LIST OF RECOMMENDATIONS UNDER DELEGATED POWERS

REPORT FOR CONSIDERATION UNDER DELEGATED POWERS

1. APPLICATION DETAILS

Reference No: HGY/2016/2311 **Ward:** Bounds Green

Date received: 16/06/2016

Last amended date: 01/08/2016

Drawing number of plans: 01 site location, 02 floor plans

Address: Second and Third Floor 90 Trinity Road N22 8YB

Proposal: Certificate of Lawful Development for the existing use of the third floor of the site as a self-contained flat (amended description)

Applicant: Mr Nikitas Efstathiou

Ownership: Private

Officer contact: Wendy Robinson

2. RECOMMENDATION

GRANT CERTIFICATE

3. PROPOSED DEVELOPMENT AND LOCATION DETAILS

The application site relates to a three storey, end-terrace corner property located on the junction of Bounds Green Road and Whittington Avenue. The property consists of a ground floor retail unit with residential above. The property is located within Bowes Park Conservation Area but is not within a curtilage of a Listed Building.

4. RELEVANT PLANNING AND ENFORCEMENT HISTORY PLANNING APPLICATION HISTORY

OLD/1987/1931 GTD 21/12/87 Conversion of first and second floors to form two self-contained flats
HGY/2004/0113 GTD 03/02/04 Infill of void at rear first floor level
HGY/2005/2120 GTD 20/12/05 Erection of rear dormer window and insertion of rooflights to front and side elevation

5. 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.

6. 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 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 16/06/2012.

Information provided for Flat B

Information provided	Date and method of verification	Officer's comments
Council tax valuation listing for Flat 2nd Floor 90B	Website print out dated 13/06/16	Flat B identified separately from 01/06/06
Tenancy agreement between the applicant and Miss Yfantidou, Mr Evangelos, and Mr Yfantidis from 08/11/11 for 12 month period	Copy of agreement dated 08/11/11	Flat B identified separately with three occupants
Tenancy agreement between the applicant and Mr and Mrs Robu, and Mr and Mrs Timofte from 21/05/14 for 12 month period	Copy of agreement dated 21/05/14	Flat B identified separately with four occupants
British Gas bill reminder 90B	Copy of reminder letter dated 13/10/14	Flat B identified separately

Information provided for Flat C

Information provided	Date and method of verification	Officer's comments
Council tax valuation listing for Studio Flat Top Floor 90C	Website print out dated 16/05/16	Flat C identified separately from 01/06/06
Tenancy agreement between the applicant and Mr and Mrs Gitler from 10/11/12 for 12 month period	Copy of agreement dated 10/11/12	Flat C identified separately with two occupants
Tenancy agreement between the applicant and Mr Gilchrist and Mr Smith from 02/09/13 for 12 month period	Copy of agreement dated 02/09/13	Flat C identified separately with two occupants
EDF energy bill for period 18/06/14 – 13/07/14	Copy of bill dated 25/07/14	Flat C identified separately
EDF energy bill reminder 90C	Copy of reminder letter dated 10/08/14	Flat C identified separately
Thames Water bill reminder	Copy of bill dated 28/11/14	Flat C identified separately
EDF energy bill for period 24/03/15 – 28/10/15	Copy of bill dated 28/10/15	Flat C identified separately
Thames Water final bill for period 17/08/15 – 31/10/15	Copy of bill dated 09/11/15	Flat C identified separately

It is noted that numerous other documents were submitted but were for periods prior to the relevant period which commenced on 16/06/2012 and were therefore not considered applicable.

Council tax records identify that the two units have been taxed separately since 01/06/2006.

A letter has also been provided dated 10 September 2014 from Haringey Council Local Land Charges confirming at that time that 3 No flats are addressed 90A, 90B and 90C Trinity Road.

Information provided for Flat B is not actually required as the use of the second floor is permitted as a self-contained residential flat and that this application needs only be for evidence to show Flat C in the loft level has been a self-contained flat for a four year period. There is no evidence to the contrary.

7. SUMMARY AND CONCLUSION

The applicant has demonstrated that on the balance of probability that 90C Trinity Road has been a self-contained residential unit for a period of 4 years, has become immune from enforcement action and is therefore lawful.

8. RECOMMENDATION

GRANT CERTIFICATE

Registered No. HGY/2016/2311

Applicant's submissions: 01 site location, 02 floor plans

The applicant has demonstrated that on the balance of probability that 90C Trinity Road has been a self-contained residential unit for a period of 4 years, has become immune from enforcement action and is therefore lawful.