LIST OF RECOMMENDATIONS UNDER DELEGATED POWERS

REPORT FOR CONSIDERATION UNDER DELEGATED POWERS

1. APPLICATION DETAILS

Reference No: HGY/2016/1628 **Ward:** Bruce Grove

Date received: 19/05/2016

Drawing number of plans: 1093/02

Address: 29 Greyhound Road N17 6XP

Proposal: Use of property as two self-contained flats (certificate of lawfulness for an existing use)

Applicant: Mrs Apostolis Panayi

Ownership: Private

Officer contact: Duncan McKane

2. RECOMMENDATION

GRANT CERTIFICATE

3. PROPOSED DEVELOPMENT AND LOCATION DETAILS

This is an application for a lawful development certificate for the use of the property known as 29 Greyhound Road N17 6XP as two self-contained flats. The property is a 2 storey mid terrace property on the western side of Greyhound Road.

4. RELEVANT PLANNING AND ENFORCEMENT HISTORY PLANNING APPLICATION HISTORY

- HGY/1992/1245 REF 17-11-92 29 Greyhound Road London - Conversion of property to form 1 X 1 bed and 1 X 2 bed self contained flats.

5. CONSULTATION RESPONSE

5.1 The following were consulted regarding the application:

None required.

6. LOCAL REPRESENTATIONS

6.1 The following were consulted:

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 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 19/05/2012.

Information Provided

Ground floor flat A

Information provided	Date and method of verification	Officer's comments
Copy of VOA Council tax band details for 'Flat GND FLR 29, Greyhound Road...' indicating the property was determined to be in Council Tax band C with effect from 27/01/2005.	31/03/2011	Indicates flat was set up to pay council tax from 27/01/2005 (independently verified on VOA website).
Copy of tenancy agreement between 'Mr	Dated 15/02/2012.	Indicates Flat A occupied by tenants.

Panayis Apostolis' (Landlord) and 'Henrietta Annabelle Bond and Akolade Oludamilare Bello' for 12 month fixed term commencing 15/02/2012.		
Copy of tenancy agreement between 'The Property Company' (Landlord) and 'Helem Maryuri Betancourt Collazos, Mauricio Alejandro Palacio-Serna, Willington Quintero Sanabria' for 12 month fixed term commencing 11/03/2013.	Dated 11/03/2013.	Indicates Flat A occupied by tenants.
Copy of Council Tax Bill (2013/2014) indicating year total of £1322.06.	Date of issue: 07/02/2014	Indicates council tax paid by tenants of Flat A over year 2013/2014.
Copy of Lease Agreement between 'Mr Panayis Apostolis' (Lessor) and 'The Property Company' (Lessee) for 3 years commencing 13/11/06.	Dated 08/11/2006.	Indicates Flat A leased as separate property.
Copy of Lease Agreement between 'Mr Panayis Apostolis' (Lessor) and 'The Property Company' (Lessee) for 3 years commencing 01/02/2010.	Dated 21/01/2010.	Indicates Flat A leased as separate property.
Copy of Lease Agreement between 'Mr Panayis Apostolis' (Lessor) and 'The Property Company' (Lessee) for 3 years commencing 15/02/2012.	Dated 15/02/2012.	Indicates Flat A leased as separate property.
Copies of Rental statements for period	Dated monthly between	Indicates occupation by tenants throughout relevant period.

29/02/2012 to 31/01/2016	29/02/2012 and 31/01/2016	

First floor flat B

Information provided	Date and method of verification	Officer's comments
Copy of VOA Council tax band details page for 'Flat 1ST F FLR 29, Greyhound Road...' indicating the property was determined to be in Council Tax band C with effect from 27/01/2005.	31/03/2011	Indicates flat was set up to pay council tax from 27/01/2005 (independently verified on VOA website).
Copy of Council Tax Bill (2013/2014) indicating year total of £1322.06.	Date of issue: 26/02/2014	Indicates council tax paid by tenants of Flat B over year 2013/2014.
Copy of Lease Agreement between 'Mr Panayis Apostolis' (Lessor) and 'The Property Company' (Lessee) for 3 years commencing 01/02/2007.	Dated 01/02/2007.	Indicates Flat B leased as separate property.
Copy of Lease Agreement between 'Mr Panayis Apostolis' (Lessor) and 'The Property Company' (Lessee) for 3 years commencing 01/02/2010.	Dated 21/01/2010.	Indicates Flat B leased as separate property.
Copies of Rental statements for period 31/01/2012 to 31/12/2015	Dated monthly between 31/01/2012 and 31/12/2015	Indicates occupation by tenants throughout relevant period.

The applicant has included a copy of an affidavit declaring that he is the owner of the freehold property (29 Greyhound Road, London, N17 6XP), that the property was converted to two self contained flats in January 2005, that the property has been used as two self contained flats in January 2005 and that the two flats were awarded individual Council Tax rates on 27/01/2005.

The applicant has provided floor plans (1093/02) completed by CGArchitects dated January 2016 indicating the property is converted into 2 x self contained units.

9. SUMMARY AND CONCLUSION

The applicant has demonstrated that on the balance of probability that 29 Greyhound Road N17 6XP has been in use as two 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/2016/1628

Applicant's submissions: 1093/02