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# Appeal Decision

by **B S Rogers BA(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 28 June 2023**

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**Appeal Ref: APP/Q5300/X/22/3302320**

**30A Ingersoll Road, ENFIELD, EN3 5PU**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
  - The appeal is made by MR SEYFULLAH OZDIL against London Borough of Enfield.
  - The application ref 22/00211/CEU is dated 21 January 2022.
  - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
  - The use for which a certificate of lawful use or development is sought is use of property as a one bedroom flat.
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## Decision

1. The appeal is dismissed.

## Preliminary Matter

2. In a case of this type, the planning merits of the development are not relevant. Furthermore, neither party considered it necessary for an inspection of the interior of the property. As I have been provided with floorplans and elevations, I consider an external inspection would serve little practical purpose. There has been no objection from either party to my determining the appeal without a formal site visit and so I have proceeded on this basis.

## Reasons

3. The building in question, referred to as no.30A Ingersoll Road, appears to have been originally built as a two-storey extension to the side of a terraced house, no.30 Ingersoll Road. The submitted plans show it now to have a living room and kitchen on the ground floor and a bedroom, shower room and utility room on the first floor.
4. In a case of this type, the onus is on the appellant to demonstrate his case. An appellant seeking to make out a lawful use must provide sufficient evidence which shows, on the balance of probabilities, that there has been a continuous use for the relevant four year immunity period.
5. The only indication given by the appellant as to when the material change of use began is on the application form to the Council, where the date is given as "01/08/2021". This is substantially less than four years prior to the date of the application of 21 January 2022 and, on this basis alone, the appeal should fail.
6. The appellant's only submission, with no explanatory narrative at all, is a series of Council tax records relating to no.30A Ingersoll Road, dating from 2014/2015 to 2020/2021. Although the address of the property on these records is the same as that of the building which is the subject of the appeal,

having regard to para. 5 above, it is not clear whether these records relate to the building in the form in which it exists today.

7. Furthermore, although it is implied that the use continued throughout the requisite period, there is no evidence put before me, for example of tenancy agreements or witness statements, to demonstrate who might have occupied the building and when. Accordingly, there is an insufficient level of substantiation for me to be able to conclude that the breach of planning control continued throughout the relevant four year period, without a significant break.
8. The Council has made no observations at all on the case. The Planning Practice Guidance advises that, if there is no evidence to contradict the appellant's version of events or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted. However, the appellant's evidence here is sparse and ambiguous and insufficient to satisfy the onus of proof.
9. For the reasons given above, I conclude, on the evidence now available, that the Council's deemed refusal to grant a certificate of lawful use or development in respect of the use of the property as a one bedroom flat was well-founded and that the appeal should fail. I will exercise the powers transferred to me under S.195(2) of the 1990 Act as amended.

*B S Rogers*

INSPECTOR