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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 in respect of a second floor extension to Flat 4

The proposed work

4. The building to which this determination relates was originally a single family dwelling house, built on a sloping site, consisting of a main two storey building with a smaller two storey east wing with floors set slightly lower than the main building. The whole building has been converted into several self-contained flats spread over the two original storeys plus the roof space in the main building. All the flats in the main building and the east wing are accessed by a common hall and a single common stair located in the main building.

5. Flat 4 comprises all the first floor of the east wing and part of the adjacent first floor of the main building. There is a second floor flat above the latter part. The entrance hall to the flat in the main building connects via four steps to a lower hall in the east wing. You indicate that there is doubt as to the adequacy of the existing fire protection in terms of the internal planning of flat 4, the protection afforded to the common stair, and the compartmentation between adjacent flats. You have not provided details of the other flats in the building.

6. The proposed building work will convert the flat into a maisonette by the creation of a new second floor living room of approximately 48m². The plans also show that one of the existing habitable rooms in the flat contained within the main building is to be re-designated as a third bedroom. The conversion into a maisonette will be achieved by removal of the pitched roof above that part of the flat contained in the east wing and the vertical extension of the east wing walls and construction of a new pitched roof above the new second floor. The second floor will be accessed by the provision of an internal stair separated by a fire resisting door from the existing entrance hall (ie the upper part of the hall) of the flat, which you state will be upgraded to comply with current standards. You also propose to carry out work to generally upgrade the fire precautions of the flat and provide mains operated smoke alarms.

7. These proposals were the subject of a full plans application which was rejected by the Borough Council on the grounds that insufficient information was provided to demonstrate compliance with Requirement B1 (Means of warning and escape) of the Building Regulations. The Council referred to the guidance in *Approved Document B (Fire safety)* and stated that as the proposed second floor level was greater than 4.5m above ground level, an alternative exit would be required from the upper level of the newly formed maisonette. However, you consider that the request for an additional means of escape from a proposed single room in your case is unreasonable and not possible. You therefore applied for a determination in respect of the question as to whether your proposals comply with Requirement B1.

The applicant's case

8. You make the following points in support of your case:

(i) the door to the proposed second floor living room is at first floor level directly off the main protected entrance hall and is within 9 metres of the entrance door to flat 4 on the same level. It therefore accords with paragraph 3.11a of *Approved Document B* which refers to additional requirements where a floor is over 4.5m above ground level.

(ii) the travel distance from the entrance door of the flat to the top of the proposed stair is also within 9 metres.

(iii) the proposed stair will be designed to accord with the guidance in *Approved Document K (Protection from falling, collision and impact)*.

(iv) 30 minutes fire protection will be provided within the proposed second floor living room separating this from the bedrooms below.

(v) the proposed stair will be enclosed in 30 minutes fire resisting construction providing a continuous protected escape route from the proposed living room through the entrance hall to the entrance door of the flat.

(vi) the walls of the entrance hall to the flat will be upgraded to achieve a minimum of 30 minutes fire resistance incorporating 30 minutes fire resisting doors with self-closing mechanisms.

(vii) the ceilings to the kitchen, entrance hall and proposed (ie re-designated) bedroom 3 in the flat contained within the main building will be upgraded to achieve current separation standards to the second floor flat above.

(viii) mains operated smoke detectors will be provided in the kitchen, hall, lower hall and proposed living room.

(ix) if your proposals were viewed as a roof conversion/extension of a two storey dwelling they would accord with the guidance in the current *Approved Document B*. In your view because, in this case, the ground floor storey is a separate dwelling this should enhance the merits of your proposals as you are providing a means of escape at "first floor" to the common stair.

(x) the local authority planning department and the owners of the other flats in the building will not permit the construction of an external stair from the proposed second floor of flat 4.

9. You conclude that your proposals will upgrade existing parts of the building to comply with Part B (Fire Safety) of the Building Regulations which might not otherwise be carried out thereby maintaining the potential danger to the occupants of flat 4 and the second floor flat above in the main building if a fire should occur. In your view, as creating an additional single room in a house where the floor is more than 4.5m above ground level is acceptable, it is unreasonable to require that a similar situation is not considered acceptable within a self-contained flat.

10. Following the Borough Council's representations to the Secretary of State you have also added that:

(i) if the Borough Council is suggesting that your proposals would be acceptable if greater protection was provided to the existing and proposed structure to enhance the fire resistance than that currently required under Requirement B1, then you would be willing to discuss further.

(ii) your client has advised that it may be possible to provide a fixed external ladder with a handrail from the proposed second floor of flat 4 down to the ground in a position to be agreed. This would provide an alternative means of escape in an emergency.

The Borough Council's case

11. The Borough Council accepts that, as it has no record of the conversion of the house into self-contained flats, the flats may not comply with the requirements of the Building Regulations and that your proposal is to upgrade the fire resisting structure of flat 4 from a current position of clear non-compliance. However, the Council takes the view that your proposals offer no greater protection than would currently be required under Requirement B1 and that this is no compensation for not providing an alternative escape route from the upper level of the proposed maisonette.

12. While the Borough Council accepts that the majority of your proposals comply with Requirement B1, they take the view that they do not comply with the additional provisions for flats and maisonettes with a floor level of more than 4.5m above floor level. The Council refers to *paragraphs 3.14 and 3.15 of Approved Document B* which provide guidance on the methods needed to achieve compliance with Requirement B1 for flats and maisonettes and state that the provision of an alternative exit from the non-entrance level is required.

