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Ref: 45/3/156

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 K1 (Stairs, ladders and ramps) of the Building Regulations 2000 (as amended) in respect of the design of a stair between the first and second floors, forming part of building work to erect a four storey dwelling and detached garage

The appeal

3. The building work to which this appeal relates is complete and involves the erection of a detached four-storey (including basement storey) dwelling of approximately 160m² in plan area and a double garage. The plans indicate that the basement floor of the house will be used as a storeroom. The ground floor comprises a study, lounge, family room, kitchen/breakfast room, dining room and the hall to the front door flanked by two cloak/coat rooms. The first floor accommodation comprises four bedrooms (with en suite bathrooms) and the second floor is shown on the plans as comprising two bedrooms and a bathroom.

4. The stairs from the basement to the first floor are located in the centre of the house and rise to a landing on the first floor. The second floor is accessed by a separate open stair from the first floor landing. The latter stair was fitted during April 2001 and comprises a straight flight of five steps, four winders turning the stair through 180 degree , and a further straight flight of five steps.

5. These proposals were the subject of a full plans application which was submitted by your then agent and rejected by the Borough Council on the grounds, inter alia, that the winders on the stair between the first and the second floors did not accord with the guidance in *paragraph 1.5 of Approved Document K (Protection from falling, collision and impact)* and therefore did not comply with Requirement K1 (Stairs, ladders and ramps) of the Building Regulations. The guidance recommends that "*The normal relationship between the dimensions of the rise and going is that twice the rise plus the going (2R + G) should be between 550mm and 700mm*". However, for the winders in this stair the formula derives a value of 770mm. Your agent therefore submitted revised plans which replaced the winders with a half

landing between the two straight flights of steps. These were conditionally approved by the Borough Council.

6. However, you state that you were not aware of many of the changes to your plans which were requested by the Borough Council as these were addressed to your agent. On most occasions this involved the submission of an entire set of amended drawings by your agent who sent the approved drawings to you and you placed these on your file. One of these 'approved' drawings erroneously showed an old version of the stair (ie incorporating winders), which was given to the stair manufacturer, who manufactured it based on this drawing. In addition - despite a number of visits to the property by the Borough Council's building control officers - you say that you were only advised by telephone of the alleged non-compliance of the stair after it had been constructed and the property had been plastered, underfloor heating pipes laid, and the floors screeded. You therefore applied for a relaxation of Requirement K1 in relation to the stair between the first and second floors which was refused by the Borough Council. It is against that decision that you have appealed to the Secretary of State.

The appellant's case

7. You have made the following points in support of your appeal:

- (i) the stair between the first and second floors leads to secondary accommodation which does not form part of the main house. You have referred to this as secondary loft accommodation and an 'attic', and state that it comprises only one bedroom and a lounge/playroom, not two bedrooms as shown on the plans
- (ii) the second floor accommodation is intended to be used by relatives who visit regularly from their home in the USA. The accommodation is therefore familiar to those users, but is not intended to be used on a daily basis
- (iii) the design of the stair has not presented any difficulty to users to-date and is not unsafe
- (iv) the alleged non-compliance of the stair was not brought to your attention by the Borough Council's building control officers, despite numerous inspections, until the property was substantially complete
- (v) the Borough Council had stamped "Approved" and issued a set of drawings to your then agent, including (whether in error or not) a drawing showing the stair design as now built which went onto your file of approved drawings. This was given to the stair manufacturer, a specialist in this field, who did not query the configuration of the stair and has advised that he makes many stairs in this style
- (vi) the stair has been used by and inspected by the Zurich Municipal Building Surveyor (for insurance purposes), who is content with it and did not raise the question of non-conformity with Requirement K1

(vii) the work involved in altering the stair is not minimal and would cause considerable disruption to you and your family. The existing apron is stained timber and has been set into the wall and plastered up to. Either a new apron, or an extension to the existing apron would be required. The latter would look "incongruous". You believe that the suggestion of butting-up pieces of ply on top of the existing winders is "ludicrous"

(viii) the requirements of *Approved Document K* are "reasonable safety between levels". The stair as installed achieves this.

(ix) the Borough Council has never before brought up the matter of an additional handrail being required.

8. In response to the Borough Council's representations to the Secretary of State regarding your appeal you subsequently added the following points:

- (i) the most up to date approved set of drawings issued by the Borough Council is dated 5 December 2000 - not 7 August 2000 - and it was your understanding that the former superseded the latter
- (ii) while you accept that the stair as constructed does not accord with *Approved Document K*, your understanding is that this is meant as a guide to achieving a safe stair
- (iii) in your view the intended use of the rooms on the second floor is not particularly relevant, but this information has been given to demonstrate that there is no need for a visitor to go to this floor to reach facilities which are not available elsewhere in the house
- (iv) you have never suggested that the second floor is concrete beam and block construction or that altering the stair would interfere with the floor construction. Your reference to floor screeding applies to the first floor which is concrete beam and block, where the stair has been set into the floor. The disruption would be caused by the removal of the stair or by the addition of ply extensions to the existing treads and the consequential alterations needed to the string to make it look acceptable
- (v) you express confusion in that the Borough Council advised you initially that regular access to the rooms on the second floor meant that the stair had to comply absolutely with Requirement K1 because of the amount of use. You are now advised that as the rooms are not intended for every day use the stair must comply absolutely because the users will be unfamiliar with it. You have referred to the paragraph under the heading "Performance" on page 5 of *Approved Document K* which refers to different standards of provision in a public building vis a vis a dwelling to reflect the level of familiarity and number of users. You have argued that this indicates that the number of users should be reflected by a higher degree of compliance, and that this in turn would imply that there must be 'flexibility' in the level of that compliance.

