

Date: 19/12/05

Ref: 45/3/176

Note: The following letter which has had personal details edited out was issued by our former department, the Office of the Deputy Prime Minister (ODPM). ODPM became Communities and Local Government on 5 May 2006 - all references in the text to ODPM now refer to Communities and Local Government.

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 relation to the height of a new window, forming part of completed building work.

The proposed work

3. The building to which this appeal relates, as originally built, is a four bedroom detached house with an attached garage. The building work, which was completed in April 2002, involved:

- an extension of the ground floor at the rear of the building with a sloping roof, which extended the existing living room, accommodated the relocation of the kitchen, and provided a utility room behind the existing garage;
- an extension to the first floor at the side of the building over the existing garage and the new utility room, which provided for the extension of three bedrooms including the master bedroom;
- the provision of an en-suite bathroom on the first floor, and other internal alterations to the house.

Following the above work, the house has a plan area of approximately 10m x 8m.

4. You state that the Borough Council withheld issuing a 'completion certificate' for the completed building work for three reasons, two of which have been resolved. The third relates to the height of the new window provided for emergency egress purposes (one of two new windows provided) in the master bedroom above the garage and overlooking the front of the house on the first floor. The Council suggested that, as an alternative to lowering the window, the floor could be raised locally so that the distance between the floor and the bottom of the window opening does not exceed 1100mm, to achieve compliance with Requirement B1 (Means of warning and escape) of the Building Regulations. However, you decided to apply for a relaxation of Requirement B1 in relation to the height of the window which

was refused by the Council on 16 May 2005. It is against this refusal that you have appealed to the Secretary of State.

The appellant's case

5. You comment that the new windows in the master bedroom were installed at the same height as the existing first floor windows at the front of the house and that it would have looked "most odd" if they were installed at a different height because of the decorative brickwork above and below the windows. You stress that the Borough Council did not stipulate the required height of the new windows during the plans approval or inspection procedures.

6. You consider that providing a raised area or step below either of the new windows would be unsightly; could be costly if re-carpeting is required; may reduce the value of the property; and is unnecessary. You have measured the distance from the floor to the top of the window sills and, in your view, the difference in height over the 1100mm limit stated in the guidance in *Approved Document B (Fire safety)* is negligible and does not pose any danger to the present or future occupants of the house.

7. You add that you have a battery powered smoke alarm installed at the head of the stairway directly outside the door of the master bedroom and that there is also an improved fire exit from the three rear bedrooms in the house, as they now have a sloping roof built just below them as part of the building work carried out.

The Borough Council's case

8. The Borough Council states that the master bedroom has two new windows, one of which has been fitted with appropriate hinges and provides an unobstructed openable area of 0.33 m², with a minimum opening width of 450mm, thereby partly meeting the conditions for emergency egress purposes stated in *Approved Document B*. However, the bottom of the opening of this window is 1165mm above the finished floor level and the window sill is 1095mm above this level. The Council adds that these measurements were taken in your presence.

9. The Borough Council has therefore suggested that the floor could be raised locally to ensure that the distance between the floor and the bottom of the window opening in question does not exceed 1100mm. The Council considers that the raised area should be permanently fixed in place, be preferably 100mm to 220mm high, and that its edges should be highly visible to reduce the risk of a trip.

10. The Borough Council also recommends that a mains operated smoke alarm with secondary power back-up should be installed at the head of the stairway, as an additional minimum compensatory feature.

The Secretary of State's consideration

11. The Secretary of State considers that the issue that needs to be considered in this case is whether the new escape window in question in the master bedroom provides an 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.

12. 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.

13. You have argued that the window in question has been installed at a height to match the existing windows on this elevation and that to do otherwise would have resulted in the building looking most odd. The Borough Council has suggested raising the area of the floor local to the window and also providing an additional smoke alarm, but you have objected to this approach on similar aesthetic and other grounds.

14. The Secretary of State considers that, in the circumstances of this case, there are no extenuating circumstances that would justify the provision of an escape window which is not readily accessible. The Borough Council's suggestion of raising the floor local to the window is a reasonable and practical solution to the problem, but the Secretary of State does not consider that there would be any justification in also insisting on the provision of a smoke alarm as an additional "compensatory feature". Alternatively, the whole floor level could be raised with a step up into the room, or the need to provide a window for emergency egress purposes would be removed if a protected stair enclosed in fire resisting construction were provided (the Council can advise you on this). In these circumstances, it is the Secretary of State's view that there is no case for a relaxation of Requirement B1.

The Secretary of State's decision

15. The Secretary of State has given careful consideration to the particular circumstances of this case and the arguments presented by both parties.

16. 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 in exceptional circumstances. Paragraph 14 above gives the Secretary of State's views on the measures that could be taken to achieve compliance in this particular case and he considers that there are no extenuating circumstances which would justify relaxing Requirement B1 (Means of warning and escape) of Schedule 1 to the Building Regulations 2000 (as amended). Accordingly, he dismisses your appeal.