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Note: The following letter was issued by our former department, the Office of the Deputy Prime Minister (ODPM). ODPM became Communities and Local Government on 5 May 2006 - all references in the text to ODPM now refer to Communities and Local Government.

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 the provision of a gallery, forming part of building work comprising a first floor extension to a two storey house

The proposed work

4. The building work which is the subject of this determination is a first floor extension to a two storey, double fronted, three bedroom detached house whose plan footprint is 'L' shaped - being approximately 10m in frontage and 10m in depth. The site slopes from front to rear.
5. The ground floor is of split level design and comprises a hall, lounge and sitting room at the front with a kitchen to the centre rear. Three steps from the kitchen lead down to a single storey extension comprising a dining room and a utility room located on the side and rear of the house.
6. The first floor comprises three bedrooms to the front with a bathroom to the rear located above the kitchen. There is a drop landing at the top of the stairs with an additional step up to each of the two landings and accommodation on either side of the stair.
7. The proposed alterations and the extension are at first floor level and will involve building above the existing single storey extension to provide an additional bedroom and en suite bathroom. The construction will incorporate a gable end to the rear elevation. Two inward opening French windows are proposed in the new rear elevation of the bedroom which give access to a narrow width balcony.
8. In addition, a gallery of approximately 2m width is proposed which will run across the full width of the extension (approximately 6m) - ie running across the rear of the bedroom and across the total area of the en suite bathroom below. The gallery will be open to the remaining area of the bedroom. An oriel window to the gallery in the gable end will provide the minimum dimensions required for an escape window. The height of the gallery floor above the bedroom floor is approximately 2.4m. The plans indicate that the height of the gallery floor above ground level at the rear is approximately 5.2m.

9. Access from the existing first floor landing to the new bedroom and gallery is from a new self-closing 30 minute fire door which opens on to a new landing within the bedroom. This landing gives access to the right of the door to three winder steps leading down to the new bedroom floor; and directly opposite the door to a stair which leads up to the gallery. The maximum travel distance from any point on the gallery to the head of this stair is 4m.

10. All existing internal doors opening off the hall and the two first floor landings are shown on plan as self-closing. Interconnected mains operated smoke alarms are proposed in the hall at ground floor level; the first floor drop landing; and at the top of the stair to the gallery.

11. These proposals formed the basis of a full plans application which was rejected by the Borough Council on the grounds, inter alia, of non-compliance with Requirement B1 in respect of safe escape from the gallery level. The Council considered that the proposed gallery was more akin to the conversion of a roof space in a two storey house and as such contravened Requirement B1. In the Council's view to achieve compliance it would be necessary to separate the gallery from the rest of the house using fire resisting construction. However, you have argued on various grounds that your proposals do comply with Requirement B1 and it is in respect of this question that you have applied to the Secretary of State for a determination.

The applicant's case

12. You have made the following points to support your case for compliance with Requirement B1:

(i) the gallery area is to be used in conjunction with the bedroom, but not as sleeping accommodation.

(ii) because of the split level layout of the house the gallery is not a full storey height above the entrance level to the bedroom, but is at split level with the bedroom.

(iii) the gallery is part of the actual bedroom and not a separate room. Should there be a fire or another emergency, the escape distance from the gallery is less than from the far end of the main part of the bedroom. You also consider that in such a case, it would be more dangerous if the gallery were to be enclosed.

(iv) With reference to paragraphs 2.12 to 2.26 of *Approved Document B (Fire safety)* regarding provisions for houses with a floor more than 4.5m above ground level, you acknowledge that the land on which the house is built is not level but slopes down from front to rear, thus resulting in the gallery floor at the rear being more than 4.5m above ground level. However, you argue that as the building has been built to a split level design, it lends itself to a mezzanine/gallery type extension rather than to the creation of a very tall room. On this basis you therefore emphasise that the gallery is an integral feature of the bedroom and not a main floor.

The Borough Council's case

13. The Borough Council has made the following points to support its case for rejecting your proposals:

(i) The gallery area is part of a bedroom and as such could easily be used for sleeping accommodation. Paragraph 2.9 of *Approved Document B* states that where a sleeping gallery is provided, the gallery should be no more than 4.5m above ground level. Even taking into account the fact that the bedroom below is to have a ceiling height of no more than around 2m, the proposed floor level of the gallery will still exceed the 4.5m threshold. In the Borough Council's view your proposals do not therefore accord with the guidance in the Approved Document.

