

## **BUILDING ACT 1984 - SECTION 16(10)(a)**

### **DETERMINATION OF COMPLIANCE WITH REQUIREMENT B1 OF SCHEDULE 1 TO THE BUILDING REGULATIONS 2010, TAKING ACCOUNT OF THE GUIDANCE IN PARAGRAPH 0.24 (UNSUPERVISED GROUP HOMES) IN APPROVED DOCUMENT B VOLUME 2 (FIRE SAFETY - BUILDINGS OTHER THAN DWELLING HOUSES) (2006 EDITION INCORPORATING 2007, 2010 AND 2013 AMENDMENTS)**

#### **The proposed work and question arising**

4. The papers submitted indicate that the building / building work to which this determination relates to fire precaution measures recommended, after a fire risk assessment carried out by an independent consultant. The building will be used to accommodate a group of up to 6 people, with minor learning and physical disabilities. They will live together in the premises in a “Care in the Community facility” and will have the support of one carer, working on a shift system. The proposed work includes fire precautions as per risk assessment. This will mean new fire doors and closers, HMO/LD2 Emergency Alarm detection/call system, escape lighting and signage. The provision of a new stairwell to the second floor will be needed, as the existing staircase was considered to be too steep. Replacement of the ground floor en-suite shower cubicle with a wetroom shower, replacement of certain sanitary and bedsit kitchen fittings and re-positioning the door to the new first to second floor stair were also proposed. Re-wiring and provision of new gas fired central heating were included in the work.

The above proposed work was the subject of a full plans application which was rejected by the council on 18 December 2012, on the grounds that your proposals do not comply with the requirements of Part B of Schedule 1 to the Building Regulations 2010. This resulted from a dispute with the Council, regarding the classification of the building as a dwelling. It is in respect of this question that you have applied for a determination.

#### **The applicant’s case**

“The point in the dispute relates to the number of people in the property and the interpretation of the definition of a dwelling in *Appendix E of Approved Document B, Volume 2 (Buildings other than dwellinghouses)*:

“**Dwelling** A unit of residential accommodation occupied (whether or not as a sole or main residence):

a. by a single person or by people living together as a family; or

*b. by not more than 6 residents living together as a single household, including a household where care is provided for residents.”*

The Council's Building Control want to class the carers as one resident, making the total number living at the property 7 and not the 6 where care is provided, even though the carers work shift patterns and no carer will have a tenancy agreement or be registered on the electoral roll at that address. Building Control are of the opinion it is a care home, particularly as staff are on site overnight, and this is cited as their reasoning.

As such, they require additional fire protection measures over and above those proposed, they require fire lobbies provided inside each room accessed off the stair or fire screening to form lobbies outside the protected stair box at both first and second floor level. Building Control have stated that if the term “staff bedroom” is replaced with “staff office” and an undertaking given that the member of staff will not sleep there, the council would accept that 6 persons live there and additional lobbies/screening will not be required.

The works are to allow 6 people with minor learning and physical difficulties to live within the community within a supported living scheme, as close to a “family environment” as possible. These people have lived in the care system for the majority of their lives and the provision of the additional fire screens will only remind them of the care home environment they have left having a detrimental effect on their living experience. It will also have an adverse effect on their ability to effect a speedy exit from the building in the event of a fire, as the operation of additional fire doors with fire certified closers will delay any exit. The applicant has suggested to Building Control, and they have not disagreed, that having a member of care staff on site will be a significant advantage in the event of an emergency / fire, if the building has to be evacuated.

The original proposals do not comply with fire escape provisions indicated in *figure 11.2 of HTM88, (Fire Precautions in Housing Providing NHS Supported Living)*. There is a fully compliant HMO/LD2 fire detection, emergency lighting and signage system to be provided – this in excess of the requirements of Section 10 of document HTM88. To add, none of the travel distances within the rooms exceeds 6.2 metres, and there have been no significant changes to the layout of the premises from its use as a family dwelling.

The applicant has made attempts to resolve the matter directly with Building Control, and has attended a meeting in their office with the officer dealing with the application, her line manager and our client but the parties have reached an impasse over the interpretation of the carers being classed as the 7<sup>th</sup> member of the household i.e. 6 people with minor physical and mental disabilities receiving care and the seventh member of the household being a group of shift working carers. Our interpretation is that the number of people requiring care for their physical / mental difficulties is stated as 6 and the caring staff are members of the “family group”.

The applicant had the same dispute with the Planning Department who required a change of use application to an HMO (Health Maintenance Organisation). It

resolved this in our favour and accept that under *DCLG Circular 8/2010* it is Class C3(b) for up to six persons receiving care.”

### **The Council’s case**

The applicant submitted a statement from the Council as part of the application:

“The Council’s Building Control view does not relate to the number of residents. We would agree there are six residents and in addition there is a carer present in the property twenty four hours a day, seven days a week.

