LIST OF RECOMMENDATIONS UNDER DELEGATED POWERS

REPORT FOR CONSIDERATION UNDER DELEGATED POWERS

1. APPLICATION DETAILS

Reference No: HGY/2016/1534 **Ward:** Tottenham Hale

Date received: 09/05/2016

Drawing number of plans: Supporting Documents (unnumbered)

Address: 60a Rosebery Avenue N17 9SA

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

Applicant: Mr George Philippou Dealer Estates

Ownership: Private

Site Visit Date: 04/07/2016

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 09/05/2012.

Information Provided

Studio Flat 1: Ground 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.
Benefit decision notice for 'M Baziki, Ground floor front – Studio 1, 60A Rosebery Avenue...'	Dated 13/04/2012	Indicates a tenant in receipt of housing benefit was living at property between 04/02/2011 and 01/01/2012.

stating 'Claim cancelled' States that Housing benefit would have been paid between 04/02/2011 and 01/01/2012		
Photocopy of benefit decision notice for 'M Baziki, Ground floor front – Studio 1, 60A Rosebery Avenue...' stating £180.00 housing benefit paid to landlord on 02/04/2012	Dated 17/03/2012	Indicates occupation of flat by tenant in receipt of housing benefit
Photocopy of Haringey Housing Benefit payment receipt for claimant 'M Baziki' stating claimant received payment of £1760.41 for period 04.02.2012 to 16.04.2012	Dated 03/05/2012	Indicates occupation of flat by tenant in receipt of housing benefit
Copy of temporary accommodation form for a 'Ms Donna Ricketts' addressed to Landlord from a 'Ms Wendy Hawkins', LBH Senior Temporary Accommodation Officer. States that accommodation for 'Ms Donna Ricketts' was sought on 18/04/2012.	Dated 18/04/2012.	Indicates occupation of flat by tenant on temporary basis.
Copy of Notice of B&B Cancellation for 'Ms Donna Ricketts' addressed to landlord from LBH Senior Temporary Accommodation Officer, with stated cancellation date of 02.10.2012.	Dated 02.10.2012.	Indicates occupation of flat by tenant on temporary basis.
Copy of tenancy agreement between Landlord and a 'Mr Mohamed Kaled' for 6 month period between	Agreement dated 10/10/2014.	Indicates occupation of flat by tenant between 10/10/2014 and 09/04/2015.

10/10/2014 and 09/04/2015.		
Copy of Benefit Decision Notice dated 18/04/2015 for 'Mr Mohamed Kaled, Ground floor front – Studio 1, 60A Rosebery Avenue...' – benefit payment start date 17/11/2014.	Decision notice dated 18/04/2015.	Indicates occupation of flat by tenant in receipt of housing benefit
Copy of Benefit Decision Notice dated 04/08/2015 for 'Mr Mohamed Kaled, Ground floor front – Studio 1, 60A Rosebery Avenue...' – benefit payment start date 27/04/2015	Decision notice dated 04/08/2015.	Indicates occupation of flat by tenant in receipt of housing benefit
Photocopy of Haringey Housing Benefit payment receipt for claimant 'Mr Mohamed Kaled' stating claimant received payment of £201.96 for period 27.04.2015 to 19.07.2015	Dated 10.08.2015	Indicates occupation of flat by tenant in receipt of housing benefit
Copy of Booking License to Occupy indicating nightly accommodation for a 'Ms Esmerelda Lleshi' was sought on 24/02/2016	Dated 24/02/2016	Indicates occupation of flat by tenant on temporary basis.

Studio Flat 2: Ground Floor Middle

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	Agreement dated 02/04/2012.	Indicates occupation of flat by tenant between 02/04/2012 and 01/10/2012.

Landlord and a 'Mr Roy Bisson' for 6 month period between 02/04/2012 and 01/10/2012.		
Copy of Benefit Decision Notice dated 15/10/2012 for 'RC Bisson, Ground floor middle – Studio 2, 60A Rosebery Avenue...' – benefit payment start date 29/11/2012	Decision notice dated 15/10/2012.	Indicates occupation of flat by tenant in receipt of housing benefit
Copy of Benefit Decision Notice dated 22/03/2014 for 'RC Bisson, Ground floor middle – Studio 2, 60A Rosebery Avenue...' – benefit payment start date 01/04/2014	Decision notice dated 22/03/2014.	Indicates occupation of flat by tenant in receipt of housing benefit
Photocopy of Haringey Housing Benefit payment receipt for claimant 'RC Bisson' stating claimant received payment of £768.00 for period 02.02.2015 to 01.03.2015	Dated 26/02/2015	Indicates occupation of flat by tenant in receipt of housing benefit
Copy of Benefit Decision Notice dated 21/04/2015 for 'RC Bisson, Ground floor middle – Studio 2, 60A Rosebery Avenue...' – benefit payment start date 01/03/2015	Decision notice dated 21/04/2015.	Indicates occupation of flat by tenant in receipt of housing benefit
Copy of Benefit Decision Notice dated 19/03/2016 for 'RC Bisson, Ground floor middle – Studio 2, 60A Rosebery Avenue...' – benefit payment start date 01/04/2016	Decision notice dated 19/03/2016.	Indicates occupation of flat by tenant in receipt of housing benefit

