LIST OF RECOMMENDATIONS UNDER DELEGATED POWERS

REPORT FOR CONSIDERATION UNDER DELEGATED POWERS

1. APPLICATION DETAILS

Reference No: HGY/2016/2199 **Ward:** Woodside

Date received: 15/06/2016

Drawing number of plans: OS Plan, Block Plan, EXPL/01 Rev A, EXPL/01 Rev B, Existing Ground Floor Plan, Existing First Flor Plan, Existing Second Floor Plan, Existing Third Floor Plan, Recipts and statement from Berthold Popp Bauelemente (10/06/2016), Tenancy Agreement for flats 1-12 and 14 (2011-2016), Council Tax records for flats 1-13 (2016/2017).

Address: 25 Stuart Crescent N22 5NN

Proposal: Certificate of Lawful Development for the conversion of the property into 13 units.

Applicant: Mr Kiri Hakim

Ownership: Private

Officer contact: Nanayaa Ampoma

2. RECOMMENDATION

REFUSE CERTIFICATE on the following grounds:

On the basis that the Council has contrary evidence, the applicant has failed to fully demonstrate that 'on the balance of probability' the property has been used as 13 self-contained flat for a continuous period of four years.

3. SITE AND SURROUNDINGS

The application site relates to a three-storey property on a residential road. The site forms part of a row of terraces. The property was previously a single dwellinghouse, however has since been converted with extensions.

The property is not listed however falls within the Trinity Gardens Conservation Area.

4. RELEVANT PLANNING AND BUILDING CONTROL HISTORY

Planning

HGY/2004/1355: Creation of additional floor within roof space and erection of side extension to create 3 x 1 bed and 1 x 2 bed self contained flats. Renovation of existing ground floor rear building (B1 Use). – Granted 03/08/04

HGY/2009/1364: Erection of first, second and third floor rear extension and roof extension, conversion of property into 1 x two and 3 x one bedroom flats, and renovation of existing B1 (Business) use building to rear with alterations to front/ rear elevations. – Granted 13/010/2009

HGY/2012/0256: Creation of 2 x 1 bedroom self contained flats at the rear, insertion of solar lights, insertion of another dormer on the principle frontage, alterations to the side and rear windows. -Granted 27/03/12

OLD/1950/0582: Use of premises for retreading and sites of tyres and for office 2nd storage purposes. -Refused 04/07/50

OLD/1952/0501: Use for buying, sorting & selling of scrap metal.-Refused 13/02/52

OLD/1952/0502: Use for sale of dwelling materials and sheds @ rear as builders yard. -Refusal 12/03/52

OLD/1957/0621: Use as wholesale warehouse. Granted 15/07/1975

OLD/1971/1145: Change of use of ground floor front room to tailers shop and work room. Granted 12/07/71

OLD/1972/1415: Use of ground floor for light industrial purpose (N0. 25). Refused 03/01/1972

OLD/1972/1416: Use of ground floor front as shop and of the single storey building at rear of storage purposes (25A). Refused 03/05/1972

OLD/1972/1417: Use of ground floor front room for office purposes & of single storey building at rear for hight industrial purposes (No.25A). Granted 04/05/72

OLD/1973/1703: Continuation of use of single storey building at rear for the manufacture of children's clothes & ground floor front room for office purposes. Granted 20/01/73

OLD/1983/1523: 6/5/83 Change of use from residential to school use. Refused 20-06-83

Building Control

FE/0008/4876/: Replacement Windows/Glazing or Doors Member name: Homeserve Emergency Servi FENSA installation ID: 5255464 FENSA membership no.: 11376 Install invoice no.: HO1606838 Window count: 0 Door count: - Accepted 07/12/07

FE/0008/5410/: Replacement Windows/Glazing or Doors Member name: Homeserve Emergency Servi FENSA installation ID: 5359737 FENSA membership no.: 11376 Install invoice no.: HO1738555 Window count: 0 Door count: - Accepted

FE/0009/2838/:1 Door – Accepted

INE/0010/0576/: Three storey extension and new roof. – Accepted 25/05/2011

INE/0010/2485/: Internal fitout to create 4 self contained flats within 3 storey shell and internal fitout of single storey structure at rear to create 2 self contained flats. – Accepted 06/12/11

5. DETAILS OF PROPOSAL

A Certificate of Lawfulness for existing use is sought for the conversion of the main property and the creation of several rear extensions at the site. The application is made under Section 191 of the Town and Counctry Planning Act 1990 for an existing use. The applicant maintains that the creation of 13 flats at the property was undertaken more than four years ago (in 2011) and can be assessed under this Section. The assessment must therefore consider:

- Whether the building works were completed four years ago
- Whether the 13 units were created four years ago and have existed continuous for the last four years.

