

BUILDING ACT 1984 - SECTION 39

APPEAL AGAINST REFUSAL BY THE COUNCIL TO RELAX REQUIREMENT M4 (SANITARY CONVENIENCES IN DWELLINGS) IN PART M (ACCESS TO AND USE OF BUILDINGS) OF SCHEDULE 1 TO THE BUILDING REGULATIONS 2000 (AS AMENDED), IN RESPECT OF THE PROVISION OF GROUND FLOOR WC FACILITIES, FORMING PART OF THE ERECTION OF TWO DWELLINGS.

The building work and appeal

3. The papers submitted indicate that the building work to which this appeal relates is completed and comprised the erection of two semi-detached, two storey, dwellings, following demolition of the previous unoccupied building which had deteriorated. The new dwellings are approximately 40m² each in ground floor plan area and have a hallway, an open plan living room, and kitchen on the ground floor and two bedrooms with a bathroom on the first floor.

4. The building work was the subject of a building notice. You say that on completion of the work, the Council advised you that, due to the non-provision of a WC on the ground floor of the new dwellings, the work did not comply with Requirement M4 of the Building Regulations and the Council was not therefore prepared to issue a completion certificate. As you considered that this requirement was unreasonable, you applied to the Council for a relaxation of Requirement M4 which the Council refused on 25 January 2008. It is against this refusal that you have appealed to the Secretary of State.

The appellant's case

5. You acknowledge that a WC should be provided on the entrance or principal storey of a new dwelling (as applicable) to comply with Requirement M4 of the Building Regulations. However, due to site restrictions and the size of the constructed properties in this case, you believe that the requirement places an overly onerous and unreasonable duty on your client.

6. You agree with the spirit of Part M of the Building Regulations but you have requested a relaxation to allow for the omission of a WC on the ground floor (ie the entrance storey), because you feel that due to the small size of the dwellings such provision will take up an unreasonable amount of floor area, which would be of economic detriment to the project. You add that the ground floor area is open plan and the WC would have to be accessed from the living room, which you consider is an unsatisfactory solution in terms of privacy and hygiene. This would also be exaggerated due to the WC requiring mechanical extraction as there is no possibility of providing a window. Although in theory an extractor fan would remove any smells you believe that "it is an unpleasant method of full compliance".

7. In your view, Part M guidance provides for occupants with disabilities to cope better with reducing mobility and stay longer in their own homes. The provisions are not necessarily expected to facilitate full independent living for all people with disabilities. You point out that due to the dwellings' location and planning restrictions, there is an entrance step into the dwellings which in effect means that a "relaxation" in relation to Part M has already been granted. You consider that this will have a knock-on effect because, whilst the owners have the potential to receive visitors with disabilities, it is unlikely that the occupants will have a disability which might prevent them from using the bathroom on the first floor, as access to the dwellings is not suitable for wheelchair access.

8. Furthermore, you are led to believe from estate agents that the properties in question are likely to be purchased by young first time buyers or investors looking to rent to young professionals. Either way the people most likely to buy the properties are unlikely to stay there all of their lives.

9. As the development consists of only two small dwellings, you consider that this will have a minimal impact on the housing stock locally. You also add that the Council did not at any stage during the planning, demolition or building regulations process mention that a ground floor WC was required for the two dwellings and you understand that it is not a condition by all local authorities to enforce this. To further support your case, you have submitted details of similar dwellings which you say have been built in the area without ground floor WCs.

The Council's case

10. The Council states that your comments have been considered and agrees that the entrance step into the dwellings precludes unaided wheelchair access. The Council believes that Requirement M4 of the Building Regulations makes provision for ground floor WC accommodation with the expectation that this will be in place for the life of the building, although occupation criteria for this period is clearly unknown. The location of the WC and size of the living area were noted in this case but were not considered to be of such significance as to justify the non-provision of this facility. It is the Council's view that the requirement for the provision of a ground floor WC is also to assist persons who have difficulty in climbing a full flight of stairs whether they are residents or visitors.

11. The Council considers that there is adequate space for the provision of ground floor WC accommodation in the dwellings in this case and that it is reasonable to expect installation of this facility. The Council concludes that the facilities provided are not adequate, as required by Requirement M4, and is not prepared to relax the requirement.

The Secretary of State's consideration

12. The Secretary of State notes that Requirement M4 of the Building Regulations requires that reasonable provision shall be made in the entrance storey in new dwellings for sanitary conveniences or where the entrance storey contains no habitable rooms, reasonable provision for sanitary conveniences shall be made in either the entrance storey or the principal storey. This is supported by the guidance in Approved Document M (Access to and use of buildings).

13. The Secretary of State considers that, in the above context, it is appropriate to take into account the mobility needs of not only current but all potential future occupiers, and also occasional visitors who may have a temporary or permanent disability. In her view, individuals with mobility impairments should not be prevented from going about their affairs in an independent manner and be put in an unnecessary position whereby they have to be helped up or down a flight of stairs to reach a WC.

14. You have put forward arguments for omitting WCs on the ground floor/entrance storey of the two dwellings in this case including: the presence of an entrance step into the properties, the small size of the units, not being able to find a suitable location for the WCs and the loss of floor area which would be of economic detriment to the project. The Secretary of State recognises that there may have been difficulties in introducing a ground floor WC into each dwelling. However, these difficulties are not insurmountable and could have been avoided if an alternative design had been adopted.

15. Whilst the presence of a step as part of a planning condition may present an obstacle to some people it cannot be regarded as an absolute barrier to occupiers and occasional visitors who may have a temporary or permanent disability. As such, it should not be considered reason in itself to fail to comply with Requirement M4.

16. You have pointed out that the Council did not mention that a ground floor WC was required whilst the dwellings were under construction. The Secretary of State notes that you elected to use the building notice procedure rather than seeking full plans approval, which would have drawn attention to the need for a ground floor WC at the proposal stage. Where it is felt unreasonable to show compliance with the Building Regulations in any particular case, such matters are best agreed with the appropriate building control body prior to construction. You also refer to other dwellings in the borough which you say have been built without a ground floor WC. However, those cases are a matter for the appropriate building control body and the Secretary of State can only consider the merits of the case that has been submitted to her on appeal.

17. You hold the view that the impact of these new properties on the housing market as a whole is minimal, and suggest that the impact of a relaxation in these circumstances would similarly be minimal. The Secretary of State takes the view that in the case of new build dwellings it is unacceptable in all but the most exceptional circumstances to build without complying with the requirements of Part M of the Building Regulations and she does not consider that such circumstances apply in this particular case.

The Secretary of State's decision

18. 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.

19. As indicated above, the Secretary of State has concluded that a case has not been made to relax Requirement M4 (Sanitary conveniences in dwellings) in Part M (Access to and use of buildings) of Schedule 1 to the Building Regulations 2000 (as amended), in relation to the two new dwellings in question. Accordingly, she dismisses your appeal.

20. You should note that the Secretary of State has no further jurisdiction in this case and that any matters that follow should be taken up with the building control body.