

Date: 21/09/01

Ref: 45/3/152

Note: The following letter which has had personal details edited out was issued by our former department, the Department for Transport, Local Government and the Regions (DTLR). DTLR is now Communities and Local Government - all references in the text to DTLR 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 in order to provide at ground floor level a stair which will be open to an enlarged hall, consequent upon building work

The appeal

3. The building to which this appeal relates is a four storey house, 12m x 5.5m in plan. Prior to the building work, the ground floor comprised an integral garage 2.3m x 4.5m with the garage doors on the front elevation adjacent to the front door which gave access to a passage-style hallway. The hallway in turn gave immediate access to the stair to the right and a living room to the rear which span the full width of the house. The hallway also had an access door to the garage through the dividing wall on the left. There was also a car porch against the left hand flank wall of the dwelling. The stairway leading to the upper floors is understood to have been protected at all floor levels.

4. The upper floors have not been altered as a result of the building work. The first and third floors have french windows in the rear elevation opening on to balconies. The front elevation of the third floor is contained within the slope of the roof and served by a roof light. The height of the top floor is understood to be just under 7.5m.

5. The building work, which has now been completed, comprised the demolition of the existing car porch adjacent to the integral garage and the building of a new double garage in this area; the removal of the dividing wall between the passage-hallway and the existing integral garage to form an enlarged hallway; the replacement of the garage doors with a window; and the insertion of a door in the left hand flank wall to give internal access to the rear garage. This work has resulted in the creation of an enlarged hallway of irregular plan shape with a width of approximately 4.5m and average depth of about 4.5m, which in turn means that the stair at ground floor level is now open to this enlarged area.

6. Your building work was progressed by the building notice procedure. The Borough Council responded to the first building notice requesting clarification of the use of the enlarged hallway. Following a further building notice, the Council expressed concern about the size of the newly formed hall and the fact that its potential for use as a habitable room meant that the stairway was no longer protected for escape purposes and that all rooms opening on to it had become inner rooms. As such the Council took the view that the building work therefore failed to comply with Requirement B1 of the Building Regulations. Although you entertained the possibility of constructing a store of 2.8m x 1.75m within the volume of the old integral garage to reduce the area of the new hall, you considered this to be an unsatisfactory solution and therefore applied for a relaxation of Requirement B1 in order for the enlarged hallway and open ground floor section of the stairway to achieve compliance with Requirement B1. The Borough Council took the view that Requirement B1 had to be fully complied with and therefore refused your application. It is against that refusal that you have appealed to the Secretary of State.

The appellant's case

7. You feel that the Borough Council's refusal is a gross interference with house owners' rights to carry out sensible alterations to their properties and that such refusals lead to illegal alterations being carried out elsewhere.

8. You take the view that the new hall will remain part of the safe escape route and is only an enlargement of the existing hall which you describe as being miserably small. In support of your case you state that from a fire escape point of view there are three escape routes from the enlarged hall and from the first floor there is a veranda on the rear elevation with the garden below.

The Borough Council's case

9. The Borough Council takes the view that the upper stories of the house should be served by a protected stair on all floors. It is their contention that the new hall area is too large to be treated solely as a hall use and is of a similar size to habitable rooms in the house. The Council believes that this presents an unacceptable risk to the stairway for means of escape in case of fire and it is for this reason that they have refused your request to relax Requirement B1.

10. In support of their case the Borough Council has referred to a previous determination by the Secretary of State where the principal of increased risk with relatively large hall areas in comparison with other rooms in the house is addressed.

The Secretary of State's consideration

11. In considering this case the primary concern of the Secretary of State is the safety of the buildings occupants who may have to escape or be rescued from the building in an emergency situation.

12. You have suggested that the Borough Councils refusal is of a type that leads to illegal alterations being carried out elsewhere. The Secretary of State, however, does not consider this to be a material consideration as to whether there is a case for relaxing the requirements of the Building Regulations.

13. The Secretary of State believes the fundamental issue of this case is whether or not the enlarged hall area at ground floor level should be regarded as part of the protected stairway or as a space likely to be regularly used for habitable purposes by the occupants, in such a way as to be a potential fire risk. There is no definitive way of deciding this. However, the Secretary of State believes some guidance can be taken from the scale of the building; the number of rooms and the usability of the space; and the number and position of the doors which open off the area. In this case the hall area, as enlarged, occupies around one quarter of the ground floor. Therefore the Secretary of State believes it is a reasonable assumption that the space is likely to be used for more than circulation and as such could present a considerable fire risk and threat to the occupants of the building.

14. It is understood that the Borough Council considers that reducing the area of the new hall by constructing a store, enclosed with fire resisting construction, would be an acceptable means of achieving compliance with Requirement B1. Whilst you considered this to be an unsatisfactory solution the Secretary of State takes the view that this is one of a number of potential solutions that could be explored.

The Secretary of State's decision

15. 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. He has given careful consideration to the facts of this case and the arguments put forward by both parties. He has also noted the Borough Councils reference to a previous determination decision which they contend constituted a similar proposal to this case. However, the Secretary of State is required to consider all cases on their own individual merits, and issues specific to previous cases will not necessarily be relevant to subsequent ones.

16. The Secretary of State does not consider that your proposals make adequate provision for safe escape. He has concluded 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 and that the Borough Council therefore came to the correct decision in refusing to relax this requirement. Accordingly he dismisses your appeal.