

Date: 31/03/99

Ref: 45/3/114

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 City Council to dispense with Requirement B4(1) (External Fire Spread) of the Building Regulations 1991 (as amended) in respect of a completed rear conservatory to the first floor

The appeal

3. The building work to which this appeal relates is completed and comprises a glazed conservatory at first floor level to the rear of a five storey, including basement, mid-terrace residential building. The pitched roof of the conservatory and its three enclosing walls consist of laminated double glazed units. It has been constructed over what was once an open roof balcony, above the existing ground and first floor extension to the building, with a plan area of approximately 6 m². The conservatory is entered directly from the buildings internal staircase.

4. The proposals for the conservatory were the subject of a full plans application which was conditionally approved, subject to the conservatory wall positioned directly on the site boundary achieving a minimum fire resistance of 60 minutes. The City Council subsequently wrote to you stating that a recent site inspection had found that the work you had carried out did not comply with this condition; the "allowable unprotected" areas (ie windows) in a separating wall had been exceeded; and intumescent sealing and self-closing devices had not been fitted to the door opening on to the main stairway. The same letter warned of proceedings under Section 36 of the Building Act 1984. The City Council subsequently served a Section 36 notice upon you.

5. However, you considered that in this particular instance the requirement as to fire resistance was unduly onerous in light of the fact that if the very same conservatory were to be constructed at ground level then it would be exempt from the Building Regulations 1991(as amended). You therefore sought the agreement of the City Council for the period of compliance under Section 36 to be extended from 28 days to 6 months and they raised no objection. You also applied to the City Council for a dispensation of the requirements of Part B (Fire safety) of the Building Regulations which was refused.

6. It is against that refusal that you appealed to the Secretary of State. You have not specifically referred to which requirement(s) your appeal relates. Because the appeal is in respect of an expanse of unprotected area positioned directly on the site boundary the Secretary of State has determined that the subject of your appeal is in respect of Requirement B4(1) (External fire spread).

The appellant's case

7. Your grounds for appeal centre on the City Council's refusal to dispense with Requirement B4 in order for you to secure compliance with that regulation whilst retaining the glazed wall to your conservatory which is positioned directly on the site boundary, and which does not meet the 60 minutes fire resistance referred to in the guidance given in *Approved Document B (Fire safety)*. You consider the City Council's reasons for refusing to dispense with the requirement as inappropriate and excessively restrictive.

8. You make the following points in support of your appeal:

(i) you do not consider the conservatory to be a habitable room, because it is not insulated and has the same fire risk as the balcony it replaces. In addition, you confirm that there are no heating appliances within the conservatory itself and that there is still a door separating it from the rest of the building

(ii) you state that there is no difference in fire risk between this conservatory and that of an exempt conservatory constructed at ground level. You also consider that if a fire were to occur its consequences would be much reduced by the fact that the conservatory is at a higher level than one that is permitted to be built at ground level

(iii) if the two properties were in the same ownership (your own and your neighbours) when the application was submitted, there would be no boundary line, so the unprotected area rule would not be applied. If the properties were then to be sold off the situation would be as it is now

(iv) you argue, with regard to the issue that your conservatory should not be allowed to prejudice the adjoining neighbour's right to extend their property, that according to the guidance contained within paragraph 13.10 of *Approved Document B*, 1m² of unprotected area, (ie a window), is allowed directly on the boundary line. You state that this would be no different to the situation which exists with the conservatory now. You also point out that the conservatory wall has an area of 3.75 m², but if it had been moved back 1 m from the boundary line then under the guidance given within *Approved Document B* an unprotected area of 5.6 m² would be allowed

(v) You state that if the conservatory wall was less than 70 degrees to the horizontal then under the guidance given within Appendix E of *Approved Document B* it would not be considered to be a wall but would be part of the roof, and as such the fire requirements would not apply. In your opinion if the conservatory had been built with its walls at less than 70 degrees to the

horizontal the fire risk of such a construction would be no different to that as built.

The City Council's case

9. The City Council takes the view that the conservatory does not fall within CLASS VII of Schedule 2 of the Building Regulations 1991 (as amended) because it is positioned above the ground floor. Thus the building work undertaken should comply with requirements of Schedule 1 of the Regulations. The City Council point out that the conservatory wall positioned on the boundary does not provide the 60 minutes fire resistance as required for a compartment wall and therefore constitutes a risk to the adjoining owner.

