

## **BUILDING ACT 1984 - SECTION 39**

### **APPEAL AGAINST REFUSAL BY THE BOROUGH COUNCIL TO DISPENSE WITH REQUIREMENT B1 ("MEANS OF WARNING AND ESCAPE") OF THE BUILDING REGULATIONS 2000 (AS AMENDED) IN RESPECT OF COMPLETED BUILDING WORK, COMPRISING AN ADDITIONAL STOREY AND OTHER INTERNAL ALTERATIONS TO A FOUR STOREY HOUSE**

#### **The building work and appeal**

3. The papers submitted indicate that the building to which this appeal relates is now a five storey house (four existing and one new storey), which was originally built in the 1950s and has a plan area of approximately 6m x 12.5m at ground floor level.

4. The building work in question is complete and comprised the provision of a new en-suite bedroom and terrace at the roof level of the building to create a new third floor (fifth storey), together with other internal alterations. You have provided the following details of the layout of the floors within the house and the alterations carried out:

#### **(i) Lower ground floor level [first storey]**

This configuration remains unchanged but a new fire door has been installed at the head of the stair to the upper level. There is also an exit at lower ground floor level to a well at the front of the building and up steps to ground level, which remains unaltered. The utility area has been fitted with a 30 minute fire door. Cupboards in the corridor to the exit door to the front of the building are fire rated and locked closed.

#### **(ii) Ground floor level [second storey]**

There is access to the ground floor from the lower ground floor via a stairway set below the main stair. This access has been maintained and, as indicated above, a new fire door has been installed to this opening. There is also access into the adjoining garage and the door to the garage has been upgraded to a 30 minute fire door. The main exit door to the building discharges to the front of the house.

#### **(iii) First floor level [third storey]**

Walls enclosing the kitchen and drawing room have been reconstructed to provide more light penetration into the stairway area. The glazing is fire-resisting and new 30 minute fire doors have been provided. A library and computer area near the stairway have been removed and the area has been opened out to make a wider landing for the purpose of receiving guests before they go into the drawing room.

**(iv) Second floor and new third floor levels [fourth and fifth storeys]**

The arrangement on the second floor has been left generally as existing with bedrooms and en-suite bathrooms. A new stairway has been introduced from the second floor landing to the new third floor bedroom that opens onto a roof terrace and across adjoining roofs to a place of safety. The stairway is protected with 30 minute fire doors and enclosure.

**(v) Throughout the house**

A heat and smoke detection and alarm system has been installed throughout the house including the extended first floor landing area. Fire doors to the stairway have been installed and the new stair enclosure at second floor level is fire resisting construction. A secondary means of escape is provided at roof level leading to an adjacent building.

5. The building work carried out was the subject of a building notice which was given to the Council on 25 October 2004. Following a subsequent site inspection of the work, the Council indicated that – following the removal of an enclosure (which the Council has annotated “A” on a copy of drawing no 638/P5) - the extended landing area on the first floor of the house was likely to be used for habitable purposes, thus prejudicing the means of escape. As your client was keen to maintain the open nature of the landing, she applied for a dispensation of Requirement B1 of the Building Regulations which was refused by the Council on 8 March 2006. It is against this refusal that you have appealed to the Secretary of State.

**The appellant’s case**

6. You state the following to support your view that the extended landing area at first floor level is not prejudicial to the means of escape and that reasonable and appropriate measures have been taken to provide an adequate means of escape through the building:

- (i) The house is a robust construction of brickwork and concrete.

- (ii) The risk of fire in the fabric and surface finishes is negligible. Walls and ceilings are finished with plaster applied direct to the fabric of the building ensuring that there are no fire 'flash over' voids or areas for fire and smoke to permeate through the building. This renders the building fabric incombustible and the finishes to walls and ceilings class "0" surface spread of flame rated, thus substantially reducing the risk of fire break-out and spread in accordance with paragraph 7.1 and Table 10 in Approved Document B 2000 (*NB: all references in this letter to Approved Document B (AD B) "Fire safety" are to the 2000 edition with 2000 & 2002 amendments*).
- (iii) The extended landing area is not significant to, and will not prejudice, the means of escape. It is to be used as a wide circulation area between the kitchen and dining/reception room in order to make the space flow better between these rooms and to provide a greeting space for guests outside the reception room. Both adjacent rooms are constructed with 30 minute fire-resisting walls and self-closing doors and are protected with a smoke alarm system.
- (iv) The extended landing area is fully protected with a smoke alarm system. Each storey level and each habitable space, including the stairway within that storey level, is protected with a smoke detector. Sounders are located at storey levels and are part of a monitored, fully maintained inter-linked approved system with eight hour battery back-up to provide protection throughout the house, giving confidence in the installation and running of the system, in accordance with AD B, paragraph 0.20. The area in question is protected with an optical detector system as recommended in BS 5446: Part 1 (referenced in AD B, paragraph 1.4) to avoid "invisible smoke" triggering false alarms, thus providing enhanced confidence in the long term suitability of the system.
- (v) The smoke alarm system is equipped with 102Db sounders. One sounder is located at second floor level in the stairway.
- (vi) The primary vertical means of escape from the upper floors is downwards to ground floor level with the final exit at ground level via the front door. All doors onto the stairway are 30 minute fire-resisting and self-closing.

