

Date: 13/07/99

Ref: 45/1/176

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 Requirements B1 (Means of Escape), E1 (Airborne Sound (Walls) and K1 (Stairs and Ramps) of the Building Regulations 1991 (as amended) in respect of the relocation of a ground to first floor level staircase giving access to a flat above a shop

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

The proposed work

4. The building to which the proposed building work relates is a five storey (including basement) mid-terraced property approximately 3.8m in frontage and 12m in depth comprising a ground floor shop with basement and a flat above comprised of the three upper floors (ie first, second and third floors). It is understood that this property, plus one of the adjacent ones, originally comprised hotel accommodation.

5. The first floor accommodation comprises three bedrooms and a bathroom; the second floor comprises two bedrooms and a kitchen; and the third floor comprises a lounge and bedroom. The three floors are accessed by a return stair in the centre and on the north wall of the property.

6. The shop is accessed by a recessed door on the south side of the frontage and extends back to a partition wall at the rear where a door gives access to a transverse corridor between a stairway leading up to the flat on the first floor and a stair leading down to the basement on the south wall. There is a door at the top of the stairs giving access to the flat. There is a door at the rear of the basement giving access to the rear of the property and an enclosed yard.

7. The proposed building work relates to an alteration to the means of access from the ground floor level to the flat at first floor level. The proposal is to remove the ground to first floor level stair on the north wall of the property and to replace it with a new stair on the south side leading up from the front door. Access to the shop and stair will be via the existing recessed external shop door into a lobby with one door opening into the shop and another door opening straight ahead into the stairwell. The latter two doors are to be 60 minutes fire resistant. The new partitioning between the new stairwell and the

shop is to be 3" x 2" studwork to 60 minutes fire resistance, lined with plasterboard and having rockwool infill.

8. The new stair is to have a 380 pitch with risers no greater than 190mm and goings no less than 250mm. The width between the strings is to be 1m with handrails on both sides 900mm above the pitch line.

9. The drawings also indicate a new suspended ceiling between the shop and the first floor of the flat to meet the sound insulation requirements of the Building Regulations.

10. These proposals were the subject of a full plans application which was rejected by the city council on the grounds of non-compliance with Requirements B1, E1 and E2, F1 and F2, K1 and J of the Building Regulations 1991. The city council's judgement was based on their understanding that a change of use would occur by virtue of the fact that a new self-contained flat would be created. However, you did not accept that a change of use would occur and contended that your proposals therefore did not necessarily have to comply with all the relevant requirements of Schedule 1 in respect of the rest of the building. You did, however, accept that a material alteration would be triggered. You contend that your proposals meet all the relevant requirements which it would be necessary to do in respect of a material alteration and it is in respect of that question that you have applied for a determination.

The applicant's case

11. The need for this work was triggered in part by a fire in the flat and the subsequent involvement of the city council's Environmental Health Department who require the existing staircase to be improved.

12. Whilst you have no argument with the fact that the Building Regulations apply by virtue of the fact that a material alteration will be triggered by the proposed work, you do not accept the contention by the city council that a material change of use will occur because the alteration will render the flat a self-contained one whereas as existing it is not.

13. You argue that the existing flat has been separated from the shop for many years; has been separately rated since 1990; and that the electricity and heating systems are separate from the shop. Although the existing and proposed access arrangements require the sharing of an existing access you argue that in both cases the flat remains self-contained with its own front door.

14. With regard to compliance of your proposed new staircase you argue that it will reduce the length of the fire escape route from the flat by one storey and is clearly an improvement on the existing provision. This is because you state that at present occupants of the flat access it via the rear yard and entrance door to the basement and do not use the ground level shop floor entrance.

The city council's case

15. The city council take the view that the repositioning of the staircase, together with the associated works, would constitute a change of use in that it would then give access to a self-contained flat with its own door. The council argue that the existing stairway discharges to a lobby at the rear of the shop which requires access from the front door of the shop and across the shop floor; and that this constitutes an other residential purpose group classification for the purposes of Part B (*Table D1 of Appendix D of Approved Document B (Fire Safety)*).

