

Date: 03/07/98

Ref: 45/3/183

Note: This letter has had personal details edited out.

BUILDING ACT 1984 - SECTION 39

Appeal against refusal by the borough council to relax requirement B1 (Means of warning and escape) of the Building Regulations 2000 (as amended) in respect of self-closing fire doors forming part of building work at a care home

The building work and appeal

3. The papers submitted indicate that the building to which this appeal relates is a care home, ie a Mental Health Inpatient Unit for elderly people, which was built in 1992 and was extended and upgraded in 2005. The latter building work comprised a two storey extension to an existing single storey building with other alteration work. Following completion of the work, the accommodation comprises 38 bedrooms and associated facilities located at ground floor level with a first floor section housing consultants' offices, staff and administrative rooms. The plan areas of the ground and first floors are 850m² and 220m² respectively.

4. The cross corridor doors in the building are held open by electro-magnetic devices linked to an L1 standard fire detection and alarm system. These doors are located such that up to 9 bedrooms are served by any one section of corridor. The final exit doors are electro-magnetically locked shut to ensure patient security, which open in the event of the fire alarm being activated. The doors are monitored from the nurse station and the fire alarm is linked to a central monitoring station. Smoke detectors have been provided in every bedroom, the corridors and all other rooms; and individual bedrooms have 30 minute fire resisting doors with vision panels and smoke seals.

5. The building work in question was the subject of a full plans application which was approved by the Council on 21 December 2004. However, following completion of the work, you decided to apply for a relaxation of Requirement B1 to provide for the omission of self-closing devices from the bedroom doors, as you consider that you have sufficient management, fire containment and emergency evacuation procedures in place to substitute for these. This was refused by the Council on 27 March 2006, for the reasons explained below, and it is against this refusal that you have appealed to the Secretary of State.

The appellant's case

6. You state that the nature of the residents (up to 38 in number) of the care home requires a high ratio of nursing staff, an average of 11 during the morning, 9 during the afternoon and 5 at night. During the day residents are encouraged to use the communal facilities when their unoccupied rooms are kept locked. When the bedrooms are occupied during the day, doors are left open to allow observation. At night doors are closed but louvered vision panels, mounted in the doors, allow discrete observation.

7. Your papers indicate that the residents are mostly ambulant but, in the case of fire, the majority would require instruction and, due to the cognitive impairment of many of them, physical intervention from nursing staff would be necessary to effect an evacuation. On activation of fire alarms, some residents would respond to the noise and become distressed and anxious due to lack of comprehension whilst the majority would not respond and would rely on staff to take them to a safe area.

8. You consider that self-closing devices on the bedroom doors would present unacceptable operational difficulties for staff and would hinder the evacuation of residents. You also consider that if doors that were open all closed with the alarm, there would be a feeling of entrapment which may cause residents to panic.

9. You advise that your client has employed &&.. as fire advisors and you have submitted details of their fire risk assessment. This gives their view that, because the elderly patients are slow and would need the assistance of staff in the case of an evacuation, the "doors to patients' bedrooms need to be free to open and close without a self-closer". You have also submitted a "Controlling Methods" statement which details the management and fire safety procedures put in place, including:

- (i) smoke detectors in every bedroom, corridors and all other rooms
- (ii) individuals bedrooms have 30 minute fire doors, with vision panels and smoke seals
- (iii) all electrical appliances are regularly checked by staff and PAT tested annually
- (iv) no smoking policy is in place throughout the building
- (v) observations by staff on duty every 20 minutes
- (vi) all doors, including corridor fire doors, shut at night
- (vii) during the day bedrooms are empty and doors are locked shut
- (viii) fire risk assessments are in place and audited annually

(ix) all staff are trained in fire safety matters annually

(x) the fire alarm system has addressable location so origin of fire can be identified immediately

(xi) fire procedure instructs staff to close all doors in affected area

(xii) nursing staff on duty at all times.