6. EVIDENCE SUBMITTED

OS Plan
Block Plan
EXPL/01 Rev A
EXPL/01 Rev B
Existing Ground Floor Plan
Existing First Flor Plan
Existing Second Floor Plan
Existing Third Floor Plan
Recipts and statement from Berthold Popp Bauelemente (10/06/2016)
Tenancy Agreement for flats 1-12 and 14 (2011-2016)
Council Tax records for flats 1-13 (2016/2017)
CIL

7. RELEVANT PLANNING LEGISLATION

The application has been made under Section 191. Section 191(2) (a) of the Town and Country Planning Act 1990 (as amended) indicates that a use is lawful if the time limit for enforcement action has expired. The time limit for enforcement action relating to the conversion of a property or the creation of a residential units is set out as four years of continuous use under Section 171B of the Town and Country Planning Act 1990.

In light of this, an assessment is required as to whether the proposed use of the property as thirteen flats has been continuous for the period of four years up to the date of the application submission. In addition, whether the building works under residential use, were substantially completed over four years ago. The planning merits of the development are not material considerations in the issuing of the Certificate. As such, matters including neighbour amenity, character or design are not taken into account. The Council must determine whether, on the balance of probability, the applicant has produced adequate evidence to demonstrate that the development complies with the four year rule.

8. ANALYSIS/ASSESSMENT OF THE APPLICATION

The Secretary of State has advised local planning authorities that the burden of proof in applications for a Certificate of Lawfulness is firmly with the applicant (DOE Circular 10/97, Enforcing Planning Control: Legislative Provisions and Procedural Requirements, Annex 8, para 8.12). The relevant test is the "balance of probability", and authorities are advised that if they have no evidence of their own to contradict or undermine the applicant's version of events, there is no good reason to refuse the application provided the applicant's evidence is sufficiently precise and unambiguous to justify the grant of a Certificate.

The applicant has built a number of units and extensions to the rear of the property and converted the main property and the extensions at 25 Stuart Road into what they have described on the application form as 13 flats.

The applicant has stated that the document from German manufacturers Berthold Popp Bauelemente represents an affidavit that proves that the units were created over four years ago. However officers consider that while this document may suggest that the building works known to the German builders were completed in 2011, it does not shed light on or provide clarification as to whether the use of the units as 13 flats has been in existence for the last four years.

Planning records indicate that the site has been given several permissions to convert and create extensions to the original building. It is not clear whether any of these permissions were implemented and then later amended.

Building Control records state that in 2011 works were undertaken at the property to create 4 self-contained flats to the main property and to create 2 flats to the rear structure (INE/0010/2485/). These works were accepted on 06/12/11 by Building Control. There are no further Building Control records that indicate further conversions. As such if the applicant submitted an application for 6 units and built 13 they were in contravention of the Building Notice. Nevertheless the Building Control application amounts to a desktop assessment rather than a site visit. Therefore it is possible that a different number of units could have been built.

The applicant has also submitted shorthold tenancy agreements from previous tenants however these documents highlights further inconsistencies. Firstly, all the tenancy agreements relate to '*rooms*' 1-12 and 14 and not flats. Suggesting the property was previously bedsits. Also, that perhaps in 2012, 2014 and 2015 there were in fact 14 units at the site and not 13. The applicant has stated that the reason for this is because the occupier of unit 13 was superstitious so the address was amended to state 14 rather than 13. While this may or may not be the case there are other inconsistencies. Some of the tenancy agreements refer to rooms in flats. For example, there is a tenancy agreement for room number 1 in flat 1 at 25 Stuart Crescent dated 15/01/2015 and room number 5 in flat 3 at 25 Stuart Crescent dated 1st March 2015. This further speaks to HMOs or bedsits not whole flats. No affidavits or statements have been received from the tenants. In light of this, the tenancy agreements provided by the applicant fails to clarify the number of units and their continuous use.

