

## **BUILDING ACT 1984 - SECTION 16(10)(a)**

### **DETERMINATION OF COMPLIANCE WITH REQUIREMENT B1 (MEANS OF WARNING AND ESCAPE) IN PART B (FIRE SAFETY) OF SCHEDULE 1 TO THE BUILDING REGULATIONS 2000 (AS AMENDED), IN RESPECT OF EGRESS WINDOWS AND OWNERSHIP/CONTROL OF LAND, FORMING PART OF BUILDING WORK.**

#### **The proposed work and question arising**

4. The papers submitted indicate that the building work to which this determination relates comprises the change of use of a Grade II listed building from an arts centre into a dwelling. The proposed work involves the installation of a mezzanine gallery at first floor level to accommodate two new bedrooms with en-suite bathrooms accessed by an open balcony and a stair from the existing ground floor. The ground floor accommodation will consist of an open plan kitchen/dining/lounge area with a small partially enclosed study, cloak room and utility area. A master bedroom and en suite bathroom is also proposed in the basement. As the first floor bedrooms are 'inner rooms' the proposal is to alter the existing windows therein to serve as egress windows to ensure adequate means of escape.

5. The egress windows will be within a wall which comprises the legal boundary of the property and adjoins an enclosed courtyard garden of an adjoining Grade II listed cottage. The Council takes the view that, for the egress windows to be acceptable, it is essential that your clients either own or control the land into which occupants of the building will escape or be rescued. However, you hold the opinion that the guidance in Approved Document B (Fire safety) is silent on the issue of ownership and/or control of land serving an egress window and that this issue is irrelevant. The Council has suggested alternative design options for the purpose of achieving compliance with Requirement B1 (Means of warning and escape) in Part B (Fire safety) of Schedule 1 to the Building Regulations 2000 (as amended), which you consider to be expensive or visually unacceptable.

6. Your full plans application was therefore rejected by the Council on 23 January 2009 on the grounds that your proposals relating to the egress windows do not comply with Requirement B1. As you consider that your plans as submitted achieve compliance, you have applied for a determination in respect of this question.

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

7. The Secretary of State notes that the Council takes the view that it is inappropriate to accept egress windows that lead to an area outside the ownership or control of the owners/occupiers of the building from which escape is required, as in this case. However, he also notes that you take the view that it is common for such situations to exist, such as where windows open onto public highways and that, in your view, ownership or control of the land is irrelevant.

8. The Secretary of State observes that the size and arrangement of the windows in question and the size of the adjoining courtyard garden have not been questioned by either party and so they have not been considered here. You have suggested that the guidance given in Approved Document B on escape into enclosed spaces such as courtyards and gardens supports your case. But this guidance relates only to the geometry of such spaces and makes no reference to ownership or control.

9. Requirement B1 of the Building Regulations provides that means of escape should be capable of being safely and effectively used at all material times. The Secretary of State takes the view that whilst it is not possible, under building regulations, to control the ongoing availability of an escape route, the likelihood that escape will meet this criterion is a material consideration in respect of Requirement B1.

10. Clearly, the most desirable approach would be for egress windows to deliver to land within the control of the occupants of the building as this provides the greatest certainty that the escape route would not be compromised. However, the Secretary of State considers that it could be reasonable to accept escape onto adjoining land if the likelihood of development that might compromise the escape route is low and if alternative options are unreasonably onerous.

11. The Council has identified a number of alternative design options for which this question would not arise. These include introducing a connecting door between the two first floor bedrooms and a new egress window onto land owned by your clients, introducing additional fire resisting construction to form a protected route, or the installation of a sprinkler system. You consider that these alternatives would be unreasonable in terms of cost and amenity. You have also argued that the potential for further development in the adjoining courtyard garden is low, as in this case both the buildings in question are Grade II listed.

12. The Secretary of State has given careful consideration to the particular circumstances of this case and the arguments presented by both parties. He concludes that the unusual context of the two buildings and their listed status is such that the likelihood of further development that would prevent the use of the proposed egress windows is low and that the other design options available would be unreasonably onerous.

### **The determination**

13. The Secretary of State considers that your proposals as submitted, relating to the egress windows in question, make adequate provision for means of escape in case of fire in this particular case. In this respect, he has therefore concluded

and hereby determines that the plans of your proposed building work comply with Requirement B1 (Means of warning and escape) in Part B (Fire safety) of Schedule 1 to the Building Regulations 2000 (as amended).

14. You should note that the Secretary of State has no further jurisdiction in this case and that any matters that follow should be taken up with the building control body at the Council.