

Our Ref: APP/007/002/018

Your Ref:

15 April 2016

## **BUILDING ACT 1984 – SECTION 39**

### **APPEAL AGAINST REFUSAL TO RELAX OR DISPENSE WITH REQUIREMENTS ON A MATERIAL CHANGE OF USE**

I am directed by the Secretary of State for Communities and Local Government to refer to the appeal made by you under section 39 of the Building Act 1984 against the refusal to relax or dispense with the requirements under regulation 6 of the Building Regulations 2010 against the decision by the Council, in respect of the above building work.

Details of your appeal are set out in your appeal form received on 26 January 2016 (with enclosures). The building control body, (hereafter referred to as “the Council”), provided representations in its letter to you of 22 December 2015 and to the Department on 24 February 2016. The enclosures you have submitted include copies of plans/drawings of the building work.

#### **The building work and appeal**

The papers submitted state the building work was in relation to two four bedrooled semi-detached houses built in 1980. It was stated in your appeal you bought No. 2 in 1980 and in 1993 had bought No.1 and removed part of the internal wall to gain easy access between the two properties for your growing family. Each property has retained its own services, stairs, and front and rear doors. You have now re-instated the wall, putting the properties back as they were built in 1980.

The issue you have with the Council is that you consider that the reinstatement of the missing part of the wall between the two properties is not a material change of use. The Council maintain that the work was a material change of use under regulation 5(g) of the Building Regulations 2010 as the work changed one eight bedroom house into two four bedrooled houses and therefore compliance with relevant requirements in regulation 6 was required. The appellant requested a relaxation of or dispensation with the requirements under regulation 6 of the Building Regulations 2010. The Council refused the request. It is against this refusal that the appellant has appealed to the Secretary of State.

#### **The appellant's case**

In the application, the appellant stated:

“The houses No's 1 & 2 were built in 1980 as two four bedroom semi's and each has always retained their own services, stairs, front and rear doors, so there is no change of use. There has not previously been one eight bedrooled house on this site.

The work required to convert both 1980 houses to comply with the 2010 building regulations, will cost tens of thousands of pounds and require us to vacate our home, putting furniture into storage, while the building work is carried out. This is unreasonable and onerous.”

In support of the case, on 17 December 2015, the appellant wrote to the Council:

“We have been waiting now more than 3 months for a response from Building Control to a meeting we had with them on 8<sup>th</sup> September.

The background is that we own two four bedroomed semi-detached houses built in 1980. We bought No.2 in 1980 and in 1993 had the opportunity to buy No.1 and removed part of the internal wall to gain easy access between the two properties for our growing family. We no longer need the extra space, so have reinstated the wall, putting the properties back as they were built in 1980 and intend to sell number 2.

Having received a letter dated 12<sup>th</sup> August advising we were in contravention of Building regulations, and listing eight items requiring attention, my wife and I had a meeting on the 8<sup>th</sup> September at the Council Offices. We were trying to understand why Building Control were considering the re-instatement of the wall as change of use/two new builds, and as such require us modify our 1980 home, to comply with the 2010 building regulations.

They apparently are classing numbers one and two as one eight bedroomed house, despite each having retained their own services and front and rear doors. This seems completely over the top, being very costly to do, and probably requiring us to store our own furniture elsewhere and vacate our home for a number of weeks while the work is carried out.

At the meeting, it was agreed that the building control officer would check with a colleague what modifications we had to make to comply, and would provide us with a complete definitive list so we can approach architects, surveyors or builders for quotes. We do not want to get work done only to find further conditions being imposed. To date nothing has been received, although I did get a system generated confirmation of my receipt to my 14<sup>th</sup> October e-mail chasing for a reply.

We would appreciate your assistance please in obtaining a response with the relevant information so we can move forward.

We asked about relaxation or dispensation at the meeting, but were informed these were no longer applicable.

We have subsequently been told by other people relaxation or dispensation is possible and would like to be considered for it.

We are not property developers or speculators so do not know the rules or process, and reliant on being given accurate information. It appears unfair that the other two houses Nos 3 & 4, built at the same time to identical specifications as ours, do not have to comply with the 2010 regulations.”

### **The Council's case**

The Council wrote to the appellant on 22 December 2015:

“Thank you for your recent e-mail. I have discussed the issues that were raised within my letters dated 29<sup>th</sup> July and 12 August 2015 and our during our meeting on 08<sup>th</sup> September 2015 with the Building Control Commercial and Operational Manager, however the requirements as detailed in my previous letters (dated 29<sup>th</sup> July and 12<sup>th</sup> August 2015) still apply and we are unable to alter our decision.

Under Part 2, Paragraph 5 of the Building Regulations 2010, a material change of use occurs when the building, which contains at least one dwelling, contains a greater or lesser number of dwellings that it did previously, therefore the requirement as detailed in Paragraph 6.-(1)(a)(d)(f) apply.

Please find attached an additional copy of the relevant section of the Building Regulations for your information. Additionally, please find detailed overleaf a list of the items that require addressing.

If you would like to discuss this matter further please do not hesitate to contact me.”

