

Date: 11/05/04

Ref: 45/3/169

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 dispense with Requirement B1 (Means of warning and escape) of the Building Regulations 2000 (as amended) in respect of building work at Flat 5.

The appeal

3. The building work to which this appeal relates comprises a material alteration which has been carried out - primarily to the entrance hall - of a maisonette comprised of three levels of accommodation. The maisonette forms the upper floors (third, fourth and fifth) of a six storey (plus basement) terrace property. The access level (level 1) plan dimensions of the maisonette are approximately 5m x 8m.

4. The entrance door to the maisonette (at level 1) opens off of the top landing of a common stair which serves one other dwelling at this level. There is also a lift which delivers on to the landing. No information has been provided as to the presence or otherwise of lobbies to the flats below whose entrance doors open on to the common stair, but the Borough Council has stated that in a recent refurbishment of Flat 1 an entrance lobby has been retained.

5. There is uncertainty as to the earlier presence or otherwise of fire resisting walls and doors provided to form a protected entrance hall to the maisonette and to protect the private internal stair rising from within the hall. However, the parties do agree that immediately prior to the Building Notice being given in this case, and the alteration work being carried out, the maisonette did have a partially enclosed private entrance hall made up in part of partition walls and in part of an open archway which led direct into the living accommodation on this level. This entrance hall also gave access to a WC / cloakroom, a cupboard containing a boiler, and a linen cupboard.

6. The private internal stair gives access to the accommodation at the second and third levels of the maisonette which has remained unchanged following the alterations. The accommodation at level 2 comprises a master bedroom to the front with en suite toilet and shower facilities; a separate bathroom; and a second bedroom to the rear.

7. Level 3 comprises an open plan 'terrace room' including a fully equipped kitchen area. The drawings provided by the Borough Council indicate that there are steps from the floor of this room to a side window which gives access for fire escape purposes through the window onto an adjacent roof.

8. The alteration work to the entrance level to the maisonette is understood to have commenced prior to the receipt of a Building Notice on 25 April 2002. The work comprised the complete removal of the partition walls and open archway forming the entrance hall; the removal of the existing cloakroom; and the removal of the boiler cupboard and linen cupboard in order to relocate a new cloakroom under the stairs. This work has created a completely open plan living area which is accessed direct from the entrance door. It comprises a living and dining area, together with kitchen facilities at the end of the room, furthest from the entrance door. The foot of the newly designed internal stair to level 2 is accessed directly from this living space and is approximately 3.4m from the entrance door.

9. The alteration work is also understood to have incorporated up-grading of the fire resistance of all existing partition walls, doors and ceilings; and the installation of a fire alarm system of unspecified type and unspecified location of detectors.

10. On 9 May 2003 the Borough Council served a notice under section 36 of the Building Act 1984 requiring reinstatement of the enclosure "*to at least the same standard of construction which existed before demolition*". However, you argued that the alteration work, together with the compensatory measures you have incorporated, had made compliance with Requirement B1 no worse and in some respects better. You therefore applied to the Borough Council for a dispensation of Requirement B1 in order to secure compliance for the open plan area with the unprotected stair. This was refused on 2 July 2003 and it is against that refusal that you have appealed to the Secretary of State.

The appellant's case

11. You argue that prior to the alteration work you have carried out to the maisonette, level 1 had an open plan layout and there were no enclosures around the existing private stairway. You consider that the stairway may never have been enclosed and that retrospective requirements under the Building Regulations cannot be made.

12. You suggest that the "original plans" dated 6 November 1979 and the more recent photographic evidence, which you have provided to support your case, may indicate that the proposed work shown on the drawings provided by the Borough Council was never implemented.

13. Notwithstanding the above, you believe that the alteration work has not jeopardised any means of escape nor any major change to passage. On the contrary you consider that you have improved the condition of the entrance area by removing the boiler. You have also upgraded the fire resistance of all existing partitions and ceilings to 60 minutes, including new 30 minutes fire

resisting doors, and you have installed a fire alarm and smoke detectors. Your view is supported by a letter from your fire consultants written to the Borough Council on completion of the work.

