

Date: 25/09/00

Ref: 45/3/146

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 Requirement B1 (Means of escape) of the Building Regulations 1991 (as amended) in respect of the need for an exit door at the foot of the stair to the first floor gallery room forming part of building work to a listed building comprising a Church.

The appeal

3.The building to which this appeal relates is a listed church dating from 1841. You state that it is of architectural merit. It measures some 21m from the west wall to the altar and 7m between the north and south walls. The west end of the church is entered through double doors on the south side. There is an additional external door providing egress from the vestry on the south side of the east end.

4.The building work to which this appeal relates comprises the erection of a 4.5m x 7m gallery (ie a first floor room) over the entrance and west end of the nave. The use envisaged is primarily as a Sunday school and possibly as a Committee meeting room.

5.The side of the new gallery room facing the nave has been filled in with a glazed screen which extends to the ground floor where it contains sliding glazed panels to the sides and double glazed doors to the centre. The effect is to enclose the west end of the church at ground floor level between the north and south walls, across the aisle, and to provide the option of forming a room below the gallery room containing the existing double entrance doors. Smoke detectors have been provided at ground floor level on the soffit of the gallery.

6.Access to the gallery room is via a wooden stair, enclosed only at ground floor level, which is installed on the north side and discharges via a door into the ground floor 6.5m from the main entrance. A sink and small tea point are provided in a cupboard under this stair, the doors to which need to be opened in order for it to be used.

7. The proposals for this building work were the subject of a full plans application which was rejected by the Borough Council on the grounds that in order to comply with Requirement B1 an exit door should be constructed at the foot of the stair to the gallery room at the north end of the west elevation. Although you were in contention with the Council about the need for the proposed exit door, in order to commence the work you submitted further plans which included provision of the exit door requested by the Council. This application was approved by the Council subject to a condition pertaining to structural calculations.

8. However, for structural and aesthetic reasons and because you believe that the existing means of escape is not unacceptable, you have continued to resist the Borough Council's request for an exit door. You therefore subsequently decided to apply for a relaxation of Requirement B1 which the Council refused. It is against that refusal that you have appealed to the Secretary of State. The building work is now complete with the exception of the exit door and the Borough Council has advised you that until your appeal is determined you should not use the gallery.

The appellant's case

9. You consider that it would not be unacceptable to retain the existing means of escape ie without the proposed exit door at the foot of the new stair whereby persons escaping from the gallery room pass through the ground floor. In support of this you make the following comments:

(i) The church is a listed building dating from 1841. You believe that the proposed exit door on the external elevation would be unattractive and detract from the nearby stained glass window and that it would also be unreasonable to have to provide an exit door through a 2 foot thick wall close to that window and a structural buttress.

(ii) Travel distance from the furthest point in the gallery room measured down the slope of the stair and to the final exit at ground floor is 18m, which exceeds the 15m maximum recommended in *Approved Document B (Fire safety 1992 edition)* by only 3m.

(iii) The church has a low fire risk and is not in continuous use. The gallery room itself will only be used two or three times a week by a maximum of thirty people, although the ground floor area would be in use more often. When the gallery room is in use on a Sunday, the ground floor area will always be occupied and there will therefore be early warning of fire.

(iv) A fire detection and alarm system incorporating smoke detectors at ground floor level has been provided and this is in excess of Building Regulations requirements. Emergency lighting has also been provided.

(v) An additional escape route is available in an easterly direction through the nave, exiting through the vestry door. The total travel distance in this direction is 33m, which exceeds the 32m maximum recommended in *Approved Document B (1992 edition)* by only 1 metre.

(vi) There is little combustible material on the ground floor. The walls are constructed of stone and the ceilings are plastered. You propose to ensure that the chairs are of suitable construction and the small tea making facilities located underneath the stair will be enclosed in fire resisting construction. Smoking is not allowed in the church and there is little or no use of electrical appliances that could be the source of fire.

(vii) The risk of an arson attack whilst only the gallery room is occupied is reduced by your clients intention to provide a lock and buzzer system controlling access to the church. But in response to the Borough Council's concerns you would be prepared to keep the main entrance door unlocked if necessary, or have a device such as a push pad which would permit exit at all times.

(viii) In your view the travel distance criteria applied to assembly buildings in *Approved Document B (1992 edition)* are appropriate to theatres and stadia but would be unnecessarily onerous in the case of a small church with a limited use.

The Borough Council's case

10. The Borough Council considers that without the provision of an exit door at the foot of the stair the means of escape from the gallery room is unacceptable. The Council argues that without this door persons escaping from the gallery room would need to pass through the ground floor and as such their opinion is that the stair cannot be considered to be a protected stair.

11. The Borough Council refers to the guidance in *paragraph 4.25 of Approved Document B (1992 edition)* which does include a provision to allow the use of an unprotected stair to form part of an internal route to a storey exit or final exit, provided that the distance of travel and the number of people involved are very limited. However, the Council takes the view that the distance of travel in this case is not very limited and for that reason considers that an exit door at the foot of the stair should be provided or that the stairway should discharge to the existing entrance door by way of a protected passageway.

The Secretary of State's consideration

12. In the Secretary of State's view the main point at issue is the safety of the occupants of the gallery room if a fire were to occur on the ground floor. You have argued that the maximum travel distances adopted for assembly and recreation buildings are more appropriate to theatres and similar buildings and that they are unreasonably onerous for this type of case. The Secretary of State accepts this view in the specific circumstances of this case and

considers that there might be circumstances where it would be more reasonable to apply those distances normally adopted for office buildings. But the fact remains that in this case the only means of escape from the gallery room is via the stair which discharges into the ground floor room formed below.

13. You consider that the occupants of the gallery room would be given early warning of a fire on the ground floor by either the fire detection and alarm system or by the occupants of the ground floor themselves. Although you argue that the fire detection and alarm system would not normally be required by the Building Regulations, the Secretary of State considers that where the only escape route from a room is via another room then some form of early warning will be necessary for the occupants of the inner room; and that where visual warning is not possible it is his view that a fire detection and alarm system would be required.

14. The Borough Council has referred to the guidance given in *paragraph 4.25 of Approved Document B (1992 edition)* regarding the acceptability of unprotected stairs in certain circumstances but has taken the view that these circumstances have not been met. The Secretary of State accepts this view. He has also had regard to the provisions for small premises in *clause 10 of BS 5588: Part 11: 1997* Fire precautions in the design, construction and use of buildings Code of practice for shops, offices, industrial, storage and other similar buildings previously contained in *clause 9 of BS 5588: Part 2: 1985*. This guidance provides an alternative approach to *Approved Document B* which might reasonably be applicable to design constraints similar to this case. But in this particular instance the travel distance from the door at the foot of the stair to the final exit is 6.5m more than double the 3m maximum recommended in *BS 5588: Part 11: 1997*.

15. The Secretary of State is sensitive to the need to recognise the constraints which may be imposed on compliance with the Building Regulations when the building concerned is a listed one, and he has taken into account the points you have made regarding the design and construction of the building and its historic and architectural importance. He has however come to the conclusion that it would not be appropriate to allow the stair to discharge other than to a final exit or protected passageway in this case, and as such the existing means of escape from the gallery room is unacceptable.

The Secretary of State's decision

16. In paragraphs 12-15 above, the Secretary of State has given his view on the compliance of the building work as now completed with Requirement B1 and has concluded that compliance is not being achieved. However, you have appealed to the Secretary of State in respect of the refusal by the Borough Council to relax this requirement. 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.

17. 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 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 Borough Council therefore came to the correct decision in refusing to relax this requirement. Accordingly, he dismisses your appeal.