

BUILDING ACT 1984 - SECTION 39

APPEAL AGAINST REFUSAL BY THE COUNCIL 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 USE OF A LOFT SPACE FORMING PART OF A TWO STOREY SIDE EXTENSION

The building work and appeal

3. The papers submitted indicate that the building work to which this appeal relates is complete and comprised a two storey side extension to an existing two storey, two bedroom dwelling, and other alteration work, in order to provide an additional two bedrooms and other accommodation. The work was the subject of a full plans application deposited with the Council on 10 July 2008 and was approved with conditions on 8 September 2008.

4. The approved plans showed the formation of a playroom and new store within the loft space (i.e. roof space) primarily over the extension; access to the store located in the existing loft space was via this proposed playroom, which was to be separated from the remainder of the dwelling by a protected stairway. However, you state that, as there would have been insufficient headroom at the top of the stairway for an adult to conveniently enter the loft space, the area would not have been fit for purpose. Your builder therefore suggested that the layout be changed to a "galleried landing", referred to as an "open lightwell/landing" on the revised plans, and that you change its use so that it was no longer a room which would be inhabited for any substantial amount of time.

5. You say that you received conflicting views from Council officers as to whether the revised proposal relating to the use of the loft space would be approved. However, you submitted revised plans on 3 September 2009 and the Council confirmed its view that the work carried out - including the removal of the proposed protected stair enclosure to the loft - did not comply with Requirement B1 (Means of warning and escape) of the Building Regulations. Your architect therefore applied for a relaxation of Requirement B1 which was refused on 22 September 2009 as the Council considered that the size of the new loft space had not changed significantly and could still be used for habitable purposes. It is against this refusal that you have appealed to the Secretary of State.

The appellant's case

6. You set out three main grounds for your appeal:

(a) That it was inconsistency in the Council's advice which resulted in the loft space extension being built as it now exists

(i) The reason for changing your plans is explained in paragraph 4 above. You state that the proposed new layout of the loft space was shown to an officer of the Council carrying out the building control service and a building inspector in a different borough and both had advised that a galleried landing would be approved and that the building work could continue with the amended plans submitted at a later date. You would not have proceeded with the work if you had not received this explicit verbal approval.

(b) The Council has not given due consideration to the proposed use of the loft space, or to provisions made for the early warning of fire and means of escape

(i) The proposed use of the new loft space has been changed to ensure that it would not be a habitable space but you are concerned that the Council appears to cast doubt on this change of use. You confirm that the space will be used non-habitably but question how “non-habitable” can be proved.

(ii) You have installed smoke alarms (heat detectors where appropriate) in every room in the house as well as in the new loft space - i.e. the proposed “galleried landing” or “open lightwell/landing” - and, as indicated on the plans, fire resisting doors are to be fitted to all habitable rooms on the escape route. Egress hinges are in the process of being fitted to the new bedroom windows on the first floor and there is a means of escape from the roof windows in the proposed landing. You consider that should a fire start on the lower floors the means of warning and escape for anyone on the landing, i.e. via the stairway to the ground floor or one of the first floor bedrooms is more assured than if the landing were enclosed by fire walls and fire doors. With the safety measures you have put in place, you do not believe escape from the landing to be less likely than from the first floor, barring the deliberate starting of a fire at the foot of the stairway to that landing.

(iii) With regard to the Council’s alternative recommendation of a fire door at the foot of a protected stairway to the loft, you consider that this is not an adequate safety measure as the door would open outwards onto the existing first floor landing potentially blocking the escape route of anybody fleeing one of the bedrooms on that floor or injuring them.

(c) That the Council, in implying that the new-build windows need to be increased in size both vertically and horizontally, has not given due consideration to the overall appearance of the building as a whole

(i) You refer to the Council’s statement that the windows in the extension on the first floor are too small and too high and point out that they are similar in size and height to the windows in the rest of the house. You would find it a shame if the Council was to impose regulations which made your house look as if it had been extended with no regard to the dimensions of the existing building. You find it baffling that the original windows have been the size they are since the house was built in 1947 and they have apparently not been deemed a threat to anybody’s safety since that time, yet the recently installed windows are not considered to allow safe escape.