10. In addition the City Council make the following points in support of their rejection of your application for a dispensation:

(i) the City Council consider the conservatory to be a habitable room, the contents of which cannot be controlled by the Building Regulations. They consider that whilst there may not be a heating source, the contents alone could sustain a fire which should be contained by the building fabric. The City Council also point out that a portable heating appliance could be suitable to start a fire within this area

(ii) the City Council consider that the fact that there is currently no building adjoining the conservatory should not be allowed to prejudice the neighbour's right to extend their property. They go on to state that whether or not planning permission would be given is not relevant to this particular argument

(iii) the conservatory is built on the boundary with the adjoining property which is not under the same ownership. Thus the unprotected area should be a maximum of 1 m²; whereas the actual unprotected area of the wall as constructed comprises the whole wall and is approximately 3.75 m²

(iv) the wall is vertical and cannot develop resistance to the passage of fire. A roof of less than 70 degrees to the horizontal would not present the same threat to the adjoining space. However notwithstanding that the wall and the roof as constructed are of the same construction, it cannot be assumed that the roof will fail before the wall to result in the fire being vented through the roof.

The Department's view

11. The Department accepts the City Council's judgement that the conservatory is not exempt under Schedule 2 of the Building Regulations 1991, because it is not sited on the ground floor, and thus should meet the requirements of the regulations.

12. The Department notes all of the supporting comments you have made in this particular instance. In particular, the Department notes that the conservatory only has a floor area of approximately 6 m² and is entered via a door directly off a half landing to the buildings staircase. The minimal size of the conservatory in question therefore provides some indication of the possible fire load, if any, that could be placed within it. The fact that the conservatory is entered directly off of the stair, albeit with a separating door, means that in this instance there is apparently no practical possibility of the area forming an extension to another room, such as a dining area or lounge (which could have a considerably larger, and more recognised, fire load) by removal of the separating door. Moreover, due to the small size of the conservatory, and the fact that it is unheated, it would appear to fall within the traditional concept of a conservatory.

13. The Department acknowledges all of the comments made by the City Council but is of the opinion in this particular case that due to the small size of the conservatory, and its low perceived fire hazard, the building work undertaken, (ie the positioning of an unprotected area of approximately 3.75 m² on the site boundary) complies with the functional requirements of Requirement B4(1). The Department also acknowledges the guidance given in Section 13 of *Approved Document B* with regard to the allowable unprotected areas and its recommendations in respect of boundary conditions such as this - in this instance 1m². However, having regard to the analysis of the particular circumstances of the case in paragraph 12 the Department does not consider the existence of 3.75 m² of unprotected area on the site boundary to be a risk to life safety.

14. Approved Documents provide guidance only on how compliance with the functional requirements contained in Schedule 1 to the *Building Regulations 1991* may be achieved. There may be other solutions. *Approved Document B* contains performance criteria which need to be considered alongside the statutory requirements contained in Part B of Schedule 1. In respect of external fire spread Approved Document B states (page 71) that the requirements of Requirement B4 will be met "*(b) if the amount of unprotected area in the side of the building is restricted so as to limit the amount of thermal radiation that can pass through the wall, taking the distance between the wall and the boundary into account..... The extent to which this is necessary is dependent on the use of the building, its distance from the boundary and, in some cases, its height*".

The Secretary of State's decision

15. Paragraphs 12-14 above have considered the issue of compliance of your completed building work with respect to Requirement B4(1). However, you have appealed to the Secretary of State in respect of the refusal by the City Council to dispense with Requirements B4(1).

16. The Secretary of State considers the requirements in Part B of Schedule 1 to the Building Regulations 1991 to be life safety matters and as such would not normally consider it appropriate to relax, let alone dispense with, any of those requirements. He has given careful consideration to the facts of this case and the arguments put forward by both parties. He has also taken note of his Department's advice regarding the compliance of your building work. In all the circumstances he does not consider there are any extenuating circumstances which would justify either a relaxation of or a dispensation of Requirement B4(1). Accordingly, he dismisses your appeal.