The Borough Council's case

14. The Borough Council comments that according to its records the maisonette was last altered in 1979 and has provided copies of drawings incorporating alterations to the entrance hall which were approved under the previous application. These plans show the partition walls and doors at the entrance level to the maisonette to be in place providing protection to the private internal stairway at that level.

15. The Borough Council does not believe that it should condone the illegal alterations that it considers have taken place following the approved proposals in 1979 and prior to the current application. The Council considers that a fire on the entry level of the maisonette would leave the occupants trapped in areas on the upper floors and therefore protected egress is essential regardless of any early warning provisions.

16. The Borough Council does not accept that the earlier apparent 'unauthorised' removal from the internal hallway of the doors leading to the living area should be used as an argument for removing all the separation at the entrance level. This would remove the option of reinstating the doors which the Council considers did exist in 1979.

17. Even under the circumstance that the archway opening had existed without doors, it is the Borough Council's view that the walls previously forming the enclosure afforded a degree of protection, from direct heat, should a fire have occurred within the living area at this level. As such the Council considers that removing the walls has resulted in the means of escape becoming worse and that the measures you have incorporated do not compensate for this.

The Secretary of State's consideration

18. In considering this appeal the Secretary of State has first considered the degree of compliance with Requirement B1 which was being achieved previously in respect of the protection of the internal hallway and stairway in the maisonette, prior to the most recent alterations. The Borough Council has records of approved plans dated 1979 which indicate a protected entrance hall constructed of fire resisting construction and fitted with suitable fire resisting doors. However, you contend that these proposals may never have been implemented. There is therefore no agreement between the parties on this matter, and as a matter of fact it is one on which the Secretary of State is not in a position to decide.

19. There is, however, agreement between the parties as to the extent of compartmentation in existence immediately prior to the alteration work carried out in 2002. This comprised some partition walling and an open archway. From the photographs submitted, it is clear that the crown of the archway was some distance below the soffit of the ceiling. As such any smoke generated by a fire in the living accommodation would have accumulated beneath the ceiling before spreading into the stairway. In addition, the section of wall immediately adjacent to the foot of the stair would also have provided some shielding to persons making their escape down the stairway from the upper floors. Nevertheless the level of protection afforded would not be considered adequate to achieve compliance with Requirement B1 in a new building.

20. The alteration work as now existing has removed in total this partial protection to the hallway and stairway, and as such has resulted in a worsening of the standard of immediate escape from the upper floors of the maisonette. In the Secretary of State's view the compensatory measures put forward by you by way of upgrading of the fire resistance of doors and ceilings, and of the provision of an unspecified standard of fire alarm system, do not offer sufficient compensation for removal of the partial protection. It follows that the building work which comprised the material alteration in 2002 complies with neither regulation 4(1) nor regulation 4(2) of the Building Regulations.

21. In respect of the practicality of designing proposals for achieving compliance with Requirement B1, it seems clear that irrespective of whether the proposed compartmentation approved in 1979 was implemented or not, there is no insurmountable constraint which would militate against achievement of compliance with Requirement B1. In these circumstances it is the Secretary of State's view that there is no case for a relaxation of this life safety requirement, let alone a dispensation.

The Secretary of State's decision

22. 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.

23. The Secretary of State has given careful consideration to the facts of this case and the arguments put forward by both parties. Paragraphs 19 - 21 above have given the Secretary of State's view on the degree of compliance currently and previously being achieved with Requirement B1. He is also of the view that there are no extenuating circumstances in this particular case which would justify relaxing or dispensing with Requirement B1 (Means of warning and escape) of Schedule 1 to the Building Regulations 2000 (as amended) and that the Borough Council therefore came to the correct decision in refusing to dispense with this requirement. Accordingly he dismisses your appeal.