

# LIST OF RECOMMENDATIONS UNDER DELEGATED POWERS

## REPORT FOR CONSIDERATION UNDER DELEGATED POWERS

### 1. APPLICATION DETAILS

**Reference No:** HGY/2022/2797

**Ward:** Tottenham  
Central

**Date received:** 30/09/2022

**Last amended date:** N/A

**Drawing number of plans:** 20220904-PL01, 20220904-PL02, 20220904-PL03, 20220904-PL04, Location map, Supporting evidence provided.

**Address:** Ground Floor Flat 1 Handsworth Road N17 6DB

**Proposal:** Certificate of lawfulness for the existing use of the house as two self contained flats for over 10 years.

**Applicant:** Mr Zuhtu Zuhtu

**Ownership:** Private

**Site Visit Date:** N/A

**Officer contact:** Sabelle Adjagboni

### 1. RECOMMENDATION

GRANT CERTIFICATE

### 2. PROPOSED DEVELOPMENT AND LOCATION DETAILS

This is an application for a certificate of lawfulness for the existing use of the house into two self-contained flats for over 10 years. The property is not located in a conservation area, nor does it have a listed status. However, the site falls under a Family Housing Protection Zone.

### 3. RELEVANT PLANNING AND ENFORCEMENT HISTORY PLANNING APPLICATION HISTORY

HGY/[2006/1929](#) | 1 [A](#) Handsworth Road London N17 6DB London  
Conversion of property into 2 x one-bedroom dwellings.  
Refused on 27/11/2006

HGY/1996/[1115](#) | 1 [A](#) Handsworth Road London N17 6DB London  
Change of use from workshop to a three bedroomed house.  
Refused on 25/10/1996

## **4. CONSULTATION RESPONSE**

5.1 No consultation was required

## **6. LOCAL REPRESENTATIONS**

6.1 No local representations have been sought.

## **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 dwelling house, 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 has been in place for a period in excess of 4 years and the use of the house as two self-contained flats has been in continuous use for a period in excess of 10 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 the 19<sup>th</sup> July 1996.

## Information Provided

| Information provided | Date and method of verification                                                                                                                                                                                                                                                                               |
|----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Council Tax          | <ul style="list-style-type: none"><li>- Council tax dating back to 1996 for the ground floor flat and 1999 for the first floor flat.</li><li>- More recent evidence of council tax from 2018 – 2022 for each flat.</li></ul>                                                                                  |
| Drawings             | The floor plans show the use of the property as two flats with enclosed stairs, and a door to access the stairs. There is a kitchen on each floor further emphasizing the use of the property as two independent and self-sufficient flats.                                                                   |
| Tenancy agreements   | <ul style="list-style-type: none"><li>- Tenancy agreement for flat 1B 2018 – 2019,</li><li>- Tenancy agreement for flat 1B 2019 - 2020,</li><li>- Tenancy agreement for flat 1A 2019- 2020,</li><li>- Tenancy agreement for flat 1A 2021- 2022,</li><li>- Tenancy agreement for flat 1A 2022- 2023,</li></ul> |

Officers conclude that 1 Handsworth Road is has been in use as two self-contained flats for over 10 years.

## 9. SUMMARY AND CONCLUSION

The applicant has demonstrated that on the balance of probability that 1 Handsworth Road has been a house in use as 2 self-contained flats for a period of 10, years and has become immune from enforcement action and is therefore lawful.

## 10. RECOMMENDATION

GRANT CERTIFICATE

Registered No. HGY/2022/2797

Applicant's submissions: 20220904-PL01, 20220904-PL02, 20220904-PL03, 20220904-PL04, Location map, Supporting evidence provided.