16. On the basis that a material change of use would be triggered, the city council took the view that after the building work was complete, it must demonstrate compliance with requirements B1, E1, E2, F1, F2, K1 and J. The city council considered that the information provided by you at full plans deposit stage was insufficient to demonstrate whether compliance with these requirements would be met and rejected the plans accordingly.

The Department's view

17. It is common ground between you and the city council that the Building Regulations apply to the proposed work but whether or not the Building Regulations are applicable only because a material alteration is to take place or because a material change of use will occur, is fundamental to the extent to which the building, after that work has been completed, will have to comply with the Building Regulations.

18. The issue hinges on whether the work after completion would constitute a change to the building so that it contains a flat, where previously it did not (Regulation 5(b)). Regulation 2(1) defines a flat as separate, self-contained premises constructed or adapted for use for residential purposes but does not define self-contained. In the Department's view constructed or adapted for use for residential purposes means that the flat should contain adequate facilities for cooking, sanitary purposes and sleeping, which are not shared with the occupants of other parts of the building, but should not be taken to require that the access to the front door of the flat should be private and not shared - and indeed this is seldom the case even in purpose built flats.

19. It is therefore the Department's view that the proposed work will not constitute any distinction in the character of the flat such as to trigger Regulation 5(b). It follows that for the purpose of your request for a determination, it is the Department's view that compliance need only be demonstrated in respect of the building work itself (Regulation 4(1)) and that the building and/or any controlled service after completion of the work should be, at worst, no more unsatisfactory in relation to the relevant requirements than before the work was carried out (Regulation 4(2)). The Department believes that the relevant requirements in this case are requirements B1, E1 and K1.

Requirement B1 (Means of Escape)

20. The Department's concern in respect of Requirement B1 relates to the degree of protection to the escape route from the flat and any risk that may exist within this route.

21. The existing arrangement allows for escape either at first floor level via the shop or at basement level via the rear yard, this route being separated from the shop by a single door.

22. The proposed stair delivers to outside through a lobby shared with the shop entrance. A single fire resisting door separates the shop from the lobby. The degree of protection to the escape route is similar to the existing situation and the risk of fire or obstruction along the route would appear to be reduced. Therefore in the Department's view the proposed location, and construction and protection of the new stair will, within the circumstances of this case, achieve compliance with Requirement B1. The overall effect on the compliance of the whole building with Requirement B1, after the installation of the new stair, will be no more unsatisfactory than as existing.

Requirement E1 (Airborne sound (walls))

23. Requirement E1 states that: "A wall which - (a) separates a dwelling from another building or from another dwelling, or (b) separates a habitable room or kitchen within a dwelling from another part of the same building which is not used exclusively as part of the dwelling, shall resist the transmission of airborne sound."

24. In the Department's view for the purposes of this case the stair can be treated as part of the dwelling, and so the new work is covered by Requirement E1(a). The relevant parts of the new work comprise the studwork wall by the flight; the two doors at the bottom of the flight; and the doors to the rooms at the top of the flight. It is likely that these structures will provide reasonable resistance to airborne sound.

Requirement K1 (Stairs and ramps)

25. Requirement K1 states that: "Stairs, ladders and ramps shall be so designed, constructed and installed as to be safe for people moving between different levels in or about the building".

26. In the Department's view the proposed stair and handrails have been designed in accordance with the guidance given in *Approved Document K (Protection from falling, collision and impact)*, and so may be expected to satisfy Requirement K1. These changes will have no adverse effect on the extent to which the rest of the building complies with the relevant requirements.

The determination

27. The Secretary of State has given careful consideration to the particular circumstances of this case and the arguments presented by both parties. He accepts that the Building Regulations are applicable to the work by dint of Regulation 3(1)(c), 3(2) and 3(3) but not by dint of Regulation 5(b) of the Building Regulations 1991 (as amended).

28. In the particular circumstances of your case the Secretary of State is of the view that the relevant requirements which your proposed work needs to demonstrate compliance with are requirements B1, E1 and K1. Having considered your proposals as presented he has concluded, and hereby determines, that your proposals comply with these three requirements. He has also concluded that the effect of your proposals on the rest of the building will be such as to comply with Regulation 4(2).