Studio Flat 3: Ground 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 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 Benefit Decision Notice dated 11/10/2010 for 'J Copak, Ground floor rear – Studio 3, 60A Rosebery Avenue...' – benefit payment start date 20/09/2010	Decision notice dated 11/10/2010.	Indicates occupation of flat by tenant in receipt of housing benefit
Copy of tenancy agreement between Landlord and a 'Mr Josef Copak' for 6 month period between 02/04/2012 and 01/10/2012.	Agreement dated 02/04/2012.	Indicates occupation of flat by tenant between 02/04/2012 and 01/10/2012.
Copy of Benefit Decision Notice dated 06/08/2012 for 'J Copak, Ground floor rear – Studio 3, 60A Rosebery Avenue...' – benefit payment start date 20/09/2012	Decision notice dated 06/08/2012.	Indicates occupation of flat by tenant in receipt of housing benefit
Copy of Benefit Decision Notice dated 17/06/2013 for 'J Copak, Ground floor rear – Studio 3, 60A Rosebery Avenue...' – notifiifcation of claim cancellation, benefit payment period 19/08/2010 to 26/05/2013	Decision notice dated 17/06/2013.	Indicates occupation of flat by tenant in receipt of housing benefit
Copy of Benefit Decision Notice dated 09/09/2013 for 'J Copak, Ground floor rear – Studio 3, 60A Rosebery Avenue...' – benefit payment start date 12/09/2013	Decision notice dated 09/09/2013.	Indicates occupation of flat by tenant in receipt of housing benefit
Photocopy of Haringey Housing Benefit payment	Dated 09/09/2013	Indicates occupation of flat by tenant in receipt of housing benefit

receipt for claimant 'J Copak' stating claimant received payment of £625.11 for period 24.06.2013 to 18..08.2013		
Copy of tenancy agreement between Landlord and a 'Mr Emil Rafael' for 6 month period between 29/05/2014 and 28/11/2014.	Agreement dated 29/05/2014.	Indicates occupation of flat by tenant between 29/05/2014 and 28/11/2014.
Copy of Benefit Decision Notice dated 15/05/2015 for 'E Rafael, Ground floor rear – Studio 3, 60A Rosebery Avenue...' – benefit payment period 01/12/2014 to 14/01/2015	Decision notice dated 15/05/2015.	Indicates occupation of flat by tenant in receipt of housing benefit
Copy of Benefit Decision Notice dated 23/07/2015 for 'E Rafael, Ground floor rear – Studio 3, 60A Rosebery Avenue...' – benefit payment made on 30/03/2015	Decision notice dated 23/07/2015.	Indicates occupation of flat by tenant in receipt of housing benefit
Photocopy of Haringey Housing Benefit payment receipt for claimant 'E Rafael' stating claimant received payment of £3011.90 for period 03/02/2014 to 25/05/2014	Dated 29/05/2014	Indicates occupation of flat by tenant in receipt of housing benefit
Photocopy of Haringey Housing Benefit payment receipt for claimant 'E Rafael' stating claimant received payment of £3127.20 for period 01/12/2014 to 26/04/2015	Dated 18/05/2015	Indicates occupation of flat by tenant in receipt of housing benefit
Photocopy of Haringey Housing Benefit payment receipt for claimant 'E	Dated 23/07/2015	Indicates occupation of flat by tenant in receipt of housing benefit

Rafael' stating claimant received payment of £1508.64 for period 25/05/2015 to 19/07/2015		
Copy of Benefit Decision Notice dated 23/07/2015 for 'E Rafael, Ground floor rear – Studio 3, 60A Rosebery Avenue...' – benefit payment made on 01/04/2016	Decision notice dated 19/03/2016.	Indicates occupation of flat by tenant in receipt of housing benefit

The officer notes that further evidence was submitted, however this was either not relevant for the period in question (4 years commencing 09/05/2012) or not applicable as evidence for the use of this property as three self contained flats.

9. SUMMARY AND CONCLUSION

The applicant has demonstrated that on the balance of probability that the property known as 60a 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/2016/1534

Applicant's submissions: Supporting Documents (unnumbered)