

Date: 27/06/00

Ref: 45/3/139

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 a lobby to avoid an inner room situation at third floor level, forming part of building work

The appeal

3.The property to which this appeal relates is a semi-detached house comprising a basement and a ground, first and second floor containing a laundry room, study, day room, kitchen, living rooms and five bedrooms. The basement, ground, first and second floors are connected by a protected stair located on the detached wall and in the centre of the dwelling. At present there is another stair located on the party wall and in the centre of the dwelling connecting the second floor with the roof space.

4.The building work, a part of which is the subject of this appeal, involves primarily the refurbishment of the bathrooms on the ground, first and second floors; repositioning of the kitchen; and alteration of the roof space to form a new third floor. Over half this third floor comprises a lounge/lobby with storage areas and toilet facilities. The lounge/lobby gives access to a home recording studio which in turn gives access to a small recording vocal booth to one side.

5.The building work also involves removal of the original staircase between the second and third floors has been removed and replacement by a new one formed by partitioning off the left rear second floor bedroom and forming a new opening between the second and third floors. The stairwell so formed is open to the lounge/lobby on the third floor and protected by a fire door on the second floor. A storage room also opens onto this stair.

6.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 the proposals contravened a number of requirements of the Building Regulations 1991, including Requirement B1 (Means of escape). The Borough Council took the view that the studio is an inner room and the vocal booth is an inner-inner room, which are both located above 4.5m from ground level. To achieve compliance with Requirement B1, the Council considers that a lobby should be formed at the top of the stair, on the third floor, to provide

separate access/egress to the lounge/lobby and to the studio, thus eliminating the inner room status of the studio. However, you consider that the inclusion of a lobby on the third floor would not benefit the buildings safety and would significantly disrupt the intended function of this area. You therefore applied for a relaxation of Requirement B1 and the Borough Council formally notified you of their refusal to relax this requirement on It is against that refusal that you have appealed to the Secretary of State.

The appellant's case

7. You accept that the vocal booth is accessed through the studio and that the studio is accessed via the new lounge/lobby area which means that the studio is considered to be an inner room and the vocal booth an inner-inner room for the purposes of the Building Regulations. However, you consider that the lobby required by the Borough Council to separate the studio from the rest of the third floor would be an intrusion into that floor and would significantly disrupt the intended function of the third floor area. You point out that the third floor has been carefully designed to meet your clients needs and you consider that the absolute application of the Building Regulations ignores the actual use of the building.

8. You contend that the lobby area required by the Borough Council will not increase the protection of the studio area because it is already in a protected zone, ie it is fire separated from the rest of the house. However, you also state that you are prepared to install a full mains operated fire alarm system throughout the house in accordance with *BS 5839: Fire detection and alarm systems for buildings Part 1: 1988 Code of practice for system design, installation and servicing*, which will provide both audible and visual warning to the new third floor area. You point out that this is not a commercial facility but a home studio for your client and is in effect a home-office for someone who writes music. Your client states that for 90 per cent of the time he will be the sole occupant of the third floor programming computers, writing songs and taking telephone calls, although occasionally it will be necessary to work there with another person such as his musical collaborator or a singer.

The Borough Council's case

9. The Borough Councils view is that, as they stand, the proposals do not comply with the guidance given in *Approved Document B (Fire safety) (1992 edition)* because the studio is an inner room, and the vocal booth an inner-inner room, and there is no alternative way out from these rooms. The Council refers to *paragraph 1.16 of the Approved Document* and points out that there should not be inner rooms in a single family dwelling house located above 4.5m from ground level.

10. The Borough Council states that they have considered the use of the rooms and that they are prepared to accept the vocal booth as an inner room providing a lobby is formed at the head of the stair at third floor level. This lobby would need to be constructed so as to achieve a period of thirty minutes fire resistance and in addition an automatic fire alarm system should be

installed to BS 5839: Part 1: 1988. The alarm system would need to be installed to an L1 standard.

The Department's view

11. The Department takes the view that what needs to be considered in this case is the safety of the occupant or occupants of the studio area on the new third floor if a fire occurs in the access area. You have indicated on your drawings that the access area for the studio is designated as a lounge/lobby area and clearly anyone trying to escape from the studio/vocal booth area would be at risk if a fire did start in that access area. The proposal put forward by the Borough Council would negate this risk because escape from the studio area would then be via a protected lobby at the head of the stairs. Such an arrangement would technically still leave the vocal booth as an inner room but the Borough Council has accepted this. What therefore also needs to be considered is whether the proposal put forward by the Council is reasonable in the circumstances.

12. The Department accepts that *paragraph 1.16 of Approved Document B* restricts the provision of an inner room in a dwellinghouse with some exceptions. For example, exceptions may be rooms on the basement, ground or first storey of a dwellinghouse where they are provided with an openable window or an external door which is suitable for escape purposes. A further rationale for these exceptions is in respect of height - if an escape window were to be provided to overcome an inner room situation, it would be unreasonable to expect persons to escape via such a window from the higher levels of a building, such as your new third floor.

13. The Department has however looked carefully at what you are providing on the new third floor with regard to layout, soundproofing and special electrics, and has reached the conclusion that it is a specialist work area - albeit within the overall context of a dwellinghouse unit - which would not easily lend itself to the normal type of habitable accommodation that would be expected in a dwellinghouse. On this basis the Department considers it reasonable, in the context of the particular circumstances of this case, to differentiate between the new third floor and the rest of the house, and to consider your specific proposals for the new third floor as being more akin to a use in a building other than a dwelling. It follows that it would then be more appropriate to look to alternative guidance which may be more relevant to these circumstances.

14. *Paragraph 3.9 of Approved Document B* gives guidance on inner room situations in the context of buildings other than dwellings. It suggests that these are acceptable if a suitable fire detection and alarm system is provided to warn the occupants of the inner room of the outbreak of fire in the access room. Condition (c) of this paragraph does also suggest that inner-inner rooms should not be provided and, as has been pointed out by the Borough Council, the vocal booth would fall into this category. However, the Department notes your clients comments with regard to the limited use of this room; the fact that it would only be used in conjunction with the recording

studio; and the glazed separation between the two rooms. On this basis the Department therefore considers it reasonable to consider the studio and vocal booth as one unit for the purposes of fire safety, and that together they can be viewed as one inner room which falls within the spirit of the guidance contained in *paragraph 3.9 of the Approved Document*.

15. With regard to an alarm system, the Department notes that you propose to install a full alarm and detection system which will include both audible and visual warning for the third floor. The Department attaches importance to the installation of such systems in this particular case because persons in a sound-proofed area wearing head phones might well not hear the audible signal.

16. On the basis that such an alarm system is installed the Department considers that your proposal with regard to the inner room situation in respect of the studio and vocal booth satisfies Requirement B1 of the Building Regulations; and that the provision of a protected lobby at the top of the stairs is unnecessary in this particular case.

The Secretary of State's decision

17. Paragraphs 11-16 above have considered, and given the Departments view on, the issue of compliance of the building work with Requirement B1. However, you have appealed to the Secretary of State in respect of the refusal by the Borough Council to relax Requirement B1. His decision is therefore as follows.

18. 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 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 concluded that there are no extenuating circumstances which would justify a relaxation of Requirement B1 (Means of escape) of Schedule 1 to the Building Regulations 1991 (as amended). Accordingly, he dismisses your appeal.