 **Ward:** Bruce Grove

Date received: 09/02/2016

Last amended date: N/a

Drawing number of plans: Tenancy agreement 2005; Email from Thames Water; Council Tax letter 2015/16; Skypark (Scottish power); Statutory Declaration.

Address: 178 Philip Lane N15 4JW

Proposal: Certificate of Lawfulness for use of rear structure/area as residential

Applicant: Mr Colin Ademosu

Ownership: Private

Officer contact: Samuel Uff

2. RECOMMENDATION

REFUSE CERTIFICATE

3. PROPOSED DEVELOPMENT AND LOCATION DETAILS

The application site is at the end of a commercial building on Philip Lane and is accessed via a rear alley. The studio is currently in use as a self-contained residential unit.

4. RELEVANT PLANNING AND ENFORCEMENT HISTORY PLANNING APPLICATION HISTORY

HGY/2002/0411 GTD 21-05-02 Alleyway Rear Of 178-190 Philip Lane London Erection of an entrance gate fronting Dongola Road.

OLD/1989/1575 GTD 17-05-89 178 Philip Lane London 22/2/89 Self-containment of two flats above launderette.

5. CONSULTATION RESPONSE

5.1 No consultation undertaken.

6. LOCAL REPRESENTATIONS

6.1 None required.

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 residential use has been in continuous use for and 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 January 2004, but the 4 years would be 04/04/2012.

Information Provided

Information provided	Date and method of verification	Officer's comments
Tenancy agreement	2005	This references "Ground floor 178", not studio flat. Not an original document.
Email from Thames Water	January 2004	Screen shot of an email. References Mr Ademosu as having a water account from 2004 but no reference to this being studio. Reference is for "The Shop, 178 Philip Lane", which seems contradictory to this being for the studio part of the unit.
Council Tax letter	2015/16	This refers to "Ground floor – rear studio" but is since the complaint was made.

Skypark (Scottish power)	2004	Screen shot of an email. Also makes reference to Mr Ademosu using their service since 2004 but is no-specific to the "Studio". No reference to outbuilding / studio or even 178 Philip Lane is given.
Statutory Declaration	2006	Neighbour at 180A (Fattemmah Ettehad). This seems reasonable as a declaration and references the relevant time period.

A complaint was received for the site in 2015. The initial enforcement notes for the site refer to a conversation with Mr Ademosu in which the enforcement notes state: *"He admitted that he has a small bedsit at the rear that he has been renting out for about a year."*

The current tenant states that she has been living in there for approximately a year, which is supported by the council tax records (registered in 2015). The tenancy agreement in 2005 is not an original document and there is no record of tenancy agreements in the intermittent 10 years until the current tenant.

There are documents regarding meters and accounts under Mr Ademosu's name but these are non specific to the studio at the rear of the site, or do not even refer to the site at all. The statutory declaration would add support to any factual submissions that this was in continuous use, but insufficient evidence has been submitted in this regard. It seems odd that the applicant would have no site specific evidence of the self containment of this unit other than a statement from a neighbour.

Given that Council records show that this has not been a registered unit for that period, the level of information is considered to be inadequate to contradict the assertion that this is has been a self-contained unit.

9. SUMMARY AND CONCLUSION

The applicant has failed to demonstrate that on the balance of probability that the use of the self-contained studio has been in continuous use for a period of 4 years.

10. RECOMMENDATION

REFUSE CERTIFICATE

Registered No. HGY/2016/0426

Applicant's submissions: Tenancy agreement 2005; Email from Thames Water; Council Tax letter 2015/16; Skypark (Scottish power); Statutory Declaration.

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