10. You comment that the original building was designed to comply with Part B (Fire safety) of the Building Regulations and you considered that it was not feasible for the recent extension and alterations to conform with the Firecode HTM81 (Fire precautions in new hospitals). You also draw attention to HTM05, the draft replacement to HTM81, which you say makes no specific reference to self-closing devices being fitted to patient bedrooms of the elderly or mentally ill.

11. You refer to what you consider to be precedents to support your case, including a previous determination decision issued by the Secretary of State, and to copies of documents you have submitted issued by the Fire and Rescue Services which make the point that "*bedrooms in care homes with two directions of travel to a Fire Exit are not required to have self-closing doors*".

12. You conclude by expressing your "genuine concern" that the well-being of patients will be compromised by installing self-closing devices on bedroom doors. You stress that your client takes their responsibilities seriously and carries out risk assessments. You also refer to the experience of the Fire Consultant as a Fire Safety Officer and the consultation he carried out with the Fire Brigade Safety Officer in this particular case. You submit that self-closing devices need not be fitted on bedroom doors in this building for elderly mentally ill patients where:

(i) a full L1 fire alarm system is installed

(ii) the bedrooms are not in a dead-end condition

(iii) a risk assessment has established staffing levels and staff training addresses the fire safety needs of patients.

13. In response to the Council's representations to the Secretary of State (see below), you added:

(i) It appears that the Fire and Rescue Service is working from HTM05 which is not in force yet. When &&. consulted the Service at an early stage of the project they were apparently supportive of the policy of omitting the self-closing devices.

(ii) The difficult nature of the patients and how best to care for them cannot be over-emphasised. The specific treatment of mentally ill patients is recognised

in HTM81 and should not be dismissed by virtue of these premises being considered under the Building Regulations. The high ratio of staff is a requirement to provide the necessary care and this does represent a 'compensatory feature' in the risk assessment. You feel that your client's experience, including that of running other establishments and similar premises you have referred to, reinforces the case for this type of building to be given special consideration.

The Council's case

14. The Council consulted with the Fire and Rescue Service prior to refusing your relaxation application and submitted a copy of their response. The Council cites the following as grounds for refusal:

(i) you chose to base your design on the recommendations of the *Approved Document B (Fire Safety)*, relating to simultaneous evacuation, rather than follow the guidance in the appropriate Firecode document (ie *HTM 81*) for phased evacuation

(ii) the bedroom corridors form part of the protected escape route, and the doors forming part of the corridor enclosures are required to be FD20(S) standard. (*Approved Document B, Appendix B, Table B 1*)

(iii) By definition, fire doors should be fitted with self-closing devices (*Approved Document B, Appendix B, paragraph 2*)

(iv) In choosing to omit self-closing devices on the bedroom doors, you have produced a fire risk assessment and detailed management procedures to be put in place. However, the assessment also cites the guidance of *HTM 81* - which is not applicable to a building designed for simultaneous evacuation (see (i) above), and quotes as precedents other establishments where self-closing devices have been omitted by agreement but without saying what standard was followed in the design of those premises.

(v) The Council's view is that a fire breaking out in a room with an open door, or an occupant evacuating a room where a fire has broken out and failing to close the door, or even the act of evacuating a patient from a fire source room resulting in the door being open for a period, could quickly lead to smoke-logging of the escape corridor.

(vi) There is a conflicting procedural demand on staff between (a) closing doors in an alarm, and (b) the primary duty to evacuate patients as speedily as possible. The act of evacuation will lead to doors being opened and without closing devices they will remain open. The possibility of smoke-logging of the escape routes is further increased.

(vii) Assuming that staff will need to assist and direct evacuation, it is important in premises of this type that escape routes should be kept passable for the maximum time possible. Without effective containment of fire and smoke the escape routes will quickly become untenable.

(viii) The Council is sympathetic to the patient concerns you have expressed. However, the Council's suggestion that alarm-activated self-closing devices could be installed was not accepted by your client.

(ix) In the Council's view, no substantive compensatory features have been put in place to mitigate the absence of self-closing devices. The management and control measures you quote are no more than might be considered appropriate for premises of this type.

(x) The Council concludes that the absence of automatic closing devices on the bedroom doors results in a contravention of Requirement B1, and that a relaxation of the requirement is not appropriate.

