

Date: 06/02/98

Ref: 45/1/164

*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.*

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

#### **Determination of compliance with Requirement E1 (Airborne Sound (Walls)) and Requirement E2 (Airborne Sound (Floors and Stairs )) of the Building Regulations 1991 (as amended) in respect of the change of use by the creation of an additional flat in an existing building containing a dwelling and shop**

3. In making his determination the Secretary of State has not considered whether the plans conform to any other relevant requirements.

#### **The proposed building work**

4. The properties to which the proposed building work relates, comprise 2 two storey dwellings occupied and used as one dwelling and a shop. Approximately one half of the ground floor contains a shoe shop and workshop behind, and the other half comprises a two storey dwelling, the first floor of which extends over the top of the shop and workshop on the ground floor. The proposed building work is to convert that part of the first floor of the house which is over the shop and workshop, into a self-contained flat, leaving the original house comprising the remaining part of the first floor and the ground floor area as before. To achieve this conversion additional extension work, including provision of a new external stair, is proposed but is not of relevance to this determination.

5. The existing wall at ground and first floor level between the shop and the dwelling, and the proposed flat and dwelling, is of 42 inch common brick with plaster finish to both sides. You amended your plans to include a 32 mm layer of gyprock tri-line to the wall between the flat and the dwelling at first floor level. Your proposals as amended did not contain any provision for additional sound insulation for the wall between the dwelling and the shop; nor do they make provision for additional sound insulation of the floor between the flat and the shop.

6. These proposals were rejected by the District Council on grounds of non-compliance with Requirement E1 (Airborne sound (walls)) and Requirement E2 (Airborne sound (floors and stairs)). The District Council drew your attention to the existence of paragraph (g) to Regulation 5 (Meaning of material change of use) of the Building Regulations 1991 (as amended) but you maintained that it was not necessary for sound insulation to be provided to the wall between the shop and the dwelling or to the floor between the proposed flat and shop below in order to achieve compliance with Part 'E'. It is in respect of this question that you applied for a determination.

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

7. You accept that Regulation 5(g) means that the creation of two dwellings from the one means that a material change of use will occur and that the requirements of Part 'E' should be applied.

8. However, you do not accept that there is a material change of use between the shop and the flat over, and the shop and the adjacent dwelling. You argue that the use of the building in these particular areas will not change and that therefore no material change of use will occur. It follows that you accept that the requirements should be met in respect of the first floor wall between the existing dwelling and proposed flat, but you do not believe that sound insulation needs to be applied to the wall at ground floor level nor to the existing floor separating the proposed flat from the shop.

### **The local authority's case**

9. The district council takes the view that the proposals will constitute a material change of use under both Regulation 5(b) and 5(g) - i.e. respectively the building contains a flat or flats, where previously it did not; and the building which contains at least one dwelling, contains a greater or lesser number of dwellings than it did previously. The District Council say that it follows that Regulation 6 requires that where such changes of use have taken place the requirements, among others, of Part 'E' shall apply. On that basis the district council has requested sound insulation to the existing floor, and the existing walls at ground and first floor level to the standards recommended in *Approved Document E ( Airborne and impact sound)*.

### **The department's view**

10. Regulation 2(1) provides that the interpretation of a building includes a reference to part of a building. This provision is subject to the opening line to the Regulation - ie unless the context otherwise requires.

11. Although the department understands your argument that certain parts of the building are not subject to a change of use in a general sense, the intention of Regulation 5 as set out in its opening phrase is clear. It refers to where there is a change in the purposes for which or the circumstances in which a building is used.....

12. In the department's view, the reference to circumstances in the context of Regulation 5(g) means that although the same floor area of a building may remain in residential use, the intensity of its use or the juxtapositioning of uses within the dwelling may change (ie a bedroom may become a kitchen, or a bathroom may become a bedroom). It is therefore the department's view that Regulation 5(g) is intended to take account of the effect of a change of use on the building as a whole. In the context of this case the proposed additional dwelling will lead to a change in the circumstances in which a building is used.

13. You argue, in effect, that only parts of the building are subject to a change of use and that Part E therefore need only be selectively applied to elements of part of the building. However, the department takes the view that the building as a whole is affected by the proposals and that the reference in Regulation 6(1) to such work, if any, "*should be carried out as is necessary to ensure that the building complies with the relevant requirements....*" means that whatever work is required, over and above the specific work needed to effect the actual conversion, must be done to achieve compliance with Requirements E1 and E2 within the whole building. The Department would further argue that even if the context for the change of use were to be accepted as being limited to part or parts of the building, Regulation 6(2)(b) would still have the same effect in terms of requiring such work, if any, to be carried out as is necessary.

### **The determination**

14. The Secretary of State has given careful consideration to the facts of this case and the interpretation of the Building Regulations as he understands them. He has concluded that the proposed work constitutes a change of use within the meaning of Regulation 5(b) and 5(g) of the Building Regulations (as amended) to the whole building and that by virtue of Regulation 6(1)(e) the building as a whole will require such work as may be necessary to ensure compliance with Part 'E' - in this case Requirement E1 and Requirement E2. The Secretary of State therefore determines that your proposed work does not comply with Requirement E1 and Requirement E2 of Schedule 1 to the Building Regulations 1991 (as amended).