

## **BUILDING ACT 1984 - SECTION 39**

### **APPEAL AGAINST A REFUSAL TO RELAX OR DISPENSE WITH REQUIREMENT B1 (MEANS AND WARNING OF ESCAPE) OF PART B (FIRE SAFETY) OF SCHEDULE 1 TO THE BUILDING REGULATIONS 2010 (AS AMENDED), IN RESPECT OF CONVERSION OF A PROPERTY INTO SELF CONTAINED FLATS**

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

3. The papers submitted state that the building work to which this appeal relates concerns work undertaken to a two storey residential house with a loft room which is being converted into three flats. The building work involves the conversion of a residential house into three self-contained flats (1 x 3-bed at ground floor, 1 x 2-bed at first floor level and 1 x 1-bed at first floor and loft). The dispute with the Council concerns a proposed fire escape ladder at the rear of the building. The Council has requested a fire resisting partition is constructed in the first floor lounge in flat C to create a protected escape route from the bedroom in the loft. You have stated that although this is a common solution for loft conversions, it is not practical in this case because the size of the lounge will end up being too small and will not comply with the room size requirements set out in the London Plan or Unitary Development Plan (UDP).

4. Therefore, you have proposed that an external fire escape ladder is fixed to the rear wall of the building with a small landing to enable escape from the dormer window in the loft bedroom. The Council has stated that a conventional external stair would be required to comply with Building Regulations and does not accept that an external fixed ladder would comply. You applied to the Council for relaxation or dispensation on 29 July 2012 and the Council refused to relax or dispense with the requirements of the Building Regulations in question on 3 August 2012.

It is against this refusal that you have appealed to the Secretary of State.

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

5. You believe that the proposed fixed fire escape ladder is in accordance with paragraph 5.22(b) of Approved Document B (2006), Volume 2 (Buildings other than dwellinghouses) which states that fixed ladders should only be used when a conventional stair is not practical. You believe that this is the exact situation the appellant has here, because it is not practical to provide a conventional external stair in this case.

6. You take the view that a conventional external stair would require planning permission, which you state would be refused due to overlooking the neighbour's property. You also state that the space it would take up in the small garden would

lead to a loss of amenity space. In addition, that it would not be practical to place the stair columns in the small garden in front of the kitchen door and windows. You argue that an internal partition in the lounge is also impractical because it would create a small lounge which does not comply with room size requirements set out in the London Plan and UDP. You are of the opinion that the only practical solution is the external escape ladder. Further more you state that there is always the risk that the fire may spread to the first floor corridor area and an external escape route is always beneficial.

7. On 22 August 2012, you copied the Department into additional correspondence with the Council, stating:

- There is only one room on the second floor; the other area is only for storage as marked on the plan.
- The young can easily be carried down the ladder, elderly people who are too frail to use ladders are in special care homes and will not be renting a maisonette in a loft.
- Bad weather is not an excuse to avoid using a ladder in a fire escape situation.
- The option the Council recommended is a partition forming a corridor which does not comply with planning requirements and therefore is not practical. In this situation the solution in paragraph 5.22(b) of the Approved Document mentioned above, a fire escape ladder, is acceptable. This also overcomes the risk of firespread into the stair/corridor area. What other option is there other than the fire partition in the lounge or an external escape stairs?

8. A further e-mail on 18 September stated:

- There is only one bedroom in the loft, there is inadequate height in the storage area for use as a habitable room
- The maisonette is a market rented property and elderly frail people are generally in special care homes, they do not rent this type of property. The very young who are unable to climb ladders can easily be carried down the ladder by the supervising adult.
- Bad weather is not an excuse to avoid using a ladder. In any case, the final exit will have to be outside into such weather anyway.
- The only options that Building Control has suggested are a fire partition or an external staircase. Both of these are impractical. The partition would cause the room to be too small which would be overcramped and not comply with planning requirements or London Plan. The external stairs will not be practical either, it requires planning permission which could be refused due to overlooking onto neighbour's property and the space it would take up in the small garden leading to a

loss of amenity space. Nor would it be practical to place the stair columns in the small garden in front of kitchen door and window.

Therefore clause 5.22(b) [of the Approved document mentioned above] allows ladders when a conventional stair is not practical.

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

9. The Council sent the Department its views on 18 September which outlined the reasons for its decision to refuse a relaxation in respect of a fixed external fire escape ladder:

- A stairway from the two rooms on the second floor of the maisonette comes down through the first floor kitchen. This makes the two second floor rooms inner rooms. There is room in the kitchen to provide a half hour fire resistant partition with a fire door to resolve this issue.
- A ladder or ladders would be impractical for use by the young or the elderly.
- A ladder or ladders would be impractical for use in bad weather.
- Options that comply with the approved documents are available for use.

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

10. The Secretary of State has given careful consideration to the particular circumstances of this case and the arguments presented by both parties. He notes that what needs to be considered is compliance with requirement B1 of Schedule 1 to the Building Regulations, which, provides (amongst other things) that the building shall be constructed so that there are appropriate means of escape in case of fire from the building to a safe place outside the building capable if being safely and effectively used at all material times. In this particular case, whether an appropriate means of escape from the loft space bedroom accommodation has been provided, should a fire occur within the same flat at first floor level.

11. The Council takes the view that the open layout of the flat at its lower level means that the upper rooms should be treated as inner rooms. This is because a fire at the lower level would present an unacceptable risk that the occupants of the upper floor would become trapped. As such, a suitable alternative escape route should be provided or the lower level should be remodelled to provide a protected route. You have not disputed the council's views in this respect, but you have argued that a fixed external ladder leading from a dormer window at the upper level would provide a suitable alternative and that other options would present problems with obtaining the necessary planning permission.

12. In general, fixed ladders are not generally considered to be an acceptable alternative to a stair, except in situations where they are being used for maintenance access. In domestic situations, such as this, a fixed ladder leading to a window may also be regarded by the occupants of the building as a security risk. This introduces a significant potential that the occupants may choose to remove or otherwise disable the ladder.

13. The Secretary of State does not consider that potential problems with planning permission are material considerations for establishing what is reasonable for matters of life safety. If a satisfactory level of safety cannot be achieved for a particular design within the constraints applicable to the site then it may be that the design is unviable and an alternative should have been sought.

14. The provision for escape via an egress window where the floor is not more than 4.5 metres above ground level may be considered an appropriate means of escape from inner rooms within flats and houses, such as described in paragraph 2.4 of Approved Document B - Fire safety: Volume 1 - Dwellinghouses. In this case, the upper floor of the flat in question is above this height and window escape would not normally be considered acceptable. However, the window in question is immediately above a flat roof and it might be reasonable therefore, to consider this window as a suitable egress window to the flat roof. The Secretary of State therefore takes the view that the platform and ladder leading to the flat roof, shown on the plans, would, result in a level of safety that is equivalent to an egress window from a floor not more than 4.5 metres in height above ground level. The additional ladder leading from the flat roof to ground level, however, may be unnecessary for compliance with the Building Regulations as the flat roof is not more than 4.5 metres above ground level and you may wish to omit it to avoid any concerns regarding security.

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

15. The Secretary of State concludes that the arrangement of an escape ladder from the egress window to the flat roof immediately below is an appropriate means of escape as required by requirement B1 of Part B of Schedule 1 to the Building Regulations for the reasons given in paragraph 14 above. There is thus no need for a relaxation of dispensation in respect of this requirement as the work complies. Accordingly the appeal is dismissed as unnecessary.

16. 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, the Borough Council. A copy of this letter is being sent for information to the Council.