

Date: 13/01/00

Ref: 45/3/141

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 District Council to dispense with Requirement K1 (Stairs, ladders and ramps) of the Building Regulations 1991 (as amended) in respect of an open and unguarded stair giving access to a loft conversion.

The appeal

3. The building work to which this appeal relates has been completed and involves the conversion of a roof space of a bungalow into a new second storey, comprising a single en-suite bedroom/bathroom. Access from the ground to the new first floor has been provided via an open stair to give an unobstructed view through the bungalow. The stair has a handrail on one side with no guarding on the other side, and the stairs have open rises of approximately 200mm.

4. The proposals for this building work were the subject of a building notice and, following a subsequent site inspection, you were advised by the District Council that further work was needed to the stair to achieve compliance with Part K (Protection from Falling, Collision and Impact) of the Building Regulations 1991. However, although you say that you have agreed to adjust the headroom at the bottom of the stair as requested, you subsequently applied to the District Council to dispense with Requirement K1 of the Building Regulations in respect of the spacing between the rises and the absence of guarding to one side of the stair, on the grounds that the stair had been installed in its existing form for aesthetic reasons. This was refused by the District Council. It is against that refusal that you have appealed to the Secretary of State.

The appellant's case

5. You make the following points in support of your case for a dispensation of Requirement K1:

(i) the stair to the loft conversion has been designed for aesthetic effect. You have opened up all of the rooms in your house to give the illusion of light and space and the design of the stairs was created with this specifically in mind

(ii) you believe that one handrail on the stair with open rises is adequate for your purposes. You have no children and there is no need for anyone else to use the stair. Should you have guests you propose to let them use the downstairs bathroom and bedroom

(iii) you would be prepared to change the stair to comply with the requirements of the Building Regulations, should you decide to sell the house.

The District Council's case

6.The District Council makes the following points in support of its decision to refuse your application to dispense with Requirement K1:

(i) the open rises are approximately 200mm, and therefore will not obstruct a 100mm sphere, as recommended in *paragraph 1.9 of Approved Document K (Protection from falling, collision and impact)* to increase safety for young children. Although there are no children living at the house at present, there is a possibility that children may visit the house or may live there in the future.

(ii) with regard to the guarding to the stair, no attempt has been made to protect people from falling. The stair on the lounge side should have a handrail between 900mm and 1000mm from the pitch line. The flight should be guarded at the side by a barrier, constructed so that a 100mm sphere cannot pass through, and is not readily climbable

(iii) the requirements of the Building Regulations cannot be taken in part for the particular occupants at the time to choose the elements which are felt to apply to them. These requirements are for all people likely to use a building, both currently and in the future.

The Departments view

7.The Department notes that there are no plans to assess in this case and its views are therefore expressed on the basis of the information supplied. However, it appears that the facts of the case are not in dispute between the parties.

8.The Department notes that you want to retain an open stair to give the illusion of light and space, and as the stair is only for your use, you consider that this should override the reduction in safety compared with a stair having the features recommended in *Approved Document K*. You are prepared to incorporate the safety features if you should decide to sell the house. However, the District Council considers that the stair should offer a reasonable standard of safety to all users, especially young children, who may visit the property, or live there in the future.

9. The Department notes and endorses the point made by the District Council that the Building Regulations cannot be applied selectively but must relate to all persons, including young children, in or about a building; and that they must be applied at the time of the building work. In the Department's view, compliance could be readily achieved in practical terms in respect of both the guarding and the open risers. Moreover, the effect of the open risers need not necessarily be completely compromised if an adequate guarding were to be installed to ensure that a 100mm diameter sphere could not pass through the risers, as recommended in *paragraph 1.9 of Approved Document K*.

The Secretary of State's decision

10. The Secretary of State considers that compliance with Requirement K1 can be a life safety matter and as such would not normally consider it appropriate to dispense with it; and would not lightly consider relaxing it except in exceptional circumstances.

11. The Secretary of State has given careful consideration to the facts of this case and the arguments put forward by both parties. He has concluded that there are no extenuating circumstances which would justify either a relaxation or dispensation of Requirement K1 (Stairs, ladders and ramps) of Schedule 1 to the Building Regulations 1991 (as amended) and that the District Council therefore came to the correct decision in refusing to dispense with this requirement. Accordingly, he dismisses your appeal.