

Date: 08/02/99

Ref: 45/3/120

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 K1 (Stairs, ladders and ramps) of the Building Regulations 1991 (as amended) in respect of a proposed balustrade guarding to an existing stair in a dwelling

The appeal

3. The proposed building work is for the installation of a new hand forged mild steel balustrading by way of guarding to a traditional style stair running from ground to first floor of a private dwelling in a conservation area. The same guarding is also to be installed on the first floor landing. The stair is of generous proportions and elegant design sweeping upwards in a curve through 270 degrees to the first floor via two series of winders and a half landing. The steelwork comprises vertical members approximately 1.4 metres apart supporting the top rails, with infill panels comprising a design made up entirely of swirl and curl elements ranging from very tight to very broad radii - many of which form near horizontal sections. The balustrade is 900 mm in height and it is stated that a 100 mm sphere will not pass through any of the openings in the design.

4. The proposed new balustrade is part of a larger refurbishment scheme for the property which commenced with a building notice procedure followed shortly by a full plans application. This application was given conditional approval but it did not incorporate the proposals for a new balustrade. These were the subject of separate on-going correspondence in which the Borough took the view that the balustrade design proposals put forward by you would be readily climbable by children and did not therefore comply with Requirement K1. The Borough's suggestion of using glass or clear plastic within the panel design to prevent climbing was not acceptable to you, and you therefore requested a relaxation of Requirement K1 which was refused by the Borough. It is against that refusal that you appealed to the Secretary of State.

The appellant's case

5. It appears that initially you took the view that the balustrading was in accord with the guidance given in *paragraph 1.29(b) of Approved Document K (Protection from falling, collision and impact)* and would not be readily climbable by children because of the way that the curves of the metalwork had been designed. However, you state that you have explained to your clients that the proposed balustrade is climbable and that the Building Regulations exist for their own protection, but that in this instance your clients have insisted that aesthetic considerations should take precedence. These considerations are: (a) your clients desire to reinstate the interior as closely as possible to the original; and (b) your clients opinion that the beauty of the design is in its openness and sculptural delicacy. You further state on behalf of your clients that the glass or clear perspex solution suggested by the Borough would be considered a significant compromise to these objectives, and would be accepted by your clients only as a last resort.

The Borough Council's case

6. The Borough Council consider that the proposed balustrade guarding should comply with *paragraph 1.29 of Approved Document K* but in their judgement neither your original nor subsequent design proposals do so. They consider that the horizontal elements provide a foothold which a child could easily gain and can therefore be readily climbed.

7. The Borough Council states that they do not wish to stifle creativity or artistic flair and that they would have accepted your earlier proposals for a glass or perspex sheet in the panels to prevent climbing. In addition, the Borough Council have expressed the view that as an alternative the design of the panels could be altered so that the elements are made more vertical in order to comply with Requirement K1.

The Department's view

8. Requirement K1 [as amended 1 January 1998] states that:

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

9. *Paragraph 1.29 of Approved Document K* advises that:

"Except on stairs in a building which is not likely to be used by children under 5 years the guarding to a flight should prevent children being held fast by the guarding. The construction should be such that:

a. a 100 mm sphere cannot pass through any openings in the guarding and

b. children will not readily be able to climb the guarding."

10. *Approved Document K* does not elucidate on what is meant by "stairs not likely to be used by children under 5 years". It is the Department's view that paragraph 1.29 should be applied in buildings, or those parts of buildings, where young children may reasonably be expected to be unsupervised for short periods. This would therefore include all dwellings, and other buildings which cater for children - such as childrens libraries, toy shops, fast food restaurants, and places of entertainment.

11. In the case of dwellings, the fact that children may not be resident does not detract from the fact that children may visit that dwelling periodically or that at some time in the future children may live there. Whenever children are present in the domestic environment of a dwelling it is unlikely that they will be constantly supervised and it is therefore always appropriate to follow the guidance given in *paragraph 1.29 of Approved Document K*.

12. With regard to the question of compliance of your proposals with Requirement K1, the Department takes the view that in the absence of experimental evidence any assessment of how readily a guarding could be climbed by a child, will be subjective. In the Department's view guarding of the type proposed - when not protected by a glass or perspex screen - would provide ample footholds for a child thus rendering it easy to climb. The danger of a child being held fast by the proposed guarding (ie the 100 mm sphere test) does not appear to be at issue. However, the fact that the guarding could be readily climbed by a child means, in the Departments view, that the proposal is not in compliance with Requirement K1.

The Secretary of State's decision

13. The Department's view on compliance of your proposals has been given directly above. However, you appealed to the Secretary of State against the decision by the Borough Council to refuse to relax Requirement K1 in this particular case. Your justification for such a relaxation was the particular aesthetic and design considerations attaching to this dwelling and its staircase.

14. The Secretary of State has given careful consideration to the facts of this case and the arguments put forward by both parties. Compliance with Requirement K1 can be a matter of life safety and the Secretary of State therefore would not normally consider it appropriate to dispense with the requirement or lightly consider relaxing it except in exceptional circumstances. In this particular case it is clear that the stair will be used in a domestic environment where it must be assumed that young children may live - or have access to as visitors - and within which it is reasonable to assume they may be left unsupervised for short periods.

15. Although the Secretary of State has sympathy with the objectives of reinstating the original design of the staircase balustrade, he does not accept the principle that such objectives should override the clear need for safety of children in a domestic environment. He therefore does not accept your design objectives as representing a sufficient extenuating circumstance to warrant relaxing Requirement K1 and has come to the conclusion that the Borough Council came to the correct decision in refusing to relax Requirement K1. Accordingly, he dismisses your appeal.