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Ref: 45/1/183

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

## **Building Act 1984 - Section 16(10)(a)**

### **Determination of compliance with Requirement B1 (Means of escape) of the Building Regulations 1991 (as amended) in respect of a single storey ground floor rear extension**

#### **The proposed work**

4. The proposed building work is in respect of an existing one bedroom, ground floor flat in a mid-terrace two storey house. The frontage of the building is approximately 6m and contains a front door giving access to a lobby with separate internal front doors to the ground and first floor flats. The depth of the terrace is approximately 9m; and the depth of the rear garden approximately 9.2m.

5. The ground floor flat has an existing rear extension approximately 3m x 1.9m located down one side of the garden wall boundary which contains a bathroom and WC suite. Beyond this extension, and running in the same alignment along the garden wall up to the rear boundary, is a large garden store. The suite is accessed direct from the kitchen that in turn is accessed from the hall to the ground floor flat.

6. The proposed building work comprises the removal of the bathroom and WC suite and garden store beyond, and the construction in the same location of a lobby adjacent to, and accessed from, the existing kitchen. The lobby has a door to the side opening into the garden, and a third door opening onto a new bedroom approximately 4.4m x 2.8m. which is to be constructed along the rear boundary. A door at the end of the bedroom opens into a shower and WC suite measuring approximately 2.9m x 1.5m. The plan shows the remaining space between the rear garden boundary and the end of the new bedroom and bathroom extension as being used for a new garden store.

7. Additional alterations involved in the work are the insertion of a second bathroom between the front living room and the original back bedroom; and the relocation of the existing front door to the ground floor flat - but these are not relevant to this determination.

8. The above proposals were contained in a full plans application which was rejected by the Borough Council on the grounds that there was insufficient information to determine whether the proposals complied with Requirement B1 (Means of escape) of the Building Regulations 1991. A further full plans application was rejected by the Borough Council, again on the grounds of non-compliance with Requirement B1. The Borough Council considered that an independent escape route to a place of safety was required from the new bedroom, and was not satisfied that access to the rear garden would constitute a place of safety for any extended duration. The Council therefore considered that compliance with Requirement B1 was not being achieved. However, you take the view that the rear garden does constitute a safe area, and that if necessary escape could be effected across other garden boundaries. It is in respect of the question of compliance with Requirement B1 that you have therefore applied to the Secretary of State for a determination.

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

9. You consider that your proposals satisfy Requirement B1 (Means of escape) of the Building Regulations 1991. You accept that because the new bedroom is accessed via the kitchen it would constitute an inner room and you have therefore provided an alternative escape route from the bedroom by the provision of the door that leads from the lobby to the garden. In support of your case you state the following:

- (i) you believe the garden satisfies the criteria for a place of safety as detailed in *paragraphs 1.16 to 1.18 and Diagram 1 of Approved Document B (Fire safety)*
- (ii) if it became necessary for the occupants of the ground floor flat to escape further than the dimensions of the garden allow, this could be achieved by passing through the gardens of adjoining properties.

### **The Borough Council's case**

10. The Borough Council consider that the new bedroom would be an inner room and as such an alternative escape route is required. They accept that the door leading from the lobby to the garden would be sufficient subject to it leading to a place of safety.

11. The Borough Council does not regard the garden as being a place of safety. They acknowledge that it is a matter of judgement as to whether or not this area can be considered to be a place of safety, but they contend that it does not meet the guidance contained within *Approved Document B*. The Borough Council are concerned that in the event of a fire someone might be in the garden for a considerable period of time. During that time the fire might spread from the main building into the extension, at which point the garden might no longer be a place of safety.

12.As the Borough Council contend that the garden does not constitute a place of safety they therefore would look for a satisfactory escape to be provided via the other neighbouring gardens. The Borough Council has suggested that unless a permanent gate or other provision to allow safe access to the adjoining gardens is made available, and this is supported by a formal agreement with the adjoining owners, then escape via neighbouring land could not be considered as adequate.

### **The Department's view**

13.When establishing if an area can be considered a place free from danger from fire a degree of judgement is required. In general however, a courtyard or garden from which there is no exit other than through other buildings should be sufficiently large to allow people waiting for rescue to stand far enough from the building so that they would not be put at unreasonable risk from the products of combustion or the associated falling debris. This distance should be at least equal to the height of the building in question.

14.In the Department's view it would not be unreasonable to anticipate and consider the impact of fire spreading from the main building into the new extension and the consequential need for the garden to be used as a place of refuge. To satisfy the guidance in *Approved Document B* a person should be able to stand in the garden in a position, which is concurrently at a distance equal to, or greater than, the respective heights of the main building and the extension.

15.The height of the main building (measured to the mid point of roof slope) is approximately 8m. The height of the extension (to the top of the flat roof) is approximately 3m. A person standing in the most remote corner of the garden would be 3.3 m from the extension and 9m from the main portion of the building. The provision in *Approved Document B*, therefore, would appear to be satisfied.

16.With regard to the issue of escape or rescue from the garden area itself *Approved Document B* recommends within paragraph 1.18 that a courtyard or back garden from which there is no exit other than through other buildings would have to be at least as deep as the dwelling is high to be acceptable. Paragraph 15 above states that in the Department's opinion the garden is of a sufficient size to meet this guidance. In addition, at present it would appear possible for escape to be made from the garden into either one of two adjacent neighbouring gardens (or where necessary assisted rescue from the neighbouring gardens). Whilst the comments of the Borough Council are noted with regard to the fact that the surrounding neighbours may erect in the future an extension, high fencing, or even trellis, the Department considers that assisted escape would probably still be possible in one form or another and that there would be no need to provide a gate in one of these walls and to negotiate a legal agreement to provide for such access.

## **The determination**

17. 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 the proposals as submitted he considers that they make reasonable provision for safe escape. He has therefore concluded, and hereby determines, that your proposals comply with Requirement B1 (Means of escape) of Schedule 1 of the Building Regulations 1991 (as amended).