

Date: 25/02/03

Ref: 45/3/157

Note: The following letter which has had personal details edited out was issued by our former department, the Office of the Deputy Prime Minister (ODPM). ODPM became Communities and Local Government on 5 May 2006 - all references in the text to ODPM 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 warning and escape) of the Building Regulations 2000 (as amended) in respect of a loft conversion above a flat to form a maisonette

The appeal

3. The building work to which this appeal relates comprises an alteration to an existing three storey building approximately 11m x 9.5m in plan area, sharing party walls with other properties on one side and to the rear. Each storey contains one two-bedroom flat only. The roof is of pitch construction with the centre ridge running from front to back of the building. The work involves the creation of a new habitable room in the roof space above the second floor flat (ie a loft conversion), thus creating a maisonette.

4. The ground floor flat is independently accessed by a separate front door to the side of the building. The first and second floor flats are accessed via a common covered porch and front door at ground level which opens into a hall which, in turn, leads to a common stair giving access to the upper flats. Although it is not shown on the plans, it is understood that the second floor flat has access from the kitchen window to a fixed fire escape ladder on the front elevation which discharges onto the flat roof of the ground floor porch. The existing common stair has a fire alarm system of unspecified standard.

5. The proposed third floor room is designated on your plan as a 'study'. It will be created within the existing roof space by removing the existing ceiling joists and replacing them at a slightly lower level by floor joists and by the insertion of three roof windows. The new room will be accessed via a small lobby, formed between the second floor flat entrance door and entrance hall, leading to a new stairway. This arrangement affords the occupants of the new room direct access to the entrance door without the need to pass through the hall.

6. The plans indicate that all rooms and the new stair in the newly created maisonette will have a mains linked smoke alarm system (of Ionization chamber design based on an unspecified part of *BS (British Standard) 5839 (Fire detection and alarm systems for buildings)* with a heat detector in the kitchen.

7. The above proposals were the subject of a Building Notice served. However, the Borough Council took the view that because the proposal was for a maisonette with a floor more than 4.5m above ground level, an alternative escape should be provided from the upper floor. Without this alternative escape the Council considered that your work would not comply with Requirement B1.

8. You then applied to the Borough Council for a relaxation of Requirement B1 on the grounds, inter alia, that the upper room would be accessed by a 30 minute fire resistant lobby which would separate the new stair from the lower floor of the newly formed maisonette; that the smoke alarm and heat detector system would be extended; and that the installation of an external fire escape would be cost prohibitive. Your application for a relaxation was refused by the Council and it is against that refusal that you have appealed to the Secretary of State.

The appellant's case

9. You acknowledge that by definition you are creating a maisonette. However, in your view the "trade off" against the requirement for an external fire escape is to install an extended mains linked smoke alarm system. You have found this to be acceptable to many local authorities in both flats and town houses of various heights.

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

(i) The proposed third floor room will be accessed by a 30 minute fire resistant lobby separated from the existing flat with a 30 minute fire door. Escape from the proposed room via the common stair will be possible without entering the flat entrance hall, therefore early warning would ensure no increased risk to either the lower floor or upper room of the proposed maisonette.

(ii) As a means of ensuring early warning of fire, you propose to provide an extended mains linked smoke alarm system (based on BS 5839) in all the rooms and the stair in the newly created maisonette, with a heat sensor in the kitchen. The existing "common" stair is also fitted with a smoke/fire alarm system.

(iii) In the unlikely event of the common stair being impassable, the existing flat can be entered from the proposed third floor room via the lobby and escape made either by use of the existing fixed escape ladder from the kitchen window down onto the porch roof from where a person could lower themselves and drop to ground safely, or by assisted rescue by ladder.

(iv) You would be prepared, if considered necessary, to fit an additional fire door and lobby at the head of the proposed new stair, to ensure room separation from the lobby and thus ensure no additional risk to the flat escape route.

(v) The fitting of an external fire escape would be both cost prohibitive and unlikely to be granted planning permission.

11. You subsequently added the following points in response to the Borough Council's representations to the Secretary of State:

(i) You did not provide details of the existing smoke/fire alarm system fitted in the "common" stair, or originally provide details of the proposed smoke alarm system for the maisonette due to the Borough Council's refusal to agree a "trade-off". The entrance door to the second floor flat is a solid hardwood door, but you would be willing to replace this with a certified fire door.

