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## Appeal Decision

Site visit made on 30 June 2020

**by L Perkins BSc (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 03 July 2020**

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**Appeal Ref: APP/T5150/C/19/3240951**

**72 Hay Lane, London NW9 0LG**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr Sunil Kalyani against an enforcement notice issued by the Council of the London Borough of Brent.
  - The enforcement notice was issued on 3 October 2019.
  - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of a domestic garage at the front of the premises to a dwelling.
  - The requirements of the notice are:
    1. Completely and permanently cease the use of the domestic garage at the front of the premises as a dwelling.
    2. Remove all partitions, doors, facilities, fixtures and equipment that facilitate the unauthorised residential use.
    3. Removed all items, waste materials and debris associated with compliance Steps 1 and 2.
  - The period for compliance with the requirements is 6 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(b) and (c) of the Town and Country Planning Act 1990 as amended.
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### Decision

1. It is directed that Schedule 4 Step 3 of the enforcement notice be corrected by deletion of the word "Removed" and its replacement with the word "Remove". Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

### Preliminary Matter

2. There is a typographical error in requirement 3 of the notice which I have corrected as set out in my Decision above.

### Reasons

#### *The appeal on ground (b)*

3. The appellant has stated that what is alleged in the notice has not taken place and that there is no evidence to suggest that the converted garage has been used as a self-contained flat.
4. But evidence provided by the Council, including photographs and an account of an internal inspection in September 2019, indicates the garage building has been occupied by a family with use of kitchen, washing and sleeping facilities all of which I saw at my site visit.

5. The appellant has also stated the current usage is as an office. But in light of the above there is no evidence of this. Considering each of the above points the appeal on ground (b) fails.

*The appeal on ground (c)*

6. Under his ground (b) appeal the appellant has stated that the use of the converted garage is an ancillary use connected with the main house and that the current usage is permitted development as it is incidental to the main property. These points relate to ground (c) ie that the matters alleged do not constitute a breach of planning control, rather than ground (b).
7. Having found, above, that the breach of planning control alleged in the notice has occurred, the use of the garage building as a separate dwelling is not a use which is ancillary or incidental to the main dwelling on the site. The use is a material change of use that requires planning permission in its own right under section 55(1) of the 1990 Act noted above.
8. Permitted development rights do not allow a building such as the domestic garage building which is the subject of this appeal to be used as a separate dwelling. The appellant has stated that the conversion of a garage into a habitable room is permitted under the Town and Country Planning (General Permitted Development) Order. But the garage building in this case contains primary living accommodation, including bedrooms and a living area with kitchen facilities. Primary living accommodation does not constitute a use which is incidental to the enjoyment of a dwellinghouse.
9. The appellant has said the garage is more closely associated with an annex. But I do not accept this argument as, from the evidence available to me, it has been separately occupied as a dwelling by a family with no access to the main house.
10. In addition, there is no evidence planning permission has been granted for the breach of planning control alleged in the notice. Considering all of the above points the appeal on ground (c) fails.

**Other Matters**

11. The appellant considers it is unreasonable to ask that the kitchen and bathroom is taken away and that it is unreasonable to enforce changes that were in situ when the property was purchased.
12. But for planning enforcement purposes it is not relevant who carried out the works, and, an enforcement notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own do not constitute development or are immune from enforcement action.
13. The appellant has said that the garage has been converted to a habitable nature for a significant period of time. But no evidence of this has been provided and no clarity has been provided on what is meant by conversion in this context.
14. The appellant has said that the garage is an original part of the property and that it was not built specifically for the purposes of providing an annex. But these points make no difference to my overall conclusion in this case.

## **Conclusion**

15. For the reasons given above, I conclude that the appeal does not succeed. I uphold the enforcement notice with a correction.

*L Perkins*

INSPECTOR