LIST OF RECOMMENDATIONS UNDER DELEGATED POWERS

REPORT FOR CONSIDERATION UNDER DELEGATED POWERS

1. APPLICATION DETAILS

Reference No: HGY/2016/0635 **Ward:** Harringay

Date received: 03/03/2016

Drawing number of plans: PC/2016/001 and OS

Address: Rear Loft Floor 2 Queens Parade Green Lanes N8 0RD

Proposal: Certificate of Lawfulness for use as a studio flat

Applicant: Mrs Norma Hegoda

Ownership: Private

Officer contact: Wendy Robinson

2. RECOMMENDATION

REFUSE CERTIFICATE

3. PROPOSED DEVELOPMENT AND LOCATION DETAILS

The application site relates to a three storey, mid-terrace property located on the western side of Green Lanes close to the junction with Falkland Road. The property consists of a ground floor retail unit with residential above. The property use previously included a solicitor's office. The property is not a Listed Building and is not located within a Conservation Area.

4. RELEVANT PLANNING AND ENFORCEMENT HISTORY PLANNING APPLICATION HISTORY

HGY/1998/0092 GTD 17-03-98 2 Queens Parade, Green Lanes London Change of use of property from mini cab office with residential on upper floor to solicitors office.

HGY/2003/0399 REF 01-05-03 Hegoda & Hegoda Solicitors 2 Queens Parade, Green Lanes London Change of use of second floor to residential use.

HGY/2014/1150 GTD 17-06-14 2 Queens Parade Green Lanes London Demolition of the existing storage building and construction of single storey extension comprising an ancillary office

HGY/2014/2634 GTD 10-11-14 2 Queens Parade Green Lanes London Change of use from studio flats at Second Floor Level into One Bedroom flat and change of use from Office at First Floor Level into One Bedroom Flat.

HGY/2015/1066 REF 08-06-15 2 Queens Parade Green Lanes London Erection of single storey rear extension over existing ground floor extension

HGY/2016/0634 PENDING Loft Floor Front 2 Queens Parade Green Lanes London Certificate of Lawfulness for use as a studio flat

HGY/2016/0636 GTD 26/04/16 First Floor Rear 2 Queens Parade Green Lanes London Certificate of Lawfulness for use as a studio flat

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.

6. 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 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 03/03/2012

Information Provided

Information provided	Date and method of verification	Officer's comments
Tenancy agreement between the applicant and Mr Hussain from 30/11/11 for 12 month period	Copy of agreement dated 30/11/11	Second floor rear studio identified separately

Council Tax reminder	Copy of reminder letter dated 20/08/12	Studio 2 identified separately
Summons for non payment of Council Tax for period 22/06/12 – 31/03/13	Copy of court summons dated 12/09/12	Studio 2 identified separately
Tenancy agreement between the applicant and Mr Suruk and Miss Gokberk from 17/09/12 for 12 month period	Copy of agreement dated 17/09/12	Second floor rear studio identified separately
Tenancy agreement between the applicant and Mr Elbayoumi from 01/03/13 for 12 month period	Copy of agreement dated 28/02/13	Second floor rear studio identified separately
Tenancy agreement between the applicant and Mr Tormey from 23/03/14 for 12 month period	Copy of agreement dated 21/03/14	Studio 2 identified separately
Council Tax bill for period 12/03/15 – 31/03/16	Copy of tax bill dated 11/05/15	Studio 2 identified separately but tax payment reduced as unoccupied and unfurnished from 12/03/15 – 31/03/16
Council Tax bill for period 12/03/15 – 31/03/16	Copy of tax bill dated 10/07/15	Studio 2 identified separately but tax payment reduced as unoccupied and unfurnished from 12/03/15 – 31/03/16
Temporary agreement between the applicant and Mr Wloczewski for period 09/01/16 – 08/02/16	Copy of signed agreement dated 09/01/16	A builder was allowed to occupy Studio 2 for temporary period while conducting or beginning building works at the subject property
Tenancy agreement between the applicant and Mr Manna from 08/03/16 for 12 month period	Copy of agreement dated 07/03/16	Studio 2 identified separately and occupation re-commenced.
Word document with 'chain of events' detailed by the applicant	Non-verified document	Contact from Haringey Council Housing Services requesting a license be sought for studios, plans were submitted by applicant, and exception notice granted until 12/03/15 Application for license was withdrawn and planning permission was obtained

		for 2 studios as 1 bedroom unit Units were made vacant by request of Council (not planning department) to avoid and minimise any Enforcement and immune property from legal action Applicant has personally used the studios during vacant period (no evidence provided) and allowed temporary use by builders which doing work (not clear what building work) Advice from Council (not planning department) to make the subject application and then rented unit again

Evidence provided shows that the studio has not been in residential use between March 2015 and January 2016.

It is noted that Council HMO housing section appear to have been involved recommending the units to be vacated but no evidence has been provided as to any advice given. It is important to note that no Planning Enforcement investigation has been undertaken and therefore no planning advice has been provided to the applicant regarding the studio use and required timeframes of any application.

7. SUMMARY AND CONCLUSION

The applicant has not demonstrated that on the balance of probability that Studio 2 of 2 Queens Parade has been a residential unit for a period of 4 years and is therefore not immune from enforcement action, and is, therefore, unlawful. Therefore, pursuant to Section 171B (2) of the Town and Country Planning Act, the proposal is not lawful and would require planning permission. On this basis, it is recommended that the Certificate of Lawfulness application be REFUSED.

8. RECOMMENDATION

REFUSE CERTIFICATE

Registered No. HGY/2016/0635

Applicant's submissions: PC/2016/001 and OS

The applicant has not demonstrated that on the balance of probability that Studio 2 of 2 Queens Parade has been a residential unit for a period of 4 years and is therefore not immune from enforcement action, and is, therefore, unlawful. Therefore, pursuant to Section 171B (2) of the Town and Country Planning Act, the proposal is not lawful and would require planning permission. On this basis, it is recommended that the Certificate of Lawfulness application be REFUSED.