LIST OF RECOMMENDATIONS UNDER DELEGATED POWERS

REPORT FOR CONSIDERATION UNDER DELEGATED POWERS

1. APPLICATION DETAILS

Reference No: HGY/2016/0729 **Ward:** St Anns

Date received: 08/03/2016

Last amended date: 19/05/2016

Drawing number of plans: OS and Plan 192

Address: 192 St Anns Road N15 5RP

Proposal: Certificate of lawfulness for use of property as two flats

Applicant: Mr Lenos Tsialis

Ownership: Private

Officer contact: Wendy Robinson

2. RECOMMENDATION

GRANT CERTIFICATE

3. PROPOSED DEVELOPMENT AND LOCATION DETAILS

Confirmation that the use of 192 St Anns Road as two self-contained residential units consisting of 2 x 1 bed flats has been occurring at least four years and now benefits from deemed consent.

4. RELEVANT PLANNING AND ENFORCEMENT HISTORY PLANNING APPLICATION HISTORY

None

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 2015, 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 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 04/02/2012

Information Provided for Ground Floor Flat

Information provided	Date and method of verification	Officer's comments
Council tax record identifying ground floor flat with effect from 23/12/1996	Website screen shot dated 29/02/2016	Ground floor flat identified
EDF Energy bill for period 04/03/11 – 31/05/11	Copy of bill dated 31/05/11	Letter identifies occupant as Mr Henry Wawro at property 192 St Anns Rd
EDF Energy bill for period 01/06/11 – 02/09/11	Copy of bill dated 02/09/11	Letter identifies occupant as Mr Henry Wawro at property 192 St Anns Rd
Tenancy agreement between the applicant and Mr H Wawro for 12 month period commencing 03/11/11	Signed copy of agreement dated 03/11/11	Flat 1 identified with occupant as Mr Henry Wawro
EDF Energy bill for period 03/09/11 – 03/12/11	Copy of bill dated 03/12/11	Letter identifies occupant as Mr Henry Wawro at property 192 St Anns Rd
EDF Energy bill for period 04/12/11 –	Copy of bill dated 02/03/12	Letter identifies occupant as Mr Henry Wawro at property 192 St Anns Rd

02/03/12		
EDF Energy bill for period 03/03/12 – 31/05/12	Copy of bill dated 01/06/12	Letter identifies occupant as Mr Henry Wawro at property 192 St Anns Rd
EDF Energy bill for period 31/05/12 – 01/09/12	Copy of bill dated 01/09/12	Letter identifies occupant as Mr Henry Wawro at property 192 St Anns Rd
EDF Energy bill for period 02/09/12 – 02/12/12	Copy of bill dated 02/12/12	Letter identifies occupant as Mr Henry Wawro at property 192 St Anns Rd
Tenancy agreement between the applicant and Mr H Wawro for 12 month period commencing 03/11/12	Signed copy of agreement dated 03/11/12	Flat 1 identified with occupant as Mr Henry Wawro
EDF Energy bill for period 03/12/12 – 03/03/13	Copy of bill dated 31/03/13	Letter identifies occupant as Mr Henry Wawro at property 192 St Anns Rd
Landlord/home owner gas safety record	Copy of record dated 30/04/13	Flat 1 identified as individual residence
EDF Energy bill for period 04/03/13 – 02/05/13	Copy of bill dated 02/05/13	Letter identifies occupant as Mr Henry Wawro at property 192 St Anns Rd
EDF Energy bill for period 03/06/13 – 02/09/13	Copy of bill dated 02/09/13	Letter identifies occupant as Mr Henry Wawro at property 192 St Anns Rd
EDF Energy bill for period 03/09/13 – 02/12/13	Copy of bill dated 02/12/13	Letter identifies occupant as Mr Henry Wawro at property 192 St Anns Rd
Payment statement from Haringey Council for housing benefits 14/10/13 – 10/11/13	Copy of statement dated 07/11/13	Ground floor flat identified and occupied for stated period
EDF Energy bill for period 03/12/13 – 02/03/14	Copy of bill dated 02/03/14	Letter identifies occupant as Mr Henry Wawro at property 192 St Anns Rd
Tenancy agreement	Signed copy of	Flat 1 identified with occupant as Mr

between the applicant and Mr H Wawro for 12 month period commencing 04/04/14	agreement dated 04/04/14	Henry Wawro
Landlord/home owner gas safety record	Copy of record dated 30/04/14	Flat 1 identified as individual residence
EDF Energy bill for period 04/06/14 – 03/09/14	Copy of bill dated 04/09/14	Letter identifies occupant as Mr Henry Wawro at property 192 St Anns Rd
EDF Energy bill for period 04/09/14 – 03/012/14	Copy of bill dated 05/12/14	Letter identifies occupant as Mr Henry Wawro at property 192 St Anns Rd
EDF Energy bill for period 04/12/14 – 03/03/15	Copy of bill dated 05/03/15	Letter identifies occupant as Mr Henry Wawro at property 192 St Anns Rd
Landlord/home owner gas safety record	Copy of record dated 30/04/15	Flat 1 identified as individual residence
Tenancy agreement between the applicant and Mr H Wawro for 12 month period commencing 04/06/15	Signed copy of agreement dated 04/06/15	Flat 1 identified with occupant as Mr Henry Wawro
EDF Energy bill for period 04/03/15 – 03/06/15	Copy of bill dated 05/06/15	Letter identifies occupant as Mr Henry Wawro at property 192 St Anns Rd
EDF Energy bill for period 04/06/15 – 02/09/15	Copy of bill dated 03/09/15	Letter identifies occupant as Mr Henry Wawro at property 192 St Anns Rd
EDF Energy bill for period 03/09/15 – 04/12/15	Copy of bill dated 08/12/15	Letter identifies occupant as Mr Henry Wawro at property 192 St Anns Rd
EDF Energy bill for period 05/12/15 – 03/03/16	Copy of bill dated 07/03/16	Letter identifies occupant as Mr Henry Wawro at property 192 St Anns Rd
Landlord/home owner gas safety record	Copy of record dated 30/04/16	Flat 1 identified as individual residence

