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Ref: 45/3/149

*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 Borough Council to relax or dispense with Requirement B1 (Means of escape) of the Building Regulations 1991 (as amended) in respect of the need for fire resistant self-closing doors, forming part of building work at a dwelling house**

#### **The appeal**

3. The building to which this appeal relates is a detached three storey traditional brick and tiled dwelling house built in 1913. As existing its floor area plan was basically rectangular measuring approximately 17m in length and a minimum of 6m in depth. The first floor comprised three bedrooms. The second floor is accommodated within the roof space and comprises one bedroom and a playroom, each containing a dormer window on the front elevation. The original stair to the first floor was and remains accommodated inside the hall against the front wall and discharges by the front door. At first floor level a further stair in the centre of the house leads from the first floor landing to the second floor.

4. The building work, which is now complete, comprised three separate extensions. Two were single storey one to the rear to form a sunroom and the other to the front to form an entrance porch neither of which are at issue in this appeal.

5. The third and main extension on the left-hand side of the house comprises three storeys built in part from ground level and part over existing single storey accommodation. The ground floor of this new extension incorporates an existing study and sitting room, and in addition a new pantry and utility room - all accessed from a hall which is entered via an external door and a second original door from the existing kitchen. On the first floor there are two new bedrooms each with en-suite bathrooms; and on the second floor there is one new bedroom with en-suite bathroom, and a studio on the opposite side of the new landing. The studio has a dormer window to match the two existing on the front elevation. Its dimensions are 760mm x 500mm and is 1900mm along the roof slope from the eaves. The bedroom has a casement window also measuring 760mm - 500mm to match existing in the top of the new gable forming the rear elevation of the new extension; and the en-suite bathroom has a roof window.

6.The three floors in the new extension are accessed by a new stair aligned approximately to the longitudinal centre line of the house and discharging opposite the new external door in the hall of the extension.

7.Following completion of this work the accommodation on the first and second floors are as follows. The first floor now comprises two of the original bedrooms with the third having been converted to a through sitting room giving access to the landing of the new extension, and the two bedrooms contained therein. The original floor area of the second floor has increased from approximately 33 square metres to 67 square metres and contains the original bedroom and playroom; but the latter now gives access to the left into the new studio and thence the new landing and stair. Access from the new bedroom to the original stair is across the new landing, and thence into the new studio, and then through the original playroom.

8.A mains smoke detector alarm has been provided over the landing at each level of the new stair. There is one battery-powered smoke detector over the first floor landing of the original stair.

9.The doors giving access to both stairs are not to an appropriate specification. Those giving access to the new stair in the extension are of three varying appearances, of undetermined fire resistance, do not include self-closing devices, and are not to the specifications contained in the approved plans. The doors from the habitable rooms in the original stair enclosure are of traditional soft wood and panelled construction with no form of self-closing device.

10.The proposals for the building work were the subject of a full plans application which was conditionally approved by the Borough Council. However, for aesthetic reasons and because you believe that the building itself is no more unsatisfactory in relation to Requirement B1 of the Building Regulations than it was before the building work was carried out, you have not carried out the work according to the approved plans in relation to the provision of 30 minute fire resistant self-closing doors to the new stair, including 30 minute doors separating the two stairs, and no provision of glazing to the enclosures. You decided instead to apply for a relaxation or dispensation of Requirement B1 which was refused by the Borough Council. 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 up to and including SI 1999/77).

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

11. In support of your decision not to complete the work in accordance with the approved plans in respect of the specifications required of the doors opening onto the new stair you have argued as follows. You consider that the building is no more unsatisfactory than before the building work was carried out and that in fact the work has improved certain aspects of the fire safety of the house. You believe that the introduction of an additional stair in the new extension serving the first and second floors, and the provision of mains wired smoke detection within the new stair enclosure, together with the new window in the new bedroom on the second floor, have all improved the fire safety for the buildings occupants. You also believe that the new layout of the rooms throughout the house would result in fewer occasions when use of the second floor accommodation would be required.

