

Date: 06/02/01

Ref: 45/3/147

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 Borough Council to relax Requirement B1 (Means of Escape) of the Building Regulations 1991 (as amended) in respect of the need to enclose the new external fire escape staircase, as part of building work at an existing factory mill building

The appeal

3. The building work to which this appeal relates is now complete and involved the refurbishment / renovation of a derelict four storey (including ground), brick built mill. The mill is approximately a hundred years old and was previously unoccupied for five years. The plans provided indicate that the building is of trapezium plan area with two right angles and approximately 25m x mean average length of 36m. The main entrance is indicated as in the north corner of the building but no details are shown of existing internal stair provision. At the diagonally opposite corner the building incorporates a tower structure which itself has a fifth storey at roof level. Adjacent to the tower on the south elevation there was an external steel fire escape supported from the main structure of the building - comprising six flights of 600mm wide stairs accessed from a window on each of the first, second, and third floors. At third floor level a steel ladder extended from the third floor landing of the escape stair to the roof level adjacent to the fourth floor of the tower.

4. The work consisted of the internal refurbishment of the four floors, with the ground floor divided off into units to be let and the upper three floors left open-plan, and with the aim of encouraging potential tenants to take floor space. This work included shot-blasting, wall repairs, lighting (including fire alarm and emergency lighting) and toilet renewal. Externally, the work included roof repairs, brick cleaning, window repairs and decorations, and car parking provision. It also included the removal and replacement of the external fire escape staircase with a new steel staircase serving all floors up to the third floor. No replacement provision was made from the third floor to the roof level.

5. The plan details and the photographs you have provided of the new fire escape show that it is set back from the building by approximately 1800 mm and is structurally free standing from the building. It is constructed with a 30 degree pitch. It comprises five flights of stairs with treads of 1200mm width; and risers at 180mm and goings at 280mm. The plans indicate that access to

the new staircase is to be by fire check doors on the first, second and third floors but the photographs of the new structure appear to indicate that at that time window access only had been retained. As proposed and constructed all the stair flights are not weather protected.

6. The proposals for this building work were the subject of a full plans application which was approved by the Borough Council, subject to conditions that further details and structural calculations should be submitted and approved by the Council prior to the commencement of the work on site, including those in respect of the enclosure of the external fire escape staircase. The Council took the view that the new external fire escape would need to be enclosed to protect the staircase from adverse weather conditions. However, you considered that enclosing the staircase was unnecessary and would be detrimental to the refurbishment scheme. You therefore applied for a relaxation of Requirement B1 which the Borough Council refused. It is against that refusal that you appealed to the Secretary of State. The material date for your appeal is .which therefore falls to be considered in respect of the Building Regulations 1991 (as amended up to and including SI 1999/77).

The appellant's case

7. You state that the new external fire escape staircase is a replacement of the original staircase but that is a vast improvement. You add that the original staircase could not be replaced exactly like for like and that in your view the new staircase has been designed and installed to meet Building Regulations requirements and is a far safer means of escape. However, you do not believe that the new staircase needs to be enclosed to protect it from adverse weather conditions as the Borough Council requests and you, and your Architect, have made the following points in support of your case:

(i) The original fire escape was in an old and dangerous condition, but had the owner of the building accepted a tenant into the building without carrying out building work it would have remained as the only fire escape.

(ii) The original staircase was only a maximum 600mm wide, whereas the new staircase is 1,200mm wide and allows two persons to descend at a time.

(iii) The original staircase was flush against the existing building and against glazing which was not fire rated, whereas the new staircase is further away from the building thereby providing more safety for users.

(iv) The original staircase pitch was exceedingly steep, whereas the new staircase conforms to current building control standards in terms of pitch, handrail, landings and head height.

(v) Following the refurbishment of the building, only the ground floor has new partitions and people on this floor will not need to use the external fire escape. The upper three floors remain open plan and therefore the occupancy situation has not changed with regard to types and number of users and floor space.

(vi) The lack of protection on the fire escape staircase against adverse weather conditions would not deter people from using it in the event of a raging fire.

