

BUILDING ACT 1984 - SECTION 39

APPEAL AGAINST REFUSAL BY THE COUNCIL TO DISPENSE WITH REQUIREMENT F1 (MEANS OF VENTILATION) IN PART F (VENTILATION) OF SCHEDULE 1 TO THE BUILDING REGULATIONS 2000 (AS AMENDED), IN RESPECT OF THE PROVISION OF MECHANICAL VENTILATION IN TWO NEW BATHROOMS FORMING PART OF AN EXTENSION.

The building work and appeal

3. The papers submitted indicate that the building work to which this appeal relates is complete and comprised a first floor rear extension and enlargement of an existing second floor loft room of a five bedroom detached property, for which planning permission was received from the Council in 2007. The work included the installation of a new en-suite bathroom on the first floor and a new shower room in the loft room (also referred to below as 'bathrooms').

4. A building regulations full plans application was deposited with the Council for the building work which was rejected on matters unrelated to your dispensation application and appeal. Work started on site on 26 June 2007 and a final inspection was carried out on 14 March 2008 where a number of outstanding matters were noted by the Council. Included in these items was the non provision of mechanical ventilation in the two new bathrooms, which the Council stated was required under Requirement F1 (Means of ventilation) of the Building Regulations.

5. Due to the lack of mechanical ventilators in the bathrooms you were informed that a completion certificate could not be issued. As you considered that these were unnecessary you applied for a dispensation of Requirement F1 on 1 July 2008, which the Council refused. It is against this refusal that you have appealed to the Secretary of State.

The appellant's case

6. You have enclosed a copy of a statement from your builders which in your and their view is "proof that the provisions provided are adequate to secure reasonable standards of health and safety for persons in the building". You add that you have used the new bathrooms since November 2007 and do not see any practical need for installing mechanical ventilators, which you consider will waste energy, create noise and bother your neighbours.

7. Your builders' statement indicates that both bathrooms are of substantial size (en-suite bathroom 37.5 cubic metres, shower room 22.5 cubic metres) and are provided with large windows within the extension. The statement adds that

the following measures were provided in order to prevent the occurrence of future moisture problems:

- The size of the opening windows in the shower room is greater than 1/6 of the floor area and greater than 1/17 in the en-suite bathroom. (Appendix B of Approved Document F requires the window area to be at least 1/20 of the floor area.)
- The en-suite bathroom has a frameless glass door which leaves a surrounding gap of 10mm.
- All surrounding walls as well as floors and ceilings are fully insulated according to building regulations requirements.
- The bathroom walls are fully tiled from floor to ceiling to prevent build up of mould. Floors are also tiled and ceilings painted with waterproof bathroom paint.

8. In response to the Council's representations to the Secretary of State, you added that your understanding is that the issues relating to the rejection of your plans and the completed work were resolved apart from the question of ventilation in the new bathrooms. In your view the Council has not explained their position or responded to all your arguments indicated above. You added that:

- There has been little to no steam building-up since the bathrooms have been in use. When the windows are opened the steam disappears after a couple of minutes. Even if the windows were not opened, the steam would not be of any harm to health and safety as the tiling of the rooms prevents the creation of mould.
- In your view an electrical operated ventilated system will consume electricity and the existence of a ventilation hole is a source of waste of heating energy to the outside. The Council's requirement is counter-productive to a "green concept".
- You believe the Council has been "lenient" in the past in enforcing Requirement F1.

The Council's case

9. As indicated above, the Council has refused your dispensation application relating to the "requirement for mechanical extractors to the two new bathrooms" as they consider that this is required by Requirement F1 of the Building Regulations and was specified in "the Architect's construction notes".

10. With regard to Requirement F1, the Council states that for ventilation rates for bathrooms to be effective, they should have a rapid extract capacity suggested at 15l/s (intermittent) or 8l/s continuous. The Council notes the case you have submitted to obviate the need for rapid ventilation but does not accept this as the

most effective ventilation associated with the high vapour and relative humidity associated with bathroom usage.

The Secretary of State's consideration

11. The Secretary of State has given careful consideration to the particular circumstances of this case and the arguments presented by both parties and has referred to the guidance in Approved Document F (Ventilation - 2006 edition) to assist her in reaching a decision.

12. The Secretary of State observes that the Building Regulations now encourage builders to make the building envelope airtight in order to save energy. This makes it more important that an adequate ventilation system is installed and used correctly in modern buildings, including in new extensions.

13. Approved Document F describes in paragraphs 3.11 to 3.15 a number of ventilation systems that will meet Requirement F1 of the Building Regulations when adding a room where moisture is produced – such as a bathroom or kitchen – to an existing building. The Approved Document advocates providing all three of the following types of ventilation to a bathroom or shower room:

- extract ventilation (for example an intermittent extract fan) to remove water vapour before it can condense on cold surfaces and possibly support mould growth, and also to minimise the spread of water vapour to the rest of the building;
- background ventilation (for example a window trickle vent) to provide a small amount of fresh air continuously;
- purge ventilation (for example an openable window) to remove high concentrations of pollutants and water vapour arising from occasional activities such as painting and decorating, and to improve comfort in hot weather.

14. The Council has referred to “the Architect’s construction notes” in this case which specified the use of mechanical extractors, ie intermittent extract fans, to provide the extract ventilation in the new bathrooms. You took the view that the fans were not needed but, as indicated above, their purpose is to minimise condensation and the spread of water vapour throughout the building which is especially important in cold weather when windows are closed.

15. The Secretary of State appreciates that the walls and floors of the bathrooms have been extensively tiled and that the windows are larger than required for the purposes of purge ventilation. However, she does not consider this to be sufficient reason to dispense with Requirement F1 of the Building Regulations, and for the reasons given above feels it is important to provide some form of extract ventilation in the bathrooms.

16. The extract ventilation may be provided either by an intermittent extract fan or, if fan noise and energy consumption are a concern, by a passive stack

ventilator (see the guidance in Approved Document F, paragraph 3.12c, which can be found on the Department's website) which does not require a fan or use any electricity.

The Secretary of State's decision

17. As indicated above, the Secretary of State considers that compliance with Requirement F1 is important for the reasons explained and she considers that a sufficient case has not been made to dispense with the requirement in this case. She has therefore concluded that it would not be appropriate to dispense with Requirement F1 (Means of ventilation) in Part F (Ventilation) of Schedule 1 to the Building Regulations 2000 (as amended), in relation to the need for adequate means of ventilation in the two new bathrooms in question. Accordingly, she dismisses your appeal.

18. You should note that the Secretary of State has no further jurisdiction in this case and that any matters that follow should be taken up with the building control body.