

Date: 28/01/00

Ref: 45/3/132

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 ventilation to a staircase serving a block of flats

The appeal

3. The building work to which this appeal relates was the subject of a full plans application which was conditionally approved. The work has been completed. It comprises one (Block A) of two blocks of flats containing 24 flats in total. Block A is L shaped and comprises a mix of one and two bedroom flats on each of the three storeys (ie ground, and first and second floors). The block is of walk-up design and divided into two with a single staircase serving flats in each of the two parts. One stair exits onto the frontage of the block; and the other exits onto the side of the block. The stairwell to the former stair has a vertically aligned window on the front elevation of approximately 3.1m x 5.6m running from the first to second floor levels. This stair serves 6 two bedroom flats. The second stair is completely enclosed.

4. The approved plans showed means of ventilation to both stairwells. This was to be provided by openable windows in the fenestration to the stairwell on the front elevation; and by roof ventilation to the enclosed stairwell on the side elevation.

5. A site inspection at completion stage was carried out and you were informed of a number of outstanding items that included the need to make provision for openable windows to the front staircase to Block A, as in accordance with the approved plans. The Borough Council subsequently wrote to you advising that if this contravention was not rectified formal action would be taken under section 36 of the Building Act 1984.

6. However, you took the view that the work complied with Requirement B1 and that the requirement for openable windows or openable vents was unreasonable, as the means of escape to a place of safety outside the building was capable of being safely and effectively used at all material times. You therefore requested a determination from the Secretary of State. As the work had been completed you were advised that a determination request could not be accepted under section 16(10)(a) of the 1984 Act. You then

applied to the Borough Council for a relaxation of Requirement B1, which was refused. It is against that refusal that you have appealed to the Secretary of State.

The appellant's case

7. You consider that you have satisfied Requirement B1 of the Building Regulations and in support of this you have stated the following:

(i) You believe that in case of fire, the means of escape is capable of being safely and effectively used at all material times. You state that the building only has 3 storeys and as such, is one storey less than that suggested in *Approved Document B (Fire safety)* as being acceptable for consideration as a small single stair building.

(ii) There are only two flats per floor that open onto the stairway, ie 6 flats in total instead of the 8 that would have been considered acceptable if *Approved Document B* had been followed and there had been 4 storeys.

(iii) All the flats have double frontages capable of being reached by firemans ladder and have windows large enough to exit in an emergency. You accept however that escape from a window would only be used as a last resort in the event that the stair was incapable of being used because of fire spread.

(iv) Each of the flats has a protected hallway and a self closing 30 minute fire resisting front door. You believe that the chances of the staircase being rendered unusable through fire or smoke are extremely small. You take the view that should a small amount of smoke leak from a lower flat into the stairway, there is still a large stairway volume above the upper flat level to be filled before the stair is rendered unusable.

8. You consider that in the event that the stair did become full of smoke then persons on the upper floors would be safe to wait in their flats until the Fire Brigade arrived. You contend that, if confronted with a smoke logged stair, the Fire Brigade are much more likely to break a window in order to ventilate the stairway rather than don breathing apparatus and climb up the smoke-logged stair to open a window.

The Borough Council's case

9. The Borough Council is of the opinion that the principal objective of providing openable windows in these situations is to allow the stairway to be ventilated quickly and effectively in the case of smoke contamination. In the Council's view this facilitates access for fire fighting and ensures that the stairway can be cleared quickly to facilitate escape. The Council also considers that your proposal that fire fighters could break and clear the windows of glass from outside during a fire fighting operation is unacceptable.

10. The Borough Council points out that you gave many assurances that openable windows or vents would be installed, in accordance with the plans and details submitted which showed compliance with Requirement B1. The Council takes the view that reliance on secondary means of escape through any of the individual flat windows is unsatisfactory in this case as the windows suitability is not known and, being new build, the recommendations of *Approved Document B* with regard to the ventilation of the common staircase should be followed.

11. As part of its procedures for considering requests for relaxation the Borough Council has consulted with the Fire Authority which supports the Council's views and has suggested that alternative methods of ventilation that satisfy *BS 5588 (Fire precautions in the design, construction and use of buildings) Part 1: 1990 (Code of practice for residential buildings)* may be acceptable. The Borough Council points out however that the guidance given in the British Standard with regard to stairway ventilation exactly mirrors that given in *Approved Document B*.

The Department's view

12. The Department takes the view that the issue in this case is whether openable windows or vents, as described in *Approved Document B*, could be reasonably replaced by breakable windows. As you have suggested guidance for the design of flats with respect to fire safety is based on the premise that each flat is a separate fire compartment, thus isolating the fire and limiting fire spread. If the fire can be restricted to one flat then in many cases the only persons who may need to escape are those in the fire affected dwelling.

13. There will however be situations where persons may wish to escape or during fire fighting the Fire Brigade may make an operational decision to evacuate the building. The provisions contained within *Approved Document B* for ventilation to the common stairways of flats are intended to facilitate such situations.

14. You have suggested that it might be more appropriate for the Fire Brigade to break windows to the stairway rather than try and open a window. However, the operational procedures to be adopted by Fire Brigades are not matters for the Building Regulations. The guidance given in *Approved Document B* suggests that openable vents for use by the fire service should be provided to the common stairway of flats and it is an operational decision as to how and when they use them.

15. The Department takes the view that openable vents are necessary in this type and size of building. Whilst alternative solutions which satisfy the requirements of the Building Regulations could be acceptable - such as stair pressurisation schemes - in the Department's view the need for the Fire Brigade to break windows to achieve ventilation would not be an acceptable alternative. Moreover, the Department notes also that this is a new building and does not therefore consider that there is any justification for the ventilation to be omitted. In the Department's view openable vents should be

provided in accordance with your original proposals as approved by the Borough Council.

The Secretary of State's decision

16.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 noted that the subject window was not installed in accordance with the approved plans. He has concluded that there are no extenuating circumstances which 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.