

# Officer's Report

|                           |                                                                                                                              |
|---------------------------|------------------------------------------------------------------------------------------------------------------------------|
| <b>Application Number</b> | <b>HGY/2022/3943</b>                                                                                                         |
| <b>Type</b>               | <b>Lawful development: Existing use</b>                                                                                      |
| <b>Location</b>           | 95, Willoughby Lane, Tottenham, London, N17 0RT                                                                              |
| <b>Proposal</b>           | Certificate of lawfulness for the existing use of the property as two separate self-contained flats within the C3 Use Class. |
| <b>Case Officer</b>       | Oskar Gregersen                                                                                                              |
| <b>Valid Date</b>         | 01/11/2022                                                                                                                   |
| <b>Applicant</b>          | Acorn Properties Solutions                                                                                                   |
| <b>Agent</b>              |                                                                                                                              |

## **RECOMMENDATION**

### **Permitted Development**

### **PROPOSED DEVELOPMENT AND LOCATION DETAILS**

Existing use certificate for the use of 95 Willoughby Lane, as two self-contained flats.

Subject site is a two-storey end of terrace dwellinghouse, that appears to have been subdivided as two flats.

### **RELEVANT PLANNING AND ENFORCEMENT HISTORY PLANNING APPLICATION HISTORY**

There is no relevant recent planning history at the site

The enforcement history is as follows:

UNW/2009/00073 | 95 Willoughby Lane, N17  
Breach of condition: Conversion to two flats  
Remedy: Closed 2009 immune

### **CONSULTATION RESPONSE**

No consultation undertaken on this application.

### **LOCAL REPRESENTATIONS**

Ward Councillor sent a response raising concerns at the loss of family housing. However the evidence shows that the site is immune from enforcement action.

### **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.

## **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 use of 95 Willoughby Lane as two 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 95 Willoughby Lane as two self-contained flats referred to in the application were lawful for planning purposes on the date of the application. In this instance the relevant period commences on 11/2018

## Information Provided

| Information provided                     | Date and method of verification       | Officer's comments                                                                                                                                                                                                                                                                                                                                               |
|------------------------------------------|---------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Location plan of site                    | -                                     | -                                                                                                                                                                                                                                                                                                                                                                |
| Ground floor plan of 95                  | -                                     | -                                                                                                                                                                                                                                                                                                                                                                |
| Ground floor plan of 95A                 | -                                     | -                                                                                                                                                                                                                                                                                                                                                                |
| Existing enforcement case UNW/2009/00073 | Listed on LBH register as closed 2009 | <p>This site was <u>investigated</u> for sub-division as two flats in 2009, and case was closed with no further action taken. This is likely as the site was already immune from enforcement action.</p> <p>For this <u>case</u> the relevant date is 11/2018. This evidence is sufficient to support approval of the certificate.</p>                           |
| Council Tax Information                  | <u>.Gov</u> website screenshots. 1999 | <p>The submitted images in the evidence show that the Government council tax site has record of 95 Willoughby lane <u>being sub-divided</u> as two flats since 1999.</p> <p>The relevant date for this site is 11/2018, and when assessed alongside the existing closed enforcement case, the LPA is confident that this application <u>can be approved</u>.</p> |

The required date for this application, which the proposed existing use would be immune from enforcement action, is 11/2018. In this instance, the submitted evidence, in particular the existing closed enforcement case, and submitted council tax information from the government website is sufficient to suggest that the site is immune from enforcement action. Therefore, the certificate can be granted.

## SUMMARY AND CONCLUSION

The applicant has demonstrated that on the balance of probability that 95 Willoughby Lane has been sub-divided as two self-contained flats for a period of 4 years and has become immune from enforcement action and is therefore lawful.

## RECOMMENDATION

GRANT CERTIFICATE

