

Date: 08/05/00

Ref: 45/3/143

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 emergency egress route from a roof space conversion

The appeal

3. The building work to which this appeal relates is completed. It comprises the conversion of the roof space of a three bedroom, semi-detached house to form a habitable room of approximately 12metres square at second floor level. The stair at ground and first floor level is fully enclosed with fire resisting walls and the hallway extends to a final exit. The new stair leading to the second storey rises from the existing staircase enclosure. The doors leading onto the staircase enclosure are fitted with self-closing devices and the door to the new room on the second floor has 30 minutes fire resistance. The new storey is fire separated from the rest of the house. You state that a mains operated smoke detection system has been installed.

4. Two roof lights have been installed in the rear slope of the roof, the lower one of which is intended to be a fire escape window and is of appropriate dimensions. An existing rear extension to the ground floor lounge extends approximately 2m beyond the rear elevation of the house. It has a very shallow pitch tiled roof and is located below the new loft escape window. Access is stated to be available to the rear garden.

5. The above building work was carried out under the Building Notice procedures. At the first site inspection the Borough Council questioned the viability of the rear fire escape window having regard to its position in relation to the rear extension at ground floor level and the excessive distance of the escape window from the eaves. You state that because of structural constraints in the roofing timbers the bottom of the escape window has been positioned at 2.2m along the roof line from the eaves rather than the 1.7m as illustrated for guidance in *Diagram 4 of the extant Approved Document B (Fire safety) (ie the 1992 edition)*. In addition, the Borough Council contends that the rear extension forms an obstruction to ladder access to the escape window and that reliance would have to be placed on the Fire Brigade for rescue.

6. The Borough Council therefore took the view that your building work does not comply with Requirement B1 and indicated that they would be considering appropriate legal action. However, you contend that you have provided a protected and fully alarmed escape route, and that under the circumstances it would be appropriate for the Borough Council to relax Requirement B1 insofar as it relates to the location of the escape window to the loft conversion. You therefore applied to the Borough Council for a relaxation of Requirement B1 which was formally refused by the Council. It is against that refusal that you have appealed to the Secretary of State.

The appellant's case

7. You consider that the issue is not one of whether ladder access is possible to the rear escape window but more one of whether adequate precautions have been undertaken on the project to afford reasonable means of escape in fire, to the extent that Requirement B1 of the Building Regulations is satisfied. You point out that whilst Requirement B1 is a statutory requirement, the guidance given in the extant *Approved Document B* is not mandatory and states that alternative ways of demonstrating compliance may be appropriate. You add that it uses words such as may in the context of using a ladder for rescue purposes and, in your view, provision for means of escape commonly uses a fire engineering approach to achieve compliance with Requirement B1 in many ways.

8. You state that you have incorporated a mains operated alarm and detection system with battery back-up on each floor, as part of the alterations package, and you point out that this is additional to the recommendations given in the extant *Approved Document B* for loft conversions. You also state that the location of your escape window has the approval of the local Fire Authority.

9. The Fire Authority accepts that the rear extension prevents a ladder being placed safely up to the escape window. However you state that the Fire Authority has suggested that they would be able to use a triple extending ladder for rescue, which they have said is carried on all fire appliances. The Fire Authority has provided a letter to the Borough Council agreeing to your application for a relaxation to approve the escape window as constructed, subject to the provision of a suitable early warning system.

10. You emphasise that the Fire Authority's preferred method of rescue would be via the internal stair and in this sense you consider that the early warning system that you are providing will be of particular value. You state that the existing doors opening onto the stair enclosure are fitted with self-closing devices and the door to the new room on the second floor has 30 minutes fire resistance. You point out however that if all of these doors had been replaced with new self-closing 30 minutes fire resisting doors then the escape window would not have been required. As part of your justification for this you refer to a previous appeal decision by the Secretary of State which had accepted that the existing first floor could remain as constructed, ie with a modified 30 minutes period of fire resistance. You contend that your proposals are generally in line with past decisions issued by the Secretary of State where

emphasis has been put on the primary escape route as being of utmost importance. You believe that you have provided a protected and fully alarmed escape route which goes beyond the minimum requirements of Requirement B1.

