

02 September 2014

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

### **DETERMINATION OF COMPLIANCE WITH REQUIREMENT B1 (Means and Warning of Escape) IN PART B (Fire Safety) OF SCHEDULE 1 TO THE BUILDING REGULATIONS 2010 (AS AMENDED) IN RESPECT OF SIDE EXTENSION**

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

The papers submitted indicate that the building work to which this determination relates to is a proposal to provide a side extension to an existing 3 storey town house that dates from circa 1967. The extension includes one additional room at top floor and the bottom floor of the existing floor levels; in the middle floor the extension increases the size of the existing room at that level. The building is on a sensibly level site.

The above proposed work was the subject of a full plans application which was rejected by the Council on 28 January 2014 on the grounds that the proposals do not comply with requirement B1 (Means and warning of escape) in Schedule 1 to the Building Regulations 2010, in relation to Part B (Fire Safety). However, the applicant believes that the proposals meet this requirement and that the Council's Building Control section does not fully understand the issues. It is in respect of this question that the applicant has applied for a determination.

#### **The applicant's case**

In support of the application, the applicant has argued that there is no change of use. There is no new storey being constructed. The existing staircase and access route is not subject to any alteration or change by virtue of the proposed extension, and the staircase and escape route has not been altered or amended since the house was originally constructed. In fact more than 30 identical three storey townhouses exist on the site, all of which to the best of the applicant's knowledge and belief have the same staircase and escape route.

The matter which is in dispute is Part B1(1) of the Regulations. The reason listed for refusal is as follows: "The plans deposited do not give sufficient information/detail to conform compliance with the building regulations". The applicant considers that this wording is misleading, as from all your discussions with the council's building control officers it was made clear to you by them that they do have sufficient information and detail to understand fully what is being proposed. They simply do not agree that what is being proposed is in compliance with the Building Regulations. They also confirmed that the issue within B1(1) which they regard as non-compliant is Means of Escape rather than warning.

In addition, the applicant's statement (with supporting points) on why they consider that the work complies with the regulations is as follows:

"The proposed works do not add an additional storey to the existing property. The existing staircase arrangements (which I understand to have been carried out in full compliance with the Regulations as they existed in circa 1967/68) are not altered by the proposed extension. The Regulations require that existing elements of the building which are not the subject of works will be "no more unsatisfactory" by reference to clause 0.20 of Approved Document B Volume 1 Dwelling Houses. The extension does not make the existing element (i.e. the means of escape arrangements) any "more unsatisfactory".

1 At the second floor there will be the same number of bedrooms as there are now and each bedroom provides direct access via a door onto the staircase. There are no inner rooms created. The current layout has two bedrooms which do not have fire-rated doors (since these were not a requirement in 1967/68). The new layout converts one of these to a second bathroom (i.e. a non-habitable room) and provides a new bedroom in the extension which has a fire-rated door. This arrangement cannot be described as "more unsatisfactory".

2 At the first floor there will be an extension to an existing open plan living area. The extension to the room has (from the extremity position) a travel distance no more than the extremity travel distance from the existing room, and in addition it provides a new alternative emergency escape and rescue arrangement by having French doors, and sliding doors to a new external balcony area. This arrangement cannot be described as "more unsatisfactory".

3 At the ground floor an existing bedroom (without a fire-rated door, and with windows which do not have openings that comply with current escape and rescue standards) provides access to a hall area with two alternative exits directly to the outside at ground level. This room is being retained for use a study. The extension provides a new bedroom, with a fire-rated door into the same hall (the two final exits are retained) and with windows which allow emergency escape and rescue. This arrangement cannot be described as "more unsatisfactory".

4 In summary, I consider that, for the building as a whole with the extension constructed, the (existing) means of escape would self-evidently be no more unsatisfactory than it was before the work was carried out and that it therefore would be satisfactory as regards clause 0.20 of the Approved Document.

5 In relation to this interpretation the council have simply stated that the existing means of escape has been made worse because the extension will have increased the floor area of the building served by the existing stair (see their letter dated 3rd January 2013).

For the avoidance of misunderstanding, I accept and acknowledge that the existing 3 storey town house would not comply with the current version of the Building Regulations but I also note that I do not agree with the statement in the initial letter dated 10th December 2013 issued to me by the council that the current arrangements in the existing and unextended house are unsatisfactory, since of course they do not need to comply retrospectively with new regulations if the house is unaltered. Note that this statement has been clarified - i.e. withdrawn - by their subsequent letter dated 3rd January 2014.”

