LIST OF RECOMMENDATIONS UNDER DELEGATED POWERS

REPORT FOR CONSIDERATION UNDER DELEGATED POWERS

1. APPLICATION DETAILS

Reference No: HGY/2016/2506 **Ward:** Seven Sisters

Date received: 26/07/2016

Drawing number of plans: PC-2016/001

Address: 108 Plevna Crescent N15 6DW

Proposal: Certificate of Lawfulness for use of property as four flats comprising of 2 x studios and 2 x 1 beds

Applicant: Mr Khandoker Shakhawat Hossain

Ownership: Private

Officer contact: Duncan McKane

2. RECOMMENDATION

REFUSE CERTIFICATE

3. PROPOSED DEVELOPMENT AND LOCATION DETAILS

This is an application for a Certificate of Lawfulness for the use of property as four flats comprising of 2 x studios and 2 x 1 beds. The application site is a three storey semi detached property at the end of Plevna Crescent. The building is not within a conservation area and is not a listed building.

4. RELEVANT PLANNING AND ENFORCEMENT HISTORY PLANNING APPLICATION HISTORY

- Planning Complaints FCV/2012/00090 CLOSED 00-00-00 108 Plevna Crescent London – Alleged breach: Unauthorised flat conversion containing extra sanitary areas. No planning permission.

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 (property converted into 4 self contained 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 26/07/2012.

Information Provided

'Front Studio Flat' (ground floor studio flat 1)

Information provided	Date and method of verification	Officer's comments
Copy of tenancy agreement between 'Mr Shakhawat Hossain Khandoker' (Landlord) and 'Mr Andrei Patros' for 12 month fixed term from 01/02/2014 to 31/01/2015.	Dated 01/02/2014.	Indicates 'Front Studio Flat' occupied by tenants between 01/02/2014 to 31/01/2015.

'Garden Front Studio' (ground floor studio flat 2)

Information provided	Date and method of verification	Officer's comments
Copy of tenancy agreement between 'Mr Shakhawat Hossain Khandoker' (Landlord) and 'Mr Pantelis Iosifis' for 12 month fixed term from 27/04/2014 to 26/04/2015.	Dated 26/04/2014.	Indicates 'Garden Front Studio' occupied by tenants between 27/04/2014 to 26/04/2015.

Flat 1st Floor

Information provided	Date and method of verification	Officer's comments
No information submitted.		

'Top Floor Flat' (Flat 2nd Floor)

Information provided	Date and method of verification	Officer's comments
Copy of tenancy agreement between 'Mr Shakhawat Hossain Khandoker' (Landlord) and 'Lucjan Strzepek' for 12 month fixed term from 01/01/2014 to 31/12/2014.	Dated 15/12/2013.	Indicates 'Top Floor Flat' occupied by tenants between 01/01/2014 to 31/12/2014.

The applicant has provided 2 tenancy agreements which do not clearly relate to any of the 4 x units to which this application relates:

- Tenancy agreement for 'Room/Flat, 108 Plevna Crescent, London, N15 6DW' between 'Mr Shakhawat Hossain Khandoker' (Landlord) and 'Diana Bananowska and Marcin Jawemkiewicz' for period 01/10/06 to 30/04/2007 (dated 01/10/06)

- Tenancy agreement for 'Room/Flat, 108 Plevna Crescent, London, N15 6DW' between 'Mr Shakhawat Hossain Khandoker' (Landlord) and 'Lucjan Strzepek' for period 10/12/06 to 07/06/2007 (dated 10/12/06)

Given that the numbering of the flats is not consistent with the addresses described in the later tenancy agreements (generic 'Room/Flat') these are not considered to adequately evidence occupation of the 4 x units applied for here within the relevant period.

The applicant has provided the following documents:

- A photocopy of an 'NHS medical card' for 'Miss Jessica Nicole Maldonado-Gomez' with card issue date 10/08/2005
- A photocopy of a '3 Mobile' customer registration form for a 'Lucjan Strzepek' dated 10/07/2006
- A photocopy of an 'Insurance Registration and Service Agreement Form' from 'Premier Plan' for a 'Mr Lucjan D Strzepek' dated 10/07/2006.
- A photocopy of an HMRC repayment claim addressed to a 'Mr L D Strzepek' with issue date 06/09/2010
- A photocopy of an 'NHS medical card' for 'Miss Jessica Nicole Maldonado-Gomez' with issue date 06/09/2010
- A photocopy of a '3 Mobile' phone bill for a 'Alexandra Gomez Fajardo' dated 08/07/2016
- A photocopy of a account statement for a 'Mr L Strzepek' dated 16/11/2010.
- A photocopy of an HSBC Account Statement addressed to a 'Mrs A E Gomez Fajardo' for May to June 2016
- A photocopy of a letter HSBC letter addressed to a 'Mr M Pirogov' dated June 2016.

All of these documents are addressed to '108 Plevna Crescent, Tottenham, London, N15 6DW', with no mention of the 4 x flats applied for. Furthermore, besides Mr Lucjan Strzepek none of the individuals to whom the letters above are addressed are named as tenants on the submitted tenancy agreements. As such, these documents cannot be used as evidence for the existence of the 4 x separate units at the above address.

No record of Council Tax payments / valuations for the 4 units being applied for has been provided. The Valuations Office Agency website indicates that 108 Plevna Crescent, Tottenham, London, N15 6DW was valued within Council tax band D, with effect from 01/04/1993. This suggests that no Council tax has been paid by occupants of the 4 units being applied for here and that the property known as 108 Plevna Crescent has been a single unit for the purposes of Council Tax since 01/04/1993.

The applicant has provided floor plans (PC-2016/001) which indicate the size and location of the 4 x units (2 x studio flats at ground floor, 1 x 1 bedroom flat at 1st floor and 1 x 1 bedroom flat at 2nd floor level.

9. SUMMARY AND CONCLUSION

The applicant has not provided sufficient evidence to prove that the property known as 108 Plevna Crescent, Tottenham, London, N15 6DW has been in use as 4 self contained units for the relevant period beginning 26/07/2012.

The applicant has not demonstrated on the balance of probability that No. 108 Plevna Crescent has been used as 4 separate self-contained residential units for a period of 4 years and is therefore not immune from enforcement action, and is, therefore, unlawful. Therefore, pursuant to Section 171B (2) of the Town and Country Planning Act, the proposal is not lawful and would require planning permission. On this basis, it is recommended that the Certificate of Lawfulness application be REFUSED.

10. RECOMMENDATION

REFUSE CERTIFICATE

Registered No. HGY/2016/2506

Applicant's submissions: PC-2016/001

The applicant has not demonstrated on the balance of probability that No. 108 Plevna Crescent has been used as 4 separate self-contained residential units for a period of 4 years and is therefore not immune from enforcement action, and is, therefore, unlawful. Therefore, pursuant to Section 171B (2) of the Town and Country Planning Act, the proposal is not lawful and would require planning permission. On this basis, it is recommended that the Certificate of Lawfulness application be REFUSED.