

BUILDING ACT 1984 - SECTION 39

APPEAL AGAINST REFUSAL BY THE DISTRICT COUNCIL TO RELAX OR DISPENSE WITH REQUIREMENT K2 (“PROTECTION FROM FALLING”) OF THE BUILDING REGULATIONS 1991 (AS AMENDED) TO PROVIDE FOR THE OMISSION OF GUARDING AT A CHANGE OF FLOOR LEVELS BETWEEN LIVING AREAS, FORMING PART OF THE ERECTION OF A NEW DWELLING

The building work and appeal

3. The building to which this appeal relates is a newly completed detached dwelling, which you say you have built as a ‘DIY’ project over several years, in the grounds of an existing dwelling. The building is not of a conventional design; it is equivalent to a two storey dwelling with changes in level and access to the roof areas as terraces. The main structure is formed of concrete sprayed onto steel reinforcement and about 60% of the roof is covered with earth. The lower-level of the building contains a lounge, four study bedrooms, garage and other accommodation. The upper-level contains a kitchen, dining area with a gallery and terraces. A passage connects the gallery and the kitchen and a stair provides a link between the lounge and the dining area.

4. The Council carried out a completion inspection of the building work on 22 August 2005 and identified four contraventions of the Building Regulations. You advise that work to remedy the contraventions was carried out, including the provision of a guardrail around the upper terrace above the lounge. However, you decided to apply for a relaxation or dispensation of Requirement K2 of the Building Regulations 1991 (as amended) to provide for the omission of guarding at the change of floor levels between living areas, of approximately 5m in length, as detailed in paragraph 6 below, as you do not consider that this is necessary. This was refused by the Council on 6 April 2006 and it is against this refusal that you have appealed to the Secretary of State.

The appellant’s case

5. You refer to the wording of Requirement K2 and the guidance in Approved Document K (“Protection from falling, collision and impact” - 1998 edition) and conclude from this that guarding should be capable of preventing injury from falling more than 600mm, although some risks are deemed acceptable. You consider that the issue is one of appropriate protection where it is necessary to reduce the risk to safety.

6. You explain that the existing arrangement for the lounge/dining areas in question is as follows:

- (i) The areas comprise a free-form space with overall dimensions of approximately 11m x 8m and are used as sitting and dining areas and as a circulation space.
 - (ii) There is a change of level of 1.2m between the lower seating area and the upper dining area, and the change of level is terraced to form seating and a water feature and includes a stair comprising 5 steps.
 - (iii) There is a change of level of 1.4m between this seating area and the passage to the kitchen, which is also terraced to form seating.
 - (iv) At the upper-level there is a 200mm step between the dining area and the passage and a similar step between the passage and the kitchen.
7. With regard to protection from falling, in your case you state that:
- (i) No guarding is provided or deemed necessary in the areas in question.
 - (ii) Circulation routes are clearly delineated and there is no more danger of falling than there would be from a railway station platform. Marker lights are positioned at approximately 400mm centres along the edge of the change of levels and to the sides of steps.
 - (iii) To prevent people from injury by falling from a height of more than 600mm the edge along the change of levels is terraced and fitted with cushions.
 - (iv) The seating is 400mm high including cushions and 800mm high to the top of the backrest cushion and shelf.
 - (v) The ceiling from the dining area and passage curves to meet the ceiling above the seating area and partially restricts access to the change of levels above a height of 900mm.
8. With regard to the issue of safety you conclude that:
- (i) Given the nature and design of the dwelling an acceptable standard of safety has been achieved.
 - (ii) There is no risk of falling from a height of more than 600mm; any such fall would be onto cushioned seating.
 - (iii) The current arrangement has existed since 2000 without incident.
 - (iv) The occupants do not want or require further guarding as they believe it would be obstructive, visually intrusive, and unnecessarily sub-divide the living space.
 - (v) The occupants are content with the safety of the existing arrangement and do not feel that their personal safety or that of visitors/others using

the building is at risk. The nature of the dwelling and circumstances are such that visitors or others unfamiliar with the arrangement automatically take appropriate care.

