

Date: 28/01/99

Ref: 45/3/110

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.

Text of DETR "appeal" letter dated 28 January 1999 (Reference: 45/3/110)

Building Act 1984 - Section 39

Appeal against refusal by the District Council to dispense with Requirement B2 (Internal Fire Spread (Linings)) of the Building Regulations 1991 (as amended) in respect of the erection of a timber frame swimming pool building

The appeal

3. The proposed work to which this appeal relates comprises the erection of a proprietary single storey timber swimming pool enclosure. The building is of a standard timber frame interlocking log wall construction with a slate covered roof and is specifically designed to cover swimming pools. The ground plan is shown on *drawing 96/01 (drawing No 1)* to be approximately 5 metres wide by 9 metres long. One of the long sides of the building is comprised of glass with wide sliding doors in its centre.

4. Your client states that the pool surface area occupies over 70 per cent of the floor area of the enclosure. The pool is to be operated at a temperature of approximately 80°F throughout the year and the internal walls and ceiling will therefore be subject to high humidity throughout the lifetime of the building. Because of your concern over subsequent discoloration which will be caused to the timber, you do not propose to coat the internal surfaces of the building with a flame retardant which would ensure that it achieves a Class 1 surface spread of flame rating.

5. Your proposals were the subject of a full plans application which was rejected by the District Council on grounds of non-compliance with requirements B2 and B4 (Internal fire spread (linings) and External fire spread). The Council took the view that treatment of the internal surfaces with a fire retardant material was necessary and that a product existed which could achieve the Class 1 rating required whilst not producing any subsequent discoloration of the timber. However, you considered the requirement that the internal surfaces of the pool enclosure should provide a Class 1 surface

spread of flame to be unreasonable and you had therefore also applied to the Council for a dispensation to Requirement B2. The District Council refused this application, at the same time as rejecting your full plans application, on the grounds that they considered that there was a product available which would achieve the required rating and that dispensation of the requirement would be a serious matter. However, you maintained your view that there is no need to treat the internal surfaces of the enclosure and it is against the Council's refusal to dispense with Requirement B2 that you appealed to the Secretary of State.

The appellant's case

6. You state that there is not a fire retardant suitable for application to this high humidity enclosure and you consider that any attempt to treat the internal wall surfaces would result in discoloration which would be unsightly. You state that you have not been able to obtain a guarantee from a manufacturer of intumescent coatings that treatment with their product would not result in discoloration. You argue that you have built these pool enclosure structures in 30 other local authority areas and to date have not been refused a dispensation of Requirement B2 with regard to the need to provide a Class 1 surface spread of flame rating for the internal wall surfaces. You also make reference to a previous similar determination application to the Secretary of State which was accepted in respect of the Requirement B2 issue.

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

i) because of its use as a swimming pool the building can be considered to be of a very low fire risk

ii) the means of escape is very good since all openings are direct to the outside and are at ground level

iii) the building is non-habitable, will not be used for sleeping purposes, and will have a low occupancy

iv) *Approved Document B (Fire safety)* does not have a specific classification for ancillary garden type timber structures and to use the same classification grouping as that of a dwelling house is considered excessive and unnecessary.

The District Council's case

8. The District Council take the view that the internal wall surfaces of the timber pool enclosure should be treated so that they achieve a Class 1 surface spread of flame rating in accordance with the guidance given in *Approved Document B* such that Requirement B2 of the Building Regulations would then be satisfied. They do not support your contention that no suitable treatments are available and they have directed you to a product which in their opinion, and if properly applied, would be suitable.

9. In addition, the District Council also make the following points in support of their rejection of your application for a relaxation/dispensation:

i) the previous submission to the Secretary of State was a determination and not, as stated by you, an appeal; and also the decision letter clearly stated that it '*should not be regarded as establishing a precedent*'. The District Council supports this and takes the view that all cases should be considered on their individual merits

ii) in this particular case the District Council are aware that the user of the pool suffers from arthritis which they consider further prevents them from dispensing or relaxing Requirement B2. In response to this point the pool user has written to the effect that the person with arthritis is 42 years of age, is able to move easily and would not be in danger when using the pool.

The Department's view

10. The Department acknowledges the earlier decision made by the Secretary of State on a similar Requirement B2 issue relating to a timber swimming pool enclosure, but affirms that this was in respect of a determination and that each case must be considered on its individual merits.

11. The Department notes that in this case it is Requirement B2 (Internal fire spread (linings)) which is at issue and the proposal is not to treat the internal surfaces with a timber treatment so that they achieve a Class 1 surface spread of flame rating in accordance with the guidance given in *Table 10 on page 47 of Approved Document B*. The Department is therefore of the opinion that what needs to be considered is the is the life safety threat from within the enclosure in a fire situation.

12. In the Departments view the threat to safety from within the building in a fire situation is small - the use of the building is limited to swimming, has a relatively small floor area, and has good means of escape to external air. The Department is therefore of the opinion that there will not be a threat to life safety if the internal surfaces (ie the walls and ceilings) remain untreated. It follows that in the Department's view your proposal incorporating the untreated internal surfaces is in compliance with Requirement B2. In reaching this conclusion the Department has taken account of the District Council's concern about one of the pool users having arthritis.

The Secretary of State's decision

13. The Department has expressed its view directly above on the question of compliance of your proposals with Requirement B2. However, you have appealed to the Secretary of State against the decision by the District Council to refuse your application for a relaxation of Requirement B2.

14. The Secretary of State has given careful consideration to the facts of this case and the points made by both parties. Compliance with Requirement B2 of Schedule 1 to the Building Regulations is a life safety matter and as such the Secretary of State does not normally consider it appropriate to relax or dispense with the requirement. In this particular case the Secretary of State considers there are no extenuating circumstances which would justify relaxation or dispensation of Requirement B2, and has therefore concluded that the District Council came to the correct decision in refusing to relax or dispense with the requirement. Accordingly, he dismisses your appeal.