

Date: 29/09/05

Ref: 45/3/175

Note: The following letter which has had personal details edited out was issued by our former department, the Office of the Deputy Prime Minister (ODPM). ODPM became Communities and Local Government on 5 May 2006 - all references in the text to ODPM now refer to Communities and Local Government.

Building act 1984 - section 39

Appeal against refusal by the Borough Council to dispense with requirement M4 (Sanitary conveniences in dwellings) of the Building Regulations 2000 (as amended) in respect of the provision of sanitary accommodation in the entrance storey of a new dwelling

The building work and appeal

3. The proposed building work to which this appeal relates comprises the erection of a new detached three storey house, with plan dimensions of approximately 6.2m by 11.2m. The three floors will be connected by a stairway and will contain:

- basement floor level - a stair down to an internal lobby, with connecting guest WC, leading to, on one side, the kitchen/dining room, and, on the other, via a utility room, to a hobby room with en-suite bathroom with a WC
- ground floor (entrance) level - level access entrance door opening on to hall/stairway with one step down to formal living/dining room to one side and garage to the other
- first floor level - four bedrooms and two WCs (one as part of an en-suite bathroom).

4. The building control service for the above proposed work is being undertaken by Approved Inspectors. However, your clients did not wish to provide a WC at the entrance level on the ground floor of the new dwelling and you therefore applied to the Borough Council for a relaxation of Requirement M4 of the Building Regulations with regard to the toilet provision, as Approved Inspectors are not empowered to consider relaxation or dispensation applications. The Borough Council took the view that your application was, in fact, for a dispensation of Requirement M4, which the Council refused on 18 March 2005 on the grounds that there was no justification. It is against that decision that you have appealed to the Secretary of State.

The appellant's case

5. You refer to the guidance in *Approved Document M (Access to and use of buildings)* and state that the design of the new building complies with the intent of the guidance, with the exception of Section 10 relating to Requirement M4, which you consider to be too onerous and unreasonable in the circumstances of this case.

6. You comment that the proposed house will not be a speculative home built for an unknown buyer - it has been designed specifically for your clients' requirements and use at their own expense. Two toilets will be provided on the basement floor which is the living area that will be mostly used by the family and a further two will be provided on the first floor adjacent to the bedrooms. Your clients do not wish to have a WC compartment adjacent to the formal living room on the ground floor which is generally where they will entertain guests.

7. You add that there will be no disabled occupants in the house and none of your clients' family or friends are currently disabled. The house will not be a public building and if there was a disabled guest he/she would be invited into the house when the owners are present so that the guest would be helped to negotiate the steps. It would be inappropriate to expect your clients to invite disabled strangers in off the street to use the toilets in their house. However, should your clients find that their mobility decreases or they decide to sell the house in future, provision has been made for a WC compartment to be built at ground floor level, adjacent to the plumbing stack running alongside the entrance/living room wall, if necessary.

8. You conclude that economically the cost of installing a WC at ground floor level is not an issue in this case. In your view, any future purchasers of the house would need to be financially well off and the costs of installing a WC in the future would not therefore unreasonably present any financial hardship to any owner.

9. You subsequently commented further in response to the Borough Council's representations to the Secretary of State (see below), making further reference to the guidance in *Approved Document M* and reiterating that you have provided a mitigating circumstance in the design of the new building that allows for the "easy" installation of a WC at ground floor level in the future, if necessary. You note that the Council has not referred to this and, in your view, it offers an alternative solution to "reasonable provision" to ensure that buildings are accessible and usable.

The Borough Council's case

10. The Borough Council advises that it has referred to Requirement M4 of the Building Regulations and to the relevant guidance in *Approved Document M*, and notes that the primary objective is to provide a WC in the entrance storey of a dwelling and to locate it so that there should be no need to negotiate a stair to reach it from the habitable rooms in that storey. As the entrance storey at ground floor level in the proposed house will contain a living/dining room and with no alternative but to use the stair to reach a toilet, the Council considers that there is a requirement to provide a WC at this level.