To end, the applicant responded to the Council’s building control body with comments, regarding the matter in dispute and stated that:

“Copies of the council’s letters dated 10th December 2013 and 3rd January 2014 are attached. To allow these letters to be read in context I also attach my letters to the council dated 16th December 2013 and 8th January 2014. The letters from the council are addressed to me and not to the Department, but I assume that they will not be putting forward different points to those which have already been notified to me. Verbally I have been informed that in order for the council to approve this application I would have to install full separation of the existing staircase at all existing levels with a fully enclosed stairwell in the existing building floor zones and with all existing doors changed to fire doors.

Please note that in an effort to reach agreement to proceed with this work and notwithstanding my opinion that the submission complies with section B1(1) of the Regulations, I offered to install a partial domestic sprinkler system as set out in my letter dated 8 January 2014. This offer was in direct response to a telephone call with the council’s building control officer, in which was suggested that such a step may provide an alternative means of compliance with Part B1(1). This offer was put to the council prior to their Refusal Notice and I therefore make the reasonable assumption that it has also been rejected. This proposal has been written up in a note which I issued to the council with a letter dated 18th February 2014 (a copy of the letter and the note are also attached to this application).

I am requesting a determination that these arrangements comply with the Building Regulations on a proper consideration of the requirements that relate to the modest extension of an existing 3 storey residential building, where no additional storey has been added, and where no alterations are shown which make the existing means of escape arrangements any "more unsatisfactory".

I wish this determination to be made on the basis of (i) the original design submission and (ii) the original design submission, as modified by my 8th January letter and set out formally in my 18th February letter and note.”

The applicant also wrote 3 additional letters to the council on 16 December 2013, 08 January 2014 and on 18 February 2014 to support your case.

Their letter to the council on 16 December says:

“Full Plans Submission – extension

Thank you for your letter dated 10<sup>th</sup> December 2013, which raises a query with respect to the means and escape provision. I would like to respond as follows:

In respect of the first bullet point you refer to as the means of escape to the “unmodified” property as being currently unsatisfactory, I assume that you are referring to the Building Regulations 2010, but of course you are referring here to the Building Regulations 2010, but of course these regulations do not apply to an unmodified property constructed early in the early 1960s.

In respect of the second bullet point, the proposed works do not alter the existing means of escape, and in particular do not introduce the means of a new third storey (which already exists and already relies on the existing means of escape). You state that the existing means of escape will be “made worse” by the construction of the proposed extension and that I need to revise the design so that this element becomes “satisfactory”. However, according to section 4 (3) of the 2010 Building Regulations, since the existing building did not comply with the particular regulations before the proposed extension was constructed, it does not have to comply afterwards, it simply has to be “no more unsatisfactory” (as judged by the BR 2010 standards) in the way that you state in your letter. I would like to have an explanation from you as to which parts of the relevant provisions in Schedule 1 are “more unsatisfactory” (i.e. are you referring to B1, B3, to which parts of the relevant provisions in Schedule 1 are “more unsatisfactory” (i.e., are you referring to B1, B3, B4, B5?) and in detail why?

In fact the situation for means of escape is, or any proper assessment improved by the virtue of the provision of a readily accessible place of relative safety, at the middle floor level. This external balcony is in itself only 2.0 m above the adjacent ground level at the rear of the building and provides an emergent escape route from the top storey analogous to that available from a two storey structure. Of course, I am very willing to consider any reasonable and feasible alteration you propose which further improves the current situation, for example the installation of an early warning system for fire as set out in regulation B1.”

Their letter dated 8 January 2014 stated:

“Full Plans Submission – extension

Thank you for your letter dated 3<sup>rd</sup> January 2014. I also refer to my telephone conversation with the council’s building control earlier today.

You have queried whether or not the existing property has been modified so as to alter the fire escape arrangements from the original design constructed in circa 1967/8. I can confirm that no alteration to the stairs, or the doors and walls surrounding the stairs has been carried out. To the best of my knowledge (I have been inside at least 3 of the other identical townhouses) the property is exactly the same as all the other properties on the court. They all incorporate a split open

plan living area at first floor level. At ground level and at the second floor the staircase/hallway is enclosed with doors into the rooms.

