

Date: 16/12/03

Ref: 45/3/164

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 respect of the need to reinstate a glazed door and screens to the main stair enclosure at first floor level, as part of building work comprising an additional first floor office at a school.

The appeal

3. The building work to which this appeal relates comprises a small first floor extension, and access arrangements, to a three storey block (Block `A') in a secondary school complex comprising some six blocks plus other facilities such as a library and assembly hall.

4. Block `A' is a three storey teaching block built circa 1927 of conventional construction. It is `L' shaped in plan area measuring approximately 50m in length by 20m. The main stair is contained in the base of the `L' plan and gives access to all three storeys. A second stair located at the top end of the `L' plan connects the ground and first floor only. An additional external escape stair is provided at the rear of the building serving the second floor.

5. The ground floor comprises administrative offices and incorporates a flat-roofed toilet block. The accommodation on the first floor - prior to the addition of the extension - comprised a staff work room and a reprographics room accessed from an area which previously formed a circulation lobby immediately to the left of the main stair landing; and also comprises a staff room and five class rooms opening onto a corridor running down the 'leg' of the `L' to the second stair at the end, and accessed from the right of the main stair landing. The second floor is approximately half the plan area of the first and contains four inter-connected class rooms, the furthest one of which from the main stair gives access to the external escape stair.

6. Prior to the building work Georgian wired plate glass doors and screens were positioned at first floor level immediately on the left and right of the main stair landing. These formed part of the enclosure protection to the main stair.

7. The building work and alterations were carried out during 2002 and comprised the refurbishment of the ground floor toilets and the addition of a first floor extension above these toilets to provide a special needs office of approximately 7.5m x 3.5m. Access at first floor level to this new office was provided by knocking through an existing window to provide a doorway. This new doorway is adjacent to the staff work room and reprographics room to the left of the main stair landing, and which hitherto had been separated from the stair by one of the two doors and screens sets referred to in paragraph 6 above.

8. The alteration work included the removal of the door and screens to the left of the landing and the installation of 30 minute fire resisting, self-closing, doors to the new special needs office, the existing staff work room, and the reprographics room - the effect of which has been to extend the fire resisting enclosure of the stair to incorporate the area which previously formed the circulation lobby from which these rooms are accessed. The other door and screens to the right of the landing (protecting the class room corridor) remain in position. The building remains covered by the existing fire alarm system, and emergency lighting has been provided.

9. Your clients' proposals for the special needs office had formed the basis of a full plans application which was rejected by the Borough Council. Point 3 of the grounds of rejection reads: "*Existing staircase not to be open to the corridor. At present separated by door/screen, this must be maintained*". Following discussions the Borough Council wrote to your clients requesting that the door/screen be reinstated without delay.

10. However, in your opinion the enlarged area to the left of the landing forms what you have referred to as a 'protected lobby' and in the circumstances the provision is acceptable. You therefore applied to the Borough Council for a relaxation of Requirement B1 to provide for the omission of the screen. The Council took the view that the building was a high risk one and that there were already existing risks in the block. They therefore concluded that the requirements of the Building Regulations did not act unreasonably and refused your application for a relaxation in a two page letter of justification. It is against that refusal that you appealed to the Secretary of State.

The appellant's case

11. You have explained that the reason for removing the left hand door and screens relates to the use of that part of the first floor. The staff area which was accessed via the screen door was subject to constant pupil visiting which was excessive at times. This had resulted in the screen door being left permanently fixed open. It was with this in mind that, in consultation with the school, you omitted the screen and provided the fire resisting doors to the adjacent rooms.

12. You believe that your proposals are acceptable under the terms of the Building Regulations. In support of your case you make the following points:

(i) With respect to *paragraph 5.23 of Approved Document B (Fire safety)* although enlarged, the new lobby formed is a protected lobby, all the walls and doors have a minimum of 30 minutes fire resistance and therefore comply.

(ii) Whilst the spaces opening from the stair are not listed as acceptable in *paragraph 5.29 (Use of space within protected stairways)* of the Approved Document, the areas concerned are equally non-hazardous. There are no open fires or gas appliances in any of the rooms and they are designated non-smoking areas.

(iii) Two smoke alarms have been provided - one within the area previously forming the circulation lobby to the left of the stair, and the other over the first floor landing of the main stair - for the better protection and warning of the users in the area; and additional smoke alarms will be provided in the three rooms depending upon the outcome of this appeal.

13. You asked that it be noted that this work has not been done without due consideration of facts and of the requirements of the Building Regulations, which you point out are now written in functional rather than prescriptive form.

The Borough Council's case

14. The Borough Council takes the view that the area identified by you as a 'lobby' is in fact an extension of the stairway enclosure at first floor level, with three rooms opening directly on to this stairway enclosure. Having consulted the Fire Brigade, the Council maintains that the door and screens separating the stairway from the circulation area giving access to these rooms should be reinstated.

15. In response to your application for a relaxation of Requirement B1, the Borough Council made the following points:

(i) The stair in question provides the only access to, and escape route from, the second floor (a point subsequently withdrawn by the Council). *Approved Document B* recommends a protected lobby in such a situation.

(ii) The removal of the circulation 'lobby' protection and the addition of a room at first floor level results in an increased risk. Whilst fire doors have been fitted to the rooms to the left of the first floor landing, this is not seen as a compensatory measure with regard to the removal of the circulation 'lobby'.