- (vi) Any subsequent occupants could add guarding should they wish.

The Council's case

9. The Council confirms that Requirement K2 of the Building Regulations 1991 (as amended by SI 1997/1904) applies in this case as the building work commenced on 20 April 1998.

10. The Council has made the following comments, in response to the points you have made, to support its case that it would not be appropriate to relax or dispense with Requirement K2:

- (i) The intention of Requirement K2 is to prevent people from falling by providing suitable barriers rather than protecting people from injury after having fallen. The cushioned seating you have provided below the edge of the upper-level floor would therefore be deemed unsuitable.
- (ii) The low ceiling above the change in floor levels may restrict access to the edge of the upper-level for adults but would not prevent children from falling over the edge.
- (iii) The marker lights may help to warn users of the change in floor levels but would not assist in preventing accidental tripping.
- (iv) The Council cannot accept that the provision of suitably designed guarding would obstruct normal use or unnecessarily sub-divide the space.
- (v) The Council considers that the risk of falling over the edge of the upper-level floor is too great to rely on people unfamiliar with the arrangement to take appropriate care.

The Secretary of State's consideration

11. The Secretary of State recognises that this is an unusual design of dwelling, but she considers that this does not change the need for a reasonable standard of safety. Requirement K2 of the Building Regulations 1991 (as amended) is applicable in this case and it states:

“(a) Any stairs, ramps, floors and balconies and any roof to which people have access, and

(b) any light well, basement area or similar sunken area connected to a building,

shall be provided with barriers where it is necessary to protect people in or about the building from falling.”

12. In your case, you have made a number of points to support your view that an acceptable standard of safety has been provided in the areas in question. You state you have delineated the edge of the change of floor levels with lights at 400mm centres and you argue that in the event of a fall the victim would land on cushioned seating. You also say that the ceiling over the dining area curves down over the seating area and partially restricts access to the change of levels. You add that there have been no accidents since 2000, and that subsequent occupiers of the building could add guarding if they wish.

13. However, the Council argues that although the marker lights would warn the user of the change in floor levels, it would not prevent a slip or trip. The Council also feels that the lower ceiling above the change in levels would not prevent children from falling. Moreover, the Council considers that the intention of Requirement K2 is to prevent falls, not minimise injury.

14. The Secretary of State is minded to agree with the Council on these matters. As the upper-level floor is in a dining area she feels that there is a possibility of food or liquid spills which could make the polished wood floor slippery and precipitate falls. Also, while the ceiling does curve down, it still appears to be quite high at the change of floor levels, so may not significantly restrict access for adults, let alone small children.

15. The Secretary of State notes that subsequent occupants could provide guarding as you suggest, but there is no mechanism to enforce this through the Building Regulations. In addition, there is nothing to stop them moving the upholstered furnishings you have provided.

16. Taking into account the above points, the Secretary of State does not consider that the existing arrangement offers a reasonable standard of safety for the purpose of compliance with Requirement K2. Although you may consider it adequate, the building should be reasonably safe for both current and future occupiers, including their children and visitors who may be unfamiliar with the arrangement. The Secretary of State concludes that sufficient justification has not been made to relax or dispense with Requirement K2 in this situation.

The Secretary of State's decision

17. In coming to her decision, the Secretary of State has given careful consideration to the particular circumstances of this case and the arguments presented by both parties.

18. The Secretary of State considers that compliance with Requirement K2 makes an essential contribution to life safety and as such she would not normally consider it appropriate to relax or dispense with it, except in exceptional circumstances which - in her view - do not apply in this particular case. As indicated above, she has concluded that it would not be appropriate to relax or dispense with Requirement K2 (“Protection from falling”) of Schedule 1 to the

Building Regulations 1991 (as amended) to provide for the omission of guarding at the change of floor levels in question in this case. Accordingly, she dismisses your appeal.