

Building Regulations (Northern Ireland) 2000 (as amended)

Appeal against the issue of two contravention notices

The following is a summary of the Department's determination of an appeal against the issue of a contravention notice made under Article 18B of the Building Regulations (Northern Ireland) Order 1979 (as amended).

Appeal AP12/09 – Regulation A9: Application to material change of use and Regulation R2: Access and use

The work

The building is an existing dwelling where work was carried out to convert the garage into habitable rooms. The dwelling also provides bed and breakfast accommodation.

Regulation A9 - Application to material change of use

Regulation A9 states –

(1) For the purposes of these regulations a change in the purposes for which or the circumstances in which a building, or part of a building, is used shall only be regarded as a material change of use if after that change any one of the following cases applies -

Case III- the building is used as -

(a) a hotel or boarding house, where previously it was not;

Regulation R2 Access and use

Regulation R2, as applied in the circumstances of the work by Regulation A6: Application to erection of buildings, states –

Reasonable provision shall be made for people to have access to, into, within and to use a building and its facilities:

Provided that in a dwelling this requirement shall be limited to the entrance storey or, where that storey contains no habitable room, to the principal storey.

The council's decision

The district council, under Article 18 of the Building Regulations (Northern Ireland) Order 1979 (as amended), served two Contravention Notices on the owner of this premises within which it believed that work to which Building Regulations apply, contravened those regulations.

The appellant's grounds for the appeal

Contravention Notice #1

- We would like you to please consider that this is not a change of use – neither a hotel nor boarding house but a family home and Bed and Breakfast

- We believe such regulations would be detrimental to tourism in Northern Ireland – as all B&B's would have to seek Building Control approval of this type. Northern Ireland, Lisburn in particular have a shortage of beds this is well documented within the NITB and press and we were awarded a grant to help develop as a B&B for this exact reason
- To install the necessary requirements would be so costly as to render the business not viable and therefore we would need to close down, I am sure many others would be the same. We only operate two rooms as do most B&B's the revenue is therefore small
- B&B's are not included in Building Regulations. Building Control application is surely not required as main use is private dwelling. The percentage of the house used by B&B is around 15% as it is first and foremost a family home. On this point our business is also seasonal so it is very much a part time business. There is an overlap of private usage and B&B usage.
- We do believe that it is not in the spirit or intention to legislate against B&B's to this extent and perhaps it is the legislation itself that needs addressing to accommodate these unusual situations?
- Staying in a B&B should be like staying in someone's home if it is made into a mini hotel this negates the whole feel of a B&B
- Ultimately a B&B – as the name suggests is bed and breakfast 99% of our guests stay limited time – get breakfast and go

Contravention Notice #2

- As above ... also to reiterate and add ...
- This is an existing 2 storey dwelling
- We have limited access to existing building for disabled persons as the property was built in the late 1980's so steps etc. However when we made the changes in 2008 we put in a large wide access on the ground level at the rear so guests can access the ground floor. Again we have limited usage – seasonal cost implications
- As before private dwelling – main use
- Not a change of use – as much of these regulations should not apply
- As before limited use – B&B as name suggests
- Overlap of guest use and private
- Not wanting to commercialise my home
- Costs excessive for usage

- Northern Ireland Tourist Board have approved us and countless others so they are satisfied we do a good job
- Ultimately guests are advised of facilities prior to booking

Department's consideration of the appeal

In coming to a decision on this appeal, the Department considered –

- the application of Regulation A9: Application to material change of use – therefore the application of Part R to the building
- the cases submitted by both the district council and the appellant
- the information gained from the site inspection

Conclusion

Contravention Notice #1

The appeal was considered from first principles.

In the opinion of the Department, a dwellinghouse that includes a bed and breakfast business has not undergone a material change of use to a hotel or boarding house and is therefore not controlled under Class III(a) of Regulation A9, where –

(a) the tourist accommodation is provided with the meaning of the Tourism (Northern Ireland) Order 1992;

(b) the category of tourist establishment shall be that specified in Article 12(1)(c) of the Tourism (Northern Ireland) Order 1992

(c) the person providing the tourist accommodation intends to have their sole or main residence within that dwellinghouse;

(d) the tourist accommodation will not be more than 50 m² total floor area and be subsidiary to the use of the dwellinghouse; and

(e) the tourist accommodation within the dwellinghouse will not be provided for more than 6 tourists simultaneously.

In this case –

- The dwelling is a six bedroom home and provides a bed and breakfast in two of those bedrooms. The four other bedrooms serve the family needs.
- The dwelling is registered as a “Bed and Breakfast” by the Northern Ireland Tourist Board.
- It is the home of the person providing the tourist accommodation.
- The plans provided demonstrate that the two en-suite bedrooms are approximately 36 m² in area. The dwelling has an overall floor area of 294 m².

- The accommodation caters for a maximum of four guests simultaneously.

Contravention Notice #2

As there is no material change of use (see above) the building will remain as a dwelling.

The dwelling was completed in 1988.

Regulation R1(2)(c), which came into operation from 1st April 2001, states that Part R shall not apply to –

“the alteration or extension of an existing dwelling to which this Part did not apply when the dwelling was erected other than where the alteration or extension affects a facility suitable for use by disabled people, in the existing building.”

Therefore Part R does not apply to this dwelling.

Decision

Contravention Notice #1

The Department upheld the appeal. The Council was not entitled to serve the contravention notice as this dwelling has not undergone a material change of use to a hotel or boarding house and is therefore not controlled under Class III(a) of Regulation A9.

Contravention Notice #2

The Department upheld the appeal. As Part R does not apply in this case, the Council was not entitled to serve the contravention notice.