(vii) A totally enclosed fire escape staircase, even with lighting, would be dark and oppressive, and those with claustrophobia would delay using it. The enclosure would also require additional signage and fire doors etc.

(viii) The additional cost of providing a totally enclosed staircase could jeopardise the refurbishment scheme and the prospect of bringing additional employment into the area.

8. You also suggest that enclosing the external fire escape staircase would greatly change the appearance of the staircase and the mill itself and would attract planning interest. You conclude that imposing strict conditions concerning the enclosure of an external mill fire escape would send the wrong message to potential developers of run-down sites.

The Borough Council's case

9. The Borough Council considered that the staircase was new and not a replacement of the original staircase. Moreover, it was not exactly in the same position. This new building work was therefore subject to the Building Regulations. As such the Council refused to relax Requirement B1 of the regulations on the basis that the proposed staircase was in excess of 6m from ground level and, therefore, should satisfy the relevant requirements of the regulations with respect to enclosure.

10. The Borough Council refers to *paragraph 4.36 of the 1992 edition of Approved Document B (Fire safety)* and quotes its recommendation that "*Where external stairs are acceptable as forming part of an escape route, it is important that the external stair is sufficiently protected from the weather and is adequately protected from a fire in the building*". Additionally, the Council points out that the guidance in paragraph 2.45 is also applicable, which suggests that a stair may be more than 6m in vertical extent if it is protected from the effects of snow and ice.

11. The Borough Council observes that, having regard to the height of the staircase and its - exposure - in addition to the lack of shelter offered from the mill building that it serves - Requirement B1 could not be relaxed without introducing unnecessary risk of falling etc for the occupants of the mill if they should need to use the staircase in the event of a fire.

The Secretary of State's consideration

12. In considering this appeal the primary concern of the Secretary of State is the safety of the buildings occupants who may have to use the staircase in an emergency situation, and not the cost of providing weather protection. At the end of the day that concern must inevitably - albeit regrettably - also over-ride any adverse visual effects. However, it is assumed that the new staircase complies with the requirements of Part K (Protection from falling, collision and impact) of the Building Regulations and thus provides a much improved passage for the buildings occupants in the event of an emergency; and is therefore a significant improvement over the original staircase.

13. The creation of the new staircase has been accepted by the Borough Council as building work, as defined by the Building Regulations, and as such the new staircase should therefore satisfy the relevant requirements of Schedule 1 to those regulations, of which B1 is one.

14. The new staircase is more than 9.5m in vertical extent. In this context the Secretary of State notes that *Approved Document B* recommends that it should be protected from the effects of adverse weather conditions. Your argument that the new staircase is a replacement of another, which was far from satisfactory in many ways, is considered to have some merit. However, it should be borne in mind that this is an external staircase that may need to be used by the buildings occupants in an emergency situation. In the Secretary of States view, this therefore means that the new staircase should be protected from the effects of adverse weather conditions. However this should not be taken to imply a full enclosure, eg the provision of solid balustrading and a capping roof may be sufficient.

The Secretary of State's decision

15. The Secretary of State considers that compliance with Requirement B1 is a life safety matter and as such would not normally consider it appropriate to either relax or dispense with it.

16. The Secretary of State has given careful consideration to the facts of this case and the arguments put forward by both parties. You have argued that a relaxation of Requirement B1 is justified on the grounds that the new external fire escape staircase is in all respects safer than the one it replaced. However, as new building work it fell to comply with Regulation 4(1) of the Building Regulations 1991 which requires that new building work complies with the applicable requirements contained in Schedule 1 to the regulations. The Secretary of States accepts the view of the Borough Council that the work as proposed and constructed is not in compliance with Requirement B1 (Means of escape) of Schedule 1 to the Building Regulations 1991 (as amended up to and including SI 1999/77). Because he considers this requirement to be a life safety matter, and because he considers there are no extenuating circumstances which would justify relaxing Requirement B1, he has concluded that the Borough Council came to the correct decision in refusing to relax this requirement. Accordingly, he dismisses your appeal.