The Borough Council's case

11. The Borough Council accepts that, with the exception of the escape window, all other aspects of the work complies with the guidance given in the extant *Approved Document B*. The Council also accepts that the mains operated smoke detection system will provide early warning of fire and that the internal stair should provide the primary route of escape. However the Council takes the view that for loft conversions an adequate alternative escape route should also be in place.

12. The Borough Council considers that the escape window you have provided from the habitable room on the new second floor is unsatisfactory. This in their view is due to the excessive distance of the window from the eaves, coupled with the position of the existing pitched-roof extension which would obstruct ladder access to the window. The Council has taken account of your understanding of the fire officer's opinion that the triple extending ladder that is carried by the Fire Brigade, could be laid at about the same angle as the house roof. However the Council points out that paragraph 1.31 of the extant *Approved Document B* states that it should not be assumed that only the fire service will make a rescue. In the opinion of the Council reasonable alternative measures therefore have not been provided.

The Department's view

13. The Department takes the view that what needs to be considered in this case is the safe escape of persons in a fire situation from the new loft room. You have pointed out that in the case of a new three storey house there should be a fully protected stairway and all floors are expected to be constructed so as to achieve a full 30 minutes standard of fire resistance. In a two storey house where a loft conversion is to be carried out it is permissible for the first floor to remain as constructed, ie usually with a modified 30 minutes standard of fire resistance, and the stairway to be partially protected, i.e. with door closers fitted to the existing doors.

14. The Department considers it important that if the concessions given in *Approved Document B* for loft conversions are to be applied, then the escape window should be positioned in a suitable location such that it facilitates rescue with a reasonable degree of safety. To this end paragraph 1.30 and Diagram 4 of the extant *Approved Document B* give guidance on the location of the escape window and in the Department's view this guidance should normally be followed. You have provided an escape window but it is located 2.2m from the eaves instead of at the 1.7 m recommendation given in the extant *Approved Document*.

15. *Paragraph 1.31 of the extant Approved Document B* states that in respect of the use of a ladder it should not always be assumed that only the fire service will make a rescue. This is relevant in this case as it appears that the Fire Authority has suggested that the only means of spanning the ground floor extension to achieve a reasonably safe ladder access to the escape window would be by using a Fire Brigades triple extending ladder. The published 2000 edition of *Approved Document B* now provides guidance on this situation by stating that The effect of an extension (especially from a loft conversion) should be considered. Although this latter guidance does not take effect until 1 July 2000 for the purposes of considering issues of compliance with the Building Regulations, in this instance it is considered appropriate to take it into account as the issue before the Secretary of State is one of the appropriateness of relaxation.

16. The Department notes the comments of the Fire Authority and the fact that you are installing a mains operated smoke detection system. However, although the Department accepts that the detection system will give early warning of fire, it will not prevent escape via the stairway from being prejudiced by smoke. The Department therefore accepts the need for the escape window and the Borough Council's judgement that it is not suitably located both with respect to the distance from the eaves and in respect of its position above the ground floor extension which will exacerbate the difficulty of rescue created by the increased distance from the eaves.

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. He has given careful consideration to the facts of this case and the arguments put forward by both parties. He has also noted your reference to a previous appeal decision which you contend constitutes a similar one to this. However, the Secretary of State is required to consider all cases on their individual merits, and issues specific to previous cases will not necessarily be relevant to subsequent ones.

18. The Secretary of State considers that in this case the location of the escape window from the new second floor is unsatisfactory with respect to both the excessive distance of the window sill from the eaves and in respect to the rear ground floor extension which has the potential to make safe escape more difficult. He has concluded that the structural constraints which apparently determined the location of the escape window do not amount to extenuating circumstances such as would justify relaxing Requirement B1 (Means of 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.