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## Appeal Decision

Site visit made on 25 February 2014

**by P N Jarratt BA(Hons) Dip TP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 28 February 2014**

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**Appeal Ref: APP/X5210/C/13/2203974**

**Flat A, 80 Cricklewood Broadway, London, NW2 3EP**

- 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 Ms Barbara Manfredi against an enforcement notice issued by the Council of the London Borough of Camden.
  - The Council's reference is EN13/0780.
  - The notice was issued on 11 July 2013.
  - The breach of planning control as alleged in the notice is use of a garage at rear as self contained flat.
  - The requirements of the notice are within two months of the date of the notice the use of the rear garage as a self contained residential flat to permanently cease and all fixtures and fittings relating to the residential use including bathroom and kitchen fittings to be removed permanently from the site.
  - The period for compliance with the requirements is two months.
  - The appeal is proceeding on the grounds set out in section 174(2) (d) of the Town and Country Planning Act 1990 as amended.
  - **Summary of Decision: Appeal dismissed and enforcement notice upheld.**
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### Reasons

1. An appeal on ground (d) is that, at the time the notice was issued, it was too late for action to be taken against the matters stated in the notice. In breaches of planning control involving a material change of use to residential purposes it is necessary for the use to have commenced and continued for a period of four years before the issue of the notice. As the notice was issued on 11 July 2013, the material date is therefore 11 July 2009.
2. The appeal site is a detached pre-cast concrete former double garage to the rear of No 80 Cricklewood Broadway, a three storey building with shop premises on the ground floor front and some seven flats to the rear and above. The detached structure has the appearance of a double garage with two metal garage doors facing Ebsfleet Road although a brick wall has been constructed on the boundary of the site preventing any possible vehicular access. On the side wall of the building is a domestic door and a small window. Internally, the building is fitted out as a bed sit with an L-shaped living/bedroom with kitchenette and a separate small bathroom.
3. The appellant claims that the appeal property has been continuously used as a self contained flat for at least six years but is unclear when the use actually commenced. The appellant is the current tenant and has occupied the appeal property since November 2009.

4. Reference is made to the plans attached to an application made in 2007 (Ref 2007/3265/P)<sup>1</sup> for a two storey extension to provide three flats. Permission was granted in May 2008 but has not been implemented. The existing ground floor plan (Drawing No 0621B/Drwg/EP/02A) clearly shows the converted garage with an L-shaped room with a kitchenette and a separate bathroom.
5. The Design and Access Statement (DAS) accompanying that application makes reference to the use of the garage as residential. It refers to the appeal premises at various points in the text such as 'a ground floor single-storey detached building is also located to the rear of No 80' (paragraph 1.4); and, 'access to the residential accommodation, both within the main body of the building, rear addition and the detached structure at the rear' (paragraph 1.6). Paragraph 1.8 refers to residential accommodation and 'in the detached building to the rear is one large L-shaped room with a bathroom and WC leading off this room.' Paragraph 1.15 refers to the detached structure at the rear of the premises looking rather incongruous. Paragraph 2.1 refers to the residential accommodation within a detached outbuilding to the rear of the site. Paragraph 2.2 refers to it having 'been used for residential occupation for some considerable time and has established the use in this specific location.'
6. Despite the references in the DAS to the residential use of the single storey building at the rear, which are more than just 'passing references' as suggested by the Council, there is no indication from the Council whether this was picked up by them at the time of the application. Although no officer's report on the application has been submitted by either party, the appellant makes reference to the planning officer's delegated report failing to make any comment in respect of the appeal site not being laid out as shown on the existing drawings.
7. The Council on the other hand points out that all other Council records including Council Tax, Environmental Health inspections and the Electoral Register all show that the property at No 80 has been in use as seven separate units in excess of 10 years and that there is no reference in these records to the garage being used for residential purposes. Additionally, the application form accompanying 2007/1605P indicates that the property is in use as an HMO and describes the existing use as 6 self contained flats and one non self contained flat. The appellant believes this to be an error when viewed in the context of the DAS.
8. The appellant has not submitted any evidence in the form of lease agreements, sworn affidavits, utility bills or any other documentary evidence to support her case that the flat has been in existence for the necessary four years. The appellant states that as a tenant she is not in possession of former lease agreements, utility agreements or anything pertaining to the occupation of the appeal site prior to November 2007.
9. The appellant suggests that the lack of documentary evidence or the absence of any reference to the use of the appeal property as a flat in the Council's records does not disprove the case being made. However, in legal grounds of appeal the burden of proof is on the appellant and the standard of proof is the balance of probabilities.

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<sup>1</sup> The appellant mistakenly referred to an earlier withdrawn application under Ref 2007/1605/P in their appeal. Both the withdrawn application and the subsequently determined application Ref2007/3265/P had the same Design and Access Statements and the same existing ground floor plan (Drawing No 0621B/Drwg/EP/02A).

10. The Council's reference to the non residential external appearance of the appeal premises is not material to the use of the premises.
11. Whilst I find the reference to the residential use of the single storey building at the rear in the 2007 planning application to add some weight to the appellant's case, weighing against this is the contradiction in the number of units on the application form. I do not find the information contained in the planning application to be sufficient by itself to demonstrate on the balance of probability when the actual residential use of the appeal property may have commenced or to confirm that the use has been continuous for a period of four years. Notwithstanding the appellant's statement that she has not had access to any documentary evidence prior to her tenancy, even had I been satisfied by the information in the planning application, no documentary evidence, such as a lease or utility bills or Council Tax payments have been submitted to support her claim that she has been a tenant since November 2009 and occupied the premises continuously.

### **Conclusion**

12. Accordingly it has not been demonstrated on the balance of probability that a material change of use of the single storey former garage building to the rear of No 80 commenced and continued for a period of four years prior to the date of the issue of the enforcement notice.
13. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

### **Decision**

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

*P N Jarratt*

INSPECTOR