(ii) In the Borough Council's view the proposed gallery could be treated on the same basis as a loft conversion. As such this would require the gallery to be separated from the rest of the house by fire resisting construction.

(iii) The Borough Council countered your points about what the position might be if the land was level by stating that if the site were level your property would not have been constructed as a split level house. It reiterates the point that the height of the gallery floor exceeds 4.5m from ground level, as detailed in Diagram C5 (page 129) of *Approved Document B*- "Height of top storey in building".

The Secretary of State's consideration

14. The Secretary of State notes that in this case a new split level bedroom (ie bedroom plus gallery) is proposed to be introduced into an existing two storey house. This will, in effect, create an additional storey which is more than 4.5m above ground level when measured from the lowest ground level. At this height it is not considered to be safe for people to make their own escape from windows. It would normally be necessary, therefore, to provide a protected escape route down through the house formed with fire resisting construction and fire resisting self-closing doors.

15. Paragraphs 2.17 - 2.26 of *Approved Document B* provide guidance for loft conversions. This is based on the strategy of providing fire resisting construction to separate the new floor from the rest of the house, and thus allow the occupants of the new floor to wait in relative safety for rescue via a ladder through a suitably placed window. Using this approach existing doors should be made self-closing but need not always be replaced.

16. In this particular case, in order to take advantage of the split level layout of the house you have proposed that the new floor will be open to the room below in the form of a gallery. The Borough Council has taken the view that this would not be acceptable but has suggested that the new floor could be treated as a loft conversion. Whilst, as noted in general in paragraph 15 above, this would not necessitate the replacement of the doors to the stairway elsewhere in the house, it would result in the need to separate the new storey

(ie the gallery) from the rest of the house, including the bedroom below. It would then constitute a small loft room rather than a gallery.

17. You consider that the gallery itself is very small and the vertical distance from the gallery floor to the first floor landing is less than a conventional storey height. The implications of your comments appear to be that the safety of people using the gallery would be no worse than that for the people in the bedroom underneath and that therefore no additional fire protection is required.

18. The Secretary of State takes the view that gallery floors can be similar to inner rooms. This is because there is an increased risk that persons on the gallery floor may become trapped should a fire occur in the room through which it is accessed. Where a gallery is below 4.5m from ground level it is possible to mitigate this risk by the provision of an alternative escape route such as a window or by ensuring that travel distances on the gallery are limited.

19. You have stated that the gallery area is to be used in conjunction with the bedroom, but not as sleeping accommodation. However the Borough Council has argued that the gallery area is part of a bedroom and as such could easily be used for sleeping accommodation. The Secretary of State takes the view that the gallery, as with any habitable room, may well be used for sleeping and this should be a material consideration.

20. The Secretary of State recognises that, in this case, the gallery floor is more than 4.5m above ground level. However, taking into account the small size of both the gallery and the bedroom below and their inter-relationship to each other, the two levels could only conceivably be used in conjunction with one another. This position must be contrasted with a separate loft room which may be put to different or ancillary purposes. Therefore, given this inter-relationship between the gallery and the bedroom, and the provision of a smoke alarm above the gallery stair, it would be reasonable to treat both levels as being part of the same new first floor bedroom.

21. The Secretary of State has therefore concluded that additional protection for the occupants of the gallery above and beyond what would be provided for the bedroom, is not necessary. In this case an escape window has been provided at first floor level (ie the French windows) which could be utilised by the occupants of the bedroom and gallery should they become trapped by a fire elsewhere in the house. As such the plans achieve compliance with Requirement B1.

The determination

22. The Secretary of State has given careful consideration to the particular circumstances of this case and the arguments presented by both parties.

23. As indicated above, the Secretary of State considers that your proposals as submitted, which incorporate an open gallery to the new bedroom, make

adequate provision for warning and escape. He has therefore concluded and hereby determines that your proposals comply with Requirement B1 (Means of warning and escape) of Schedule 1 to the Building Regulations 2000 (as amended).