

Date: 23/07/99

Ref: 45/3/127

*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 District Council to dispense with Requirement B1 (Means of escape) of the Building Regulations 1991 (as amended) in respect of a third storey loft conversion**

#### **The appeal**

3. The proposed building work to which this appeal relates comprises the alteration of the roof space of a two storey, semi-detached, Victorian house to form a new third storey comprising a single bedroom with en suite facilities. The two sketch plans (marked as being to the nearest foot) submitted with your appeal show the proposed new room and part plan of the existing first floor.

4. The plans show that the head of the new stair is to be open to the new loft room but will discharge at its base into a "fire lobby" formed on the existing first floor landing which has two doors opening on either side of the base of the stair. One door (marked door (b)) opens onto the rest of the landing and the ground to first floor stairs; the second door (marked door (a)) gives access to a main bedroom. Both doors are indicated as period panel doors with the door opening onto the landing being specified as self-closing. The glazing above the lobby doors is of Georgian wired glass. The partitioning to the new staircase and lobby is specified as fire proof on your plans.

5. These proposals formed the basis of discussions for full plans approval - but there is no record of any full plans application having been made. The District Council considered that to receive a full plans approval the door marked (b) should be replaced with a fire door; and that there should be mains operated smoke detection at each landing area to alert any occupants of the premises of any potential danger.

6. You were content to comply with the smoke alarm provisions but were not content on aesthetic grounds to replace the period panel door (door (b)) with a fire resisting one. You considered that the panelled door is of sound construction and adequate for its purpose. You therefore applied to the District Council for a dispensation of Requirement B1 in order to retain door (b) which was refused. It was against that refusal that you then appealed to the Secretary of State.

## **The appellant's case**

7. In support of your case for a dispensation of Requirement B1, you state that you have made every effort to follow the advice of the District Council with regard to compliance with the Building Regulations. In particular you cite the following specific issues where you have complied with their recommendations:

- (i) Floor and wall construction;
- (ii) Size and design of staircase;
- (iii) Location, size and adequacy of roof lights for escape purposes;
- (iv) Provision of new stair handrail;
- (v) Provision of a lobby at the foot of the new stair with door (b) to this lobby separating the new stair from the ground floor accommodation. You state that this door is of a sound period construction. You also state that all doors opening onto the staircase will be fitted with self-closing devices;
- (vi) Replacement of glass in fan lights of existing doors with new Georgian wired glass;
- (vii) Improvement to staircase partitioning;
- (viii) Provision of mains operated smoke alarms at ground, first and new second floor level.

8. Your application to the District Council for a dispensation of Requirement B1 in order for you to retain the existing door (b), was made on the following grounds:

- (i) The door you are providing is of sound period construction, fits well and you consider it to be adequate for its purpose;
- (ii) You have been careful to conserve and restore the period fittings of the house and the provision of a new fire door would be inappropriate in the circumstances.

9. You have also indicated your belief that the District Council is applying the Building Regulations defensively and that you would be willing to accept a qualified completion certificate from them which accepted your proposed door.

## **The District Council's case**

10. The District Council have not made a separate submission to the Secretary of State giving reasons for their rejection of the appeal but they have copied their original rejection notice issued to you. This notice states that there is inadequate fire separation between the new storey and the rest of the house as dictated under Requirement B1 of the Building Regulations.

## The Department's views

11. What needs to be considered in this case is the safety of the occupants of the new second floor in a fire situation. The guidance contained in the *Approved Document B (fire safety)* for loft conversions is intended to provide a satisfactory level of fire safety whilst taking into account the problems associated with loft conversions to existing buildings. You have not provided any information concerning the ground floor layout, but if fire occurs on a lower floor then the usual assumption is that the primary route of escape will be via the stairs.

12. As an alternative to escape down the stair, provision is made in *Approved Document B* for escape or rescue from the new loft room window. However, because of possible delays in assistance, safe escape or rescue via this window is dependant on there being adequate fire separation between the new second floor and the lower floors. The fire separation is intended to allow sufficient time for rescue if an occupant becomes trapped in the new loft room during a fire. For this reason a minimum period of fire resistance of 30 minutes has been specified to separate the lower floors from the new second floor loft room.

13. The lobby layout you propose is an acceptable alternative to having the door located at the head of the stairs and is indicated in *diagram 3c of Approved Document B*. However, although you have indicated that door (b) is a period one and is of robust construction, you have not provided any independent assessment of the period of fire resistance that this existing door could be expected to achieve. Without such an assessment it is not possible to determine whether persons could remain in the new loft room in safety while waiting to be rescued. It would be possible for you to obtain such an assessment from a recognised body. The acceptability of this assessment in terms of compliance with Requirement B1 would then be a matter between you and the District Council. Alternatively, it is possible to upgrade the fire resistance of doors of architectural merit by the use of an intumescent coating to an appropriate thickness. However, again the acceptability of this solution in terms of compliance with Requirement B1 would be a matter between you and the District Council.

14. The Department has noted the points you have made in support of your case for a dispensation but regards many of them as standard provisions for a loft conversion, and has taken into consideration the age of the property and the aesthetics of the door in question. However, it considers it essential in this case that the full recommended 30 minute period of fire resistance separation be provided between the new loft room and the lower floors.

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

15. The Secretary of State considers Requirement B1 (means of escape) to be a life safety matter and as such would not normally consider it appropriate to either relax let alone 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 or dispensation of Requirement B1. Moreover, he has noted that some options for achieving compliance with Requirement B1 appear to remain unexplored. In his view, the District Council therefore came to the correct decision in refusing to dispense with Requirement B1. Accordingly, he dismisses your appeal.