

Interpretation of “the no worse rule” Building Regulation 4(3)

Building Standards Guidance Note 15

Introduction

Introduction

On material alterations many designs are substantiated as compliant through the assertion that the design is “no worse”. Where this is the case, care needs to be taken in assessing that Building Regulation 4(3) has been applied appropriately.

Guidance

Sweco’s view is that Regulation 4(3) exists so that where works are planned on an existing building, the Building Regulations are not used to force an uplift on the existing building to bring it in line with the changes in standards that have occurred since the building was originally constructed. If the Building Regulations were used retrospectively on existing buildings to enforce an “up lift” the likely impact would be to discourage and reduce the amount of investment in buildings through work categorised as “material alterations” under the Building Regulations.

Guidance

The wording in Regulation 4(3) is:

That work “complies with the applicable requirements of Schedule 1 or, where it did not comply with any such requirement, is no more unsatisfactory in relation to that requirement than before the work was carried out”.

“The applicable requirements of Schedule 1” refers to the functional requirements laid down in Parts A to T of the Building Regulations.

It is Sweco’s view that the second part of the Regulation refers to compliance with the current requirements i.e. it assumes that the existing building complied with the requirements in place at the time of its construction. We do not believe that “where it did not comply with any such requirement” means where the existing building did not comply at the time of construction it is acceptable to use its noncompliance to justify the proposed design.

Therefore, where it is found that work within scope did not comply at the time of construction, Sweco would expect that remediation takes place to, at least, ensure compliance with the standards in place at the time of the existing building’s construction.

Guidance

It is the design team's responsibility to establish what regulations the building was built under and whether the building complied at the time. With this information it will be possible to clearly establish what “no more unsatisfactory” means in terms of design standard for the elements of the material alteration.

For buildings built prior to 1965 (the year national Building Regulations were first introduced) it will be more difficult to establish definitive compliance. However, these buildings are likely to be of traditional construction and judgements can be made on this basis.

Also, when carrying out material alterations to buildings of special architectural or historic interest, compliance can be considered in the context of maintaining the buildings essential character. Often in this context the requirements will be seen as too restrictive. In such cases, the design team's documentation should record the justification for the design solution developed.

Also, it is worth noting that BS 9991 2024 has a different approach to material alterations. The guidance suggests that the design team should, wherever possible, apply the current day guidance to the fire precautions when carrying out relevant work on existing residential buildings. If a design team elects to use BS 9991 2024 to inform the design on a material alteration, they should be aware of this element in the guidance.

Guidance

Design teams should also be aware of the extended period of liability for noncompliance. If a noncompliance is discovered on a building proposed to be subject to a material alteration, and it occurred within the 10-year period of liability, the previous duty holders would be liable.

It is worth noting that there are types of “Building Work” under the Building Regulations that can result in an uplift to work that complied at the time of construction. This is where Regulations 22, 23, and/or 28 apply and the work involves replacing thermal elements or retained thermal elements or changing the energy status of a building. Examples of work to retain thermal elements often occur in a loft or garage conversion. A change in energy status typically involves the conversion of a previously exempt building to one that is heated.

Work is a material alteration, under the Building Regulations, if it impacts on Part A Structure, Parts B1 Means of Escape, B3 Internal Fire Spread (Structure), B4 External Fire Spread, B5 Access and Facilities for Fire Service, Part M Access, and Part T Toilet Accommodation.

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