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*Note: The following letter was issued by our former department, the Department for Transport, Local Government and the Regions Department for Environment, Transport and the Regions (DTLR). DTLR is now Communities and Local Government - all references in the text to DTLR now refer to Communities and Local Government.*

### **Building Act 1084 Section 16(10)(a)**

#### **Determination of compliance with Requirement B1 (Means of warning and escape) of the Building Regulations 2000 in respect of Building work required to provide for a change of use from a dwelling to a guest house with an ancillary tea room**

#### **The proposed work**

4. The building to which this change of use and building work relates is a listed (Grade 2) three storey (plus small basement) brick and slate roof built detached property of irregular ground floor plan area, with approximate overall dimensions of 6m x 10m. All existing windows appear to be of sliding box sash type. The front elevation directly abuts the road, whilst the rear elevation overlooks an enclosed rear garden of approximately 23m in depth.
5. The existing use of the building has been as a single occupancy dwelling-house comprising a small front reception room, and a living room and kitchen to the rear. The latter were originally accessed via a passage-hallway comprised of stud partitioning which provided a protected route from the base of the stair at the rear of the ground floor to the front door. Whilst the property was still used as a dwelling, this partition and the dividing wall between the front room and living room were removed to create an open plan arrangement. This building work had formed part of an earlier Building Regulations application to the District Council, which was approved.
6. The first floor contains two bedrooms one with an en-suite bathroom and the second floor contains two bedrooms and a separate bathroom.
7. It is proposed to change the use of the dwelling to a bed and breakfast business for a maximum of six persons, and to create an associated tea room on the ground floor. It is proposed to retain the existing stair configuration whereby the stair from the upper floors discharges to the rear of the open ground floor area and would be approximately 6.5m from the front door, measured through the open plan tea room.

8. The building work to the first and second floors associated with this change of use comprises the installation of an L1 automatic fire detection and alarm system linked with similar installations on the ground floor; and the fitting of self-closing 30 minutes fire resisting doors with smoke seals to all of the first and second floor accommodation.

9. During the course of the earlier approved building work, the first floor had been upgraded to 60 minutes fire resistance and the new floor over the kitchen was also constructed to 60 minutes fire resistance. The proposed work will provide 30 minutes fire resistance to the cellar ceiling and the cellar stair enclosure. The work also includes some alterations to the kitchen, the net result of which will be to separate the kitchen from the rest of the ground floor with 30 minute fire resisting construction.

10. The proposed building work was contained in your full plans application which was deposited with the District Council. Subsequent discussions prior to your application being determined revealed that the Council accepted that the earlier Building Regulations approval had, in effect, provided a relaxation of Requirement B1 of the Building Regulations to provide for the removal - on grounds of limited space - of the ground floor partition forming the passage-hallway which provided a protected route from the base of the stair to a final exit via the front door.

11. However, the District Council took the view that the proposed change of use and building work would mean that the primary escape route would be shared by mixed uses (ie bed and breakfast guests discharging from the upper floors at ground floor level via the tea room and members of the public using the tea room) and that the level of compliance with Requirement B1 would be worse than that existing. They therefore rejected your full plans application.

12. However, you took the view that your compensatory measures - particularly the fire detection and alarm system - compensated for the lack of full fire protection to the stair enclosure at ground floor level. In addition you contended that the reduced fire loading which you planned to secure in the tea room compared with the existing residential use, resulted in a proposal which was within the spirit of the Building Regulations and therefore represented a good standard of passive fire resistance. You therefore applied to the Secretary of State for a determination in respect of this question.

## **The applicant's case**

13. It is your contention that your proposals, whilst not strictly adhering to the letter of the advice in *Approved Document B (Fire safety)*, does show compliance with the ethos of safe egress in the event of fire and exhibits a good standard of fire resistance, as required by the Building Regulations.

14. You consider that the inclusion in the scheme of an L1 automatic fire detection and alarm system gives additional factors of safety, sufficient to be classed as compensating features for those areas where the scheme does not strictly adhere to the suggested solutions of the Approved Document.

15. In support of your case you have made a series of points, the following in particular:

- (i) the current approved layout of the house is such that the only means of escape from the upper floors is through the living room on the ground floor with all the fire load that is implicit in this situation and without any smoke detection
- (ii) the provision of lobbies would result in rooms which would be too small to be economically viable or capable of providing the standard of accommodation proposed
- (iii) the Fire Authority has accepted the proposed ground floor arrangements under the *Fire Precautions Act 1971*, subject to the tea room area being completely sterile with non-combustible furnishings. This detail would be included, and controlled, through the Fire Certificate
- (iv) most deaths from fire occur in dwellings. The proposals to restrict the fire load and to provide an L1 automatic fire detection and alarm system in a managed commercial building will provide a better level of safety than currently exists
- (v) the Building Regulations do not specify the maximum length of the route to the final exit for the purpose of safe escape, nor does it limit what furnishings can be within this corridor
- (vi) the kitchen which is the main area of possible fire source is contained within a compartment. This separation provides what should be regarded as the other wall of the protected escape route. The kitchen is only to be used for providing breakfast for the guests in the morning and as a tea room during the day. The ground floor will not be used at other times
- (vii) the primary escape route will not be shared by mixed uses because the whole building will be put to the same commercial use, the tea room being incidental to the main use
- (viii) the internal construction provides sufficient stability to allow the fire and rescue service time to control the fire and gain access to all levels of the building to effect any rescues needed