12. In respect of the latter you have set out in detail how you anticipate the house will be occupied depending on the number of people within it at any one time and suggest that the second floor accommodation may not now be put into use for sleeping purposes until the total occupancy reaches seven persons. You have compared this to the house prior to the building work when you believe it would have been necessary to utilise the second floor when five persons occupied the house. You propose the occupancy will be limited in this way during the time you are the owner of the house and that these safer occupancy levels would also benefit a future owner.

13. With respect to the need for fire resistant self-closing doors you suggest that this question arose as a result of the extension to the second floor, but that this extension was only proposed in order to create a route from the original second floor accommodation to the new stair; a stair which in turn was only extended to the second floor to make that second floor safer. In your view, fire doors would be out of character in your house because of the institutional/residential care home appearance which would result.

14. Notwithstanding, you maintain that the present situation is significantly safer than before the building work was carried out, and that the house complies with the requirements of the Building Regulations under the provision of regulation 4(2). In your view, the Borough Council should consider your application for relaxation of Requirement B1 of the Building Regulations solely against the criterion of regulation 4(2).

### **The Borough Council's case**

15. The Borough Council takes the view that the building work as carried out is not in accordance with the approved plans and fails to satisfy Requirement B1 of the Building Regulations. The Council also contends that the work has affected the existing areas of the building by creating a worse situation than that which existed prior to the completed work being carried out.

16. The Borough Council judges that the original stair leading from the first floor landing to the second floor accommodation is considerably below current Building Regulations standards in terms of its pitch, going sizes and headroom. The Council points out that this stair is separated from the original second floor bedroom by an original timber partition faced with timber matching; and that the top of the stair discharges directly into a playroom. The Council also considers that the two dormer windows serving the original rooms at second floor level are not suitable for means of escape.

17. The Borough Council confirms that your full plans application was made with plans showing 30 minute self-closing fire resisting doors to the new stair, with additional 30 minute fire resisting doors to separate the two stairs; and that there would be no glazing to the stair enclosures.

18. The Borough Council refers to *paragraph 1.20 of Approved Document B (Fire safety) (1992 edition)* and comments that either a protected stair should be provided in the extension or the top storey should be separated from the lower storeys by fire resisting construction and be provided with an alternative escape. The Council also refers to *paragraph 2.12 of Approved Document B (2000 edition)* which refers to additional provisions to comply with Requirement B1 in houses with a floor more than 4.5m above ground level. On the basis of this guidance the Council acknowledges that it may be possible to utilise two unprotected stairs provided they are adequately separated for fire purposes, and thereby afford effective alternative exits.

19. However, in addition to matters of compliance of the new building work, the Borough Council has identified a number of matters which they consider constitute existing contraventions which have been made worse, or new contraventions which have been formed following completion of the new building work. In particular, the Council states that the work has increased the area of the top storey from 33 square metres to 67 square metres and the number of rooms at that level from two to four, and that as a result this has increased the risk to the means of escape from the original playroom and the original bedroom on the top storey. The new rooms on the top storey do not have access to a protected escape route as the doors throughout both stair enclosures are not fire resisting or self-closing and the existing kitchen door opening into the enclosure of the original stair contains non fire resisting glazing. In addition, the Council reports that the dormer window to the new studio on the second floor does not constitute a suitable means of escape or assisted rescue window, and that an inadequate fire alarm system has been installed.

20. The Borough Council concludes by stating that as executed the new building work fails to comply with Requirement B1 of the Building Regulations, and that it also fails to comply with the regulations by creating a worse situation than existed before in the building in terms of compliance with Requirement B1.

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

21. The Secretary of State takes the view that he is being asked to decide on whether it is necessary to provide fire resisting construction, including self-closing fire doors, to the enclosures of the new and original stairs to secure adequate means of escape for the occupants of the enlarged second floor level.

22. 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. In such circumstances, whilst sympathetic to any concerns over the aesthetic appearances of the new and original doors and enclosures, these cannot over-ride life safety issues where there is conflict. The Secretary of State also notes that reference has been made by the Borough Council to both the 1992 and the 2000 editions of *Approved Document B*, and considers such reference to be appropriate in these circumstances.

