

Date: 29/11/02

Ref: 45/3/158

Note: The following letter which has had personal details edited out was issued by our former department, the Office of the Deputy Prime Minister (ODPM). ODPM became Communities and Local Government on 5 May 2006 - all references in the text to ODPM now refer to Communities and Local Government.

Building Act 1984 - Section 39

Appeal against refusal by the Borough Council to relax Requirement E1 (Airborne Sound (walls)) of the Building Regulations 2000 (as amended) in respect of the wall separating Flat 1a from the common hall and stair on the ground floor, forming part of building work comprising the alteration of a building to form two additional self-contained flats

The appeal

3. The building to which this appeal relates is a three storey, semi-detached, Victorian dwelling of approximately 80m² in plan area, containing two self-contained one bedroom ground floor flats (one to the rear independently accessed from the side, and one to the front of the property); three bedsits on the first floor; and two bedsits on the second floor. With the exception of the ground floor rear flat, all the accommodation is accessed via the common hall and stairs to the first and second floors.

4. The proposed building work - for which planning permission has been granted - comprises alterations to the first and second floors involving removal of all the bedsits and their replacement by one self-contained two bedroom flat on the first floor, and one self-contained one bedroom flat on the second floor. The two self-contained ground floor flats are to be retained with the exception of some alteration work to the disposition of existing kitchens and bathrooms. You state that all the flats are to be occupied by tenants.

5. These proposals were the subject of a full plans application which was rejected by the Borough Council on the grounds of non-compliance with Requirement E1 of the Building Regulations. The Council took the view that improved sound resistance should be provided to the wall separating the bedroom and the living/dining room of the ground floor flat to the front of the property (Flat 1A) from the common hall and stair. You state that you have established that this wall is approximately 200mm thick and that it is constructed from solid brickwork and plastered on both faces. However, your understanding was that because the ground floor flats were not being altered Requirement E1 applied to the first and second floors only. You also considered that for aesthetic reasons it would be impractical to line one face of the wall in question on the ground floor for acoustic purposes. You

therefore applied for a relaxation of Requirement E1 which was refused by the Borough Council and it is against that refusal that you have appealed to the Secretary of State.

The appellant's case

6. You have described the cornices and corbels in the hallway and the adjacent bedroom as major Victorian architectural features which should not be destroyed. You therefore believe that it would be impractical to line one face of the existing wall separating Flat 1A from the hallway for acoustic purposes. You consider that it would not be possible to make good or match the architectural features of the cornice work to the ceilings, and that the existing corbel would be partially lost if the walls are to be lined. However, all other walls and ceilings have been upgraded in accordance with the Building Regulations.

7. You state that the existing Flat 1A has been occupied by the same tenants for many years and they have advised you that they have not experienced any nuisance concerning transmission of noise through the existing wall adjoining the common stair. You also point out that the alteration to the building will reduce its occupancy level.

8. You conclude that the Borough Council has formed its view without understanding the problems that exist in your case in trying to comply with Requirement E1 as you cannot do so without destroying the architectural features.

The Borough Council's case

9. The Borough Council takes the view that the building work proposed constitutes a material change of use under regulation 5 of the Building Regulations and will therefore need to comply with Requirement E1 and the other requirements falling within Part E (Resistance to the passage of sound) of the Building Regulations (as prescribed in regulation 6(1)(e)).

10. The Borough Council notes your argument for not complying with Requirement E1 in that you wish to preserve architectural features, but considers that these should not take precedence over the sound insulation. The Council takes the view that the expectancy of sound insulation of new flat owners is much higher nowadays as sound transmission is considered to be a nuisance. Flat buyers would expect a newly converted flat to comply with at least the minimum standards under Part E. The Council considers it inappropriate to risk damaging the health of the occupants by allowing a relaxation of Requirement E1.

11. The Borough Council does not accept that it would be impractical to provide adequate sound insulation and states that you have not given any reason why the cornice work and corbels could not be easily replaced in the same style after sound insulation was introduced to maintain the architectural appearance. The Council also believes that there may be adequate headroom

and floor area space to form a sound proofing independent stud wall and suspended false ceiling to preserve the cove, panelled ceiling detail and plaster picture rail "for future use".

The Secretary of State's consideration

12. The Secretary of State agrees that your proposals constitute a material change of use to the building and that the building as a whole should comply with Part E. In most situations it would be reasonable to improve the performance of this wall to 'separating wall' standards. However, *paragraph 5.4 of Approved Document 'E' (1992 edition)* suggests that the guidance should be treated flexibly in buildings where there are architectural features, in order to protect those features. The Secretary of State has therefore proceeded by first assessing the degree of compliance being achieved by the 'separating wall' as existing, and then by considering whether the aesthetic attributes of the cornices and corbels are sufficient to compensate for any assessed shortfall in the performance of the wall.

13. The guidance in *section 5 of Approved Document E* is that an existing separating wall may meet the requirement for sound insulation without the need for remedial work where the mass of a wall is within 15 per cent of the mass of a similar construction shown in section 1 of the guidance. In your case, you indicate that the existing wall is built from solid brick, 200mm thick, and is plastered on both faces. The Secretary of State takes the view that it is likely that the mass of this wall is within 15 per cent of the mass of wall type 1A in section 1 shown on *page 8 of Approved Document E* and it would therefore comply with Requirement E1. If there is a shortfall in the mass, the Secretary of State considers that it will be small and will have a minimal effect on the sound insulation.

14. You have provided drawings and photographs of the architectural features and the Secretary of State takes the view that they do enhance the appearance of the hallway and the adjacent bedroom and that they are worth preserving. However, the Borough Council points out that new flat owners have a high expectation of sound insulation because sound transmission is considered to be a major nuisance. The Secretary of State agrees with this view but, given that the shortfall in performance of the separating wall is assessed as small, he considers that on balance the remedial treatment suggested would detract from the appearance of the architectural features and is not warranted in this case.

15. The Secretary of State attaches great importance to sound insulation, and in reaching this conclusion he has taken account of the light use that will be made of the corridor, and your assurance that the occupants of Flat 1A have not previously been disturbed by noise. He considers that it is particularly important that cases of this type are considered on their own individual merits.

The Secretary of State's decision

16. The Secretary of State has given careful consideration to the facts of this case and the arguments put forward by both parties. Paragraph 13 above has given the Secretary of State's view on the compliance of the separating wall in question with Requirement E1, having regard to the guidance in *Approved Document E* and the circumstances of this particular case.

17. However, you have appealed to the Secretary of State in respect of the refusal by the Borough Council to relax Requirement E1. The Secretary of State considers that compliance with the requirements of Part E of the Building Regulations may well be a matter affecting the health of occupants, particularly in a domestic situation where sleeping accommodation may be subject to noise, and as such he would not lightly consider relaxing these except in exceptional circumstances. Moreover, because in the particular circumstances of this case he considers that your building work complies with Requirement E1, there would appear to be no *prima facie* case for the need to relax the requirement in any event. Therefore, taking both these factors into account, the Secretary of State has concluded that it would not be appropriate to relax Requirement E1 (Airborne sound (walls)) of the Building Regulations 2000 (as amended). Accordingly he dismisses your appeal.