As I have noted in my letter dated 16<sup>th</sup> December 2013 the proposed works do not alter the existing means of escape, and in particular do not introduce a new third storey (which already exists and which already relies on the existing means of escape). In both your letter dated 3<sup>rd</sup> January 2014 and our conversations you refer to the fact that the extension has increased the floor area (which is obviously correct) as being the reason why you consider that the existing means of escape will be “made worse” by the construction of the proposed extension. In the conversation you also stated that the extension will increase the travel distance to the stair, a point which I do not think is correct when you examine the plans. You have referred to me to the guidance given in Approved Document B Section B1 i.e. you are concerned as to the means of warning and escape rather than the other relevant sections (B2-B5). As you will be aware from my last letter, I have specifically offered to design and install fire detection and alarm systems (which do not exist in the current design) so I therefore assume you are most concerned about Section 2: Means of Escape.

The current arrangements (which I understand to have been approved as compliant with the Building Regulations in 1967/8 when the house were constructed) have a second floor which is 4.5m but below 7.5m from external ground level, and no “inner rooms” exist. The middle floor (which is an uneven split level) is an open plan arrangement. At the ground level in fact are two final exits leading off the stairway/hall area, one from each of the split levels at ground level (upper ground floor and ground floor).

I understand that of course a new three storey townhouse would require a fully separated protected stairway, serving all three storeys and existing as set out in AD B1 2.6a. However this proposal is to laterally extend an existing building with the existing means of escape provisions as set out above, and does not include the alteration or extension of an existing staircase to serve a new floor level (for example , as occurs in a loft extension where typically a three storey property is newly created).

Whilst I am confident that the current means of escape is not “more unsatisfactory” due to the proposed extension, either on the basis of the increased size of the accommodation or on the issue of travel distance, I am prepared, on a without prejudice basis, to consider installing a partial domestic sprinkler system, designed to protect the existing stair route at the open plan first floor level. This installation would be a “compensatory feature” as set out in Regulation B 0.17 and would be installed into the open plan rooms (new and existing) at this level only. Please let me know if you are able to agree to this proposal.

In your letter dated 3<sup>rd</sup> January 2014 you noted that the remaining elements for Building Regulation compliance were yet being assessed due to Means of Escape issues. However, I would like the remaining elements to be assessed by 20<sup>th</sup> January to allow me to progress the whole scheme design.”

Their letter dated 18 February 2014:

#### “Full Plans Submission

I refer to your rejection notice dated 28<sup>th</sup> January 2014 and to my telephone conversation with the council on 30<sup>th</sup> January 2014. During that telephone call I reiterated the request which I had put in writing in my letter dated 8<sup>th</sup> January 2014 that you complete checking all aspects of the Full Plans Submission, which I made on 18<sup>th</sup> November 2013. In acknowledging receipt of this submission you agreed to complete this checking by 20<sup>th</sup> January 2014. I explained that I wished – quite reasonably – to be made aware of any other concerns apart from the issue of part B1(1) Means of Escape, in order that I could give proper consideration to what action I might decide to take in an overall sense as to the submitted (and rejected) design. I explained that I did not want to deal with one issue (the Means of Escape) and afterwards discover that you had any concerns over other aspects of the design, causing me further delays and possible further design changes

I have prepared a formal submission note on the Means of Escape design which has been proposed by me and rejected by you, so that there is no misunderstanding as to exactly what information was available to you in this regard. If you have any queries or comments about this note please let me know because I do not wish factual matters about the proposal to be in dispute.

In my 8<sup>th</sup> January letter, I asked that these checks be completed by the date you proposed i.e. 20<sup>th</sup> January 2014. I have not heard from you since then and I must ask you to attend to this and respond to me as a matter of urgency. I point out that I have paid a Full Plans Submission fee which covers all the checking, not just an initial (and no doubt relatively quick) review of escape. If – as would appear to be the case, since it is almost a month from the date by which this work was to be completed – you do not intend to complete the checking of the submitted plans, then I would be pleased if you would return the submission to me as soon as possible, and refund the fee that I have paid.”

#### **The Council’s case**

According to the copy of the council’s letter dated 10 December 2013, the council said that the Full Plans application deposited on 20 November 2013 was examined and did not appear to meet the requirements of the Building Act 1984 or Building Regulations 2010 (as amended) in the following respects:

- “The proposal comprises the erection of a three storey extension to an existing three storey house. The means of escape to the unmodified property is currently unsatisfactory.
- The proposed alterations will make this unsatisfactory situation worse. Before the plan checking process can continue on this scheme you will

need to provide the Local Authority with a revised design to show how satisfactory means of escape in case of fire will be provided in the new works.