(vi) You state that the Borough Council has never requested a copy of the certificate you have received from Zurich Municipal for insurance purposes, which indicates that the property has been finished to an appropriate standard. Furthermore, the Council has not asked for any evidence to support your request for a relaxation and has offered no explanation as to why they did not notice the alleged non-compliance at an early stage.

The Borough Council's case

9. The Borough Council takes the view that the required alterations to the stair could still at this stage be carried out without major disruption and that compliance with Requirement K1 could be achieved. The Council has also made the following points to support its case for refusing to relax Requirement K1 in response to your application:

- (i) the construction of the stair from the first to the second floor does not accord with *Approved Document K* in that the winders have an excessive 'going' and are not uniform with the rest of the stair in the house. There is also no adequate handrail to help prevent falling and it is therefore considered as not providing safe passage for people moving between floors.
- (ii) The original plans submitted showed winders in the current position in contravention of Requirement K1 and were subsequently amended to show two quarter landings.
- (iii) The plan referred to as "approved" showing the winders is clearly shown as an earlier edition and, while the Borough Council should not have issued it so stamped, the approval notice accompanying it referred clearly to approval of extra information relating to floor beams only. This plan therefore should not have been substituted for any subsequently approved plan showing a compliant stair.
- (iv) The second floor comprises two large bedrooms and a bathroom. The Borough Council therefore does not accept that use can be classed as secondary or occasional.
- (v) *Approved Document K* states that, although safety can be achieved by different standards of provision, where there is less familiarity with the stair there should be a higher standard.
- (vi) The contravention of the stair was brought to your attention prior to decoration and carpeting and a solution suggested that could be implemented without major constructional disruption.

10. In response to your appeal to the Secretary of State, the Borough Council has highlighted the following matters:

- (i) the plans clearly show revision and issue numbers, the most up-to-date edition shows compliance

- (ii) you agree that the stair as constructed does not accord with *Approved Document K*.
- (iii) the deposited plans clearly show the intended use of the rooms on the second floor as bedrooms but, in any event, their proposed use by you still means that they will remain habitable rooms and therefore should comply with Requirement K1
- (iv) the second floor is timber joist construction and not concrete and screed as you state. The remedial work would not interfere with the floor construction at all
- (v) in an apparent reference to the same paragraph in *Approved Document K* as is referred to above (ie in paragraph 8(v)) - the Council interpret this as meaning that if a stair is used infrequently it should be to a good standard of safety. Because you say that the stair is to be used only by relatives visiting from the USA, the Borough Council does not consider this to be frequent use
- (vi) you have not submitted any evidence to the Borough Council that another surveyor has inspected the stair and is happy with its construction.

The Secretary of State's consideration

11. In considering the case for a relaxation of Requirement K1, the Secretary of State has first considered whether or not the stair in question, as built, complies with Requirement K1. The errors that led to its construction are unfortunate, but are irrelevant to this consideration. Requirement K1 is that:

"Stairs, ladders and ramps shall be so designed, constructed and installed as to be safe for people moving between different levels in or about the building".

Approved Document K gives guidance on how this may be achieved in common situations, but this guidance is not exhaustive and other solutions may be acceptable.

12. The stair uses four winders to make a 180 degree turn. This requires treads with large 'goings', with the result that in this case twice the 'rise' plus the 'going' ($2R + G$) is 770mm. *Approved Document K* recommends that the upper limit should be 700mm. This is mainly intended for straight flights, but is also applicable to winder flights. On the other hand *British Standard BS 5395: Part 2: 1984 (Stairs, ladders and walkways- Code of practice for the design of helical and spiral stairs)* suggests a larger value of 800mm, so the value of 700mm should not be regarded as definitive.

13. While the 'going' of the winders in question is on the large side for a comfortable gait, what needs to be considered is whether the winders offer a reasonable standard of safety. The Secretary of State believes that they do and that they therefore show compliance with Requirement K1. The provision of an additional handrail, as suggested by the Borough Council, would also form a further aid to safety.

14. In addition, the above level of compliance achieved by the four winder configuration has been compared with other practical options which could be contained within the present stairwell. These have included a half landing which would omit the need for any winders; a half landing broken in the middle by a single step which would also eliminate the need for any winders; and a quarter landing coupled with three winders. However, the Secretary of State is of the opinion that these options would not offer a greater degree of safety over the four winder configuration already installed.

The Secretary of State's decision

15. The Secretary of State has given careful consideration to the facts of this case and the arguments put forward by both parties. Paragraphs 11-14 above have considered and given the Secretary of State's view on the compliance of the stair as presently installed, having regard to the guidance in *Approved Document K* and the circumstances of this particular case.

16. However, you have appealed to the Secretary of State in respect of the refusal by the Borough Council to relax Requirement K1. The Secretary of State considers that compliance with Requirement K1 can be a life safety matter and as such he would not lightly consider relaxing it except in exceptional circumstances. Moreover, because in the particular circumstances of this case he considers that your building work complies with Requirement K1, there would appear to be no *prima facie* case for the need to relax the requirement in any event. Therefore, taking both these factors into account, the Secretary of State has concluded that it would not be appropriate to relax Requirement K1 (Stairs, ladders and ramps) of the Building Regulations 2000 (as amended). Accordingly he dismisses your appeal.