LIST OF RECOMMENDATIONS UNDER DELEGATED POWERS

REPORT FOR CONSIDERATION UNDER DELEGATED POWERS

1. APPLICATION DETAILS

Reference No: HGY/2016/1535 **Ward:** Tottenham Hale

Date received: 10/05/2016

Drawing number of plans: Supporting documents (unnumbered)

Address: 60b Rosebery Avenue N17 9SA

Proposal: Certificate of Lawfulness for use as three self contained flats

Applicant: Mr George Philippou Dealer Estates

Ownership: Private

Officer contact: Duncan McKane

2. RECOMMENDATION

GRANT CERTIFICATE

3. PROPOSED DEVELOPMENT AND LOCATION DETAILS

This is an application for a Certificate of Lawfulness for the use of the property as three self contained flats.

4. RELEVANT PLANNING AND ENFORCEMENT HISTORY PLANNING APPLICATION HISTORY

HGY/2006/1892 GTD 31-10-06 60 Rosebery Avenue London - Erection of 1 x 2 storey building comprising 1 x 1 bed flat and 1 x 2 bed maisonette.

5. CONSULTATION RESPONSE

5.1 The following were consulted regarding the application:

None consulted.

6. LOCAL REPRESENTATIONS

6.1 The following were consulted:

None consulted.

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 of the dwelling as 3 x self contained studio flats 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 10/05/2012.

Information Provided

Studio Flat 1: 1st Floor Front

Information provided	Date and method of verification	Officer's comments
Printout / photocopy of table from VOA Council Tax Valuation List with Council Tax Band details - Council Tax Band A has been in effect for Flat 1 since 16/06/2008	No date Independently checked through VOA website.	Indicates the flat has been on the Council Tax Valuation list since 16/06/2008.
Copy of tenancy agreement between Landlord and a 'Ms Gladys Rapp De Hawker'	Agreement not dated.	Indicates occupation of flat by tenant commencing16/06/2008.

for a 1 year fixed period commencing 16/06/2008		
Benefit decision notice for 'G Rapp, First floor front – Studio 1, 60B Rosebery Avenue...' stating payment period between 01/10/2011 and 28/05/2012	Dated 23/05/2015	Indicates a tenant in receipt of housing benefit was living at property between 01/10/2011 and 28/05/2012
Benefit decision notice for 'G Rapp, First floor front – Studio 1, 60B Rosebery Avenue...' stating payment period between 18/07/2012 and 27/07/2012	Dated 27/07/2012	Indicates a tenant in receipt of housing benefit was living at property between 18/07/2012 and 27/07/2012
Photocopy of Haringey Housing Benefit payment receipt for claimant 'G Rapp' stating claimant received payment of £9.62 for period 18/07/2012 to 24/07/2012	Dated 28/06/2012	Indicates occupation of flat by tenant in receipt of housing benefit
Copy of Benefit Decision Notice for 'G Rapp, First floor front – Studio 1, 60B Rosebery Avenue...' stating 'Claim cancelled' following Housing benefit payment period between 11/08/2008 and 13/01/2013	Dated 16/01/2013	Indicates a tenant in receipt of housing benefit was living at property between 11/08/2008 and 13/01/2013
Copy of Booking License to Occupy sent to Landlord by Barnet Homes made 16/01/2013 specifying clients 'Raja Amber', 'Raja Owais' and Kahn Amaira Naz'	Dated 16/01/2013	Indicates flat used to house tenants on a temporary basis
Copy of letter between Barnet Homes and the Manager / Owner stating payment of accommodation charges for clients 'Raja Amber',	Dated 06/09/2013	Indicates flat used to house tenants on a temporary basis until 08/09/2013.

'Raja Owais' and Kahn Amaira Naz' will end on 08/09/2013		
Copy of Benefit Decision Notice from Westminster CC for 'Miss Dalal Ahmed, First floor front – Studio 1, 60B Rosebery Avenue...' evidencing Housing benefit payment period between 30/09/2013 and 05/05/2014	Dated 21/03/2014	Indicates a tenant in receipt of housing benefit was living at property between 30/09/2013 and 05/05/2014.
Copy of letter sent by Housing Placements Officer, Westminster CC to 'The Manager' indicating the discontinuation of booking for 'Ms Ahmed' from 24/08/2015 onwards.	Dated 27/08/2015	Indicates tenant in receipt of accommodation assistance at property until 24/08/2015.