- (vii) The doors to the rooms off the stairway landing in question are glazed with appropriate fire rated glass so that there is a visual connection to the stair area from these adjoining rooms. In accordance with paragraph 2.7 of AD B the kitchen on the first floor can be treated as an inner room. The kitchen is provided with self-closing fire rated doors and a smoke detection system. The other room at the floor level of the area annotated "A" in the Council's submission, has a secondary means of escape opening that complies with the exit requirements in paragraph 2.11, AD B for emergency egress provision.
- (viii) Paragraph 2.14 in AD B requires that an alternative escape route should be provided for each storey situated 7.5m or more above ground level. An alternative escape route, as described in the AD B, is provided at each level.
- (ix) The fire rated enclosure to the stair to the third floor level provides the enclosure for the alternative means of escape to a place of safety. The third floor is the only significant floor level in the house in respect of paragraph 2.14 in AD B.
- (x) The alternative protected means of escape is provided up to roof terrace level and across adjoining properties to a place of safety. This provision is a significant alternative means of escape if required, and is written into the deeds of the adjoining properties that constitute the terrace on this side of the street. This provides a relevant, strategic, additional means of escape in accordance with paragraph B1.xi.a. in AD B.
- (xi) The means of escape from the second floor level also complies with the guidance in AD B even though the floor level is not above the 7.5m cut off.
- (xii) The building is residential and therefore there is a high level of familiarity with the configuration of the house and the means of escape routes.

### **The Council's case**

7. The Council has stated the following in support of its case for refusing to dispense with Requirement B1 in this case:

- (i) The building work was subject to the guidance in paragraph 2.14 of AD B.
- (ii) The Council's outline vetting letter dated 1 November 2004 (a copy of which you have submitted) was based on drawings submitted to the Council (copies of which the Council has submitted).

- (iii) In the event, the Council was satisfied that all the provisions required by paragraph 2.14 in AD B were adequately satisfied except that the enclosure annotated "A" on the first floor drawing (no 638/P5) was removed.
- (iv) It is the Council's contention that the area in question on the first floor is of such a size as to render it likely to be used for habitable purposes. In this particular case due to the location of the kitchen it would seem to be an ideal dining area.
- (v) As a habitable area it has the potential to compromise the protected route required by paragraph 2.14 in AD B should there be an incident.

### **The Secretary of State's consideration**

8. The Secretary of State takes the view that there are two matters to be considered in this case following the completion of the building work in question: whether or not the extended first floor area adjacent to the stair is a landing to be used for circulation purposes, or is a space likely to be regularly used for habitable purposes by the current or future occupants; and thus what potential fire risk this would present.

9. There is no definitive way of deciding if an area will be used for circulation or for the purposes of a habitable room. However, some guidance can be taken from the scale of the building; the number of rooms; the usability of the space; and the number and position of the doors which open off the area.

10. In this case the extended landing area in question has a floor area of approximately 12m<sup>2</sup>, according to the drawings submitted. It has a similar floor area to that of the adjoining kitchen and the arrangement of doors is such that there is room for furniture, such as a dining table, without obstructing movement between rooms. In addition, you have stated that the kitchen on the first floor can be treated as an inner room – if the landing area is not a habitable room, then it would not be necessary to treat the kitchen as an inner room.

11. The Secretary of State considers that it is a reasonable assumption, therefore, that the extended first floor area in question is likely to be used as more than a landing and, as such, could present a fire risk similar to that presented by a habitable room. Having established that this area should be regarded as a habitable space, it is now necessary to consider the implications of this on the means of escape.

12. Where a house has a floor that is over 7.5m above ground level, the guidance within AD B (paragraph 2.14) recommends an alternative means of escape for each storey above this height, which is to reduce the risk of people becoming trapped in the upper storeys. In this case, only the new third floor is subject to this provision and the Council has accepted that the roof terrace means of escape is adequate for this purpose.

13. You have argued that the roof terrace escape provides a robust alternative means of escape thus rendering the extended un-protected area at first floor level irrelevant in terms of the means of escape from the building. However, this escape route can only be reached by the occupants of the floors other than the third floor by first passing through the main stairway. As such a fire within the stairway enclosure at first floor level or above would render the roof terrace escape inaccessible and the roof escape would therefore only be of benefit to the occupants of the third floor.

14. The lower ground floor does have the option of an exit direct to outside through the well at the front of the building or up the stair to the ground floor. This stairway is separated from the ground floor with a 30 minute fire door. However, the remaining storeys of the house, from ground floor up to and including the second floor, rely on the main stairway as the only route of escape and do not have access to an adequate alternative.

15. The Secretary of State therefore concludes that the extended first floor area in question would constitute a habitable space and that if a fire were to start in this area it could jeopardise the means of escape for the occupants of the ground, first and second floors of the house. Accordingly, although she has noted the additional fire safety precautions you have taken, she considers that the means of escape from the building is not adequate and that there are no extenuating circumstances which would justify a dispensation of Requirement B1 of the Building Regulations in this case.

### **The Secretary of State's decision**

16. 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. Within this context, in coming to her decision, as indicated above she has given careful consideration to the particular circumstances of this case and the arguments presented by both parties.

17. As stated in paragraph 15 above, the Secretary of State has concluded that it would not be appropriate to dispense with 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.