

BUILDING ACT 1984 - SECTION 39

APPEAL AGAINST REFUSAL BY THE BOROUGH COUNCIL TO RELAX REQUIREMENT M4 (SANITARY CONVENIENCIES IN DWELLINGS) IN PART M (ACCESS TO AND USE OF BUILDINGS) OF SCHEDULE 1 TO THE BUILDING REGULATIONS 2000 (AS AMENDED), IN RESPECT OF A GROUND FLOOR WC, FORMING PART OF THE ERECTION OF A NEW TWO STOREY INFILL HOUSE

The building work and appeal

3. The papers submitted indicate that the building work to which this appeal relates comprises the erection of a new two storey infill house which you propose to build next to your current house. The new house will be approximately 38m² in plan area at ground floor level and you propose to have a kitchen and living room on the ground floor and two bedrooms with a bathroom on the first floor.

4. The proposed building work was the subject of a full plans application, which the Council initially rejected, but subsequently approved on 1 May 2007. However, to achieve this approval, you were concerned that the proposed layout of your new house has had to be adapted to include the provision of a WC between the kitchen and the living room on the ground floor to comply with Requirement M4 of the Building Regulations. You therefore applied to the Council for a relaxation of Requirement M4 which was refused on 28 March 2007. It is against this refusal that you have appealed to the Secretary of State.

The appellant's case

5. You cite the following as reasons for your relaxation request and appeal:

- (i) The size of the site is very small and could not realistically be extended any further without becoming obtrusive to neighbouring properties. This was a major consideration at the planning stage.
- (ii) The building has been specifically designed for you and your wife. You wanted an open plan ground floor, which included a dining area between the kitchen and the living room. Due to the limited size of the ground floor, the inclusion of the WC would effectively take away the space you need for dining and make the ground floor feel more congested. The space remaining between the stair and the WC could only then be used as a passageway between the kitchen and the living room.
- (iii) While you appreciate the spirit and objectives of the requirement, you feel that in this particular instance the inclusion of a WC will quite

drastically reduce the standard of accommodation you are trying to achieve, for you and future occupants, and will seriously affect the "liveability" of your home.

- (iv) You have considered different options with the WC included, but take the view that the only viable option would be to extend the ground floor to the rear which would require a new planning application. As this would incur additional time and costs with no guarantee of approval you are not prepared to proceed with this.
- (v) Neither you nor your wife are disabled, nor are friends or family. Should this alter in the future your proposed new home would not be your choice to live, as it is more suited to occupation by an active couple.
- (vi) You consider that it would be appropriate to dispense with a ground floor WC so that your new property can achieve its full potential and contribute positively to the diverse housing needs of the locality. However, accessible services would be left in place for the inclusion of a ground floor WC, without major disruption, in the position shown on your revised drawing, should it be required in the future.

6. In response to the Council's representations to the Secretary of State (see below), you conclude that the circumstances and wishes of current occupiers is the single most important consideration in this case. You are planning to spend a lot of money to provide a home that you want and the loss of the planned dining area will effectively make the house unsuitable for you.

The Council's case

7. The Council considers that the building work should comply with Requirement M4 of the Building Regulations and the guidance in Approved Document M (Access to and use of buildings), which require reasonable provision in the entrance storey of a new dwelling for sanitary conveniences. Your revised drawing shows how this can be provided in your case.

8. The Council does not believe it is appropriate to consider the health of the current occupiers, family or friends as this can in any event change suddenly. The Council notes that you are willing to make provision for the future, but this is not referred to in the guidance in Approved Document M, and it also does not allow for the occasional visitor who would find the stair difficult to negotiate.

The Secretary of State's consideration

9. The Secretary of State considers that wherever feasible every effort should be made to secure compliance with the requirements of Part M and that reasonable provision for sanitary conveniences should be made in either

the entrance or principal storey of new dwellings, as indicated in the guidance in Approved Document M.

10. The Secretary of State has had regard to the arguments you have put forward for omitting a WC on the ground floor of your new house and your view that the inclusion of a WC would reduce the standard of accommodation you and your wife are trying to achieve. However, she agrees with the Council that it is appropriate to consider the mobility needs of not only current but future occupiers, and also occasional visitors who may have a temporary or permanent disability. In the Secretary of State's 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. The knowledge that there is potential for construction of a ground floor WC does not help in such circumstances.

11. With regard to the alternative arrangement drawing you have provided in your case showing a WC compartment located opposite the staircase and adjacent to the soil stack serving the bathroom above, the Secretary of State agrees with you that this arrangement would seriously compromise your use of the ground floor space. However, notwithstanding the size of the site, she considers that other solutions are possible that would not have this effect. For example, it would appear to be possible to locate a Part M compliant WC in the space below the stair, with just the loss of a small cupboard. In those circumstances, a case to relax Requirement M4 has not been made.

The Secretary of State's decision

12. 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.

13. You have appealed to the Secretary of State in respect of the refusal by the Council to relax Requirement M4 of the Building Regulations. As indicated above, she takes the view that with careful design the proposed building work has the potential to comply with Requirement M4 and that there are no extenuating circumstances which would justify a relaxation. The Secretary of State has therefore concluded that it would not be appropriate 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 this case. Accordingly, she dismisses your appeal.