The relevant items under regulation 6 that require addressing, as supplied by the Council:

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#### SCHEDULE OF WORK IN CONTRAVENTION OF THE BUILDING REGULATIONS

1. Mains powered, interlinked smoke detection is required to the hall, lounge and landing (to both dwellings). Confirmation also required detailing that a suitable 60 minute fire resistant wall is in place in the loft separating the dwellings.
2. Suitable pre-completion sound testing is to be carried out by an appropriately accredited test body between both dwellings. A copy of the sound test results is to be provided/approved upon completion of the works.
3. Externally vented extract fan is required to the kitchen, bathroom and ground floor WC (if windowless WC), to be in accordance with Approved Document Part F, Table 5.1A (both dwellings)
4. Please submit full details to show that the estimated water consumption of each dwelling is not greater than 125 litres/head/day, all sanitary appliances (e.g. taps, washing machine, bath etc.) are to be in accordance with the Water Efficiency Calculation.
5. The temperature of the hot water supply to the bath(s) is to be limited to a maximum of 48°C (both dwellings)
6. Confirmation is also required detailing that the supply of air for combustion purposes to any new/existing heat producing appliance(s) is not being adversely affected by the works (both dwellings)
7. Please provide a specification for the insulation proposed to all thermal elements to both dwellings (to comply with Approved Document Part L1B, Table 3 and paragraphs 5.11, 5.12 and 5.13), to include the existing external windows and doors.
8. It is noted that an Energy Performance Certificate will be provided for each dwelling, however please also confirm that an ‘As Built’ SAP calculation will also be provided for each dwelling.

The Council wrote a further letter to the Department on 24<sup>th</sup> February 2016, with its views:

“Thank you for your letter dated 03 February 2016. My response is laid out below:

A Building Notice application was submitted to the Local Authority on 28/07/2015. The description of works on the application form read ‘re-instate load bearing walls.’

During the initial site inspection on 29/07/2015, it was noted that a substantial opening at ground floor level had previously formed in the party wall separating No’s 1 and 2.

The appellant advised that this opening had been formed in 1993 shortly after purchasing No.1. From this point, in the Local Authority’s opinion the property was effectively being occupied and used as a single family dwelling house.

The proposed works to reinstate the party wall would result, in the Local Authority’s opinion, in the house effectively being occupied and used as two separate dwelling houses.

It is therefore the Local Authority’s opinion that there is a material change of use as defined under Paragraph 5 (g) of the Building Regulations 2010 and that the relevant requirements relating to this material change of use would be applicable.

With regard to your specific enquiry pertaining to whether any other changes to the dwelling layout/services had been made; the Local Authority cannot confirm the original layout as drawings/details were not deposited with the Building Notice. The appellant, however, has stated that the original layouts and building services had not been altered.

I trust this is sufficient, however if you require any further information please do not hesitate to contact me.”

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

The Secretary of State has given careful consideration to the particular circumstances of this case and the arguments presented by both parties. Section 8 of the Building Act 1984 allows the dispensation with or relaxation of one or more of the requirements in the Building Regulations 2010 where the operation of one or more of the requirements would be unreasonable in relation to the particular case. Under the power in section 8(2) building regulations have delegated to local authorities the powers of dispensation or relaxation.

In this case the appellant has appealed against the refusal by the Council to dispense with or relax a number of the requirements of regulation 6 of the Building Regulations 2010. The appellant considers that the operation of these requirements would be unreasonable in that he considers that there has not been a material change of use under regulation 5(g) of the Building Regulation 2010.

Regulation 5 of the Building Regulations states that “there is a material change of use where there is a change in the purposes for which or the circumstances in which a building is used, so that after that change –

(g) the building which contains at least one dwelling contains a greater or lesser number of dwellings than it did previously”.

The Secretary of State notes that when the two houses were built in 1980 they were completely separated dwellings. After the appellant purchased the adjoining house in 1993 it would appear from the information available that the only alteration made was to remove part of the party wall to facilitate access between the two houses. The appellant alleges, and the Council does not disagree, that the building services (electrical, heating and cold and hot water systems) remained separate and that the separate front and back entrances to and staircases in the houses also remained.

The Secretary of State has carefully considered these circumstances and has concluded that the two houses remained at all times two houses with an internal means of access between the two. He has therefore concluded that there was not a material change of use under regulation 5(g) of the Building Regulations 2010. Given this, the Secretary of State considers that it would be unreasonable in the circumstances to require compliance with regulation 6.

The Secretary of State has also noted that the work in providing the internal access between the two houses in 1993 was apparently not notified to a building control body. This work was probably a material alteration within the meaning of what is now regulation 3 of the Building Regulations 2010 in respect of Part A (structure) of Schedule 1 to the Building Regulations. It also seems likely that the recent re-instatement of part of the party wall was also a material alteration. If that is the case the Secretary of State suggests that the appellant and the Council consider whether the work of re-instatement complies with regulation 4(1) and (3) of the Building Regulations 2010.

### **Secretary of State's decision**

The Secretary of State was asked on appeal whether the requirements of regulation 6 of the Building Regulations 2010 should be relaxed or dispensed with, attendant on a material change of use under regulation 5(g) of the Regulations. The Secretary of State allows the appeal on the grounds that there was no material change of use under regulation 5(g) and it would therefore be unreasonable in the particular circumstances to require compliance with of regulation 6.

You should note that the Secretary of State has no further jurisdiction in this case and that any matters that follow relating to the building work should be taken up with the building control body. A copy of this letter is being sent for information to the Council.