(iii) A new 'lobby' to the existing staircase has not been formed as part of the works. The area formed in this instance is an extension of the stairway enclosure and the rooms opening onto it are not of the type detailed in *Approved Document B* as being acceptable to open directly onto a stairway.

16. The Borough Council went on to state that the completed works fall outside any available guidance. The Council suggests that your clients would have difficulty in carrying out a satisfactory risk assessment as is required under Health and Safety legislation.

17. The Borough Council subsequently acknowledged, in a further letter to the Secretary of State, that the second floor is also served by an external escape stair. However, they state that the existence of the external escape stair does not affect the Council's original reasons for refusing the request for a relaxation of Requirement B1. In the same letter they also confirm that reference by the Council to the term 'lobby' in an earlier letter is misleading. They affirm that when considering the request for a relaxation their concern was the protection of the dead-end situation of the area - which had previously formed a circulation lobby - to the left of the main stair landing giving access to the new special needs office. They considered that the stair should be within a protected shaft, with the new and altered rooms at first floor level exiting via a protected corridor into that shaft (as recommended for dead-end situations in *paragraph 4.21 b. of Approved Document B*).

The Secretary of State's consideration

18. *Paragraph 5.24 of Approved Document B* gives guidance on the situations where it is necessary to use protected lobbies and/or protected corridors. *Appendix E on page 128* of the document defines a protected corridor/lobby, as well as a '*protected stairway*'. Some confusion about references to an unprotected lobby (which has been referred to in this letter as a 'circulation lobby') and other references to a 'protected lobby' and a 'protected stair enclosure' has occurred throughout the exchange of correspondence on this case. However, the Secretary of State is satisfied that the 'before' and 'after' situation relates to the screening on the left hand side of the main stair in question at first floor level in order to provide a protected stair enclosure and not to whether a protected lobby should be provided.

19. In considering this appeal the Secretary of State has first considered the level of compliance which would be achieved with the left hand door and screens permanently removed, and with the provision of fire resisting doors to the three rooms opening onto the corridor forming the extended protected enclosure to the stair. The issue is whether this will afford an adequate level of protection for the means of escape for the occupants of the newly formed room and that the means of escape for the occupants of the rest of the building are not made worse.

20. There are a number of situations where a protected escape stair needs the added protection of a protected lobby, one of which being where the stair is the only one serving a building (or part of a building) which has more than one storey above the ground storey. The Borough Council had originally suggested that the stairway was the only one serving the second floor and implied that as such a protected lobby should have been provided. However, the Council has since acknowledged the presence of an external escape stair and has not made any suggestion that this stair should not be taken into

account.

21. The Borough Council has also raised the issue of the appropriate use of the space within a protected stairway. You have acknowledged that the purpose of the rooms in this case are not listed as acceptable in Approved Document B but have argued that the areas concerned are equally non-hazardous. In the Secretary of State's view, however, the fire risk presented by a school staff work room and a reprographics room is considerably greater than would be acceptable within a stair enclosure. However, because in this case the rooms are separated from the stairway by fire resisting construction, this question does not arise.

22. Another main concern of the Borough Council has been the need to protect the dead-end corridor. The purpose of providing protection to dead-end corridors is to take into account the fact that persons escaping down the corridor may have to pass by the doorway of a room that may be on fire. The new fire doors provide both the necessary level of protection for the dead-end situation and, because of the removal of the fire resisting door and screen, also fall to provide the protection to the extended enclosure to the stair. The Secretary of State takes the view that there is no reason why, in principle, the same fire doors cannot serve both purposes.

23. However, what particularly needs to be considered in this case is the effect of creating a circulation route through the stairway enclosure between the three rooms on the left of the main stair and the classrooms and staff room located on the right of the main stair. Arrangements such as this present a risk that the fire doors are likely to be rendered ineffective (eg by constant usage or by being wedged open), resulting in inadequate protection to the stair (as indicated in *paragraph 4.12 of Approved Document B*).

24. The busy nature of this part of the building is something you have already raised. Although the circulation route through the stair enclosure already existed, before the removal of the screen the occupants of the reprographics room did have the option of passing through the staff work room to reach other parts of the building at that level. The Secretary of State considers that this situation has been made worse by the removal of the door and screens as the occupants of the existing reprographics room and the new special needs office can now only reach other parts of the building at that level by passing through the stair enclosure. There may be ways of addressing this problem but you have not made any proposals in this respect.

25. You have offered the additional provision of smoke alarms in the three rooms opening onto the circulation area to the left of the main stairs, although you have not clearly stated how these would operate. In any event the Secretary of State considers that would not provide adequate compensation for the increased risk brought about by creating a circulation route through the stairway and as such the door and screens should be reinstated.

The Secretary of State's decision

26. 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.

27. The Secretary of State has given careful consideration to the facts of this case and the arguments put forward by both parties. As indicated above, he considers that the current omission of the left hand door and screens at first floor level of the main stair do not make adequate provision for safe escape, and that therefore this recent alteration does not comply with Requirement B1. He is also of the view that there are no extenuating circumstances in this particular case which would justify relaxing Requirement B1 (Means of warning and escape) of Schedule 1 to the Building Regulations 2000 (as amended) in order to secure compliance, and that the Borough Council therefore came to the correct decision in refusing to relax this requirement. Accordingly he dismisses your appeal.