11. The Borough Council recognises that toilets are to be provided elsewhere in the house, but in the Council's view this does not negate the need to comply with Requirement M4. The Council also acknowledges that the property is to be built for a particular family, but notes that there are no limits in the application of Requirement M4 and neither are there any justifiable reasons within the guidance that would suggest that such a requirement is unreasonable in these circumstances.

12. The Borough Council considers that your drawings indicate that there is no space constraint preventing the installation of a suitable WC at ground floor level. Therefore, having given the proposals due consideration, the Council concludes that it can see no reason to dispense with Requirement M4 in this case.

13. The Borough Council also notes from the correspondence submitted to the Secretary of State that the Approved Inspectors involved in this case "can see no good reason for dispensing with Requirement M4".

The Secretary of State's consideration

14. The Secretary of State notes that Requirement M4 within Part M of the Building Regulations stipulates that "*Reasonable provision shall be made in the entrance storey 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 principal storey.*"

15. As stated in your letter of 25 April 2005, the Secretary of State's view of compliance with the requirements of Part M is set out in *Section 0 of Approved Document M* under 'General Guidance' as follows:

"In the Secretary of State's view the requirements of Part M will be met by making reasonable provision to ensure that buildings are accessible and usable.

People, regardless of disability, age or gender, should be able to:

a. gain access to buildings and to gain access within buildings and use their facilities, both as visitors and as people who live or work in them

b. use sanitary conveniences in the principal storey of a new dwelling.

The provisions are expected to enable occupants with disabilities to cope better with reducing mobility and to 'stay put' longer in their own homes. The provisions are not necessarily expected to facilitate fully independent living for all people with disabilities."

16. The Secretary of State notes further that you accept on behalf of your clients (also in your letter of 25 April 2005) "*...that the Part M Section 10 rule is applicable to this proposed project, and that with the exception of this rule the design complies with the intent of the ... performance guideline and all other relevant Part M rules*". However, as set out in paragraph 3 above, your drawings indicate that the entrance door to the proposed house on the ground floor, though itself having a level threshold, will lead only to a hallway from which the main living space is reached via a stepped access; whereas the objective set out in *paragraph 7.1 of Approved Document M* is to "*...facilitate access within the entrance storey or the principal storey of the dwelling, into habitable rooms and a room containing a WC, which may be a bathroom on that level.*" The Secretary of State has not been asked to make a decision on the question of level access to habitable rooms, but makes this point because he believes it is an indication that the purpose of the requirements of Part M (Access to and use of buildings) of the Building Regulations has been misunderstood in this case.

17. The Secretary of State has had regard to the arguments that you advance on behalf of your clients for omitting a WC on the ground floor entrance level of the proposed house, as stated in paragraph 7 above in particular. He wishes to be clear that what is being addressed here relates primarily, but not exclusively, to the needs of people with mobility impairments. Such impairments may be temporary or permanent and they can affect anybody. The Secretary of State's view as summarised above in paragraph 15 is that as far as reasonably practicable no person who is in such a position should be prevented by thoughtless building design from going about their affairs in an independent manner. A resident who has an accident, or an unexpected guest or visitor on business with a mobility impairment, should not expect to have to be helped up or down a flight of stairs to reach a WC, and the knowledge that the potential for construction of a new ground floor toilet has been foreseen is neither help nor consolation in such circumstances.

18. The Secretary of State is concerned that wherever feasible every effort should be made to secure compliance with the requirements of Part M. He has concluded that there are no extenuating circumstances in this case which would justify the omission of a WC on the ground floor entrance level of what would be a newly built house.

The Secretary of State's decision

19. The Secretary of State has given careful consideration to the particular circumstances of this case and the arguments presented by both parties.

20. As indicated above, the Secretary of State has concluded that it would not be appropriate to dispense with Requirement M4 (Sanitary conveniences in dwellings) of Schedule 1 to the Building Regulations 2000 (as amended) in this case. Accordingly, he dismisses your appeal.