(ii) You reiterate that there is no intention to flout the Building Regulations and your builders have made every effort to comply. You question why your original plans were approved if the windows were undersized.

7. Conversely, although you are appealing against the Council's refusal to relax the requirement, you refer to regulations 4(2) and 8 of the Building Regulations and contend that reasonable standards have been achieved and thus the building work in question satisfies Requirement B1.

8. In response to the Council's representations to the Secretary of State, you commented further and refuted the Council's assertion that your builder was told that if you proceeded with the proposed galleried landing it would be at your own risk. You state that he was told that revised plans need only be submitted when the work was complete for the Council's records.

The Council's case

9. The Council has made the following points to support its position:

(a) Means of escape

(i) The Council refers to the notes on your plans stating that the means of escape would comply with Requirement B1 of the Building Regulations and the guidance in Approved Document B (Fire safety), with a protected stairway and new FD20 fire resisting doors fitted to all habitable rooms on the escape route. With the protected stair enclosure now removed, the new playroom within the loft space – now referred to as a galleried landing or open lightwell/landing – and the existing rooms in the house where access is provided off the stair enclosure will all become inner rooms.

(ii) Although the revised plans show the new loft space as an open lightwell/landing, the size of the room remains essentially the same except that it is not now enclosed and the proposed additional store to the side has been deleted. The Council finds it difficult to see what purpose the new arrangement offers. The store shown on the plans is an existing loft space which could easily be served by a loft hatch. If a lightwell was required this could easily have been formed without the need to carry out the extensive structural alterations and to the size provided.

(iii) The Council's discussion with your builder appeared to be on the basis that a galleried landing would be provided; this should have been much smaller in this case and only provide access to a room and not be a room in its own right. As no plans were available at the time of the discussion about the galleried landing the Council advised that revised plans should be provided showing the alteration and if you proceeded it would be at your own risk. Revised plans were received on 3 September 2009 indicating this proposed amendment dated 4 August 2009, which was after the discussion with the Council.

(iv) The Building Regulations allow galleries within rooms provided certain conditions are met; the “gallery” in this case does not meet with these conditions as it is not within a room.

(v) While additional smoke and heat detection will help alleviate the danger, the Council does not consider that this removes all the risk especially with the lack of means of escape windows to the existing rooms. A sprinkler system would go some way to provide adequate provision for means of escape.

(vi) The Council also suggested enclosing the stairway at the base of the stair to the loft, with a fire door opening out on to the first floor landing, as a compromise to allow separation of the loft from the remainder of the house without having to carry out extensive alterations.

(b) Means of escape windows

(i) Although the specification notes specify the size of the roof windows, there is no such note relating to the new Upvc windows in the extension. On plan these scale 1000mm from finished floor level. The windows installed are 440mm wide and are 1200mm from finished floor level.

(ii) The question of the means of escape windows becomes relevant should the loft not be separated from the stairway as the windows are too high from finished floor level and are slightly undersize. The Council accepts that the height and size of the new windows in the extension are shown as the same as the existing windows in the house, but states that this question was not relevant when the plans were approved showing the protected stair enclosure.

(c) Headroom of stair

(i) The deposited plans showed that 2m headroom would be achieved above the pitch of the stair to the loft and that the stairway was to comply with the current Building Regulations. The actual headroom scales between 1.9m -1.975m, but this was considered as satisfactory to meet the requirements of the regulations.

The Secretary of State’s consideration

10. The Secretary of State has given careful consideration to the particular circumstances of this case and the arguments presented by both parties. In support of your case you have made reference to alleged inconsistent advice given by the Council. Although he appreciates that this would have been unhelpful, the Secretary of State does not consider this to be a material consideration as the duty of ensuring compliance with the Building Regulations rests with the person responsible for carrying out the building work. In this case, what must be considered is the safety of the occupants of the new loft space should a fire occur elsewhere in the house and also the impact of the work on the safety of the occupants of the lower storeys.

