

Date: 11/04/01

Ref: 45/3/150

*Note: The following letter which has had personal details edited out was issued by our former department, the Department for Environment, Transport and the Regions (DETR). DETR is now Communities and Local Government - all references in the text to DETR now refer to Communities and Local Government.*

## **Building Act 1984 - Section 39**

### **Appeal against refusal by the District Council to relax or dispense with Requirement B1 (Means of warning and escape) of the Building Regulations 1991 (as amended) in respect of the position of two Velux escape windows on the newly constructed second floor, forming part of a loft conversion**

#### **The appeal**

3. The building work to which this appeal relates has comprised the conversion of the roof space in a detached two storey house to form two habitable rooms of 21.5 square metres and 18.5 square metres and designated on the plan as a study and guest room respectively, although you suggest that one of the rooms may be used as a bedroom. The house is of traditional construction with a timber and tiled roof. Both flank walls form gable ends to the roof. The house is rectangular in floor plan measuring approximately 8m x 12m, with a protrusion to half of the front elevation which at ground level accommodates an integral garage and at first floor level contains the greater part of a large, second lounge (ie in addition to the ground floor lounge). The first floor also contains the four bedrooms. These and all other relevant doors are marked as self-closing.

4. The house was built with the intention of converting the roof space into accommodation to form a new second floor at a later stage. Suitable purpose made roof trusses were therefore used and five Velux windows incorporated in the rear slope of the roof. One window is in the centre of the building to light the landing to the second floor and the existing stairs leading to it. The other four windows are arranged in pairs, one directly beneath the other, on either side of the roof to light each of the two new rooms. The bottom window of each pair is 2200mm distance along the roof slope from the eaves.

5. The existing stairs from the first floor to the new second floor are unprotected, but 30 minute fire resisting, self-closing, doors are fitted to both the new rooms.

6. Your proposals for conversion of the roof space were the subject of a full plans application. However, the District Council noted that the existing two windows proposed for escape purposes from the new loft rooms were 2200mm distance along the roof slope from the eaves and requested that the plans be amended to show them positioned at 1700mm distance in accordance with the guidance in *Approved Document B (Fire Safety) (2000 edition)*.

7. You state that the two existing Velux windows which required re-positioning were in fact unsuitable for escape purposes and therefore needed replacing in any event. However, although they were replaced by top hung Velux windows suitable for escape, the replacements were inserted in the same position and were not lowered to accord with the 1700mm specified in the plan.

8. You accept that an error was made. This was not pointed out until after a completion inspection took place. However, you took the view that the difference in the distance to the eaves is only 500mm which in an escape situation would be negligible. You therefore applied to the District Council for a relaxation of Requirement B1 with an offer to install suitable ladders. The District Council refused your application and it is against that refusal that you appealed to the Secretary of State. The material date for your appeal is... and your appeal therefore falls to be considered in respect of the Building Regulations 1991 (as amended).

### **The appellant's case**

9. You suggest that the District Council's refusal to accept the two velux escape windows in the new loft rooms in their current position is unreasonable on the grounds that the windows are only 500mm further away from the eaves than required and the extra distance would not prevent the safe escape of people in the event of a fire. In support of your case you have made the following points:

(i) The error has occurred, in your view, because the roofer did not carry out the necessary repositioning according to the plans, and the District Council officer did not point this out when he inspected the work in progress.

(ii) Nevertheless, in your view, the distance involved is negligible and rectifying the error will cause unnecessary additional expense and disturbance.

(iii) You are prepared to install suitable escape ladders, preferably throw out ladders secured to the main beam in each room, to compensate for the additional distance and ensure a safe means of escape.

(iv) The local Fire Station Officer has advised you that all fire engines carry a roof ladder and, in his opinion, if exit can be made onto the roof, the Fire Service would be able to effect a rescue. He also suggested that if the distance between the bottom of the windows and the internal floor is an issue, you could install a step-up.

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

10. The District Council considers that the position of the two Velux escape windows provided from the new loft rooms is unsatisfactory as, in their view, the distance of the window from the eaves is excessive and is not in accordance with Diagram 6 in *Approved Document B (2000 edition)*. In their view, the escape windows should either be relocated to accord with the 1700mm specification, or new escape windows could be positioned within both gable ends.

11. The District Council also refers to the guidance in *paragraphs B1xii and 2.23 of Approved Document B (2000 edition)* and states that your proposal to install suitable escape ladders as a compensatory feature, whether this means a fixed ladder on the slope of the roof or a portable/throw out ladder, is not acceptable as a means of escape.

12. The District Council has taken account of your understanding of the local Fire Officers opinion that if exit can be made onto the roof, the Fire Service would be able to effect a rescue. However, the Council points out that *paragraph 2.25 of Approved Document B (2000 edition)* states that, it should not be assumed that only the fire service will make a rescue. They add that in the event of untrained persons trying to effect a rescue, the distance to be travelled by the escapee(s) between the escape window and the ladder position should be as short as possible, and imply that this should certainly be no greater than that which is likely to be created by an inclined ladder supported on the eaves with the recommended distance of 1700mm along the roof line to the bottom of the escape window. The Council has therefore concluded that reasonable alternative measures have not been provided.

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

13. The Secretary of State takes the view that what needs to be considered in this case is the safety of the occupants of the new loft rooms should it become necessary for them to be rescued via the two velux escape windows. The windows are positioned 500mm further away along the roof slope from the eaves than would normally be regarded as the recommended maximum.

14. The Secretary of State notes that the building work in respect of the two escape windows is considered not to be compliant and that this arose as a result of an acknowledged error. However, this is not a material consideration as to whether there is a case for relaxing Requirement B1; and the Secretary of State also notes that the District Council has suggested an alternative way of providing for escape in the gable ends of the house.

15. You have argued that the additional 500mm distance along the roof slope is negligible and you have suggested that you would be willing to provide some form of ladder, preferably a throw out ladder, as a compensatory feature. However, the statutory guidance in Approved Document B recommends dimensions for loft escape windows and their location which are based on practical experience and establish a minimum standard. It is acknowledged that the fire service may have access to roof ladders and that these could be used where persons are rescued from windows that comply with the recommended dimensions. But the availability of such equipment should not be relied upon for establishing adequate means of escape/rescue; and, in addition, paragraph 2.25 of Approved Document B (2000 edition) states that, as already noted above, in respect of the use of a ladder, it should not always be assumed that only the fire service will make a rescue.

16. The Secretary of State considers that a ladder, fixed or otherwise, would not provide suitable compensation in these circumstances. The Fire Authority has suggested the use of a permanent internal step which would address the problem of access to the window from inside but not the distance from the eaves. It may be possible to incorporate permanent features in the design of the roof as an alternative to following the guidance in Approved Document B. However, on the basis of the plans and papers provided it seems likely that any such feature would be more onerous in terms of cost and disruption than would the relocation of the windows to a more suitable position.

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

17. 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.

18. The Secretary of State has given careful consideration to the facts of this case and the arguments put forward by both parties. He has noted that no over-riding practical difficulties have been raised to prevent the correct re-positioning of the two escape windows; that the District Council has suggested an alternative solution which could be adopted; and that other design options might be explored. He has concluded therefore that there are no extenuating circumstances which would justify relaxing or dispensing with Requirement B1 (Means of warning and escape) of Schedule 1 to the Building Regulations 1991 (as amended) and that the District Council came to the correct decision in refusing to relax or dispense with this requirement. Accordingly, he dismisses your appeal.