LIST OF RECOMMENDATIONS UNDER DELEGATED POWERS

REPORT FOR CONSIDERATION UNDER DELEGATED POWERS

1. APPLICATION DETAILS

Reference No: HGY/2016/1676 **Ward:** Northumberland Park

Date received: 20/05/2016

Drawing number of plans: 513-4 & 513-2

Address: 17 Kings Road N17 8NP

Proposal: Use of property as HMO (certificate of lawfulness for an existing use)

Applicant: Mr S Aboagye

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 17 Kings Road N17 8NP as an HMO. The property is a 2 storey mid terrace property on the southern side of Kings Road. The property is within the area covered by an Article 4 direction taken out by the Council on November 2013 removing permitted development rights for the conversion of properties to small HMOs (3-6 unrelated occupants).

4. RELEVANT PLANNING AND ENFORCEMENT HISTORY

- HGY/2016/0756 WDN 04-05-16 17 Kings Road London Loft conversion consisting of 1 bedroom with bathroom and storage space

- HGY/2016/0757 WDN 04-05-16 17 Kings Road London Erection of single storey rear extension

Enforcement:

- HMO/2016/00306 CLOSED 00-00-00 17 Kings Road London

5. CONSULTATION RESPONSE

5.1 The following were consulted regarding the application:

None consulted

6. LOCAL REPRESENTATIONS

The comments received from neighbours, local groups etc in response to notification were as follows:

- Cllr John Bevan: Issues raised in regards to the use of this property as an HMO include loss of family housing (in contradiction to article 4 direction), additional noise levels affecting neighbouring residents and the failure of the property to meet housing standards set out in the Mayor's Housing SPG and Building Regulations leading to overcrowding on site. Cllr Bevan asks that a rigorous examination is made of submitted evidence that seeks to prove the conversion to an HMO occurred before the implementation date of the article 4 direction (November 2013) removing permitted development rights for the conversion of houses to small HMOs (3 – 6 occupants).
- Neighbour comments: OBJECTION - Neighbour raises issues around the accuracy of submitted floor plans and raises the need for any HMO conversion application to meet criteria set out in Saved UDP (2006) policy HSG4.

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 use of the property known as 17 Kings Road N17 8NP as an HMO has been continuous 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 was lawful for planning purposes on the date of the application. In this instance the relevant period commences on 20/05/2012.

Information Provided

Information provided	Date and method of verification	Officer's comments
Tenancy agreement between Steve Abuagye (the Landlord) and 'Theresa Amankwah' (the Tenant) for 1 year commencing 18/05/2008	Dated 18/05/2008.	Indicates tenant on site at this time.
Tenancy agreement between Steve Abuagye (the Landlord) and 'Theresa Amankwah, Kofi Oduro and Nana Yaw' (the Tenants) for 1 year commencing 18/05/2009	Dated 18/05/2009.	Indicates multiple tenants on site at this time.
Tenancy agreement between Steve Abuagye (the Landlord) and 'Theresa Amankwah, Kofi Oduro, Rita Adjei and Nana Yaw & Samuel Ofori' (the Tenants) for 1 year commencing 18/05/2010	Dated 18/05/2010.	Indicates multiple tenants on site at this time.
Tenancy agreement between Steve Abuagye (the Landlord) and 'Theresa Amankwah, Kofi Oduro & Rita Adjei, Douglas Fresh, Kwame Osie Owusu & Joyec Boakye' (the Tenants) for 1 year commencing 18/05/2011	Dated 18/05/2011.	Indicates multiple tenants on site at this time.

Tenancy agreement between Steve Abuagye (the Landlord) and 'Theresa Amankwah, Kofi Oduro & Rita Adjei, Douglas Fresh, Kwame Osie Owusu & Joyec Boakye' (the Tenants) for 1 year commencing 18/05/2012	Dated 18/05/2012.	Indicates multiple tenants on site at this time.
Tenancy agreement between Steve Abuagye (the Landlord) and 'Theresa Amankwah, Kwame Osie Owusu & Joyec Boakye, Daniel Asamoah and Fred Adjei Dompreh' (the Tenants) for 1 year commencing 18/05/2013.	Dated 18/05/2013.	Indicates multiple tenants on site at this time.
Tenancy agreement between Steve Abuagye (the Landlord) and 'Douglas Fresh, Kwame Osie Owusu & Joyec Boakye & Fred Dompreh, Daniel Asamoah and Janet Anane' (the Tenants) for 1 year commencing 18/05/2014.	Dated 18/05/2014.	Indicates multiple tenants on site at this time.
Tenancy agreement between Steve Abuagye (the Landlord) and 'Kwame Osie Owusu & Fred Dompreh, Daniel Asamoah, Charles Jude Donkor and Janet Anane' (the Tenants) for 1 year commencing 18/05/2015.	Dated 18/05/2015.	Indicates multiple tenants on site at this time.
Tenancy agreement between Steve Abuagye	Dated 18/05/2016.	Indicates multiple tenants on site at this

(the Landlord) and 'Kwame Osie Owusu & Fred Dompreh, Daniel Asamoah, Charles Jude Donkor and Janet Anane' (the Tenants) for 1 year commencing 18/05/2016.		time.

The applicant, Steven Aboagye, has submitted a copy of a statutory declaration outlining that he is the owner/landlord of 17 Kings Road, London, N17 8NP, that the property was purchased on 30/04/1998, that since the purchase the house has been rented out to multiple tenants, that between 4-6 tenants have occupied the property at any time since the purchase and that 3 tenants currently residing at the property can confirm their occupation of the property for all or part of the relevant 4 year period.

Copies of hand written letters from Fred Adjei Dompreh, Mr Daniel Asamoah and Mr Kwame Osie Owusu confirming their tenancy at the property have been received.

The applicant has submitted existing elevation plans (5130-4) and existing floor plans (513-2) dated 'February 2016' as part of their submission. The plans indicate that the dwelling house has 4 rooms (not labelled as bedrooms on plans) and a bathroom and kitchen, both accessible from communal areas.

The officer has reviewed the relevant planning and enforcement history for the site. It is noted that a complaint was received on 04/05/2016 relating to the number of bedrooms on site (HMO/2016/00306). The enforcement officer assigned to the case made contact with the landlord and received original documents (tenancy agreements, utility bills, council tax etc) evidencing that the HMO had indeed been in use since 2008 and therefore was not in breach of the article 4 direction removing permitted development rights related to conversion from C3 to C4 at the time of conversion. The enforcement officer made 2 site visits. The officer recommended the case be closed on the grounds that on balance of probability, based on the adduced evidence, that the use of the property as a HMO was immune from enforcement action. The evidence submitted with case HMO/2016/00306 has been reviewed by the officer and has been attached to this application for reference; however it has not been formally used as evidence for the purposes of this application for a lawful development certificate as it was not submitted by the applicant himself.

9. SUMMARY AND CONCLUSION

The applicant has demonstrated that on the balance of probability that 17 Kings Road N17 8NP has been used as an HMO for a period of 4 years and has become immune from enforcement action and is therefore lawful.

10. RECOMMENDATION

GRANT CERTIFICATE

Registered No. HGY/2016/1676

Applicant's submissions: 513-4 & 513-2