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## Appeal Decision

Site visit made on 16 June 2020

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

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

**Decision date: 17 July 2020**

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**Appeal Ref: APP/A5270/C/19/3237557**

**75 Greenford Avenue, Hanwell, London W7 1LJ**

- 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 J Patel against an enforcement notice issued by the Council of the London Borough of Ealing.
  - The enforcement notice was issued on 14 August 2019.
  - The breach of planning control as alleged in the notice is: Without planning permission: the material change of use of the outbuilding to a self-contained flat ("the Unauthorised Development")
  - The requirements of the notice are:
    1. Cease the use of the outbuilding as a self-contained flat
    2. Remove the kitchen and drainage connections from the self-contained flat
    3. Remove all resultant debris from the premises
  - The period for compliance with the requirements is 3 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(c) and (d) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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### Decision

1. The appeal is dismissed and the enforcement notice is upheld.

### Preliminary Matters

2. The grounds pleaded by the appellant were set out in a letter dated 28 November 2019. Save for ground (a) (for which see above) I have determined the appeal on the basis of these grounds and this is consistent with the grounds addressed by the Council.
3. The outbuilding which is the subject of the notice is to the rear of No 75. The outbuilding is accessed via an alleyway leading from a yard at the rear of the property and the yard is accessed from a side road, ie Drayton Bridge Road.

### Reasons

*The appeal on ground (c)*

4. An appeal on ground (c) is that the matters stated in the notice which give rise to the alleged breach of planning control, if they occurred, did not constitute a breach of planning control. Correspondence from the appellant states that the current use should be considered "permitted development" due to the time that

the outbuilding has been used as an independent dwelling, prior to any enforcement notice being issued.

5. There is no permitted development right to use an outbuilding as a self-contained flat and the argument presented by the appellant reflects an appeal on ground (d) ie that at the date the notice was issued no enforcement action could be taken in respect of any breach of planning control which may be constituted by the matters alleged in the notice. So I have considered the appeal on ground (d), below, and this is consistent with the approach taken by both main parties.
6. In light of the above and given there is no evidence planning permission has been granted for the appeal development or that the appeal development is not development for the purposes of s55 of the 1990 Act noted above, the appeal on ground (c) fails.

*The appeal on ground (d)*

7. In general terms, for success on ground (d), the appellant must demonstrate that prior to the issue of the notice there has been a continuous use of the dwelling for 4 years beginning with the date of the breach. The burden of proof is on the appellant. The decision must be made on the evidence provided, that evidence must be precise and unambiguous and the standard of proof is the balance of probabilities.
8. In a signed statement, the appellant has said in relation to the appeal premises that the outbuilding, known as the 'Rear Ground Floor Flat' has been used as an independent dwelling prior to his purchase of the property on 23 May 2008. He also states that the outbuilding has been used as such constantly until the current date, that being 31 October 2019 when the statement was signed. However, this statement is not recognisable as a Statutory Declaration pursuant to The Statutory Declarations Act 1835 and there is no evidence any sanctions would apply should what is said subsequently prove to be untruthful. Therefore I give limited weight to the appellant's written statement.
9. The appellant's evidence includes a Council Tax Liability Order relating to an address referred to as 'Ground Floor Rear Flat' at the appeal premises, dating back to 1 April 2014. But as there are two dwellings in this location, ie the outbuilding and another dwelling opposite it in what appears to be a rear part of the main building at No 75, I cannot be certain the 'Ground Floor Rear Flat' referred to in the liability order is the dwelling which is the subject of this appeal. Moreover, the payment of Council Tax does not necessarily demonstrate there has been continuous use of a dwelling for 4 years. Neither does the banding of a property for Council Tax, which in this case is also said to have happened on 1 April 2014.
10. A signed statement has been provided from Mr Akram Ak Ali. He states he lived in the property known as 'Rear Ground Floor Flat', No 75A, and that he rented this property from 1 February 2010 to 31 January 2014 ie for precisely 4 years prior to the issue of the notice. However, no tenancy agreement has been provided to support this statement, the statement is not a Statutory Declaration and the statement refers to the property as No 75A which is not consistent with the address stated in the statement signed by the appellant.

11. A site visit to the appeal site by the Council on 17 July 2013, when Mr Akram Ak Ali has said he lived there, found in the rear alley way (noted above) one room occupied by an old couple and 'other rooms' used as storage. Considering all of the above points, including that there are no other rooms in this location that could have been used as storage, I am not satisfied the statement of Mr Akram Ak Ali demonstrates on the balance of probabilities that there has been continuous use of the outbuilding as a dwelling for 4 years. Consequently, I give his statement limited weight.
12. A signed statement by Mr Manjit Gakhal says he lived in the 'Rear Ground Floor Flat' of No 75A which he rented from 5 June 2015 to 5 January 2017, ie a period of just over a year and a half. But Mr Gakhal's statement is not supported by a tenancy agreement, it is not a Statutory Declaration and it also refers to No 75A so it does not match the address referred to in the statement signed by the appellant either. I therefore give Mr Gakhal's statement limited weight.
13. Moreover, a site visit undertaken by the Council on 25 October 2016 found that 'ground floor rear flat 1', ie the outbuilding, was being used for storage, including tools and building materials. Whilst Mr Gakhal may be a builder (and this may explain what was seen) his occupation of the outbuilding does not demonstrate 4 years continuous use of the outbuilding as a dwelling.
14. The appellant has said references from site inspection reports to the outbuilding being used for storage could have been mistaken for when the outbuilding was being used as accommodation. But I do not find it likely that Council officers used to inspecting residential premises would be mistaken in this way.
15. A fire broke out in the outbuilding on 22 May 2017. A report by London Fire Brigade describes the outbuilding as a bedsit said not to be in use at the time of the fire. At a site visit by the Council on 30 May 2017 it is said the landlord said no one lives in the outbuilding but that builders use it as they have been doing building work for the last 2 years. During the visit, personal items were noted inside including opened letters, and, a tenant from the first floor of the building said that someone had been living there.
16. At a further site visit by the Council on 28 June 2017 tools were found being stored in the outbuilding. However, officers noted the double bed, personal items in the bathroom, ladies perfume and opened letters in the kitchen area indicated that there could well be someone living there and a tenant from the first floor said that someone had been living there. But none of these are evidence of continuous use of the outbuilding as a dwelling for 4 years.
17. Having considered all of the evidence provided I am not satisfied that the appellant's evidence is sufficiently precise and unambiguous to demonstrate on the balance of probabilities that the outbuilding has been continuously used as a dwelling for 4 years prior to the issue of the notice. Accordingly, the appeal on ground (d) fails.

**Conclusion**

18. For the reasons given above the appeal does not succeed.

*L Perkins*

INSPECTOR