

DETERMINATION OF COMPLIANCE WITH THE BUILDING REGULATIONS 2010 (AS AMENDED) IN RESPECT OF A PROPOSED TWO STOREY ANNEXE

The proposed work and question arising

1. The documents submitted indicate the proposed building work to which this determination relates is the erection of a two storey building within the curtilage of an existing 3 storey dwelling-house, attached to the existing dwelling-house by a small roof over the entrance door of the proposed new building.
2. The proposed works were subject to a full plans application which was rejected by the Local Authority on 10 October 2018 on the grounds the proposed building work did not comply with the following requirements of the Building Regulations 2010 (“the Building Regulations”):
 - 2.1. Regulations 37A and 38B (Automatic fire suppression systems) (the Local Authority decision refers to Part B1, Section 2);
 - 2.2. Regulations 36 (Water efficiency – new dwellings) and 37 (wholesome water consumption calculation)/Part G2 of Schedule 1;
 - 2.3. Part L1 of Schedule 1 (Conservation of fuel and power) (the Local Authority decision refers to Part L1A);
 - 2.4. Part M1 of Schedule 1 (Access to and use of buildings);
 - 2.5. Part R1 of Schedule 1 (In-building physical infrastructure).
3. You have applied for a determination of whether the proposed works are in conformity with the above requirements of the Building Regulations.

The applicant’s case

4. You consider:
 - 4.1. The proposed building work does not consist of the erection of a new dwelling. Therefore the proposed work is not required to comply with the provisions of the Building Regulations listed at paragraph 2;
 - 4.2. The proposed new building is an annexe which is not a new dwelling for the purposes of the requirements of the Building Regulations but will form part of an existing dwelling-house. In this regard you refer to definitions in Approved Documents and state the proposed annexe will be entirely dependent on the existing building for services and that the existing dwelling-house and proposed annexe will be occupied by one family who will share facilities in both buildings.
5. You note if the proposed annexe were to be used as a new dwelling there would be a contravention of planning permission. You also note the Local Authority’s interpretation of the Building Regulations contradicts the Partner Authority Scheme Decision.

6. You raised the following additional points in respect of the specific requirements of the Building Regulations listed at paragraph 2:
 - 6.1. Regulations 37A and 37B (Automatic fire suppression systems) - You refer to Domestic Fire Safety (Wales) Measure 2011 and note this applies to a residence. You consider the proposed annexe is not a residence within the definition in the Measure. You state in response to an issue raised by the Local Authority there is nothing in the legislation about communicating doors. You further state the requirements of B4 External Fire Spread have been omitted from the Local Authority's decision and as these provisions equally apply to new dwelling houses, this approach is inconsistent;
 - 6.2. Regulations 36 (Water efficiency – new dwellings) - You consider it would be impossible to calculate the water efficiency as required by the regulation using the "Water Efficiency Calculator for New Dwellings", published in September 2009 by the DCLG as no new mains connection is being made;
 - 6.3. Part M1 of Schedule 1 (Access to and use of buildings) - You note Approved Document M states a dwelling means "a house or flat". You consider "the house" already exists and complied with Part M at the time it was built. You state the main house is part of the same household and so will be fully accessible to users of the annexe and consider that there cannot be two houses on the same site.
 - 6.4. Part R1 of Schedule 1 (In-building physical infrastructure) - You note this requirement is for new buildings but consider this to mean new dwellings. You state broadband facilities already exist within the existing dwelling-house and can be extended to the annexe if required.

The Local Authority's case

7. The Local Authority considers the building work consists of the erection of a new dwelling as the new building is self-contained with independent access. They consider the annexe is a separate building, designed for separate use and intended to be used for living, sleeping, cooking and washing. They note there is no internal communicating door linking the annexe to the existing dwelling. In relation to the specific requirements of the Building Regulations, they consider:
 - 7.1. Regulation 37A applies as the proposed annexe has been classed as a residential unit similar to a new dwelling;
 - 7.2. Regulation 36 and Part G2 of Schedule 1 apply as the proposed building work consists of the erection of a new dwelling;
 - 7.3. Part L1 of Schedule 1 applies if the annexe has its own independent heating and ventilation system with the ability of the occupier(s) to independently control these services;
 - 7.4. Part M1 of Schedule 1 applies because the annexe is a new dwelling;
 - 7.5. Part R1 of Schedule 1 applies because the annexe is the erection of a new building and similar to a dwelling.

