

Date: 13/01/00

Ref: 45/3/140

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 City Council to relax or dispense with Requirement K2 (Protection from falling) of the Building Regulations 1991 (as amended) in respect of the design of the balustrades to the balconies and external walkway as part of the conversion of a building to form eleven apartments

The appeal

3. The building work to which this appeal relates comprises alterations to convert a redundant hydro-electric power station into eleven apartments. The building was built in 1894 and is listed Grade II. The building is L shaped in plan comprising a boiler house on one arm and an engine house on the other.

4. From the drawings provided it appears that the height of some of the component buildings and the roof spaces are such that at least four of the proposed dwellings will be on three floors and contain up to three bedrooms. Access will be provided to all the units through openings in the existing tall windows. To achieve this in the units to be created in the engine house, an elevated tubular steel walkway will be constructed along the north east side of the building at a height ranging between about 3.1m to 4.5m. above ground level. The overall width of the proposed walkway is about 1700mm. The guarding will comprise horizontal tensioned steel cables running through vertical posts with yacht rigging fittings. The handrail will be cranked inwards from the balustrading by 200 mm.

5. Each of the large windows to be used as entrances is mirrored by a similar sized one on the opposite side of the buildings. Most of the new units are to be created by the construction of dividing walls running at right angles to each of these pairs of windows. Each window on the opposite wall of each of the proposed units in the boiler house and the engine house are to have balconies constructed measuring, on average, 3.8m x 1.9m in depth, and will have the same type and specification of guarding as is proposed for the walkway. The height of these balconies will be on average 7m.

6. These proposals received Building Regulations approval, but the City Council reserved a decision on the balustrading proposed for the balconies and walkways. The City Council was of the opinion that the proposed construction of the guarding to the balconies to units , and the walkway connecting units , did not comply with Requirement K2 of the Building Regulations 1991 because children under 5 years old in the building would not be protected from falling. However, because of the nature and design of the building, you wanted the balustrading to be as minimalist as a possible and took the view that the tensioned cable system proposed had been extensively used elsewhere and would meet the climability criteria. You therefore applied for a relaxation or dispensation of Requirement K2 of the Building Regulations 1991 which was refused by the City Council. It is against that decision that you have appealed to the Secretary of State.

The appellant's case

7. You wish to use a minimalist design for the guarding, and have chosen horizontal tensioned steel cables, with the handrail cranked inwards by 200mm. The height of the guarding is 1100mm. You accept the need to make the guarding difficult to climb, and believe what you have done is sufficient for the following reasons:

(a)the cranked handrail makes the guarding awkward and uninviting to climb

(b)the steel cabling will vibrate if stood on, making it uncertain and uninviting to climb

(c)the dwellings are unsuitable for families with children, and so children are not expected to live there

(d)you have seen this type of guarding used extensively elsewhere.

The City Council's case

8. The City Council is of the opinion that the guarding to the balconies of units and the walkway connecting units contravenes Requirement K2 of the Building Regulations by not providing sufficient protection for children under 5. The City Council has referred in particular to *paragraph 3.3 of Approved Document K (Protection from falling, collision and impact)* which says that:

The construction should be such that.....and so that children will not be readily able to climb it. Horizontal rails for such guarding should be avoided.

9. It is the City Council's opinion that your proposals are not adequate to satisfy Requirement K2 because the horizontal cables could be climbed easily, and the cranked handrail is not sufficient to deter climbing. The City Council also believes that as the units have three bedrooms, some of them may be occupied by families with young children, and any occupants may be visited by families with young children.

The Department's view

10. The Department notes your preference on design grounds for a minimalist solution for the balustrading. However, the Department accepts the City Council's judgement that the guarding will be relatively easy to climb and that young children are likely to live in, or visit, the development and thus be at risk. The risk would be greater on the balconies than the walkways, because young children are more likely to play there and because the drop appears to be in the region of two to three metres greater than that of the greatest drop to ground level on the walkway.

The Secretary of State's decision

11. The Secretary of State considers that compliance with Requirement K2 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.

12. The Secretary of State has given careful consideration to the facts of this case and the arguments put forward by both parties. Although he appreciates that the proposed guarding has been designed with a view to securing a sensitive solution for a listed building, he has concluded that the extenuating circumstances are insufficient to justify relaxing or dispensing with Requirement K2 (Protection from falling) of Schedule 1 of the Building Regulations 1991 (as amended) and that the City Council therefore came to the correct decision in refusing to relax or dispense with this requirement. Accordingly, he dismisses your appeal.