The Secretary of State's consideration

15. The Secretary of State notes that you consider that the provision of self-closing devices on the bedroom doors would present unacceptable operational difficulties for the staff and residents of this building. You propose, instead, that staff will be given the necessary training to ensure safe evacuation. This strategy will be supported by a fire detection system to an L1 standard and other fire safety procedures, and bedroom corridors have been arranged such that there are no dead ends.

16. In support of your case, you have made reference to a previous determination decision and to other premises where self-closing devices are not provided. However, each case put to the Secretary of State must be considered on the basis of its individual merits and the particular circumstances of that case.

17. The Secretary of State acknowledges that there are instances, in some healthcare premises, where for operational reasons self-closing devices can be omitted. In these cases even greater reliance will be placed on the staff in the building to manage the safe evacuation of patients. Building Regulations do not impose any requirements on the management of a building but there is a presumption that the building will be properly managed. Therefore, a design which relies on an unrealistic or unsustainable management regime cannot be considered to have met the requirements of the regulations.

18. Residential care homes are quite diverse and can be used by a variety of residents, often requiring different types of care to suit their specific needs. They can include homes for the elderly, children and people who are physically or mentally disabled. The choice of fire safety strategy is dependent upon the way a building is designed, furnished, staffed and managed and the level of assistance that residents may require in order to evacuate the building.

19. You have stated that the nature of the 38 residents is such that most would require physical intervention from staff to effect an evacuation. You also state that, in the event of a fire, staff are instructed to close doors in the affected area in order to contain the fire and smoke.

20. You have adopted a simultaneous evacuation strategy for the building. This would involve the sounding of an alarm throughout the building. As you have stated, this may result in considerable confusion and distress for the residents of the entire building at a time when the staff should be focussed on those residents directly affected by a fire. But you have made no statement as to how a situation like this would be addressed in practice in the staff procedures, particularly at night when only 5 staff members would be available.

21. Generally, in care homes where at least a proportion of the residents will need some assistance to evacuate, the Secretary of State considers that these buildings should be designed for progressive horizontal evacuation (PHE). The concept of PHE allows the managed evacuation of residents into adjoining compartments, thus only those residents immediately affected by a fire will need to be assisted by staff. Given the stated nature of the residents, a PHE strategy utilising a discrete staff alarm system (to reduce the confusion and anxiety that a general alarm may cause to residents) would seem therefore to be a more appropriate approach for this building.

22. If it is considered essential to omit self-closing devices then this may be acceptable if a suitable evacuation procedure can be put in place and provided that the design of the building keeps the number of residents in need of immediate assistance down to a manageable level. This could be achieved by limiting the number of beds in any one protected area and by separating day rooms which could contain larger numbers of residents from bedroom corridors. This issue was discussed in an earlier determination decision issued by the Secretary of State to which you have made reference in support of your case.

23. In this case, however, there would appear from the plan to be up to 9 bedrooms opening on to the same, undivided, section of corridor and day rooms are also served by bedroom corridors. As such given the adopted simultaneous evacuation strategy and layout of the building it would be unrealistic to expect staff to be able to effectively evacuate the building without sufficient in built fire precautions to assist with the early containment of a possible fire. Therefore, the Secretary of State considers that self-closing devices will be necessary in this case.

24. As the Council has suggested, there are self-closing devices available that would reduce the day to day operational problems sometimes associated with their provision. These include swing free devices which offer no resistance to the movement of the door unless the fire alarm system is activated. Alternatively, the fire evacuation strategy and the layout of the building could be revisited to produce a solution which will adequately address the safety and comfort of the residents in both normal and fire conditions.

The Secretary of State's decision

25. 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. She 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.

26. As indicated above, the Secretary of State considers that the adopted management and other fire safety procedures are not adequate to compensate for the non-provision of self-closing devices on the bedroom doors in the building. She has concluded that it would not be appropriate to relax Requirement B1 (Means of warning and escape) of Schedule 1 to the Building Regulations 2000 (as amended) in this case. Accordingly, she dismisses your appeal.