The Welsh Ministers' consideration

8. The Welsh Ministers have given careful consideration to the particular circumstances of the case presented by the parties. They note that they have been asked to make a determination in respect of whether the proposed building work complies with, or is required to comply with, the provisions of the Building Regulations listed in paragraph 2 above.
9. The decision of a local planning authority on the classification of the building for planning purposes is not a material consideration for building regulation purposes.
10. The Welsh Ministers have considered the Partner Authority Scheme Decision Advice Notice. The Partnership Scheme is an informal arrangement between Local Authorities. The decision in relation to the Building Regulations application is made by the Local Authority where the building work is being undertaken. This determination is for the Welsh Ministers.

Regulations 37A and 37B – Automatic fire suppression system

11. Regulation 37A applies where building work consists of the erection or material change of use (as defined for the purposes of regulation 37A) of a building in relation to a number of categories of buildings including dwelling-houses. A building to which the regulation applies must be provided with an automatic fire suppression system which is installed and operated in accordance with the requirements set out in regulation 37B.
12. The Welsh Ministers take the view the proposed building work consists of the erection of a building in accordance with regulation 3(1)(a) (building work) of the Building Regulations. Therefore, the Welsh Ministers consider the question in determining if regulation 37A applies to the proposed work is whether the proposed new building is a dwelling-house for the purposes of that regulation.
13. The question for the Welsh Ministers is only in relation to compliance with regulation 37A and so the Domestic Fire Safety (Wales) Measure 2011 is not relevant to this determination. However, the Welsh Ministers note the definition of “residence” in the Measure includes “dwelling-house” and that the definition of “dwelling-house” was amended by the Domestic Fire Safety (Definition of Residence) (Wales) Order 2013/2723 to have the meaning given in regulation 2(1) of the Building Regulations.
14. The Welsh Ministers have had regard to your argument that the Local Authority’s approach in not requiring the works to comply with Part B4 (external fire spread) of Schedule 1 to the Building Regulations results in an inconsistent approach. As this requirement did not form part of the Local Authority’s rejection, it is not a matter on which you have asked the Welsh Ministers to make a determination.
15. Regulation 2(1) of the Building Regulations states a “dwelling-house -does not include a flat or a building containing a flat.” Therefore, this only provides that

a flat or a building is not a “dwelling-house”. There is no definition of dwelling-house in the Building Act 1984 (“the 1984 Act”). Consequently, in accordance with standard principles of interpretation of legislation, the Welsh Ministers have had regard to the plain English meaning of dwelling-house in relation to the circumstances of this case to determine if the proposed new building is a dwelling-house for the purposes of regulation 37A.

16. The Oxford English dictionary provides the meaning of “dwelling house” is a house, used as a residence, not as an office etc. “House” is defined as “a building for human habitation.” “Residence” is defined as “the place where a person resides”.
17. Based on the available information in the form of the plans and documentation submitted, the proposed new building has all of the essential elements required for a person or persons to reside. It will have all of the facilities required for living, sleeping and cooking. There is no physical interaction with the existing building apart from the link roof. The proposed new building has its own independent access. Therefore the Welsh Ministers take the view the proposed new building is a dwelling-house. The Welsh Ministers have had regard to your argument the new building is dependent on the existing building for services. This does not alter the classification of the building as a dwelling-house, as it remains a building in which people will reside.
18. The Welsh Ministers have had regard to your argument that there is one dwelling house and considered the definition of “dwelling-house” in Appendix E of Approved Document B (Fire Safety) Vol. 1, which defines a dwellinghouse as:

“A unit of residential accommodation occupied (whether or not as a sole or main residence);
(a) by a single person or by people living together as a family
(b) by not more than six residents living together as a single household, including a household where care is provided for residents.”
19. The requirements of the Building Regulations only apply to building work and so this determination need only have regard to the proposed work to erect the new building. The Welsh Ministers take the view in the circumstances of this case the “unit” of residential accommodation is the proposed new building.
20. The Welsh Ministers, therefore, consider the proposed building work consists of the erection of a dwelling-house and accordingly that the proposals as submitted do not demonstrate compliance with regulations 37A and 37B.

