

BUILDING ACT 1984 - SECTION 39

APPEAL AGAINST REFUSAL TO RELAX REQUIREMENT B1 (MEANS OF WARNING AND ESCAPE) IN PART B (FIRE SAFETY) OF SCHEDULE 1 TO THE BUILDING REGULATIONS 2000 (AS AMENDED), IN RESPECT OF THE INSTALLATION OF A REPLACEMENT WINDOW

The building work and appeal

3. The papers submitted indicate that the building work to which this appeal relates is completed and comprised the installation of two first floor replacement bedroom windows in an existing gable end wall, which forms part of an old extension at the rear of a two storey house. These windows matched first floor windows provided in a more recently constructed adjoining two storey gable extension at the rear to the house.

4. The building work was the subject of a building notice. The Council responded to the notice by sending you a list of requirements in its letter of 3 February 2005, but you say that due to a misunderstanding between you and your builder the Council was not notified of your intention to commence with the work. The Council therefore served you a notice three years later under section 32 of the Building Act 1984 declaring that as the work had not commenced the “deposit of building plans shall be of no effect”, although you had not deposited plans (NB: regulation 13(7) of the Building Regulations 2000 contained a similar provision relating to the timescale for expiry of building notices).

5. In response to the notice, you notified the Council that the building work had been completed and it was inspected. The Council informed you that because the bottom of the openable area of one of the replacement bedroom windows, in the gable end wall on the first floor of the old extension, is more than 1100mm from the floor it contravenes the means of escape provisions in Requirement B1 (or Part B1) of the Building Regulations and referred to the guidance in Approved Document B (Fire safety: Volume 1 - Dwellinghouses), i.e. currently paragraph 2.8a of the 2006 version, to support its view. The Council advised that the bottom of the previous sash window generally reflected the guidance in Approved Document B as it opened at 760mm from floor level, whereas the new window has the bottom sash section fixed with the top section openable at a height at 1500mm from floor level.

6. You subsequently accepted the Council's position that failure to comply with the “1100mm guidance” in relation to the window in question is a breach of Requirement B1, and applied for a relaxation which was refused by the Council in its letters of 11 January and 25 February 2011. The Council referred to the wording of Requirement B1 and its consultation with the Fire Authority to justify its refusal. However, you feel that the Council's interpretation of Requirement B1 is unduly onerous and unreasonable in your case and you have appealed to the Secretary of State against the Council's refusal to relax the requirement.

The appellant's case

7. You have submitted details of your lengthy discussions and correspondence in which - prior to your relaxation application - you attempted to persuade and demonstrate to the Council that, although the window in question does not accord with Approved Document B, it meets the applicable functional requirements of the Building Regulations, in particular Requirement B1.

8. You also explain your grounds for subsequently applying for a relaxation and appealing against the Council's refusal of your application. You take the view that it is wholly unreasonable, where the window has been demonstrated to be safer than other compliant windows, to insist upon its strict operation when the Council "withheld" details of part of the requirement (i.e. B1) in its letter to you of 3 February 2005 relating to the "1100mm guidance", while referring to the other items stated in paragraph 2.8a of Approved Document B.

9. To support your position, you refer in your correspondence in particular to: your demonstrations of an escape from the window in question which included using the inside and outside ledges/sills; the difficulty in escaping from another existing "compliant" window in your house; "compliant" windows in another property with identical escape provisions; discussions with the Department and on an LABC Online Forum; an earlier appeal decision issued by the Secretary of State; and question the Council's consultation with the Fire Authority.

10. You also commented further in response to the Council's representations to the Secretary of State questioning the Council's consideration of your relaxation application and indicating that your appeal relates to whether the operation of Requirement B1 is unreasonable in your particular case, not whether there is non-compliance.

The Council's case

11. The Council has also submitted details of its lengthy discussions and correspondence with you, referring to the issues raised in paragraph 9 above. The Council explains that its decision that the window in question does not provide an appropriate means of escape is based on the following views:

- the requirement to provide an escape window which reflects the guidance in Approved Document B or an 'alternative equivalent solution', which the Council considers you have not met, is not considered unreasonable when determining life safety issues; and
- the circumstances in your case do not make the above requirement unduly onerous or unreasonable to achieve, hence the refusal of your relaxation application.

The Secretary of State's consideration

12. The Secretary of State has given careful consideration to the particular circumstances of this case and the arguments presented by both parties, along with the significant amount of evidence submitted. He notes that the issue in contention is whether one of the replacement bedroom windows, in the gable end wall on the first floor of the old extension to your house, affords adequate means of escape for the occupants should the stairway become impassable and, if it does not, would it be appropriate to relax Requirement B1 of the Building Regulations in relation to the means of escape.

13. You consider that the window in question satisfies the functional requirements of the Building Regulations and is in effect an equivalent solution, albeit outside the guidance in Approved Document B. The Council is of the opinion that the window has made the situation worse than existed previously and does not provide an appropriate means of escape for the reasons explained in paragraph 11 above. However, you question the Council's position and are of the opinion that its insistence that the bottom of the openable area of the window should not be not more than 1100mm above the floor is unduly onerous and unreasonable in your case.

14. As you are aware, the maximum height of 1100mm stated in Approved Document B is considered to be the height above which it would not be reasonable to expect a person to climb through a window opening. The Secretary of State notes that you are in full agreement with this, but argue that in your particular case, by climbing on to the window sill (760mm from floor level) escape can be made with ease, which you believe you have demonstrated.

15. The Secretary of State considers that compliance with Requirement B1 is a life safety matter and as such he would not normally consider it appropriate to either relax or dispense with it, unless there were exceptional extenuating circumstances. He takes the view that having to utilise a window sill in order to satisfy the guidance in Approved Document B that the bottom of the openable area should not be more than 1100mm above the floor does not demonstrate an equivalent solution to the guidance, and thus does not comply with Requirement B1. He also takes the view that in this particular case there appears to be no extenuating circumstances to justify the relaxation of the requirement.

16. Furthermore, the Secretary of State is of the opinion that there may well be alternative measures that could be adopted so as to demonstrate a reasonable level of compliance in this particular case. The whole floor level could be raised with a step into the room or the floor could be raised locally around the window with adequate stepped access. Alternatively, the need to provide a window for emergency egress purposes would be omitted if a protected stair enclosure in fire resisting construction were provided. The Council should be able to advise you on these approaches.

The Secretary of State's decision

17. As indicated above, the Secretary of State has concluded that it would not be appropriate to relax Requirement B1 (Means of warning and escape) in Part B (Fire safety) of Schedule 1 to the Building Regulations 2000 (as amended) in relation to the window in question in this case. Accordingly, he dismisses your appeal.

18. Please note that although the Building Regulations 2010 came into force on 1 October 2010, the Building Regulations 2000 (as amended) continue to apply to building work subject to a building notice which was started before that date, as in your case.

19. Please also note that the Secretary of State has no further jurisdiction in this case and any matters that follow should be taken up with the building control body.