

LIST OF RECOMMENDATIONS UNDER DELEGATED POWERS

REPORT FOR CONSIDERATION UNDER DELEGATED POWERS

1. APPLICATION DETAILS

Reference No: HGY/2018/1663

Ward: Tottenham Green

Date received: 03/05/2018

Drawing number of plans: Submitted Evidence

Address: 63 Broad Lane N15 4DJ

Proposal: Certificate of Lawfulness for existing use of 63 Broad Lane as two self-contained flats

Applicant: Devils Assests Ltd

Ownership: Private

Site Visit Date:

Officer contact: Laina Levassor

2. RECOMMENDATION

GRANT CERTIFICATE

3. PROPOSED DEVELOPMENT AND LOCATION DETAILS

This is a Certificate of Lawfulness for the existing use of 63 Broad Lane as two self-contained flats. The application site is a three storey building that includes a commercial unit at ground floor level, fronting Broad Lane. The site is not within any Conservation Area and is not within the curtilage of a listed building.

4. RELEVANT PLANNING AND ENFORCEMENT HISTORY PLANNING APPLICATION HISTORY

HGY/2001/0082: Refused – March 2001

Change of use from ground floor take away food shop to a 1 bedroom self-contained flat with associated alterations to the front and rear elevations.

5. CONSULTATION RESPONSE

5.1 The following were consulted regarding the application:

No consultees

6. LOCAL REPRESENTATIONS

6.1 The following were consulted:

No Consultees

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 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 May 2014.

Information Provided

INFORMATION PROVIDED	DATE AND METHOD OF VERIFICATION	OFFICER'S COMMENTS
Submitted Floorplans	Drawing Number: P101	Plans provided show the property to be subdivided into two self-contained flats – 1x2 Bed Flat First Floor & 1x1 Bed Flat Second Floor.
Planning Statement		Statement claims that the property has been used as 2 separate flats for more than 10 years.
Tenancy Agreement: '63A Broad Lane'	Period Covered: August 2009 to February 2010	Agreement Signed & Dated: 05 August 2009.
Tenancy Agreement: '63A Broad Lane'	Period Covered: October 2015 to October 2016	Agreement Signed & Dated: 09 October 2015
Tenancy Agreement: '63B Broad Lane'	Period Covered: November 2009 to May 2010	Agreement Signed & Dated: 12 November 2008
Tenancy Agreement: '63B Broad Lane'	Period Covered: May 2012 to May 2013	Agreement Signed & Dated: 30 May 2012
Council Tax	Period Covered: 2004 to Present	Records show 63A & 63B to have been separated for Council Tax purposes with effect from 01/04/2004.
Letter from 'Ellis & Co' Sales & Lettings	Dated: 04 July 2017	Letter from Company Director – states that firm was instructed to rent & manage 63a & 63b from 2007 (10 years at time of signing).
Thames Water Bill	Dated: 03 March 2014	Utility Bill addressed to 'Top Floor Flat, 63 Broad Lane' for period August 2013 to February 2014.
Site Visit	Date: 20 June 2018	Site visit attests to property being subdivided as described.

9. SUMMARY AND CONCLUSION

The applicant has demonstrated that on the balance of probability that 63 Broad Lane has been subdivided and used as two self-contained flats for a period of 4 years and has become immune from enforcement action and is therefore lawful.

10. RECOMMENDATION

GRANT CERTIFICATE

Registered No. HGY/2018/1663

Applicant's submissions: Submitted Evidence