

Date: 16/12/99

Ref: 45/3/137

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 relax Requirement K1 (Stairs, ladders and ramps) of the Building Regulations 1991 (as amended) in respect of a new spiral stair, installed as part of a conversion of a barn to a dwelling.

The appeal

3. The building work to which this appeal relates is complete and comprises the conversion of a barn, which is a Grade II listed building, to a single storey, three bedroom dwelling measuring approximately 31m x 6m in plan. At one end of the dwelling a small mezzanine gallery measuring approximately 3m x 5.6m has been installed against the flank wall overlooking the main lounge/studio on the ground floor, which you state your client intends to use as a feature gallery area for aesthetic appearance only. Access from the ground floor to the gallery is via a spiral stair.

4. The proposals for this building work were the subject of a full plans application which was approved, subject to conditions relating to Parts F and J. You were also advised by the District Council, before approval was given, that the spiral stair must comply with Part K of the Building Regulations 1991. Following a subsequent inspection of the work, the District Council informed you that as the headroom over the new spiral stair was only 1.5m this was unacceptable and was not in compliance with Requirement K1. On the grounds that the spiral stair would be giving access to a gallery area which was intended only to be a feature, and would not be used for habitable purposes, you then applied to the District Council for a relaxation of Requirement K1 which was rejected by the Council. It is against that refusal to relax that you have appealed to the Secretary of State.

The appellant's case

5. The occupier is a sculptor and artist who wants to place pieces of work in the mezzanine gallery for aesthetic reasons. The gallery will not be used as a habitable area. Your client accepts that the headroom is low at the top of the stair, but feels that the risk of injury resulting from a user hitting his/her head on the sloping ceiling is small, because the natural walking line will be on the wider end of the treads where the headroom is greatest.

6. You state that the headroom could have been increased by building the mezzanine gallery lower, or by locating the stair under a higher part of the roof. The first option was rejected to preserve the headroom under the mezzanine gallery floor (which the Department estimates to be under 2m). The second option was rejected because it was preferred to keep the stair near the walls to prevent it encroaching into usable space. To achieve 100 per cent compliance for headroom you state that the stairs would, in effect, have to be moved into the centre of the usable area of the ground floor.

7. You have suggested fitting discreet signs at the head and foot of the stair to warn users of the hazard. You contend that this would constitute an in perpetuity solution.

The District Council's case

8. Requirement K1 states 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".

The guidance in *paragraph 1.10 of Approved Document K (Protection from falling, collision and impact)* is that headroom of 2m is adequate, but for loft conversions this may be reduced to 1.9m at the centre of the stair width, and 1.8m at the side of the stair.

9. Although the mezzanine gallery is not a loft conversion, the District Council are prepared to treat it as such. However, the headroom is well below even the reduced measurements, these being: 1.5m at the narrow end of the tread, increasing to 1.85m at the wide end, and being about 1.7m over the walking line. The District Council do not consider this height to be sufficient for people to use the stair safely.

10. The District Council accept that the occupier will make limited use of the stair, but are concerned that future owners may use the gallery differently, and they argue that the stair should be safe to accommodate future uses. As the stair could have been located to provide greater headroom, the District Council feel that a relaxation is neither appropriate nor safe.

The Department's views

11. The Department notes the points made about the design constraints imposed by the height of the mezzanine gallery and by the location of the stair, which have influenced the final configuration of the design. It also notes that the stair will only be used lightly by the present owner. However, the Department accepts the District Councils view that the stair should be safe for future uses.

12. The low headroom provided at the top of the flight means that a person who hits his/her head could fall some way down the stair, and so could suffer additional injuries. As the stair is a spiral type, it is unlikely that a user would fall all the way to the bottom, but it is difficult to judge how this would affect the severity of the injury caused.

13. On balance, the Department considers that the stair does not offer a reasonable level of safety, and provision of warning signs would not be sufficient to make it safe. Given the apparently self-imposed design constraints, the Department also considers that there is insufficient justification in this case for consideration to be given to relaxing Requirement K1.

The Secretary of State's decision

14. The Secretary of State considers that compliance with Requirement K1 can be a life safety matter and as such he would not normally consider it appropriate to relax it other than in exceptional circumstances.

15. The Secretary of State has given careful consideration to the facts of this case and the arguments put forward by both parties. He is sensitive to the need to recognise the constraints which may be imposed on compliance with the requirements of the Building Regulations when the building concerned is a listed one. However, in this particular case he has concluded that there are no extenuating circumstances such as to counter the potential danger which would be inherent in relaxing Requirement K1 (Stairs, ladders and ramps) of Schedule 1 to the Building Regulations 1991 (as amended). In his view, the District Council therefore came to the correct decision in refusing to relax Requirement K1. Accordingly, he dismisses your appeal.