

Date: 31/08/00

Ref: 45/3/145

*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 City Council to relax or dispense with Requirement B1 (Means of escape) of the Building Regulations 1991 (as amended) in respect of the need for a lobby at first floor level forming part of building work**

#### **The appeal**

3.The building to which this appeal relates is a five storey (including basement) terrace. The basement and ground floor comprise of a shop which is independently accessed. The first floor comprises an open plan office suite and the third floor comprises a self-contained one bedroom flat. The second floor is in the process of conversion from office use to a one bedroom flat, and it is the building work for this conversion which has resulted in your lodging this appeal. It is similarly proposed to convert the first floor office to a flat once the current lease expires. The first and upper floors each have a floor area of 55 square metres.

4.The first, second and third floors are connected by what is stated to be an 18th century staircase with original handrails, strings and winders. The stair is comprised of half-flights with half landings; the latter being constructed across the front elevation in front of, but set back from, the fenestration. The stair discharges to the street at ground level through a separate hall to the left of the shop frontage.

5.Existing escape provisions comprise a reciprocal roof escape within the adjoining building for the third floor flat which is accessed via the staircase from the landing outside this flat. The landing is separated by an unlocked half hour fire door. It is stated that there is a working fire alarm but its specification and deployment is not given.

6.Your full plans application for conversion of the second floor flat was rejected by the City Council on the grounds of non-compliance with requirements B, E and H. To achieve compliance with Requirement B1 the Council has requested that the office suite should be lobbied on the basis that the building is in mixed use and no independent secondary means of escape is possible from the second floor. Alternatively, the Council has suggested providing a cut-off screen and door on the stair between the first and second

floors.

7. However, you do not favour the alternative solution; and given the limited size of the building you consider that because there is an existing means of upward escape and an existing fire alarm system, it would be appropriate to relax or dispense with Requirement B1 if necessary on a temporary basis - to allow for the omission of the lobby to the office suite until such time as it is converted to a flat. You therefore applied to the City Council for such a relaxation/dispensation which was refused. It is against that refusal that you formally appealed to the Secretary of State.

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

8. You have stated that the first floor office tenant has objected to the construction of a lobby as suggested by the City Council and you do not consider the provision of a cut-off screen and door on the stair appropriate because it may cause irreparable damage to the existing 18th century stair details and would adversely affect natural lighting to the stair.

9. You point out that there is a working fire alarm system and in addition to the final exit at ground level, there is a reciprocal roof escape with the adjoining building that is accessible from all floors. This escape route is accessed via a staircase on the landing outside the top flat and the landing is separated from the staircase by a half hour fire door.

10. You consider that the building is small with a very limited potential total occupation. The flats are single bedroomed and likely only to be occupied by a maximum of two people. The first floor office houses three people and is only open during normal office hours on weekdays. If a fire occurred in the first floor office you therefore consider that the single door to the stair would not be likely to remain open for long.

11. In summary, you believe that carrying out any alterations to the stair would be aesthetically wrong and very difficult in practice and you are unable to provide an internal lobby until such time as the lease on the first floor expires. Based on these considerations you consider that it would be appropriate to relax or dispense with Requirement B1, if necessary only for the duration of the present first floor tenancy.

### **The City Council's case**

12. In reaching their decision that your proposals do not comply with Requirement B1, the City Council took account of *paragraph 2.46 of Approved Document B (Fire safety) (1992 edition)*, which suggests that stairs may serve both dwellings and non-residential occupancies providing that the stairs are separated from each occupancy by protected lobbies at all levels. In this case the Council points out that protected lobbies are provided to the existing flat and proposed flat in the form of entrance halls but that no lobby is provided to the first floor office.

13. The City Council accepts that the existing upper (third floor) flat has access to an alternative means of escape, however, the Council argues that the occupants of the proposed lower (second floor) flat would need to enter into, and travel up the staircase to reach it. The Council has suggested that a cut-off screen and door could be provided such that the two possible routes of escape from the proposed second floor flat are separated and the route up to the alternative escape is adequately protected from any smoke emanating into the stair from a fire in the first floor office.

14. The City Council has considered whether it would be appropriate to accept the temporary situation which you have proposed. The Council takes the view that this might put the occupants of the proposed flat at a higher risk than would normally be acceptable, and would be on the basis that the situation may be rectified when the lease relating to the first floor office expires. The Council is not confident of predicting the probability of a fire occurring within the time scale suggested and has therefore refused your application for a relaxation or dispensation of Requirement B1.

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

15. The City Council has suggested two methods of achieving a satisfactory level of protection to the stair by either providing a lobby to the first floor office or by the provision of a cut-off screen and door on the stair between the first and second floors. In the Secretary of State's view either of these methods of protection would be appropriate to the circumstances of this case. What therefore needs to be considered in this case is whether the absence of these suggested methods of protection would compromise the means of escape from the proposed new second floor flat in case of fire.

16. You have argued that the building is small; that the second floor flat has access to two escape routes; and that the building is provided with a fire alarm. However, the Secretary of State notes that the reciprocal escape from the top floor and the final exit at ground level are reached via the same stair which, in his view, could become untenable should a fire occur in the first floor office, unless adequate protection is given to the stair. Moreover, because the building is of mixed use, there is a sleeping risk attaching to the flats. The specification of the existing fire alarm system is not given, but it is considered that sole dependency on a system of even the highest specification would not be an acceptable alternative compensatory feature for the protection of the stair in these circumstances.

17. In response to the City Council's suggestions regarding a lobby or cut-off screen and door, you have stated that you are either unable or unwilling to adopt these solutions, but that you would be able to provide a lobby at first floor level at some time in the future. However, the Secretary of State takes the view that compliance with Requirement B1 is a matter of life safety which should not be compromised, no matter how short the duration may be of that situation.

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

18.As stated above, 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.

19.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 City Council therefore came to the correct decision in refusing to relax or dispense with this requirement. Accordingly, he dismisses your appeal.