

Date: 16/09/99

Ref: 45/3/115

*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 or dispense with Requirement B1 (Means of escape) of the Building Regulations 1991 (as amended) in respect of internal alterations to a retail unit**

#### **The appeal**

3. The building work to which this appeal relates has been completed and comprises internal alterations to an existing two storey retail unit to form a coffee shop with accommodation at ground and basement level. The premises occupy a corner site with the M.... Street side tapering such that the rear of the premises is wider than the front.

4. The side-street side of the ground floor as altered contains window boxes, perch bar style tables and display units. There was previously a wall in the basement which separated the retail area from a storage area, but this has been removed to allow more space for refreshment retail. Two new toilets have been installed to the rear of the basement refreshment retail area. There is also a smaller room at the rear of the basement which opens onto the refreshment retail area and contains a wash down sink and basin, a large chiller and a freezer cabinet. You have not stated the purpose of this rear basement room but the Department assumes that it is for refreshment preparation and storage. The plan shows an inward opening door on the street side of the basement preparation room but the purpose is not stated and there is no indication that it could be used for escape purposes.

5. The basement and ground floors are linked by an open stair positioned on the party wall side of the building. You have not indicated table layouts or given any indication of the number of persons expected to use the basement or ground floors. The Department has however estimated the following floor areas from your plans:

Ground floor refreshment retail area - 42 square metres

Basement refreshment retail area - 37 square metres

Basement preparation room - 14 square metres.

6. The alterations to the ground and basement floors were contained in a full plans application which was rejected on the grounds of non-compliance with requirements contained in seven parts of the Building Regulations, of which Part B was one. In respect of Requirement B1, the Borough Council requested further information regarding the use of all the areas and means of alternative escape; and in respect of Requirement B3, the Borough Council specified that the ground storey should be constructed as a compartment floor. It is understood that the alteration works then proceeded. You were then advised in a letter from the Borough Council that at a recent site inspection the building work did not comply with the Building Regulations because the staircase had not been enclosed with construction that would achieve a 30 minute period of fire resistance. The same letter warned that if the work had not been rectified within 28 days then enforcement action under section 36 of the Building Act 1984 might follow.

7. However, you considered that the manner in which the business of the coffee shop was conducted were such that the risks did not warrant enclosure of the stairs. You therefore applied to the Borough Council to relax or dispense with Requirement B1 insofar as the stairs should remain unprotected up to a final exit. Your application was refused and it is against that refusal that you appealed to the Secretary of State.

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

8. You consider that the stairway from the basement to the ground floor need not be protected to a final exit as is suggested in *clause 9.2.4(b) of BS 5588 (Fire precautions in the design, construction and use of buildings): Part 2: 1985 (Code of practice for shops)*. You make the following points in support of your case:

(i) The premises do not constitute a restaurant because there is no table service and the consumption of cold food comprises only a small percentage of the turnover.

(ii) There are no cooking facilities on the premises.

(iii) The risk to persons from fire is actually less than was the case with the previous retail use because there are no display units. Therefore the visual and physical obstructions to the escape route have to a large extent been removed.

(iv) The nature of the product/display has resulted in a lessening of the fire load because it is mainly non-combustible.

(v) A fire alarm and smoke detection system has been installed.

## **The Borough Council's case**

9. The Borough Council give the following points in support of their rejection of your application to relax or dispense with Requirement B1 of the Building Regulations and in particular with regard to the enclosure of the basement stairway in fire resisting construction and the discharge of the stair to a final exit:

(i) The premises is considered to be a restaurant since tables and chairs are provided for the consumption of food. The issue of whether the food is hot or cold or whether table service is provided is not considered relevant.

(ii) The fact that no cooking is carried out clearly has a bearing on the level of fire risk but does not affect the need for the stairway to be enclosed and to discharge to a final exit. In a restaurant where cooking processes impose a significant risk then additional precautions, such as enclosing the cooking area in fire resisting construction, may be required.

(iii) *Clause 9.2.4(b) of BS 5588: Part 2:1985* does suggest that open plan stairways may be acceptable in small shops but this is subject to conditions and the proviso that they are neither a restaurant or bar.

(iv) Your contention that the risk in your premises is less than that of an ordinary shop and that the fire load has been reduced, does not appear to be relevant to the Borough Council.

## **The Department's view**

10. The Department takes the view that what needs to be considered in this case is the safety of the occupants of your refreshment areas if a fire were to occur on either the ground or basement floors. The main point at issue is whether it is reasonable to relax or dispense with Requirement B1 of the Building Regulations. Reference has been made to the guidance given in *BS 5588: Part 2: 1985* and the Department notes that this document has now been superseded by *BS 5588: Part 11: 1997 (Code of practice for shops, offices, industrial, storage and other similar buildings)*. However, the Department does not consider that this alters the arguments put forward in the case.

11. The Department supports the view of the Borough Council that the premises should be considered as a restaurant. As the Borough Council points out the fact that only cold food is served is not relevant. You have not indicated the maximum number of persons that are expected to use the premises but, based on the Departments assessment of floor area and using *Table 1 (Floor space factors) of Approved Document B (Fire safety)* as a guide, the Department estimates the following possible occupancies:

Ground floor refreshment area - 40 persons

Basement refreshment area - 35 persons

Basement preparation room - 5 persons.

12. If a fire were to occur on the basement floor and taking into consideration the open stair then there are two escape scenarios. Firstly the occupants of the basement would not have the benefit of reaching a protected stair and smoke from the fire would quickly prejudice what appears to be the only escape route. If the door shown on the outside wall of the preparation room is in fact an escape route then whilst this may be of benefit to the occupants of that room it would be unreasonable to expect members of the public to escape through a preparation room. Secondly smoke from a basement fire could rise up the open stairway and prejudice escape from the ground floor. It appears from the plan that escape from the ground floor is only available via the main entrance door. Equally if fire occurred on the ground floor it could prejudice escape from the basement because the stair is open to the ground floor.

13. The Department acknowledges the fact that you are providing a fire alarm system which includes smoke detectors. However, research into fire deaths has shown that persons eating and drinking are slower to move when an alarm sounds than they might do in other use buildings. After taking account of the use of the premises and the possible number, likely age and abilities of persons using the refreshment retail facilities, the Department supports the arguments put forward by the Borough Council that a protected stair to a final exit door should be provided. The Department does not consider it reasonable therefore to relax or dispense with Requirement B1 of the Building Regulations.

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

14. 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. 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 relaxing or dispensing with 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 or dispense with this requirement. Accordingly, he dismisses your appeal.