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

16. The District Council acknowledges that you have made every effort to provide compensatory features in the design to satisfy Requirement B1. They also state that the work done to date has been inspected and found to have been executed to a high standard. However, their concern is that the property comprises three above ground stories plus a basement, and that the exit from the upper floors (which would fall within Purpose Group 2(b) "Residential (Other)" - see *Table D1 of Approved Document B*) would discharge into a tea room which would be open to the general public and would fall within Purpose Group 4 'Shop and Commercial'.

17. The District Council has considered this proposed situation against the advice contained in *Approved Document B* in respect of vertical escape from buildings other than dwellings. Paragraph 5.23 advises that every internal escape stair should be within a fire resisting enclosure; and paragraph 5.26 advises that every protected stair should discharge direct to a final exit or by way of a protected exit passageway to a final exit. In addition, the Council points out that paragraph 3.47 - which relates to 'Dwellings in mixed use buildings' with not more than three above ground storeys - advises that stairs may serve both dwellings and other occupancies provided that the stairs are separated from each occupancy by protected lobbies at all levels. Having regard to this advice the Council has concluded that the proposed use of the ground floor as a tea room - which would be open to the public - would result in a greater extent of contravention with Requirement B1 than already exists, and that the compensatory features proposed would not be sufficient to achieve compliance with the requirement.

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

18. The Secretary of State notes that your proposals comprise both building work under regulation 3 and a material change of use as defined in regulation 5(c) of the Building Regulations 2000. Regulation 6 specifically identifies the requirements in Schedule 1 to the Building Regulations to which this particular change of use must comply (which includes all the requirements in Part B). Regulation 6 therefore establishes a more onerous test of compliance in relation to the building as a whole than might be applicable to building work which derives from a material alteration. Unlike a material alteration the test of compliance of the building as a whole after completion of the building work is therefore likely to be greater and require, in effect, retrospective application of the standards required by the requirements specified in regulation 6.

19. What needs to be considered in this case is the safety of the occupants of the upper floors of the building and whether it is acceptable for their escape route to pass through the ground floor tea room in order to exit via the front entrance. It is important to bear in mind that the upper floors contain sleeping accommodation and also that the occupants will be unfamiliar with their surroundings.

20. You have argued that the current floor plan arrangements already exist in the building with the approval of the District Council and that in your opinion the change of use in conjunction with the compensatory features offered will improve the level of safety. However, as explained in paragraph 18 above, the Building Regulations require that this particular change of use shall be accompanied by such building work as is required to make the building as a whole compliant with all of the requirements of Part B and this must take into account the new use of the building. In the Secretary of State's view the retention of the existing situation will not achieve the necessary compliance, notwithstanding the compensatory proposals you have made.

21. In an effort to achieve compliance you have proposed both a restriction on the furniture in the tea room and a fire detection and alarm system. You contend that the restriction on furnishings will enable the tea room to be considered as a sterile area and as such you have argued that there would be little or no risk of a fire occurring in this area. The Secretary of State considers that whilst this approach has some merit and could in theory be enforced through a fire certificate, it would be unrealistic to expect this level of control to be achieved and maintained over the contents of a room. Moreover, it would be not be possible to have any control over the potential fireload represented by the nature and content of personal effects which customers in the tea room may have with them. There is therefore an appreciable level of risk of fire occurring in the tea room which would compromise the safe escape of guests on the first and second floor who must pass through the tea room as they exit.

22. Your proposed fire detection and alarm system would be to an L1 standard. It is accepted that this would provide some improvement in the level of early warning for the occupants of the building in comparison with the standard of fire detection which would normally be provided in a boarding house or hotel. But it would not restrict the movement of smoke into/across the escape route if a fire were to occur. The alarm system alone is therefore not considered to be adequate compensation for the lack of a suitable protected route at ground floor level.

23. The Secretary of State is sensitive to the need to recognise the constraints which may be imposed on compliance with the Building Regulations when the building concerned is a listed one and when a change of use is proposed. He has taken into account the point you have made regarding the inappropriateness of providing lobbies because this would result in rooms which would be too small to be economically viable. However, he has come to the conclusion that it would not be appropriate to allow the stair to discharge other than to a final exit or protected passageway in this case. He notes that the idea of escape to the rear garden appears to have been considered but abandoned at an early stage. The garden is understood to be approximately 23m in length and there may be the possibility of it facilitating a safe refuge in the event of fire. It may therefore be that there is potential for a re-design of your proposals which would ensure a fully protected final exit to the rear garden as an alternative to the exit at the front of the building. This would be a matter for discussion with the District Council.

## **The determination**

24. The Secretary of State has given careful consideration to the particular circumstances of this case and the arguments presented by both parties. On the basis of your proposals as submitted he does not consider that they make adequate provision for safe escape. 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.