

Date: 12/02/99

Ref: 45/3/123

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 alteration of a roof space to form a habitable room in a two storey dwelling

The appeal

3. The building work to which this appeal relates is substantially complete and comprises the alteration of a roof space to provide a single room designated as a study/playroom in a detached two storey three bedroom house. The ground floor of the house is open plan in that the front door lobby opens direct into a combined lounge and dining area running from front to back of the building. The stairs to the first floor discharge into the centre of the lounge and dining room area.

4. The alteration work was substantially completed before it became apparent that Building Regulations approval was required. You therefore made a full plans application to the Borough Council which was rejected on the grounds that they did not provide adequate means of escape. The Borough Council took the view that because the existing stair discharges into the ground floor lounge/dining area your proposals did not conform to the guidance contained in *Approved Document B (Fire safety)* and therefore were not in compliance with Requirement B1.

5. Following further discussions with the Borough Council you subsequently amended your proposals to provide in total for a fire resisting enclosure to the new stair and additional fire resisting construction at first floor level, including a 30 minute fire resisting lobby at first floor level, so as to provide fire separation between the open plan ground floor accommodation and the upper floors. Your proposals also provided additional escape windows on the first and second floors and a mains operated smoke detection system with additional detectors and sounders at ground, first and second floor levels. These formed the basis of a second full plans application. However, even with these amendments you accepted that your proposals do not conform with the guidance given in *Approved Document B*. You therefore applied for a relaxation of Requirement B1. The Borough Council rejected your second full plans application and your application for a relaxation.

6. However, notwithstanding that you accepted that your proposals do not accord with *Approved Document B* you believed that the further amendments you proposed in your second application made the scheme an acceptable package. You therefore appealed to the Secretary of State against the decision by the Borough Council to refuse to relax Requirement B1.

The appellant's case

7. You accept that your building work and subsequent amendments do not conform to the guidance given in *Approved Document B* and, in particular, paragraph 1.24 of that document which gives advice on the enclosure of existing stairs. However you suggest that the package which you are offering, including your subsequent amendments, will allow occupants to make an independent or assisted escape from first floor level, or assisted escape from second floor level.

8. Your proposed package includes the following provisions:

- i) a full mains operated smoke and heat detection system with detectors at ground, first and second floor levels to provide early warning of fire
- ii) the provision of a 30 minute fire resisting barrier at first floor level with a 30 minute fire door (FD30S) fitted at the head of the first floor landing. This will give fire separation between the ground and upper floors allowing persons to check on other family members before making their escape from the first floor escape windows
- iii) self-closing devices to be fitted to all existing doors and the new second floor will be constructed to achieve 30 minutes fire resistance
- iv) a gable window installed at the new second floor level with dimensions which are suitable for escape purposes. Three first floor windows will also be suitable for escape purposes
- v) the existing cupboard beneath the stairs on the ground floor will be underdrawn to give fire resistance.

The Borough Council's case

9. The Borough Council acknowledge your attempt to provide fire separation at first floor level and a comprehensive alarm system to compensate for the lack of a protected escape route to a final exit (as suggested in *paragraph 1.24 of Approved Document B*). However, because you have not provided such a route the Borough Council consider that your proposals rely totally on secondary escape routes provided by the proposed windows. They contend that the absence of a primary escape route - ie protected stairs - could still provide a risk to the occupants of the dwelling, some of whom could be young children or persons that may be infirm.

10. In accordance with Section 15 of the Building Act 1984 the Fire Authority were consulted by the Borough Council before a decision on the relaxation application was made. The Fire Authority supports the application for a relaxation of Requirement B1 and express the opinion that your proposals should be considered as a package of measures which interlink to achieve a reasonable standard of fire safety.

The Department's views

11. *Paragraphs 1.23 to 1.28 of Approved Document B* give guidance on loft conversions and which is intended as a concession where it would be unreasonable to expect the normal fire safety provisions for a new three storey house to be incorporated. In particular, paragraph 1.24 suggests that the existing stair should be in a fire resisting enclosure and either extend to a final exit or give access to at least two escape routes at ground level which are separated by fire resisting construction. A further concession permits door closers to be provided to existing doors. However, the guidance assumes that the stair will form the primary route of escape with escape windows being provided only as a secondary alternative. There are no concessions given which suggest that the protected stair could be dispensed with.

12. The Department acknowledges the value of your proposals package, particularly with regard to the provision of fire resisting construction on the first floor landing to separate the open plan ground floor from the upper storeys, and the comprehensive alarm and detection system. However, if a fire occurs in the ground floor living/dining area the stairs will immediately be prejudiced because they are open to this accommodation. The Department accepts the Borough Councils judgement that in this situation the escape windows on the upper floors would become the primary route of travel rather than a secondary alternative route. The Department does not therefore consider that your proposals show adequate means of escape from the new second floor accommodation.

13. The Department recognises the problems associated with providing a protected stairway in situations such as yours. One alternative which you may wish to consider is the provision of a domestic sprinkler installation in the ground floor open plan accommodation. This would help contain any fire that started in this area and allow time to use the stair for means of escape. However, this would be a matter for you to discuss and agree with the Borough Council.

The Secretary of State's decision

14. You have appealed to the Secretary of State against the Borough Councils decision to refuse to relax Requirement B1 of the Building Regulations 1991 in order to accommodate your proposals to achieve compliance. The Departments views on compliance of those proposals have been given in paragraph 12 above.

15. The Secretary of State has given careful consideration to the facts of this case and the arguments put forward by both parties. Requirement B1 is a life safety matter and as such the Secretary of State does not normally consider it appropriate to either relax or dispense with it. In this particular case he has concluded that there are no extenuating circumstances which would justify consideration of a relaxation of Requirement B1 and that the Borough Council therefore came to the correct decision in refusing to relax Requirement B1 of Schedule 1 to the Building Regulations 1991 (as amended). Accordingly, he dismisses your appeal.