23. *Paragraphs 1.24 to 1.31 of Approved Document B (1992 edition)* provide guidance on the provisions which can be made for converting existing loft spaces in two storey dwelling houses. However, paragraph 1.23 states, inter alia, that such solutions would not be suitable where the floor area of the new second storey exceeds 50 square metres or where it is to contain more than two habitable rooms. As constructed the second floor has an increased area of 67 square metres and now has four rooms. On this basis it would appear that paragraphs 1.24 to 1.31 are not applicable to this situation. Therefore, although the second floor of both the extension and the original house is contained within the existing and new roof space, the Secretary of State considers that the new extension should be assessed as a vertical extension of an existing, three storey dwelling at ground, first and second floor levels.

24. To demonstrate compliance with the Building Regulations building work is required by regulation 4(1) to comply with the appropriate requirements of Schedule 1 to the regulations and in doing so must not result in failure to comply with any other requirement. In addition, building work is also required by regulation 4(2) to be carried out so that after completion any building which is extended complies with the appropriate requirements of Schedule 1 or is made no more unsatisfactory than before the work was carried out. The Secretary of State notes that you appear to have misunderstood this dual requirement; but also notes that in any event the Borough Council contend that your new building work fails to comply with both regulation 4(1) and 4(2).

25. In considering this case the Secretary of State has therefore made a clear distinction between what is required for the new work to comply, and that required to ensure the existing situation is not made worse.

26. With regard to the new work and compliance with regulation 4(1), it follows from paragraph 23 above that the new second floor accommodation falls to be considered as part of a three-storey house where the top floor is more than 4.5m above ground level. Therefore, in the Secretary of State's opinion, each new room should have either access to a protected stair, enclosed with 30 minutes fire resisting construction, and incorporating FD20 (20 minute fire resistant) self-closing fire doors; or have access to more than one internal stair which, whilst not protected, would need to be adequately separated from each other, thus affording an effective alternative means of escape. It is acknowledged that there are two stairs serving the building but they are not considered to be effective alternatives because a fire in the ground floor kitchen/sitting room or the first floor sitting room could simultaneously affect escape down both stairs.

27. Additionally, the Secretary of State observes that occupants of the new second floor bedroom do not have separate access to both stairs because access to the original stair can only be achieved by travelling across the top landing of the new stair. He considers that the primary route of exit from the new second floor accommodation should be via the new stair. However, the new stair is not adequately protected from a fire on the second and lower floors, and therefore does not constitute a protected route. The Secretary of State considers this to be critical because, without separate access to the original stair, the new bedroom at second floor is reliant on the new stair for its only internal means of escape.

28. With respect to compliance with regulation 4(2) the Secretary of State has noted the Borough Council's view that the new building work has made the existing compliance of the building worse. However, he takes the view that although the two original rooms at second floor level did not appear to have adequate means of escape in case of fire, the new building work has not increased the risk to the occupants of these rooms and that therefore compliance in respect of Requirement B1 has been made no worse.

29. Finally, it has been noted that your appeal was accompanied by a statement about the potential occupancy levels of the first and second floors. Given that there is no obligation on current or future owners or occupiers of the dwelling to control its occupancy in the manner in which you suggest, the Secretary of State does not consider these to be relevant.

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

30. The Secretary of State considers that compliance with Requirement B1 is a life safety matter and as such would not normally consider it appropriate to either relax or dispense with it.

31. The Secretary of State has given careful consideration to the facts of this case and the arguments put forward by both parties. He has concluded that although the building after completion of the building work complies with regulation 4(2), the building work itself has failed to comply with regulation 4(1) because it has not been executed in accordance with the approved

plans. He has also noted that the Borough Council has suggested two other solutions to overcome your wish not to provide the additional fire precautions to the new stairs. These involved either the fire separation of the top floor and provision of an alternative escape; or the possibility of utilising the two unprotected stairs by securing their adequate separation for purposes of fire.

32. In the circumstances the Secretary of State has therefore concluded that there is no case which would justify relaxing Requirement B1 (Means of escape) of Schedule 1 to the Building Regulations 1991 (as amended up to and including SI 1999/77) and that the Borough Council therefore came to the correct decision in refusing to relax this requirement. Accordingly, he dismisses your appeal.