Lastly, Council Tax records indicate that the development was recorded as 13 units in 2015, less than a year ago. Also, that not all units were recorded at the same time. The below demonstrates when each flat was brought into rating and when the liability commenced.

- Flat 1 - Property was set up from the 15th January 2015 and banded by the Valuation Office Agency on the 14th December 2015.

- Flat 2 - Property was set up from the 15th January 2015 and banded by the Valuation Office Agency on the 14th December 2015.

- Flat 3 - Property was set up from the 01st February 2015 and banded by the Valuation Office Agency on the 14th December 2015.

- Flat 4 - Property was set up from the 01st February 2015 and banded by the Valuation Office Agency on the 14th December 2015.

- Flat 5 - Property was set up from the 01st March 2015 and banded by the Valuation Office Agency on the 14th December 2015.

- Flat 6 - Property was set up from the 01st March 2015 and banded by the Valuation Office Agency on the 14th December 2015.

- Flat 7 - Property was set up from the 01st April 2015 and banded by the Valuation Office Agency on the 14th December 2015.

- Flat 8 - Property was set up from the 01st April 2015 and banded by the Valuation Office Agency on the 14th December 2015.

- Flat 9 - Property was set up from the 01st August 2015 and banded by the Valuation Office Agency on the 14th December 2015.

- Flat 10 - Property was set up from the 01st August 2015 and banded by the Valuation Office Agency on the 14th December 2015.

- Flat 11 - Property was set up from the 01st September 2015 and banded by the Valuation Office Agency on the 14th December 2015.

- Flat 12 - Property was set up from the 01st September 2015 and banded by the Valuation Office Agency on the 14th December 2015.

- Flat 13 - Property was set up from the 01st September 2015 and banded by the Valuation Office Agency on the 14th December 2015.

As the above shows, the properties were brought to the attention of the Council Tax department at different stages. The reason for this has not been clarified. However it would suggest the units were not all completed at the same time in their current form. In addition, the VOA records also show that previous to the recording of the property as 13 units it was recorded as 8 units. This was later deleted on 01/04/2015 by the VOA. This further compounds the argument that the units have seen several further conversions without planning permission throughout its life and this creates further ambiguity.

As such, it does not support the view that the 13 units were created four years prior and have been in continuous use. In light of this, officers do not consider that sufficient evidence has been submitted to fully demonstrate that the units have been in existence as 13 flats for four years. The history of the property suggests that it may have been bedsits

or 8 flats and now 13. In addition, no Council Tax invoices, energy bills or other forms of bills have been submitted by the applicant to demonstrate that the units have been used as 13 separate units for the last four years. In essence, the only real evidence in support of the application relates to the affidavit. All other evidence contradicts the applicant's case.

In light of the above, it is likely that much of the extensions were built in 2011, in some form. However it has not been demonstrate that the current design of the units is as it was in 2011. Instead, the evidence submitted by the application highlights clear inconsistencies, and fails to clearly demonstrate that the history of the site for the last four years has been 13 flats as described in the application submission or that the development as is on plan was built over four years ago. For example no images have been submitted. Therefore officers consider that as there is clear evidence to contradict the applicant's case and very little evidence to support it, on the balance of probability, the units have not been used as thirteen separate flats for the last four years ago. Additionally, it is not clear that the development was built and converted as currently described in the application form over four years ago. The application should be refused.

9. RECOMMENDATION

In pursuance of their powers under the above Acts and Order the London Borough of Haringey as a Local Planning Authority hereby CERTIFY that the above proposal described by the applicant DOES NOT constitutes PERMITTED DEVELOPMENT and is NOT considered lawful.

REFUSE CERTIFICATE

Registered No.: HGY/2016/2199

Applicant's drawing Numbers: OS Plan, Block Plan, EXPL/01 Rev A, EXPL/01 Rev B Existing Ground Floor Plan, Existing First Flor Plan, Existing Second Floor Plan, Existing Third Floor Plan, Recipts and statement from Berthold Popp Bauelemente (10/06/2016), Tenancy Agreement for flats 1-12 and 14 (2011-2016), Council Tax records for flats 1-13 (2016/2017).

Reason for refusal:
On the basis that the Council has contrary evidence, the applicant has failed to fully demonstrate that 'on the balance of probability' the property has been used as 13 self-contained flat for a continuous period of four years.

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