Regulations 36 (Water efficiency – new dwellings) and 37 (wholesome water consumption calculation)/Part G2 of Schedule 1

21. The requirements of Part G2 of Schedule 1 to and regulation 36 apply where a dwelling is erected. Regulation 37 provides where regulation 36 applies, the person carrying out the work must give the local authority a notice which

- specifies the potential consumption of wholesome water per person per day in relation to the completed dwelling.
22. As stated at paragraph 12 the Welsh Ministers take the view the proposed building work consists of the erection of a building. Therefore, the Welsh Ministers consider the question in determining if the requirements of regulations 36 and 37/Part G2 of Schedule 1 apply is whether the new building is a dwelling for the purpose of those requirements.
 23. Regulation 2(1) of the Building Regulations provides “dwelling includes a dwelling-house and a flat”. Dwelling is not defined in Approved Document G or in the 1984 Act. For the reasons explained at paragraph 17 the Welsh Ministers consider the new building is a dwelling.
 24. The Welsh Ministers have given consideration to your argument it would be impossible to calculate the water efficiency as required by the regulation using the “Water Efficiency Calculator for New Dwellings”, published in September 2009 by the DCLG as no new mains connection is being made. The Welsh Ministers are of the view it would be possible to calculate the water efficiency even if no new mains connection is being made. The water calculator takes the amount of water used for each fitting and/or appliance and calculates the overall consumption to ensure this does not exceed 125 litres/per person/per day. The method requires the use of water consumption figures provided from manufacturers’ product details and has no reliance on the source of the water supply.
 25. The Welsh Ministers, therefore, consider the proposed building work consists of the erection of a dwelling and accordingly the proposals as submitted do not demonstrate compliance with regulations 36 and 37 and Part G2.

Part L1 of Schedule 1 – Conservation of fuel and power

26. Part L1 provides that reasonable provision must be made for the conservation of fuel and power in buildings. The requirement applies to all buildings.
27. As stated at paragraph 12 the Welsh Ministers take the view the proposed building work consists of the erection of a building. Therefore, the Welsh Ministers consider the question in determining if the proposed building work complies with Part L1 involves considering which of the relevant Approved Documents applies - L1A (for new dwellings) or L1B (for existing dwellings).
28. The Welsh Ministers have considered Approved Document L1A, which defines a “dwelling” as “self-contained unit designed to accommodate a single household”. The Welsh Ministers take the view the proposed new building has all of the essential elements required to accommodate a single household. It is self-contained and contains the facilities required for living, sleeping and cooking. The Welsh Ministers consider the unit of accommodation in the circumstances of this case is the proposed new building. The Welsh Ministers therefore take the view Approved Document L1A applies.

29. Accordingly, the Welsh Ministers consider the proposals as submitted do not demonstrate compliance with Part L1.

Part M1 of Schedule 1 – Access to and use of buildings

30. Part M1 provides that reasonable provision must be made for people to gain access to; and use the building and its facilities. The requirements of this Part do not apply to an extension of or material alteration of a dwelling.
31. As stated at paragraph 12 the Welsh Ministers take the view the proposed building work consists of the erection of a building. Therefore it is not an extension or a material alteration of a dwelling.
32. The Welsh Ministers have considered the definition of “dwelling” in Approved Document M as “a house or a flat.” The Welsh Ministers take the view the new building is a dwelling-house and therefore falls within the definition of dwelling. The Welsh Ministers have had regard to your argument that the house already exists, however, as stated in paragraph 19, this determination need only have regard to the proposed work to create the new building.
33. Accordingly, the Welsh Ministers consider the proposals as submitted do not demonstrate compliance with Part M1.

Part R1 of Schedule 1 - In-building physical infrastructure.

34. Part R1 provides that building work must be carried out so as to ensure that the building is equipped with a high-speed ready in-building physical infrastructure. Part R1 applies to building work that consists of the erection of a building.
35. As stated at paragraph 12 the Welsh Ministers take the view the proposed building work consists of the erection of a building. Therefore they consider that the proposals as submitted do not demonstrate compliance with Part R1.

The determination

36. The Welsh Ministers consider the proposals submitted do not comply with the following requirements of the Building Regulations: regulations 37A and 38B (provision of automatic fire suppression systems), regulations 36 and 37/ Part G2 of Schedule 1 (Water efficiency), Part L1 of Schedule 1 (Conservation of fuel and power, Part M1 of Schedule 1 (access to and use of buildings other than dwellings) and Part R1 of Schedule 1 (In-building physical infrastructure). The Welsh Ministers have, therefore, concluded and hereby determine that the plans of the proposed building work do not comply with those requirements of the Building Regulations.
37. Please also note that the Welsh Ministers have 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 the letter is being sent to the Local Authority.