

Date: 16/03/99

Ref: 45/1/174

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 proposed loft conversion

3. In making the following determination, the Secretary of State has not considered whether the plan conforms to any other relevant requirements.

The proposed work

4. The property to which the proposed building work relates is an existing three above ground storey house plus a basement storey which was converted to flats a number of years ago. You indicate that there is a single flat on each of the ground, first and second floors; and your drawing shows that the ground floor is raised above ground level and is accessed by a number of steps. You have not given any details of the basement accommodation.

5. You propose to construct an additional habitable room to create a bedroom in the roof space above the top flat thereby converting this flat into a maisonette with the new floor becoming a fourth storey above ground level. Because of the raised ground floor the Borough Council state that the new floor level of the loft room is 10.5m above ground level. Your proposed access to the new loft room would be by means of a new staircase over the existing protected stair well and would therefore be a continuation of the common stair, albeit with an entrance door across the stair at first floor level.

6. You state that access to all flats is via a common ground floor entrance hall with a fire door to the ground floor flat. Access to the first floor flat is via a fire door off the first floor landing and access to the second floor flat is by means of a fire door at first floor level giving access to the staircase. Your drawing indicates that doors separating flats from common areas are 30 minutes fire resisting and self closing, and that partitions enclosing the stairway and separating the flats from the common areas are also 30 minutes fire resisting.

7. These proposals were the subject of a re-submitted full plans application which was rejected on the grounds of non-compliance with Requirement B1 of the Building Regulations. However, you consider that your proposals provide adequate escape from the new loft room in terms of Requirement B1 and it is in respect of this question that you have applied for a determination.

The applicants case

8. You state that the proposed bedroom will be within the confines of the second floor flat and should therefore, in your view, be considered as part of the same flat. You point out that the flats have been separated from the common stairway by fire resisting doors and partitions, thus providing a protected route of escape from all flats to the ground floor and safety. You state that this is currently acceptable to the Borough Council.

9. You state that your client would agree to install a smoke detection system to cover the whole building which would give a higher level of protection than the present level. In addition your client is prepared to replace the existing doors to the study, lounge and bedroom of the second floor flat with new 30 minute fire resisting and self-closing doors. With regard to an alternative escape route you state that the Local Planning Department would be unlikely to accept an external fire escape even if the practicalities of such an escape route were possible.

10. You point out that there are many similar properties in the area that have had loft conversions carried out with no external fire escape provided and you consider that your proposals, which would incorporate the additional provisions outlined above, should be considered acceptable.

The Borough Councils case

11. The Borough Council have rejected your proposals on the grounds that an alternative means of escape from your proposed room in the roof is not being provided. In support of this rejection they refer to *Approved Document B (Fire safety)* which suggests that where a maisonette does not have its own external entrance at ground level or has a floor more than 4.5m above ground level an alternative exit from each habitable room, which is not at entrance floor level, or an alternative exit from each floor (other than the entrance floor) should be provided.

12. The Borough Council point out that an alternative exit has not been incorporated in the design, and there is insufficient detail relating to the staircase access to the flat unit for them to consider whether there is any scope for 'varying the provisions' in this case. In particular, they consider there is insufficient detail to determine the nature of the fire protection afforded to the single stair; and that the flat entrance is not clearly shown with the result that it is not possible to determine whether the second floor flat is entered at first floor level or second floor level. The Council therefore had no alternative to rejecting your proposals for non-compliance with Requirement B1 of the Building Regulations 1991.

The Departments view

13. In this case the roof space of an existing second floor flat is being converted to form habitable accommodation and what is at issue is the safe escape of the occupants of this new third floor. You state that because the new loft room is within the confines of the top flat then it should be considered as part of that flat. Although your proposals are similar to a standard loft conversion in that the occupants of the new floor need a similar level of protection, there is the additional factor that those occupants will have no control over the ground and first floor flats and in this case will be using the common escape route serving all flats. In addition, the Department notes that the new storey you are providing is approximately 10.5m above ground level.

14. The Borough Council have rejected your proposal because alternative escape has not been provided from the new third floor, in accordance with the guidance given on maisonettes within *Approved Document B*. However, they appear to have given consideration to alternatives to the provision of a second escape route but have been unable to pursue this approach because there is insufficient detail to adequately assess the fire protection afforded to the stair from the two lower flats (which would remain the single escape stair). The Department acknowledges this flexible approach but accepts the Borough Councils judgement in this case that there is not sufficient evidence provided to show an adequate level of protection to the common stair at ground and first floor level.

15. The Departments main concerns with regard to the protection of the common stair relate to both the fire resistance of the elements of structure, and the protection to the common stair at the lower levels. With regard to the latter, for example, *Diagram 12 of Approved Document B* shows the double door protection which is considered necessary to the common escape route in a small single stair building. Your proposals do not appear to show this level of protection to the stair. In addition *paragraph 5.19 of the Approved Document* suggests that every escape stair and its associated landing should be constructed of materials of limited combustibility if it is the only stair serving a building in purpose group 1a (flats or maisonettes) and exceeds three storeys. Your building, as proposed, is a four storey building and no mention is made of the stair construction.

16. With regard to fire resistance, the Departments concern is that the fire resistance for the elements of structure for this proposed four storey building do not conform with the recommendations given in *Tables A1 and A2 of Approved Document B*. These tables suggest a 60 minute level of fire resistance for flats of the height of your building and although there is some provision made for a reduction in the level of fire resistance for flat conversions, *paragraph 7.13 of the Approved Document* suggests that where the altered building has four or more storeys then the full standard of fire resistance would normally be necessary. Your proposals do not show that the elements of structure have the correct level of fire resistance and in the Departments view this could have a bearing on the safe escape from the new top floor.

17. The Department notes your proposals to extend the smoke detection system within the building, and the provision of new fire doors to those habitable rooms on the second floor of the building. However, it does not feel that these would overcome the need to address the issues raised in paragraphs 15 and 16 above.

The determination

18. The Secretary of State has given careful consideration to the particular circumstances of this case and the arguments advanced by both parties. On the basis of the proposals as submitted, together with your proposal to extend the smoke detection system, he does not consider that your proposals make adequate provision for safe escape. He has therefore concluded and hereby determines that your proposals do not comply with Requirement B1 ("Means of escape") of Schedule 1 to the Building Regulations 1991 (as amended).