

Date: 31/07/06

Ref: 45/3/180

Note: This letter has had personal details edited out.

BUILDING ACT 1984 - SECTION 39

Appeal against refusal by the Borough Council to relax Requirements E1 and E3 of the Building Regulations 2000 (as amended) in respect of an extension to a school boarding house

The building work and appeal

3. The papers submitted indicate that the proposed building work, to which this appeal relates, comprises the erection of a new two storey extension to an existing two storey boarding house. The habitable part of the extension will be approximately 8m by 9m in plan area and will consist of:

- ground floor - a TV room, Boot room, a stair and lift to the first floor, an access corridor connecting to the existing building, and an external Oil Tank enclosure.
- first floor - four day studies, three study bedrooms, cleaners cupboard, lavatories and showers, a stair and lift, and an access corridor connecting to the existing building.

4. The above proposed work was the subject of a full plans application which was rejected by the Council on 20 December 2005 on a number of grounds, including Requirements E1 and E3 of the Building Regulations. The Council stated that there was inadequate resistance proposed to the passage of sound between the study bedrooms and between the study bedrooms and the common areas in the extension. As you consider that the Council's interpretation of the requirements of Part E (Resistance to the passage of sound) of the Building Regulations is inappropriate in the school boarding house environment, you applied for a relaxation of Requirements E1 and E3 which was refused by the Council on 6 February 2006. It is against this refusal that you have appealed to the Secretary of State.

The appellant's case

5. You state that your client is concerned that the current requirements of Part E in question (ie Requirements E1 and E3) will make the required supervision and discipline of student occupants - aged 13 to 18 - of the boarding house difficult or impossible, and that pastoral care standards will suffer.

6. Your understanding is that *"Part E could be interpreted so that individual study/bedrooms (rooms for residential purposes) are treated as if they were separate flats. If so, and if 'separating walls' are required between spaces, then the level of sound attenuation would be such that excessive noise would not be identified by supervisory staff"*. The school is concerned that supervision of occupants of study bedrooms and dormitories and communal rooms would be adversely affected by high levels of acoustic separation and would not allow the school to be aware of what is happening 'behind closed doors'.

7. You advise that the school, therefore, takes the view that its responsibilities are incompatible with full compliance with Requirements E1 and E3. Occupants of the boarding house are supervised by school staff and they have control over the behaviour of the occupants of neighbouring rooms. You consider that treating individual study/bedrooms in the same way as hotel rooms or dwellings in separate occupation is inappropriate.

8. You conclude that while your proposals for the school's internal walls - as described in your Building Regulations notes (copies of which you have submitted) - do not meet the standard required for buildings with 'rooms for residential purposes' as described in *Approved Document E (Resistance to the passage of sound)*, you believe that they provide a reasonable level of sound attenuation between spaces, which is sufficient to attenuate snoring and music played at normal level, and that experience elsewhere bears this out.

9. You commented further in response to the Council's representations to the Secretary of State (see below) pointing out that you take a reverse view to the Council. In your view, the ability of the school to control the activities of all occupants removes the need for high levels of acoustic separation between study bedrooms, ie excessive noise in a particular room can immediately be dealt with by normal discipline and pupils would be put at risk if staff are unable to adequately supervise this. You accept that Part E is appropriate for flats and semi-detached dwellings where there is little control over the activities of neighbours, but the school boarding house environment is entirely different.

The Council's case

10. When responding to your relaxation application, the Council referred to Approved Document E which indicates that study bedrooms are 'rooms for residential purposes'. As such the Council adds that they are required to comply with Part E of the Building Regulations and following the guidance in the Approved Document is one method of achieving this. The Council has treated other applications similarly, since the amended Part E requirements came into effect.

11. The Council also draws attention to the guidance relating to Requirement E4 (Acoustic conditions in schools) which refers to *Building Bulletin 93* for use when designing schools and school buildings, but notes that it does not provide guidance on school boarding houses. The Council therefore treats these as 'rooms for residential purposes' as defined in Part E.

12. While the Council understands your arguments, it does not accept that the sound requirements for the rooms in question should be less than that expected for 'rooms for residential purposes' that may be built elsewhere. The Council takes the view that the users of these rooms should not be put at a disadvantage simply because they are school children, when compared to users of other contemporary similar buildings, eg halls of residence. The Council considers the Building Regulations to be a minimum standard, which has not yet been met in this case.

The Secretary of State's consideration

13. The Secretary of State notes that both parties consider that the proposed study bedrooms in this case are 'rooms for residential purposes', but that the dispute concerns the levels of sound insulation and reverberation that are reasonable. As the Council has acknowledged, Requirement E4 of Part E of the Building Regulations deals with 'acoustic conditions in schools' and the guidance in *Approved Document E* refers to *Building Bulletin 93*. However, Requirement E4 only applies to teaching and learning spaces and so Building Bulletin 93 does not offer guidance for living accommodation.

14. The Secretary of State takes the view that the proposed three study bedrooms on the first floor are 'rooms for residential purposes', and so Requirement E1 will apply to the floor separating them from the television room below, the walls between the study bedrooms and the walls between the study bedrooms and the common parts in the extension. Requirement E3 will apply to the control of reverberation in the first floor access corridor. The Council has not commented specifically on the sound insulation of the first floor and is presumably satisfied with the specification.

15. The Council considers that the standards recommended in *Approved Document E* for 'rooms for residential purposes' should be applied in this case to avoid disadvantaging the occupants simply because they are school children. However, the school is concerned that the relevant standards in the Approved Document (ie those relating to Requirements E1 and E3) will make the required supervision and discipline of the student occupants (aged 13 to 18) of the boarding house difficult or impossible, and that pastoral care standards will suffer.

16. The Secretary of State has some sympathy with the above views, but believes that it is important that students should be provided with reasonable acoustic privacy to reduce interruptions while studying and sleep disturbance. The main sources of noise will be:

- (a) the activities of the occupants of the study bedrooms and the day rooms
- (b) people using the first floor access corridor and
- (c) people and the television in the television room below the study bedrooms.

17. The Secretary of State considers that good management will be sufficient to control excessive noise emanating from the study bedrooms and the day rooms. However, noise from the television room and noise in the access corridor will be of a more transient nature, and will be better controlled by design features.

18. To achieve compliance with Requirements E1 and E3, the Secretary of State therefore considers that the standards in *Approved Document E* are 'reasonable' for the first floor, the walls between the study bedrooms and for reverberation in the first floor corridor; but that lower standards would also be 'reasonable' in this case for the walls separating the study bedrooms from the first floor access corridor which would allow staff to hear noise from activities within the study bedrooms and take appropriate management action.

19. In the light of the above, the Secretary of State concludes that it would not be appropriate to relax Requirements E1 and E3 in this case.

The Secretary of State's decision

20. 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 would not consider relaxing the requirements of Part E of the Building Regulations except in exceptional circumstances. Paragraph 18 above gives her views on how the proposed building work could be designed to achieve compliance with the requirements of Part E. As indicated in paragraph 19, the Secretary of State has therefore concluded that it would not be appropriate to relax Requirements E1 or E3 of Schedule 1 to the Building Regulations 2000 (as amended) in this particular case. Accordingly she dismisses your appeal.