Information Provided for First Floor Flat

Information provided	Date and method of verification	Officer's comments
Council tax record identifying first floor flat with effect from 23/12/1996	Website screen shot dated 29/02/2016	First floor flat identified
EDF Energy bill for period 10/06/11 – 01/08/11	Copy of bill dated 01/08/11	Letter identifies occupant as Miss Zylinska at Upper Flat property 192 St Anns Rd
EDF Energy bill for period 09/09/11 – 10/03/12	Copy of bill dated 12/03/12	Letter identifies occupant as Miss Zylinska at Upper Flat property 192 St Anns Rd
Tenancy agreement between the applicant and Miss Zylinska for 6 month period commencing 04/09/12	Signed copy of agreement dated 03/11/12	Flat 2 identified with occupant as Miss Zylinska
Payment statement from Haringey Council for housing benefits 07/01/13 – 03/02/13	Copy of statement dated 31/01/13	First floor flat identified and occupied for stated period
Payment statement from Haringey Council for housing benefits 04/02/13 – 03/03/13	Copy of statement dated 28/02/13	First floor flat identified and occupied for stated period
EDF Energy bill for period 09/09/12 – 06/03/13	Copy of bill dated 07/03/13	Letter identifies occupant as Miss Zylinska at Upper Flat property 192 St Anns Rd
Payment statement from Haringey Council for housing benefits 04/03/13 – 31/03/13	Copy of statement dated 27/03/13	First floor flat identified and occupied for stated period
Payment statement from Haringey Council for housing benefits 01/04/13 – 28/04/13	Copy of statement dated 25/04/13	First floor flat identified and occupied for stated period

Landlord/home owner gas safety record	Copy of record dated 30/04/13	Flat 2 identified as individual residence
Payment statement from Haringey Council for housing benefits 29/04/13 – 26/05/13	Copy of statement dated 29/05/13	First floor flat identified and occupied for stated period
Tenancy agreement between the applicant and Miss Zylinska for 6 month period commencing 04/06/13	Signed copy of agreement dated 04/06/13	Flat 2 identified with occupant as Miss Zylinska
Payment statement from Haringey Council for housing benefits 27/05/13 – 23/06/13	Copy of statement dated 20/06/13	First floor flat identified and occupied for stated period
Payment statement from Haringey Council for housing benefits 24/06/13 – 18/08/13	Copy of statement dated 02/09/13	First floor flat identified and occupied for stated period
Payment statement from Haringey Council for housing benefits 19/08/13 – 15/09/13	Copy of statement dated 12/09/13	First floor flat identified and occupied for stated period
Payment statement from Haringey Council for housing benefits 16/09/13 – 13/10/13	Copy of statement dated 10/10/13	First floor flat identified and occupied for stated period
Payment statement from Haringey Council for housing benefits 14/10/13 – 10/11/13	Copy of statement dated 07/11/13	First floor flat identified and occupied for stated period
Payment statement from Haringey Council for housing benefits 11/11/13 – 08/12/13	Copy of statement dated 05/12/13	First floor flat identified and occupied for stated period
EDF Energy bill for period 12/09/13 – 04/12/13	Copy of bill dated 16/12/13	Letter identifies occupant as Miss Zylinska at Upper Flat property 192 St Anns Rd
Payment statement from	Copy of statement	First floor flat identified and occupied for

Haringey Council for housing benefits 09/12/13 – 05/01/14	dated 02/01/14	stated period
Payment statement from Haringey Council for housing benefits 06/01/14 – 02/02/14	Copy of statement dated 30/01/14	First floor flat identified and occupied for stated period
Payment statement from Haringey Council for housing benefits 03/02/14 – 02/03/14	Copy of statement dated 27/02/14	First floor flat identified and occupied for stated period
Landlord/home owner gas safety record	Copy of record dated 30/04/14	Flat 2 identified as individual residence
Landlord/home owner gas safety record	Copy of record dated 30/04/15	Flat 2 identified as individual residence
Landlord/home owner gas safety record	Copy of record dated 30/04/16	Flat 2 identified as individual residence

A statutory declaration was provided from the owner confirming that property has been two flats for greater than 4 years.

The evidence provided in conjunction with the lack of contrary evidence held by Council indicates that the subject site has met the requirements of this application.

7. SUMMARY AND CONCLUSION

The applicant has demonstrated that on the balance of probability that 192 St Anns Road has been two self-contained residential units for a period of 4 years and has become immune from enforcement action and is therefore lawful.

8. RECOMMENDATION

GRANT CERTIFICATE

Registered No. HGY/2016/0729

Applicant's submissions: OS and Plan 192

The applicant has demonstrated that on the balance of probability that 192 St Anns Road has been two self-contained residential units for a period of 4 years and has become immune from enforcement action and is therefore lawful.