

BUILDING ACT 1984 - SECTION 39

APPEAL AGAINST REFUSAL BY THE BOROUGH COUNCIL TO RELAX OR DISPENSE WITH REQUIREMENT B1 ("MEANS OF WARNING AND ESCAPE") OF THE BUILDING REGULATIONS 2000 (AS AMENDED) IN RESPECT OF THREE TWO-STOREY FLATS, FORMING PART OF A NEW DEVELOPMENT

The building work and appeal

3. The papers submitted indicate that the building work to which this appeal relates has commenced and is a new development on a brownfield site, which will comprise fourteen dwellings and three shop units together with parking and amenity areas.

4. Facing will be three shop units at ground floor level with two storeys above them comprising six flats and common areas. Behind this front block the plans indicate there will be eight further dwellings, four flats on the ground floor and four two-storey flats above them which are accessed from an external balcony. The access to this balcony will be from a stair to the rear of the site and a second stair within the front block. The upper storeys of three of these flats (units 11, 12 and 13) will each consist of a single open plan living area with cooking facilities in one corner. An internal stairway will lead down from this open plan area to a protected entrance hall in the units at first floor level of the building. Also accessed from this hall will be two bedrooms and a bathroom on the first floor. The units measure approximately 9m x 5m on plan.

5. The above building work was the subject of a full plans application which was conditionally approved by the Council on 28 February 2006, including conditions requiring modifications to the plans with respect to the means of escape from units 11, 12 and 13.

6. However, you decided to apply for a relaxation or dispensation of Requirement B1 of the Building Regulations in relation to units 11, 12 and 13. Although you have also proposed an enhanced level of fire detection, the Council considers that your plans do not show compliance with Requirement B1 or accord with the guidance in Approved Document B ("Fire safety") and is not prepared to agree to a relaxation or dispensation of the requirement. Your application was therefore formally refused by the Council on 5 October 2006 and it is against this refusal that you have appealed to the Secretary of State.

The appellant's case

7. You refer to a letter of 21 February 2006 from your client's consultant to the Council, a copy of which you have submitted. You state that this makes the following main points to support your case for a relaxation or dispensation of Requirement B1, which encompass the design of the units in question and take into account both means of escape and fire detection:

- (i) The proposed layout of the units has the living/dining areas on the floor above the bedrooms.
- (ii) The bedrooms will be adjacent to the entrance door of the units making for a ready escape.
- (iii) The internal walls around the bedrooms will be of fire resisting construction
- (iv) The units will be compact and travel distances within the units will be short.
- (v) The level of fire detection in each unit will be enhanced to Category L1 standard to compensate for any departure from the guidance in Approved Document B.

8. Your client's consultant has also argued that the proposed arrangement presents a safer situation than is prescribed for a sleeping gallery. Unlike a sleeping gallery, the high risk rooms will be located above the sleeping accommodation in the units and the occupants of the upper storey will be provided with a protected escape route.

9. The consultant also suggests that there is potential to escape from the proposed sleeping accommodation via escape windows at first floor level which is less than 4.5m above ground level.

The Council's case

10. With reference to paragraphs 3.11 and 3.14 of Approved Document B, the Council has refused your application to relax or dispense with Requirement B1 in relation to units 11, 12 and 13 for the following reasons:

- (i) All habitable rooms should open directly onto a protected hallway leading to the entrance door of the units.
- (ii) An alternative exit should be provided from the living accommodation, which is not on the entrance level, situated more than 4.5m above ground level.
- (iii) The cooking facilities in the upper storey of the units, at the head of the open stairway, should be sited remotely from the exit to the stairway and should not prejudice the escape route from any point on the upper storey.

- (iv) The Council is not able to locate any indication of a 'sleeping gallery' on the submitted plans nos.and states that your client's consultant has acknowledged that they "do NOT think that the apartments are sleeping galleries".

The Secretary of State's consideration

11. The Secretary of State takes the view that what needs to be considered in this case is the means of escape in case of fire for the occupants of the proposed two storey flats in question. Specifically, the potential implications on those occupants due to the lack of an alternative escape route from the upper storey and the lack of any physical separation between the accommodation at that level and the internal stairway.

12. The Secretary of State considers that multi-storey flats with a floor more than 4.5m above ground can present a risk to the occupants on one floor being trapped by a fire on another floor and that measures should be incorporated into the design to ensure that this risk is minimized. One acceptable approach is to provide alternative escape routes from each habitable room or from each floor, depending on the layout of the flat.

13. Another acceptable approach is to provide a fire resisting enclosure to the internal stairway supplemented with smoke alarms provided in both the stairway and, additionally, in the habitable rooms. This would result in a similar level of safety as would be achieved with a protected stair in a three storey dwellinghouse by providing fire resisting separation between a fire in the accommodation and people making their escape.

14. In this particular case the escape route from the upper, open plan, storey to the entrance door to the flats will be enclosed at the first floor entrance level. As such, a fire occurring in the first floor accommodation would be contained for a reasonable period allowing the occupants of the upper storey to make their escape. However, a fire occurring in the upper storey could soon fill down into the entrance hall thus trapping the occupants of the bedrooms on the first floor. Whilst you are proposing an enhanced standard of fire detection for these flats it is likely that there will be very little delay, because of the lack of an enclosure to the stairway, between activation of the alarm and the entrance hall becoming impassable.

15. Your client's consultant has acknowledged the potential to escape from the proposed sleeping accommodation at first floor level as this is at a height of less than 4.5m above ground level. However, there is no indication on the plans submitted that escape windows have been specified. The Secretary of State considers that if escape windows were provided from all of the habitable rooms at that entrance level, in addition to the other fire safety measures already proposed, then the building work would comply with Requirement B1.

The Secretary of State's decision

16. You have appealed to the Secretary of State against the Council's refusal to relax or dispense with Requirement B1 in this case. As indicated above, in coming to her decision, the Secretary of State has given careful consideration to the particular circumstances of this case and the arguments presented by both parties.

17. The Secretary of State considers that compliance with Requirement B1 is a life safety matter and, as such, she would not normally consider it appropriate to either relax or dispense with it, except in exceptional circumstances which do not apply in this case. Moreover, as indicated in paragraph 15 above, she considers that the building work in question has the potential to comply with Requirement B1. The Secretary of State has therefore concluded that it would not be appropriate to relax or dispense with Requirement B1 ("Means of warning and escape") of Schedule 1 to the Building Regulations 2000 (as amended). Accordingly, she dismisses your appeal.