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| <b>LDC Report</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 24/12/2015                                   |
| <b>Officer</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | <b>Application Number</b>                    |
| Jagdish Akhaja                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | 2015/6142/P                                  |
| <b>Application Address</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <b>Recommendation</b>                        |
| 35 Fellows Road<br>London<br>NW3 3DX                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Grant Certificate of Lawfulness              |
| <b>1<sup>st</sup> Signature</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | <b>2<sup>nd</sup> Signature (if refusal)</b> |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                              |
| <b>Proposal</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                              |
| Conversion of garage and storeroom into habitable space and replacement of rear garage door with glazed doors.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                              |
| <b>Assessment</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                              |
| <p>The application site is located on the northern side of Fellows Road. The building is not listed nor is it within a conservation area.</p> <p>The proposal relates to a single family dwellinghouse at no.35 for the conversion of the garage and storeroom into habitable space and the replacement of the rear garage door with glazed doors. The application seeks to demonstrate that these works were done at least 4 years ago such that the continued use would not require planning permission and would be immune from planning enforcement.</p> <p><b>Applicant's Evidence</b></p> <p>The applicant has submitted the following information in support of the application:</p> <ul style="list-style-type: none"> <li>• Repair work invoice dated 05/07/2005</li> <li>• Architect letter dated 04/01/2004</li> <li>• Ex-neighbours confirmation email 22/12/2015</li> </ul> <p>The applicant has also submitted the following plans:</p> <ul style="list-style-type: none"> <li>• A site location plan 1537-L-001; 002,003</li> </ul> <p><b>Planning History</b></p> <p>2003/1225/P- External alterations at rear garden level in connection with the conversion of the garage and store room to living accommodation and erection of a timber fence and pedestrian</p> |                                              |

gate to enclose rear garden area. The application was **withdrawn** on 16/01/2009, officer recommendation was granted subject to S106

There is no other relevant planning history or enforcement action on the subject site.

### **Council's Evidence**

A site visit to the property was undertaken on the 08/12/2015. The officer was satisfied that the unit had been occupied for residential use for some time.

In addition, the conversion of an internal garage to habitable accommodation for an existing dwelling house is permitted under Class A of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 as amended by the (No. 596) (England) Order 2015 (effective 15th April 2015). This means that the development does not require planning permission in any event.

### **Assessment**

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 planning merits of the use are not relevant to the consideration of an application for a certificate of lawfulness; purely legal issues are involved in determining an application.

The Council does not have any evidence to contradict or undermine the applicant's version of events.

The information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that 'on the balance of probability' the lower ground floor unit has existed in residential use for a period of more than 4 years as required under the Act. Furthermore, the development does not require planning permission as it is permitted development under the General Permitted Development Order, both at the time of the works and to this day.

**Recommendation: Grant Certificate of Lawfulness (Existing)**