13. The Borough Council has made the following comments in response to the points you have made to support your case:

- (i) the use of *paragraph 3.11a of Approved Document B* refers to flats not maisonettes
- (ii) the 9 metres travel distance requirement refers to flats and not maisonettes
- (iii) the proposed stair should meet the requirements of *Approved Document K*
- (iv) the proposed second floor as defined in *Appendix A, Table A2 of Approved Document B* would be required to achieve 30 minutes fire resistance
- (v) *diagram 11 of Approved Document B* requires the proposed stair to be enclosed in 30 minutes fire resisting construction with self-closing FD fire doors. This would still require the provision of one alternative escape from the upper level of the proposed maisonette
- (vi) the entrance door to the proposed maisonette is required to be a self-closing FD20 door - *Table B1, Appendix B of Approved Document B* applies
- (vii) the floor between the second floor flat and the proposed maisonette should constitute a compartment floor
- (viii) the provision of smoke alarms would be required under Requirement B1
- (ix) if the proposal were for an additional floor on top of a two storey single family dwelling it would be acceptable provided the stair enclosure achieved the required fire resistance and discharged at ground level to a place of safety. The main issue is that in this case, the proposed maisonette discharges at first floor level into a common stair with other flats also discharging into this stair
- (x) the subject of whether planning permission will or will not be granted is not considered pertinent to whether this scheme is acceptable under the Building Regulations.

The Secretary of State's consideration

14. The Secretary of State takes the view that, in this case, the issue for consideration is the safe escape of the occupants of the proposed second floor living room in the proposed maisonette. This should be considered in terms of both the internal arrangement for safe escape and early warning in the maisonette, as well as the common stair and hallway of the main building through which occupants would have to pass to a place of safety outside the building.

15. You have suggested that the travel distance from the door of the maisonette to the proposed living room complies with the recommendations in *paragraph 3.11 of Approved Document B*. You have also argued that the proposed means of escape are in some ways similar to that provided in the Approved Document for where a loft conversion is proposed to an existing two storey house.

16. The Secretary of State considers that maisonettes need special consideration because of the greater risk that the occupants of the upper floor can become trapped as a result of a fire on the lower levels. *Paragraph 3.11 in Approved Document B* to which you refer does not address this problem and as such is only applicable to flats where the accommodation is at one level. Although your proposals are similar to a standard loft conversion, in that the occupants need a similar level of protection, there is the additional factor that those occupants will have no control over the other flats the entrances to which the occupants of flat 4 will have to pass in order to reach a place of safety outside the building.

17. The Borough Council has suggested that an alternative route from the proposed second floor be provided. The Secretary of State notes the difficulties cited and accepts that the provision of a new stairway at this level may be unreasonably onerous in this case and that there may be an alternative solution available if adequate compensatory features were to be included in the design.

18. By way of such compensation you have proposed upgrading the fire precautions in the existing lower floor of the newly formed maisonette to current standards. Clearly these improvements to the lower floor would be of benefit to the occupants of that level. However, this proposal does not address the adequacy of the means of escape from the proposed habitable accommodation on the upper floor.

19. It is accepted that your proposals for the detection and warning of fire do exceed that which would normally be provided for in a two storey maisonette and would provide valuable early warning of a fire to the occupants of the upper floor. However, smoke alarms are not proposed for all the rooms at the lower level and as such the proposals do not adequately compensate for the lack of an alternative escape route from the upper floor of the maisonette.

20. Your client has suggested that a fixed external ladder could be provided to provide an alternative escape route, but you have provided no details as to how this would be achieved in practice. In any event fixed ladders are only considered to be suitable for means of escape in unusual circumstances such as plant rooms which are not normally occupied and accessed only by ladders. This suggestion cannot therefore be regarded as an acceptable solution to achievement of compliance.

21. Having regard to all of the above, the Secretary of State has concluded that the proposed building work to form the maisonette does not comply with Requirement B1 and therefore also fails to comply with regulation 4(1) of the Building Regulations. The Secretary of State is also very conscious that even if satisfactory provision for safe escape from the maisonette was achieved, occupiers would then still have to use the common stair in order to pass to a place of safety outside the building. Given the lack of information about the fire separation between the other flats and the common stair, it is impossible to judge whether the objective of the common stair being as safe as possible would necessarily be achieved. In any event, because your proposals as submitted fail to comply with regulation 4(1) of the Building Regulations, the building taken as a whole after completion of the work would fail to comply with regulation 4(2).

22. However, in the Secretary of State's view compliance could be achieved in principle without the addition of an alternative escape route if:

(i) a suitable detector and alarm system was provided throughout the newly formed maisonette and

(ii) the route of travel from the new upper floor accommodation in the maisonette both within the maisonette and through the common parts of the main building to the outside was provided with adequate protection.

The determination

23. The Secretary of State has given careful consideration to the particular circumstances of this case and the arguments presented by both parties. He has done so in respect of compliance of your proposals with Requirement B1 of Schedule 1 to, and regulation 4 of, the Building Regulations.

24. As indicated above, on the basis of your proposals as submitted he considers that they do not make adequate provision for early warning and safe escape from the proposed accommodation at second floor level of the maisonette. He has therefore concluded and hereby determines that your proposals do not comply with Requirement B1 (Means of warning and escape) of Schedule 1 to the Building Regulations 2000 and in consequence also do not comply with regulation 4(1). It also follows that the whole building as extended after the proposed work would not comply with regulation 4(2) of the regulations.