(ii) You note that the Borough Council refers to *paragraph 2.14 of Approved Document B (Fire safety)* and *clause 10.4 of BS 5588: Part 1: 1990 (Fire precautions in the design, construction and use of buildings: Code of practice for residential buildings)* which refer to a maisonette. Although you acknowledge that by definition you are creating a maisonette you believe that it is unfair to describe a flat with a single loft room as a maisonette. In your view a true maisonette should have more than a single room above the original level.

(iii) You have never claimed that the fixed ladder reaches the proposed third floor level, but it does - in an emergency - give a means of getting from the existing flat to the flat roof of the porch, from where a person could drop the final distance to the ground.

(iv) You cannot supply the details requested regarding the flats on the lower levels of the building as they are in private ownership. Although access could be arranged, with difficulty, you have no right to suggest work is carried out to form lobbies as the Borough Council suggests. You suggest that this applies in most cases where flats are served by a common stair, and that therefore the building work must be contained in your client's property and the common areas of the building.

The Borough Council's case

12. In the Borough Council's view, an alternative escape route from the proposed third floor is required to show compliance with Requirement B1. The Council recognises that you propose to provide a smoke alarm system in all the rooms and the stair in the newly created maisonette, with a heat sensor in the kitchen; that there is a smoke/fire alarm system in the common areas; and that a fire resisting lobby will be created. However, the Council points out that you have provided no details of the smoke/fire alarm system to the common stair and do not show whether the entrance door to your (second floor) flat is a fire door.

13. The Borough Council refers to the guidance in *paragraph 3.14 of Approved Document B* and *clause 10.4 of BS 5588: Part 1:1990* which indicate that in the case of a maisonette with a floor more than 4.5m above ground level and where alternative escape is not provided from each room above the entrance level, then an alternative escape should be provided from the upper floor with all habitable rooms entered directly from either a protected entrance or a landing on that floor.

14. The Borough Council considers that the use of a fixed ladder is not an acceptable alternative escape route. The Council adds that the ladder is accessed at second floor level only and would not extend up to the proposed third floor.

15. The Borough Council concludes by stating that you have not provided them with adequate details of the flats on the lower floors of the building or the provisions they may have for fire protection, means of escape, or fire detection and alarms. The Council considers that these flats should at least have protected lobbies. In forming their views, the Council has consulted with the Fire and Rescue Service.

The Secretary of State's consideration

16. In considering this appeal against the Borough Council's refusal to grant a relaxation in respect of Requirement B1, the Secretary of State has first considered the degree to which your proposals fall short of compliance with Requirement B1. He has then considered if, and what, realistic and practical potential there may be for varying your proposals or improving them in order to achieve full compliance.

17. The Secretary of State takes the view that what needs to be considered in this case is the safe escape of the occupants of the newly formed third floor (fourth storey) to the building which would result in the conversion of the second floor flat into a maisonette. However, in common with many cases involving alterations or extensions, the potential escape route or routes involve the overall provision within the building taken as a whole and not just the alteration or extension work itself. It is therefore particularly important in such cases for the Secretary of State to consider the compliance of the proposal with both regulation 4(1) and 4(2) of the Building Regulations insofar as this applies to Requirement B1. Regulation 4(1) requires that the proposed building work in question complies with the applicable requirements of Schedule 1 to the regulations; and regulation 4(2) prescribes that as a consequence of that building work being carried out the building as a whole shall comply with the applicable requirements of Schedule 1 or, where it did not comply, is no more unsatisfactory than it was before the work was carried out in respect of its compliance with those requirements.

18. In considering in this case the adequacy of the means of escape it is necessary to take account of the proposed increase in storey height of the building; the level of protection provided to the common internal stair; whether the existing elements of structure have the correct/appropriate period of fire resistance; and any compensatory features, such as the provision of early warning of fire, which are proposed within the maisonette itself.

19. Generally the provision of an alternative exit, or exits, from the upper storey of a new maisonette, in addition to any associated passive fire protection that may be afforded to the internal stair, should be provided so as to facilitate the safe escape of the occupants from a fire occurring within the maisonette.

