

Date: 03/07/98

Ref: 45/3/109

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 internal alterations to a three storey dwelling

The appeal

3. The proposed work to which this appeal relates comprises of internal alterations to an existing small, end of terrace, three storey dwelling. The ground floor frontage is approximately 4 metres tapering to a rear width of approximately 2.5 metres. Each storey contains one room at the front and one at the back. An enclosed stairwell approximately 1.7 metres in width rises from the hall at ground floor level up through the middle of the property and contains half landings between each floor. The front door is located on the side of the dwelling and opens into the hall opposite the foot of the stairs. The main staircase provides the escape route from the building; an alternative escape route is via a large outward opening window from the first floor bathroom onto a flat roofed rear extension.

4. Your clients propose creating more floor space in the lounge by removing the existing wall between the lounge and the hall/stairwell. The proposal is to then reconfigure the ground to first floor stair (by employing winders in part) and integrating it into the volume of the extended lounge. The front door is to remain in its present position but will open directly into the lounge. To compensate for the reduction in escape time resulting from removal of the stairwell wall, it is proposed to install smoke alarm sensors in the lounge and kitchen linked to alarms in the bedrooms.

5. The kitchen forms the second ground floor room on the opposite side of the hall. It is proposed that this should remain separate and compartmented from the rest of the property. Your clients are willing to install a 30 minutes fire resistant door to the kitchen to hinder the possible spread of fire from this room to the staircase; and this has been shown on the plans.

6. These proposals were the subject of a full plans application which was rejected by the Borough Council on the grounds of non-compliance with Requirement B1 (means of escape). The Borough Council took the view that the compensatory proposals would not offset the risk created by the stairway becoming open to the lounge. However, you consider that the requirement for the provision of full fire protection for the ground and first floor stair to be unreasonable and therefore applied to the Borough Council for a relaxation of Requirement B1. The Borough Council refused this application and it is in respect of their refusal that you have appealed to the Secretary of State.

The appellant's case

7. In justification of your case for a relaxation of Requirement B1 you have made the following points:

i) you propose to provide a smoke alarm system which would incorporate a smoke detector within both the kitchen and the lounge, on the ground floor. These detectors would be linked to alarms within the bedrooms and the bathroom on the upper floors. You believe this would compensate for the lack of separation and protection to the stairway

ii) there is an alternative means of escape via the first floor bathroom which is accessed from the stairway; escape then being through the outward opening bathroom window and onto a flat roof

iii) in addition, your clients have said they would be prepared to provide a half hour fire resisting door to the kitchen on the ground floor so as to provide greater separation between this area and the lounge, which is open to the stairway.

The Borough Council's case

8. The Borough Council state that removal of the wall which separates the stairway from the lounge, at the ground floor level, would place the occupants of the upper two floors at risk from a fire which might occur within the lounge.

9. The Borough Council note that a compensatory fire alarm system is proposed, together with the provision of an alternative means of escape via the first floor bathroom window. They have also noted your clients willingness to provide a half hour fire resisting door to the kitchen. However, the Borough Council consider that although the proposed smoke alarm system would give early warning of a fire if one occurred within the lounge itself, the stairway would already be affected by smoke and this would seriously compromise its use as an escape route. It is the Borough Council's opinion that this would render escape via the bathroom window, or the main door at ground level, difficult or impossible.

10. The Borough Council consulted the County Fire Officer of the Fire and Rescue Service and cite his comments in support of their decision. The County Fire Officer states that the staircase enclosure would quickly become untenable in the event of a fire occurring within the lounge whose classification would be high fire risk.

The Department's view

11. The Department notes that your proposals include the provision of certain compensatory measures with a view to enabling you to remove the wall which currently separates the staircase from the lounge area on the ground floor.

12. The Department considers that the provision of a half hour fire resisting door to the kitchen would certainly help to reduce the risk of any possible fire spread from this area into the proposed combined lounge and staircase area.

13. The Department also considers that the provision of a smoke alarm system on the ground floor, interlinked with alarms to the two floors above, would provide early warning of a fire to the occupants. However, it considers the lounge has the potential to be a high fire risk area. It is therefore the Department's opinion that should a fire occur within the lounge there is a very high probability that by the time a smoke detector operated a considerable part of the lounge, and the staircase itself, would be severely affected by smoke. Such a scenario could prejudice safe escape via the open stairway which is the primary route of escape.

14. The Department notes that the alternative escape route proposed is via the first floor bathroom window. However, the bathroom is entered directly off of the main staircase, which according to your proposals would be unseparated from the open ground floor lounge area. The Department therefore considers that should a fire occur similar to the one described in paragraph 13 above then it would be highly probable that this part of the staircase would be seriously affected by smoke as well, and thus also prejudice escape via the alternative route.

The Secretary of State's decision

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 of Schedule 1 to the Building Regulations 1991 is a life safety matter and as such the Secretary of State does not normally consider it appropriate to relax or dispense with it. There are no extenuating circumstances which would justify consideration of a relaxation of Requirement B1 in this case and the Secretary of State has therefore concluded that the Borough Council came to the correct decision in refusing to relax the requirement. He accordingly dismisses your appeal.