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

### **DETERMINATION OF COMPLIANCE WITH REQUIREMENT B1 (MEANS OF WARNING AND ESCAPE) OF THE BUILDING REGULATIONS 2000 (AS AMENDED) IN RESPECT OF ALTERATIONS TO THE ROOF SPACE OF A TWO STOREY HOUSE**

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

4. The documentation submitted indicates that the proposed building work to which this determination relates involves alterations to enlarge and upgrade the roof space (ie the loft) of a three bedroom two storey terraced house to provide better storage space. The footprint area of the house is approximately 12.3m x 5.7m.

5. You advise that your client's original intention was to convert the roof space of her home to provide an additional habitable room. Although planning permission was received for the installation of roof windows to the front and side elevations and a small dormer window to the rear elevation, because the house lies within a conservation area, the planning authority would not allow either the hipped roof to be built up as a gable or for a dormer window to be constructed on the hipped end. Therefore, the space in the roof space would be limited by the roof and additionally by the subsequent positioning of the stair.

6. You state that due to the space constraints your client does not intend to use the roof space for habitable purposes, but intends to carry out building work to upgrade it in terms of structure, thermal insulation and finishes as well as providing natural light so that she may store her property in a clean and stable environment. Access will be provided by a loft ladder.

7. The above proposed work was the subject of a full plans application which was rejected by the Council on the grounds of insufficient information provided. The Council was particularly concerned that the proposed alterations to the roof space had all the appearances of providing a habitable room, was likely to be used as such, and that it was not possible to restrict its use to non habitable purposes. The Council therefore requested the "usual requirements for a loft conversion", including adequate means of escape in case of fire to achieve compliance with Requirement B1 of the Building Regulations.

8. Following a discussion with the Council, you submitted revised plans to include a fire escape roof window, a fire alarm system and door closers to the doors on the ground and first floors, but the Council continued to take the view that the provision of a fully compliant stairway was needed for the altered roof space. It is in respect of this question that you applied to the Secretary of State for a determination.

### **The applicant's case**

9. As indicated above, you state that the proposed altered roof space would not, and could not, be used as a habitable room. For conservation reasons, the planning authority will not allow further development of the roof space which, amongst other things, would have enabled the construction of a new stair to the roof space over the existing stairway. In your view, it would not be practical to install a compliant stairway to the roof space without losing space in one of the existing bedrooms on the first floor and in the roof space. You add that even the proposed access ladder from the existing first floor landing would have limited head room.

10. You refer to one of the sketches you have submitted and advise that any stair to the roof space would need to be located adjacent to the central spine wall of the house, in either the front or rear bedroom, rising up towards the party wall. The enclosure at loft level, which you state is required under the Building Regulations, would then render the roof space unusable as a habitable room as the floor area would be too small. You, therefore, conclude that the only practical use of the altered roof space will be as storage and that a compliant stairway is not required.

11. You subsequently commented further in response to the Council's representations to the Secretary of State (see below) reiterating much of your case. You presume that the Council describes the proposed refurbished roof space as a habitable room because of the improved thermal insulation, but note that the Council has been promoting the merits of better insulation. You suggest that if a stair to the roof space was constructed as proposed by the Council the size of the roof space would be 4.26m<sup>2</sup>. You state that the Housing Act 1985 deems that the minimum size for a single bedroom is 7m<sup>2</sup> and it would not be possible to provide a bed in the area in question.

12. You also comment in detail on your client's "treatment" by the Council's building control and planning departments over the past five years and refer to other developments within the conservation area, although you should note that it would not be appropriate for the Secretary of State to take these issues into account in the consideration of your case.

## **The Council's case**

13. The Council takes the view that the matter to be decided is whether your client's proposed alterations to the existing roof space would form a habitable room. If so, as a means of achieving compliance, the Council draws attention to the guidance in paragraphs 2.17 to 2.26 of *Approved Document B (Fire safety)* relating to appropriate means of escape in case of fire and the need to provide a stair in accordance with *Approved Document K (Protection from falling, collision and impact)*.

14. The Council notes you have stated that the area of the roof space would be too small for habitable purposes and would only be used for storage. The Council considers that, while your client may intend to use the area only for storage, it would not be possible to ensure that future use, by your client or future occupants, would be restricted to storage. The Council also notes that your client's original intention was to provide 'an additional habitable room', and takes the view that your proposal has all the appearances and attributes of such a room. Whilst the floor area is small, it could well be used for a child's bedroom or occasional guest room.

15. The Council adds that it has fully discussed your proposals with you and has suggested that an alternating tread stair could be used (as referred to in paragraph 1.23 of *Approved Document K*), which would have less impact on the roof space area. The Council considers that the reduction in size of an existing first floor bedroom to accommodate a stair is commonplace but in this case would still leave the bedroom with adequate floor area.

16. The Council concludes by responding to your representations about its treatment of your client and details the consideration given to her Building Regulations application.

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

17. The Secretary of State takes the view that the fundamental issue in this case is whether or not the proposed altered roof space should be treated as storage only or as a space likely to be used for habitable purposes by the current, or any future occupants of the building. There is no definitive way of deciding this nor is there any statutory minimum floor area for a habitable room.

18. It is important to note that the Building Regulations cannot control the use to which rooms in dwellings are put once building work has been completed. As the provisions in Part B (Fire Safety) are designed to ensure the health and safety of people, the likely use of the roof space (eg by future occupants) has to be taken into account.

19. Guidance in *Approved Document B*, Appendix E, defines a storey as including "...a roof, unless it is accessible only for maintenance and repair". Therefore, if a roof space is being used for something other than maintenance and repair it could be considered to be a new storey. Issues that might be taken into account when considering whether the roof space is a habitable room could include its size (particularly in relation to the rest of the building), whether it has electrical services (eg power sockets etc), is plastered, has a stair (of any type), and, possibly, if there is a window even if the intention at the time is only for it to be used for storage.

20. The Secretary of State notes that the proposed work in your client's case includes boarded out floor, electrical services, plasterboard finished walls and three windows (two roof windows and a dormer).

21. In the case of three storey houses a protected stair should be provided - ie one that is enclosed in fire resisting construction with self-closing fire doors. This is designed to ensure that the occupants' means of escape is protected from the spread of fire and smoke long enough for them to be able to make their escape. Enclosing the stairway at loft level is only one method that can be used by the designer but there are others which would not utilise space in the roof space, as suggested by the Council in this case.

22. The Secretary of State therefore concludes that - following the building work your client proposes to carry out - it is a reasonable assumption that the roof space in this case is likely to be used for more than storage, if not by your client then by future occupants of the building. As such, the proposed loft ladder does not meet the functional requirements of the Building Regulations with respect to Requirement B1 relating to the means of escape and could pose a threat to the occupants, or future occupants.

## **The determination**

23. In coming to her decision, the Secretary of State has given careful consideration to the particular circumstances of this case and the arguments presented by both parties.

24. As indicated above, the Secretary of State considers that your proposals, as submitted, do not make appropriate provision for means of escape in case of fire. She has therefore concluded and hereby determines that the plans of your proposed work do not comply with Requirement B1 (Means of warning and escape) of Schedule 1 to the Building Regulations 2000 (as amended).