20. As an alternative to the alternative exit you have proposed to enclose the internal stair of the maisonette in fire resisting construction such that the occupants of the new room would have direct access to the entrance door and egress to the common stair, and to provide inter-linked smoke alarms in all habitable rooms and a heat detector in the kitchen. These proposals will benefit early warning and protection from fire for the occupants of the proposed third floor. However, it is also necessary to consider their escape route from the entrance door down through the common parts of the building to the final exit and the compliance of your proposals in this respect having regard to the criteria set out in regulation 4(2).

21. You have stated that you cannot supply the details requested regarding the flats on the lower levels of the building as they are in private ownership and that you have no right to suggest work is carried out to form lobbies as the Borough Council suggests. As a consequence you consider that the building work must be contained in your client's property and the common areas of the building. You have also subsequently noted that it is in fact only the first floor flat which shares the common stair. It follows that contrary to what is implied by the Borough Council, only one flat would be at issue in terms of protection of the common stair from fire from other flats sharing the stair.

22. The difficulties associated with ensuring adequate protection to the existing common stair are acknowledged. However, the only route of escape from the proposed third floor is via that common stair and as such the level of protection to this stair must be addressed. In this respect it is noted that you have provided insufficient detail to adequately assess the fire protection afforded to the common stair from a fire occurring in the first floor flat, or the period of fire resistance for the existing elements of structure.

23. With regard to the elements of the overall structure of the building, it is noted that the period of fire resistance of what would become a four storey building cannot be confirmed as conforming with the recommendations given in Tables A1 and A2 of Approved Document 'B'. The tables suggest a 60 minute period of fire resistance for flats where the top floor is more than 5m above ground level and, although there is some provision made for a reduction in the level of fire resistance for flat conversions, paragraph 8.11 of

Approved Document 'B' (2000 edition) suggests that where the altered building has four or more storeys then the full standard of fire resistance would normally be necessary. In the circumstances the Secretary of State therefore takes the view that there is insufficient information to establish compliance of the building as a whole as assessed against the criteria of regulation 4(2) and in respect of Requirement B1.

24. In summary, your proposals are based on the desire to omit the costly installation of an alternative escape route for the proposed third floor (ie the upper floor of the newly formed maisonette) and continued reliance on a single route of escape via the common stair. Although there is only one other flat discharging on to the common stair (ie at first floor level) you have been unable to confirm whether or not this flat has a lobbied entrance and therefore how much protection is currently afforded the common stair in the event of a fire occurring in this flat. You have also been unable to confirm the period of fire resistance of the existing common stair enclosure walls or the element of structure for the building generally.

25. In coming to a decision on this appeal, the Secretary of State has taken into account that if the existence of adequate structural fire protection to the common stair and the elements of structure throughout the building could be shown to be adequate, and a suitably designed fire detector and alarm system was to be provided not just in the newly formed maisonette but throughout the route of travel both within the maisonette and the common stair to outside, then in principle it may be possible to demonstrate compliance with regulation 4(1) and 4(2) in respect of Requirement B1 without the addition of an alternative escape route. In such circumstances it follows that the need for a relaxation of Requirement B1 would not arise.

The Secretary of State's decision

26. The Secretary of State has given careful consideration to the facts of this case and the arguments put forward by both parties. As indicated above, he does not consider that your proposals as submitted demonstrate appropriate provision for the means of escape or early warning of fire, but in his view there may be potential to achieve compliance with Requirement B1 having regard to the particular circumstances of this case.

27. However, you have appealed to the Secretary of State in respect of the refusal by the Borough Council to relax Requirement B1. The Secretary of State considers that compliance with Requirement B1 is a life safety matter and as such he would not normally consider it appropriate to either relax or dispense with it, except in exceptional circumstances. Moreover, because in the particular circumstances of this case he considers that your proposals have the potential to achieve compliance with Requirement B1, there would appear to be no prima facie case for the need to relax the requirement in any event. Therefore, taking all these factors into account, the Secretary of State has concluded that the Borough Council came to the correct decision in refusing to relax Requirement B1 (Means of warning and escape) of Schedule

1 to the Building Regulations 2000 (as amended). Accordingly, he dismisses your appeal.