

Date: 30/08/07

Ref: 45/1/228

## **Building Act 1984 - Section 16(10)(a)**

### **Determination of compliance with the Building Regulations 2000 (as amended) in respect of extensive building work to a two storey house.**

#### **The proposed work and question arising**

4. The documents submitted indicate that a full plans application was submitted to the council for the proposed building work in question, which you described as a two storey extension and alterations to an existing two storey, three bedroom, dwelling with a plan area of approximately 114m<sup>2</sup>. On completion of the proposed work the building will be a two storey, five bedroom, dwelling with a ground floor plan area of approximately 190m<sup>2</sup> and first floor plan area of approximately 140m<sup>2</sup>. In addition to increasing the overall size of the dwelling the proposed work also comprises extensive remodelling of the ground floor and a completely new layout for the first floor.

5. Following a preliminary assessment of your plans, due to the extent of demolition and alteration work proposed, the council told you that it intended to treat your application as the erection of a new dwelling and that your proposals would be subject to the following provisions, amongst others, for the purposes of ensuring compliance with the Building Regulations 2000 (as amended) (hereafter referred to as 'the Building Regulations'):

(i) Carrying out air pressure testing in accordance with regulation 20B (Pressure testing) of the Building Regulations in order to ensure compliance with regulation 17C (New buildings) of, and requirement L1(a)(i) (Conservation of fuel and power) of Schedule 1 to, the Building Regulations.

(ii) Calculating target and design carbon emission rates, in accordance with regulation 20D (CO<sup>2</sup> emission rate calculations) of the Building Regulations, using SAP or another suitable method, in order to ensure compliance with regulation 17C of the Building Regulations.

(iii) Providing appropriate provision of level access and disabled facilities, as required by requirements M1 (Access and use) and M4 (Sanitary conveniences in dwellings) of Schedule 1 to the Building Regulations.

6. The council indicated that section 123(2) of the Building Act 1984 (hereafter referred to as 'the 1984 Act') enabled it to take the above view. As an 'adequate response' was not received to the council's request for further information, the council rejected your full plans application on 24 October 2006. As you believe that the proposed building work comprises an extension and alterations to an existing dwelling and not an erection of a new dwelling,

you do not consider that you should be required to comply with the additional provisions of the Building Regulations indicated in paragraph 5 (i) - (iii) above. Consequently, you have applied to the Secretary of State for a determination in respect of this question.

### **The applicant's case**

7. You believe that section 123 of the 1984 Act "*...only deals with the extent of 'reconstruction' of a building for which building regulations approval must be sought before the work is carried out*" and does not provide the right for the council to determine that the proposed building work in your case comprises the erection of a new dwelling/building. In your view, the work does not involve erecting a new building; you state that it retains parts of the original building and extends and alters it. You therefore dispute the council's view that your proposals should be subject to the provisions of the Building Regulations indicated in paragraph 5 (i) - (iii) above.

### **The council's case**

8. The council noted the following when checking your plans for compliance with the Building Regulations:

(i) Most internal walls and a considerable proportion of external walls will be demolished and the council refers to those that were to be left undisturbed.

(ii) The removal of the internal walls and realignment will necessitate their demolition and the provision of new foundations, thus requiring substantial breaking up of the existing ground floor. By implication, "making good" to the ground floor would be extensive.

(iii) The first floor structure/layout will be completely removed and replaced by new construction and the stairway will be realigned to suit.

iv) The roof structure will be completely removed and replaced by a new structure.

9. The council therefore considered that the proposed demolition of the existing structure of the building to ground level and subsequent rebuilding should be considered as the erection of a new dwelling, not an extension and alterations to an existing dwelling. The council has referred to section 123(2) of the 1984 Act in particular to support its view. Accordingly, the council stated that your proposals would be subject to the additional provisions of the Building Regulations indicated in paragraph 5 (i) - (iii) above.

10. The council adds that, following the submission of your determination application, the building work has commenced and varies considerably from the deposited plans. The existing building has been wholly demolished to ground level with no remaining structure left to extend, which reinforces the council's position. The council has submitted photographs of the work to support its observations.

11. The council concludes that the disputed issues could be easily resolved by good design practice and careful planning of the construction process. The council notes that there are no unusual site constraints and that it would be reasonably practicable to comply with the provisions of the Building Regulations pertaining to new buildings.