11. The means of escape from a typical dwellinghouse is relatively simple. However, with increasing the height more complex provisions are needed because emergency egress through upper windows becomes increasingly hazardous. The common solution to this in a new three storey house is the provision of a protected stairway with fire doors and fire resisting construction at all levels. This provides a reasonable opportunity for the occupants of rooms in the upper storeys to escape past a fire at a lower level.

12. You state that as there would have been insufficient headroom at the top of the stairway for an adult to conveniently enter the loft space, the area would not have been fit for purpose and thus amended the plans, although the Council suggests that the headroom was sufficient. You consider that the reclassification of the space and removal of the fire door and fire rated construction from within the loft is suitable justification to ensure the area would not be adopted as a habitable room. However, the Council raised concern as to the purpose of the new arrangement, indicating the size of the area remains essentially the same as the previous proposal.

13. The Secretary of State takes the view that the fundamental issue in this case is whether or not the proposed altered use of the loft space should be treated as a circulation space only or as a space likely to be used for habitable purposes by the current, or any future occupants of the building. It is important to note that the Building Regulations cannot control the use to which rooms in dwellings are put once building work has been completed. As the provisions in Part B (Fire safety) are designed to ensure the health and safety of people, the likely use of the loft space (e.g. by future occupants) has to be taken into account when the work is being carried out.

14. There is no definitive way of deciding this nor is there any statutory minimum floor area for a habitable room. Issues that might be taken into account when considering whether the loft space is a habitable room could include its size (particularly in relation to the rest of the building), whether it has electrical services (e.g. power sockets etc), is plastered, has a stair (of any type), and, possibly, if there is a window even if the intention at the time is only for it to be used for storage.

15. In this particular case the plans designate the area in question as an "open lightwell/landing" which implies that the space is primarily intended for circulation, however there is no accommodation at this level other than the adjacent store over the existing house. Also, the area in question represents approximately 50% of the total loft space and is effectively greater than the footprint of the new extension. As such the Secretary of State takes the view that this could quite conceivably be used as a habitable room.

16. Having concluded that the loft space should be regarded as a habitable room it is now necessary to consider escape from the loft room. The Secretary of State notes that the escape route (i.e. the stairway) is protected from the accommodation at every level other than from the loft room itself. This provides, in so far as the occupants of the loft room are concerned, the same level of safety as would be afforded by a conventional protected stairway. However, should a fire occur within the loft room, smoke could quickly obstruct the escape route for the occupants of the rooms on the lower levels. As such, the rooms at first floor level have effectively become inner rooms and a suitable alternative to escape via the stairway, such as escape windows, would be necessary.

17. The Council has raised concerns about the height of the proposed escape windows, but you state that you would find it a shame if the Council was to impose regulations which made the house look as if it had been extended with no regard to the dimensions of the existing building. The Secretary of State recognises the aesthetic impact that would arise from this arrangement but does not consider that this is a valid reason for providing inadequate means of escape. However, there may well be practical solutions to this problem such as raising the floor locally to the windows.

18. In addition, you have installed smoke alarms (heat detectors where appropriate) in every room in the house as well as in the new loft room. The Council states that whilst additional smoke and heat detection will go some way to alleviate the danger it is not considered that this removes all the risk, especially with the lack of means of escape windows. The Secretary of State agrees that whilst smoke detection would be of benefit for early warning in the event of fire, he does not in this instance consider an enhanced detection system as adequate compensation for the absence of suitable means of escape from the existing and new rooms on the first floor. He also does not consider that a case has been made to justify a relaxation of Requirement B1 of the Building Regulations and notes that the Council has made some suggestions on how compliance could be achieved. You may wish to explore these and other options further.

The Secretary of State's decision

19. 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, except where it has been demonstrated that exceptional circumstances apply. As indicated above, he takes the view that such circumstances do not apply in this case. He has therefore 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 loft space in question. Accordingly, he dismisses your appeal.

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