

BUILDING ACT 1984 - SECTION 39

APPEAL AGAINST REFUSAL BY THE COUNCIL TO RELAX OR DISPENSE WITH REQUIREMENT E1 IN PART E OF SCHEDULE 1 TO, AND REGULATION 20A OF, THE BUILDING REGULATIONS 2000 (AS AMENDED), IN RESPECT OF A GROUND FLOOR EXTENSION, ALTERATIONS, AND CREATION OF A ROOM IN THE ROOF SPACE OF AN EXISTING TWO STOREY, MID-TERRACE BUILDING

The building work and appeal

3. The papers submitted indicate that the building work to which this appeal relates comprises a ground floor extension, alterations, and creation of a room in the roof space of an existing two storey, mid-terrace building. The property is of traditional Victorian construction built in approximately 1900, with masonry external walls, timber floors and a pitched timber roof.

4. A building notice was given to the Council on 5 February 2008 in respect of the proposed building work, which was later supplemented by a set of drawings. The notice stated that the existing building has been used as a House in Multiple Occupation (HMO) for students and that the intended use of the building, after completion of the work, would remain the same. You say that the house has been shared by six or less tenants under a joint tenancy agreement.

5. The drawings show that the existing premises comprised an entrance hall, living room, a dining room and a kitchen on the ground floor, three bedrooms and an area (although not annotated) assumed to be that of the bathroom/toilet at first floor level. The proposed layout, after completion of all the building work, will comprise an entrance hall, a bedroom and an open plan living room/kitchen and dining area at ground floor level. At first floor level there will be three bedrooms, a bathroom and a shower-room and there will be two bedrooms created on the new second floor (previously the roof/loft space).

6. As a result of the work, the building will be modified from a three-bedroom HMO, to a six-bedroom HMO. The Council took the view that the bedrooms should be regarded as rooms for residential purposes as defined in Regulation 2(1) (Interpretation) of the Building Regulations and, as such, the proposed change in the number of bedrooms would constitute a material change of use as defined in Regulation 5(i), in that "the building, which contains at least one room for residential purposes, contains a greater or lesser number of such rooms than it did previously". The Council therefore considered that Requirement E1, and as a result Regulation 20A, of the Building Regulations applied, such that sound insulation was required between the new rooms for residential purposes and other parts of the building/adjoining buildings, and that pre-completion testing should be carried out with reference to the guidance in Approved Document E (Resistance to the passage of sound).

7. However, you consider that the building is a dwelling-house and do not agree with the Council's interpretation that the new bedrooms should be treated as rooms for residential purposes. Accordingly, you believe that the consequential requirement in the Building Regulations for sound insulation testing to be carried out to demonstrate compliance with Requirement E1 does not apply in your case. You therefore applied to the Council for a relaxation or dispensation of Requirement E1 and Regulation 20A of the Building Regulations which was refused on 3 April 2008. It is against this refusal that you have appealed to the Secretary of State.

The Secretary of State's consideration

8. The Secretary of State has given careful consideration to the particular circumstances of this case and the arguments presented by both parties. She considers that the dispute arising in this case evolves around the definition of a "room for residential purposes" in Regulation 2(1) of the Building Regulations.

9. The Secretary of State notes that the Council has considered the definition given in Regulation 2(1) relating to the term "dwelling", which includes a dwelling-house and a flat, and has taken the view that the individual rooms in the building in question are not self-contained and as such do not meet the definition of a "flat". The Council notes that the definition of a dwelling-house does not include an HMO and that there is no definition of an HMO in Regulation 2(1). However, the Council considers that the specified definition of a room for residential purposes does fit with the use of an HMO. As stated above, the Council therefore takes the view that the building has undergone a material change of use, as defined by Regulation 5(i) and the building work to create the new bedrooms would be subject to Requirement E1 by virtue of Regulation 6.

10. However, you take an alternative view of what constitutes a room for residential purposes. You consider that:

- They are rooms or clusters of rooms which are self-contained from the rest of the building with living and sleeping space.
- They have a door 'designed to be locked' and that this means a door other than an internal door.
- They are made up of people who are unknown and independent to the people in the rest of the building, for example a hostel, hotel, block of flats or halls of residence.

11. You go on to say that, in your opinion, the Council is incorrect in its interpretation and that the extended property should be treated as a dwelling-house for the following reasons:

- The added space in the loft will not be self-contained from the rest of the building and does not contain any separate living space.
- It will not be separated by a door designed to be locked, the only lock is on the front door of the house.
- All tenants share living space, bedrooms, amenities, utility bills, cleaning duties etc, and are living as a household.

12. You also refer to the guidance in Approved Document B (Fire safety) which states that an HMO of six or less people can be regarded as a dwelling-house. The Council acknowledges that, when considering matters such as means of escape and structural fire precautions, similarities between a small HMO and a single occupancy dwelling-house might be considered reasonable. However, the Council does not consider that the guidance in Approved Document B is appropriate, nor should it be used, to decide whether an HMO is considered to require sound insulation or sound testing. The Council has also made reference to past information provided by the Department in forming its view.

13. The Council concludes that should the definition of rooms for residential purposes not be applied to HMOs, this would cause a reduction in the standards for sound insulation and may impact upon the health and well-being of people who reside in such premises.

14. The Secretary of State wishes to make it clear that when considering compliance with the Building Regulations it is necessary to consider the intended use of the premises only in terms of the definitions given in the Regulations themselves. The guidance that is given in Approved Documents should only be used in respect of the parts of the Regulations for which the guidance is given. There are a wide range of premises that meet the definitions of an HMO given in the Housing Act 2004. Many of these premises will contain rooms that would also meet the definition of a room for residential purposes, however there are others that will not. Each case should therefore normally be considered on its own merits.

15. The Secretary of State considers that, when deciding whether a room or a suite or rooms is/are a room for residential purposes, the list of establishments in the definition given in Regulation 2(1) is important. In order for a room or suite of rooms to meet the definition, the intended use must either be one of the listed establishments (i.e. in a hostel, hotel, boarding house, hall of residence or residential home), or must have a substantially similar use.

16. In this case, the building in question is intended to be shared by a group of people living as a household and is more akin to a dwelling-house. The Secretary of State therefore takes the view that the use of the building is not similar enough to the arrangements found in hostels, hotels, boarding houses, halls of residence or residential homes for the rooms to meet the definition of a room for residential purposes given in Regulation 2(1).

17. If the new bedrooms are not rooms for residential purposes, Requirement E1 would not apply to the walls and floors of those rooms, and consequently sound insulation testing under Regulation 20A would not be required for the purposes of demonstrating compliance. It would therefore be unnecessary to relax or dispense with these requirements. However, Requirement E2 of the Building Regulations, relating to protection against sound within a dwelling-house, would be applicable to the building work in this case.

The Secretary of State's decision

18. As indicated above, the Secretary of State has concluded that Requirement E1, and as a consequence Regulation 20A, are not applicable in this case. It therefore follows that it is not necessary to consider a relaxation or dispensation of Requirement E1 (Protection against sound from other parts of the building and adjoining buildings) in Part E (Resistance to the passage of sound) of Schedule 1 to, and Regulation 20A (Sound insulation testing) of, the Building Regulations 2000 (as amended), in relation to the building work in question. Accordingly, she dismisses your appeal.

19. You should note that the Secretary of State has no further jurisdiction in this case and that any matters that follow should be taken up with the building control body. A copy of this letter is being sent to the Head of Planning and Building Control at the Council.