You are advised that any structural calculations or details submitted in respect of this application are/will be receiving attention and you will be notified separately regarding any queries or amendment required.

Please note that section 16 of the Building Act 1984 requires the local authority to decide the application within 5 weeks (or two months if extension of the time agreed) of deposit of the application. In this instance a decision will be made by 20/01/2014.

Please submit any revised plans, as soon as possible, to progress the application. Plans may be submitted or the deposited plans amended at the Building Control Office

Further correspondence received from the council dated 03 January 2014, stated that:

“In response to your correspondence of 16 December, I would advise as follows:

As you state it is not possible to apply the provisions of the Building Regulations retrospectively, the first point in the letter was merely to advise that it is apparent that the existing layout of the property is not satisfactory as far as compliance with Requirement B1 of the Building Regulations 2010 is concerned.

If one considers the reference that you have made to Part 2 of the Statutory Instrument 2010 No 2214 ‘Buildings and Buildings, England and Wales’, regulation 3(2)(b) which advises that a material alteration takes place if building work would at any stage result:

‘...in a building...which before the work commenced did not comply with a relevant requirement, being more unsatisfactory in relation to such a requirement....’

It is considered that the proposed works which comprise of various internal alterations together with a three storey extension to an existing three storey house would result in a more unsatisfactory situation as far as B1 is concerned. These works increase the area of the dwelling which is served by the existing stair and as a result the existing unsatisfactory situation has been made worse.

The creation of a balcony at first floor level does not resolve the situation as occupants of the upper level would still have to pass through the open plan kitchen/reception area to access the balcony.

In addition, any deviation from guidance given in Approved Document B in relation to means and escape would involve consultation with the Fire and Rescue Service.

You should also be aware that the compliance of the scheme with the remainder of the Building Regulations has not yet been assessed due to the need to resolve this significant item.”

### **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 whether the means of escape from the new accommodation satisfies requirement B1 and whether the proposed work to form this new accommodation results in the building as a whole being no more unsatisfactory than before the work is carried out.

The council have taken the view that the layout of existing house is unsatisfactory in terms of the current provisions for requirement B1 and that the proposed works will make the situation worse this being a contravention of regulation 4(3). You have acknowledged that the existing situation does not meet the standards that would apply to a new three storey house but you dispute that the proposed works will make the premises more unsatisfactory.

The Secretary of State takes the view that although the proposed works will increase the area of each floor, and there will be more rooms at some levels, the impact of the proposed works on the existing provisions for means of escape in case of fire can not reasonably be described as making the premises more unsatisfactory

However, regulation 4(1) also requires that work shall be carried out so that it complies with the applicable requirements. In respect of requirement B1 this means that the newly formed accommodation should be provided with appropriate provisions for the early warning of fire and appropriate means of escape in case of fire.

The conventional approach to means of escape for rooms at second floor level would be to provide a protected stairway, enclosed in fire resisting construction and fitted with fire resisting doors. However, you have proposed to use the existing, unprotected, stairway and have offered the provision of a system of smoke alarms throughout the house, and both a domestic sprinkler system and escape windows at second and first floor levels.

The council have taken the view that these measures would not constitute appropriate means of escape. They have expressed concern about the problems of visibility associated with sprinklered fires and the height of the escape windows at second floor level.

Escape windows from floors 4.5m above ground level are not normally considered acceptable. However, in this case, the second floor window is immediately above a balcony which would allow a person trapped at second floor level to make their escape, by dropping from the window to the balcony and then down to ground level.

Window escape should always be regarded as a secondary option and the primary route will be via the stairway. The Secretary of State considers that whilst the provision of sprinklers will not directly replace the protection provided by a physical enclosure, it does sway the balance of risk.

However, it is not clear from the plans whether the doors and walls separating the stairway from the accommodation at ground floor level are of fire-resisting construction nor whether sprinkler protection is proposed at this level.

The Secretary of State considers that the total package of measures combining fire detection, sprinkler protection and escape windows proposed could constitute appropriate means of escape subject to the provision of fire resisting construction or sprinkler protection at ground floor level. As such the plans do not show compliance with requirement B1.

### **The determination**

As indicated above, the Secretary of State considers that the applicant's 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 the proposed building work do not comply with requirement B1 (Means of warning and escape) in Part B (Fire Safety) of Schedule 1 to the Building Regulations 2010 (as amended) in relation to the work in question.

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.