Studio Flat 2: 1st Floor Rear

Information provided	Date and method of verification	Officer's comments
Printout / photocopy of table from VOA Council Tax Valuation List with Council Tax Band details - Council Tax Band A has been in effect for Flat 2 since 16/06/2008	No date Independently checked through VOA website.	Indicates the flat has been on the Council Tax Valuation list since 16/06/2008.
Copy of tenancy agreement between Landlord and a 'Mr Haluk Ruzgar' for a 1 year fixed period commencing 20/06/2008	Agreement not dated.	Indicates occupation of flat by tenant commencing 20/06/2008.
Photocopy of Haringey Housing Benefit payment receipt for claimant 'J Springer' stating claimant received payment of £2746.80 for period 23/01/2012 to	Dated 06/09/2012	Indicates occupation of flat by tenant in receipt of housing benefit

17/06/2012		
Copy of benefit decision notice for 'J Springer, First floor rear – Studio 2, 60B Rosebery Avenue...' stating payment period between 18/07/2012 and 13/01/2013	Dated 11/02/2013	Indicates a tenant in receipt of housing benefit was living at property between 18/07/2012 and 13/01/2013
Copy of 'Notice of Appointment (with Bailiff) for Execution of Warrant for Possession or Delivery' with execution date of 10/01/2013 (Defendant 'Joy Springer')	Dated 08/01/2013	Indicates tenant served eviction warrant sometime after 10/01/2013
Copy of Booking License to Occupy sent to Landlord by LB Waltham Forest made 11/01/2013 specifying clients 'Tayshan Brooks-Brade' and 'Cashai Brade-Simister'	Dated 11/01/2013	Indicates flat used to house tenants on a temporary basis
Copy of letter sent by Housing Placements Officer, Westminster CC to 'The Manager' indicating the discontinuation of booking for 'Baarlin Mahamud' from 24/10/2013 onwards.	Dated 23/10/2013	Indicates tenant in receipt of accommodation assistance at property until 24/10/2013.
Copy of Booking License to Occupy sent to Landlord by Barnet Homes made 01/11/2013 specifying clients 'Dennsion Iulia Dana', Dennison Daniel' and 'Unborn Child'	Dated 01/11/2013	Indicates flat used to house tenants on a temporary basis
Copy of Booking license to Occupy between 'The Council' (no further detail) and Landlord for client 'Cassandra Nelson'	Dated 26/09/2014 / not signed	Not sufficient evidence to prove occupation at this time.

Copy of Booking license to Occupy between 'The Council' (no further detail) and Landlord for client 'Cassandra Nelson' commencing 26/09/2015	Not dated / signed	Not sufficient evidence to prove occupation at this time.

Studio Flat 3: 2nd Floor

Information provided	Date and method of verification	Officer's comments
Printout / photocopy of table from VOA Council Tax Valuation List with Council Tax Band details - Council Tax Band A has been in effect for Flat 3 since 16/06/2008	No date Independently checked through VOA website.	Indicates the flat has been on the Council Tax Valuation list since 16/06/2008.
Copy of Wood Green Services Receipt for customer 'Mr Desmond Mcleon'	Dated 18/02/2010 / not signed	Insufficient evidence to prove occupation since 10/05/2012.
Copy of benefit decision notice for 'D Mcleod, Second floor– Studio 3, 60B Rosebery Avenue...' stating payment period between 18/02/2010 and 30/03/2010.	Dated 30/03/2010	Indicates a tenant in receipt of housing benefit was living at property between 18/02/2010 and 30/03/2010.
Copy of benefit decision notice for 'D Mcleod, Second floor– Studio 3, 60B Rosebery Avenue...' stating payment period between 07/07/2010 and 13/07/2010	Dated 19/11/2010	Indicates a tenant in receipt of housing benefit was living at property between 07/07/2010 and 13/07/2010

The officer notes that whilst further evidence was submitted as part of this application, this was either not relevant for the period in question (4 years commencing 10/05/2012) or not applicable as evidence for the use of this property as three self contained flats and has therefore not been aluded to above.

9. SUMMARY AND CONCLUSION

The applicant has demonstrated that on the balance of probability that the property known as 60b Rosebery Avenue has been in use as three self contained 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/2016/1535

Applicant's submissions: Supporting documents (unnumbered)