

Date: 24/08/99

Ref: 45/1/181

Note: The following letter which has had personal details edited out was issued by our former department, the Department for Environment, Transport and the Regions (DETR). DETR is now Communities and Local Government - all references in the text to DETR now refer to Communities and Local Government.

Text of DETR "determination" letter dated 24 August 1999 (Reference: 45/1/181)

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

Determination of compliance with Requirements A1, A2, B1, B3, E1, E2, E3, and F1 of the Building Regulations 1991 (as amended) in respect of a refurbishment and alterations to means of access to a ground floor flat

3. In making the following determination, the Secretary of State has not considered whether the plan conform to any other relevant requirements.

The proposed work

4. The building to which the proposed building work relates is a four storey (including basement and attic) semi-detached house. The plan shows the existing ground floor accommodation to comprise three rooms - all of which are designated as bedrooms - and a kitchen/bathroom inter-linked across a hallway. The front door opens into an entrance lobby from which a second door opens into the hallway. The hallway contains one staircase giving access to a maisonette on the first floor, and a second staircase to the rear of the hallway giving access to the basement.

5. The proposed building work is at ground floor level only. It involves the removal of the entrance lobby; the provision of an internal front door to the ground floor flat adjacent to the staircase leading to the first floor and the enclosure of that staircase; the apparent removal of the basement stair; and the creation of access to the other half of the ground floor flat on the opposite side of the hallway across the infilled basement stair. The building work also includes the creation of a bathroom and kitchen within the floor space of approximately 12 square metres of the existing kitchen/bathroom; alteration to the foul drainage system; installation of a gas boiler; and the creation of access to the proposed kitchen and bathroom via the adjacent room which is shown designated on the plan as a proposed living/dining room.

6. These proposals were the subject of a full plans application in which they were described as refurbishment of the ground floor flat. The application was rejected by the city council on the grounds of non-compliance with the following Requirements of the Building Regulations 1991:

A1 (Structure - Loading)

A2 (Structure - Ground movement)

B1 (Fire Safety - Means of escape)

B3 (Fire Safety - Internal fire spread (structure))

E1 (Resistance to the Passage of Sound - Airborne sound (walls))

E2 (Resistance to the Passage of Sound - Airborne sound (floors and stairs))

E3 (Resistance to the Passage of Sound - Impact Sound (floors and stairs))

F1 (Ventilation - Means of ventilation)

7. This decision was based on the city council's view that in addition to Requirements A1, A2, B1 and B3, Requirements E1, E2, E3 and F1 are also applicable because your proposals will create a self-contained flat and that this will constitute a material change of use under Regulation 5(b) of the Building Regulations. You maintain that a change of use will not occur as a flat and maisonette already exist within the building. However, you accept that the proposed work will constitute a material alteration under Regulation 3 of the Building Regulations and maintain that your proposals comply with the relevant requirements specified in Regulation 3(3). It is in respect of the question as to whether your proposals do comply with all the relevant requirements in Schedule 1 to the Building Regulations that you have applied for a determination.

The applicant's case

8. You accept that your proposals involve a material alteration and that the Building Regulations therefore apply insofar as the relevant requirements in Regulation 3(3) are applicable. However, you state that in your view a material change of use will not occur because the flat and maisonette already exist. You therefore contend that the sound proofing works, which would be required for a change of use, are not necessary.

9. You have submitted copy documents relating to housing legislation, as well as correspondence between the management company and the tenants, all of which you contend demonstrate the current existence of a flat at ground floor level and a self-contained maisonette. You contend that these provide substantial evidence to support your argument that a change of use within the definition of Regulation 5(b) will not occur.

10. Within the context of your assertion that only a material alteration will be triggered by your proposals, you affirm that you will take appropriate action to ensure that the work will comply with the Building Regulations. Your submission contains correspondence between yourself and the city council indicating that there has been further consideration and discussion regarding compliance with Requirements A1, B1, B3 and F1 subsequent to your proposals being rejected.

The city council's case

11. The city council point out that as existing the building as a whole should be defined as "other residential" in that each habitable dwelling shares a common access and that the use of the ground floor accommodation requires circulation across the common hallway. The city council considers that the plans of the proposed work make provision for two self-contained flats and that therefore the work constitutes a material change of use under Regulation 5(b). On that basis it was the judgement of the council that in addition to demonstrating compliance in respect of the relevant requirements prescribed for a material alteration, your proposals also needed to demonstrate compliance with the relevant requirements contained in Regulation 6(1) which is triggered by a change of use as defined in Regulation 5(b). In their view your proposals did not demonstrate the necessary compliance.

12. In addition, the city council argue that the notices and decisions by other council departments which you have submitted relating to the building in order to demonstrate that a flat and maisonette already exist in the building, do not have any bearing on the case. They consider the only question at issue is whether there is a change of use to create a self-contained dwelling.

The department's view

13. The department notes that the existing ground floor accommodation comprises three habitable rooms and a bathroom/kitchen. All three of the former are designated on plan as bedrooms. Circulation between the four rooms can only be achieved by use of the hallway which forms part of the access to the first floor maisonette.

14. The Department also notes that among the documentation in your submission purporting to demonstrate that the building has comprised of an existing flat and maisonette for some time, is a Section 352 Notice under the Housing Act 1985 describing the building as a house in multiple occupation. It is also noted that there is a Section 372 Notice under the same Act which although it refers to the "top floor flat" also does so within the context of the management of a house in multiple occupation.

15. The department's clear view on this matter is that the only relevant test as to whether a self-contained flat and maisonette already exist is that provided by the definition of 'dwelling' and 'flat' contained in Regulation 2(1) of the Building Regulations 1991. Regulation 2(1) states that a "flat" means separate and self-contained premises constructed or adapted for use for residential purposes and forming part of a building from some other part of which it is divided horizontally".

16. In the department's opinion what exists at present in the building is one dwelling organised internally to provide accommodation for two or more family units. The department considers it to be a matter of fact that the ground floor accommodation as existing cannot be said to be divided horizontally from the upper floor, or to be separate and self-contained, because those who use the

upper floor can only gain access by sharing the hallway and circulation area in the middle of the ground floor accommodation. On the other hand, what is proposed appears to have the clear purpose of creating two separate and self-contained dwellings, comprising a ground floor flat and an upper flat (or maisonette) both within the definition of Regulation 2(1).

17. It is therefore the view of the department that, as the city council has indicated, your proposed work constitutes a change of use within the definition of Regulation 5(b). As such your plan and submission provide insufficient and inadequate detail for the department to make any determination as to compliance with the relevant, individual requirements of the Building Regulations.

The determination

18. The Secretary of State has given careful consideration to the particular circumstances of this case, and to the specific arguments you have advanced against the city council's judgement that compliance of your proposals must be demonstrated in respect of that which is required by a change of use.

19. In this particular circumstance, the Secretary of State is clear that a flat within the meaning of the Building Regulations does not exist at present on the ground floor and that compliance of your proposed work must be demonstrated against all the relevant requirements cited in Regulation 6(1)(a) and (e). Your plans and submission contain inadequate and insufficient information for a determination to be made in that respect. The Secretary of State therefore determines that your proposals are not in compliance with the Building Regulations 1991 (as amended).