In *Approved Document B*, the definition of a dwelling includes “6 residents living together as a single household including a household where care is provided for residents”. Concerning this definition, we feel that your property falls outside this definition as you provide more than care – i.e. supervision 24 hours a day, 7 days a week.

Our view concerns the use of the building and the level of supervision and care being provided continuously. In *Approved Document B (Volume 2)* Paragraph 0.24 guidance is provided as to when a group home can be regarded as a dwelling house under Purpose Group 1(c). It also mentions an additional two criteria, which are:

1. The building must be one or two stories.
2. The residents must be unsupervised.

*“In both cases, your property falls outside this criteria, so in my view cannot be considered as a dwelling.”*

The Department asked the Council if it had any further representations that it wished to make and received the following from the Council:

*“The existing property is a large three storey dwelling, with communal rooms provided on the ground floor, residents’ bedroom accommodation on the ground and first floors and staff bedroom accommodation in the second floor roof space.*

*Guidance provided in the definitions (Appendix E) of Approved Document B defines a dwelling as “a unit of residential accommodation occupied (whether or not as a sole or main residence) by:*

- *a single person or by people living together as a family; or*
- *not more than 6 residents living together as a single household, including a household where care is provided for residents.”*

Initially this definition would appear to concur with the applicant’s view, however further guidance is provided in paragraph 0.24 of *Approved Document B (Volume 2)*, relating to Unsupervised Group Homes. This guidance states “*where an existing house of one or two storeys is to be put to use as an unsupervised group home for not more than six mental health service users, it should be regarded as a Purpose Group 1(c) building if the means of escape are provided in accordance*

*with HTM 88: Guide to fire precautions in NHS housing in the community for mentally handicapped (or mentally ill) people. Where the building is new, it may be more appropriate to regard as being a Purpose Group 2(b)."*

The point in dispute is not the number of occupants being exceeded, in fact we are happy to accept there are only six residents and a carer/supervisor. It is the level of care and supervision which we feel restricts the purpose group classification. Care and supervision is provided to the residents twenty four hours a day, seven days a week. The applicant has confirmed the residents receive this care, support and supervision by a rota system carer. The submitted plans also indicate a "bedroom" in the roof space (second floor) where the carer/supervisor can actually sleep to provide round the clock supervision.

The additional fire precautions requested are necessary measures for a Residential (Institutional 2b) purpose group building."

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

The Secretary of State has given careful consideration to the particular circumstances of this case and the arguments presented by both parties. He notes that what needs to be considered in this case is the most appropriate fire safety strategy for the intended use of the building. Care premises are highly diverse and can be used by a variety people requiring different types of care to suit their specific needs. The choice of fire safety strategy is dependent upon the way a building is designed, furnished, staffed and managed and the level of dependency of the patients.

When considering whether plans are in accordance with the fire safety aspects of Building Regulations an understanding of the intended use of the building is therefore necessary and there are established approaches used for a range of typical uses. In this case the dispute revolves around whether a strategy suited to residents able to live unsupervised is appropriate or whether a more onerous approach suited to people who need more support and protection such as that set out in HTM 88 is called for. The decision of the local planning authority on the classification of the building for planning purposes is not a material consideration for building regulations purposes.

The Building Control Body has no control over the day to day running of the building and the nature of its residents. Ultimately this is the responsibility of the care provider who would need to satisfy the requirements of the *Regulatory Reform (Fire Safety) Order 2005*. However, the Building Control Body must make a judgement based on the information provided.

You have argued that the fire strategy you have adopted provides as close to a family environment as possible for the residents. However, the Council has taken the view that provision for sleeping accommodation for staff suggests that residents would require 24 hour support and would not be suited to unsupervised living.

The Secretary of State takes the view that the provision of 24 hour support does suggest that residents may be unsuited to unsupervised living so the means of escape provided for a normal dwelling house might not be sufficient. However, it might be reasonable to accept the design strategy shown on the plans if the plans properly acknowledge that the need for careful control and consideration of selection of residents based on their ability to live in an unsupervised living environment for at least some of the time.

Detailed management plans are not normally included in building regulations applications. However, where a design deviates from conventional practice this may be necessary so that Building Control Bodies can properly understand the intended use of the building.

The Secretary of State notes that there is nothing in the plans or evidence you have submitted that sets out the intended level of dependency of the future residents of the building, and also that the council had not asked for further details in this respect. As such the plans as submitted, do not show compliance with requirement B1 of the Building Regulations.

### **The determination**

As indicated above, the Secretary of State considers that your proposals, as submitted, do not make adequate provision for means of escape in case of fire. He has therefore concluded and hereby determines that the plans of your proposed building work do not comply with requirement B1 (means of warning and escape) of Schedule 1 to the Building Regulations 2010 (as amended) in relation to the work in question.

You should note that the Secretary of State has no further jurisdiction in this case and that any matters that follow relating to the building work should be taken up with the Council's building control body.

A copy of this letter is being sent for information to the Council.