### **The Secretary of State's consideration**

12. The Secretary of State considers that there are two questions arising in this case:

(i) first, whether the proposed building work comprises an extension and alterations to an existing building (ie dwelling), or the erection of a new building (ie dwelling); and, based on the answer to that question,

(ii) whether your proposals comply with, or are required to comply with, the provisions of the Building Regulations indicated in paragraph 5 (i) - (iii) above, on which you and the council disagree.

13. Taking the question arising in paragraph 12(i) first, the Secretary of State notes that the council has referred to section 123(2) of the 1984 Act to support its view that due to the extensive building work proposed in this case the work should be treated as the erection of a new building. However, section 123(2) relates to Part III of the 1984 Act (Other provisions about buildings) and is not applicable to Building Regulations, which are covered by Part I of the 1984 Act. It would not therefore be appropriate to have regard to section 123(2) when considering the issues arising in this case.

14. Nonetheless, the Secretary of State does not agree with your contention that section 123 of the 1984 Act "*...only deals with the extent of 'reconstruction' of a building for which building regulations approval must be sought before the work is carried out*". Regulation 4 of the Building Regulations requires that all building work must comply with the applicable requirements of Schedule 1 to those Regulations. Regulation 3 of the Building Regulations defines "building work" and consequently the extent of work which is subject to building control.

15. As regards section 123(1) of the 1984 Act, this is an enabling provision which has not yet been used. It provides that, for the purposes of Part I of the Act, and any other enactments relating to building regulations, the terms "construct" and "erect" will include references to "*the carrying out of such operations....as may be designated in building regulations as operations falling to be treated for those purposes as the construction or erection of a building....*". The effect is that building regulations may be made which could expand the meaning of either or both terms to include operations which would not be considered to be construction or erection on a strict interpretation of either term, for the purposes of the regulations only. However, only the Secretary of State can make building regulations and this provision has yet to be used. Consequently, it is not possible to use section 123(1) to decide what operations come within the terms construction or erection, nor to determine

what the terms mean. As in the case of section 123(2), it would therefore not be appropriate to use section 123(1) to determine whether large scale alterations and extensions to an existing building constitute the erection of a new building.

16. The Secretary of State notes that the term "*the erection or extension of a building*", which forms part of the definition of building work in regulation 3(1)(a) of the Building Regulations, is not defined for this purpose either in the 1984 Act or in the Regulations. Consequently, in accordance with standard principles of interpretation of legislation, she has to have regard to its plain English meaning in relation to the circumstances of this case to determine if the proposed building work should be classed as an extension and alterations to an existing building or the erection of a new building.

17. The plans indicate that the majority of internal walls are to be removed as well as the majority of the external walls. This eliminates the constraints any existing elements would give to the design and physical construction of the proposed work.

18. From the photographs submitted by the council it appears that, following commencement of the work, no existing wall of the building from ground level to first storey height is to remain in place and that the whole roof and first floor rooms are to be constructed off and supported on new, external and internal load bearing walls, which will require the provision of new foundations. The photographs also indicate that those walls forming part of the original enclosure to the building that the plans indicated were due to be retained, and which coincide with the proposed rear extension, are now being constructed from ground level. It would appear therefore, from the plans and photographs, that all aspects of the building are being constructed from ground level. The Secretary of State therefore takes the view that the proposed building work comprises the erection of a new building.

19. Turning to the second question arising in paragraph 12(ii) above, in the light of her views in paragraphs 17 and 18 above, the Secretary of State believes that it would be reasonable to require compliance with the applicable provisions of the Building Regulations, including those contained in regulations 17C, 20B and 20D, and in requirements L1(a)(i), M1 and M4 of Schedule 1 - as indicated in paragraph 5 (i) - (iii) above, in relation to the erection of the new building in question. You will therefore need to discuss and agree with the council, as the building control body in this case, the specific applicable provisions having regard to the circumstances of your case.

## **The determination**

20. As indicated above, in coming to her decision, the Secretary of State has given careful consideration to the particular circumstances of this case and the arguments presented by both parties.

21. The Secretary of State has concluded and hereby determines that your proposed building work, as shown in the submitted plans and other documentation, comprises the erection of a new building and should therefore comply with the applicable provisions of the Building Regulations, including those indicated in paragraph 5 (i) - (iii) above.