

BUILDING ACT 1984 - SECTION 39

APPEAL AGAINST REFUSAL TO RELAX OR DISPENSE WITH REQUIREMENT B1 (MEANS OF WARNING AND ESCAPE) AND REQUIREMENT K1 (STAIRS, LADDERS AND RAMPS) OF SCHEDULE 1 TO THE BUILDING REGULATIONS 2010, IN RESPECT OF THE INSTALLATION OF A STAIRLIFT TO A COMMON STAIR

The building work and appeal

3. Your appeal form indicates that the building to which this appeal relates is a two storey block containing 76 one bedroom retirement flats, with resident management staff and a community alarm service. The proposed building work involves the installation of a stairlift to an existing common stair between two flats on the ground floor and two on the first floor, which includes your property.

4. The Council rejected your full plans application for the work on 24 May 2011 on the basis that the proposal does not comply with Requirements B1 and K1 of the Building Regulations (see details of these requirements in paragraph 1 above). The Council also refused your application to relax or dispense with these requirements on 24 May 2011, primarily on the grounds that the proposed stairlift cannot be parked in a position which does not cause an obstruction to the stairway and would be a hazard to users. It is against this refusal that you have appealed to the Secretary of State.

The appellant's case

5. You make the following points to explain your case for installing a stairlift:
- as the properties are retirement homes and will always have occupants who will be getting older and less able to climb stairs, it is important that you and other occupants are able to reside in your homes, which you expect to stay in for the rest of your lives;
 - although the stairlift will have to remain parked on the stairway, the reduction in width of the stair will not unduly affect its usability, particularly as it only serves two one bedroom flats on the first floor, each currently occupied by one person;
 - your neighbour supports the installation of the stairlift and future purchasers of the flats will be made aware of the situation;
 - the ground floor flats have alternative means of escape and will not be affected except when the stairlift is in use and the rail projects at the bottom of the stair. However, the stairlift rail will lift out of the way automatically when the chair is returned to the parking position;
 - the natural light is good on the stairway and there is also emergency lighting provided; and

- you have agreed to the Council's other requirements for the stairlift and have suggested putting a notice at the entrance to warn visitors and the emergency services about its presence.

The Council's case

6. The Council explains that the reasons for its decision to reject the proposal to install a stairlift and your request to relax or dispense with Requirements B1 and K1 of the Building Regulations are:

- as stated above, it is not possible to park the stairlift in a position that does not cause an obstruction to the stairway;
- the stairlift in a parked and folded position will leave a maximum stairway width of 540mm to 580mm between the stairlift and handrail on the opposite wall (depending upon the manufacturer) and that suitable housing when the stairlift is not in use will reduce this further;
- the escape stair width in conjunction with the trip hazard of the parked stairlift is not suitable for a vertical escape route serving two flats; and
- the nature of the occupancy requires there to be continuous handrails on both sides of the stairway.

7. In discussions with you, the Council also suggested exploring the option of recessing the flat entrance door back into the hallway of your flat which would create a space for the stairlift (i.e. the chair) to be parked when not in use, therefore leaving the common parts of the stairway clear. If this option was adopted, along with re-alignment of the fire compartment around the entrance, the Council considered that adequate compliance would be achieved. However, the Council has since confirmed that you do not consider this to be a suitable option as it would result in a considerable loss of amenity and is not feasible economically.

The Secretary of State's consideration

8. The Secretary of State has given careful consideration to the particular circumstances of this case and the arguments presented by both parties. He notes that he has been asked to consider an appeal with regards to Requirements B1 and K1 of the Building Regulations, in respect of the proposed installation of a stairlift to an existing common stair in a block of retirement flats, affording access to two first floor one bedroom flats.

9. The Council has taken the view that it is not possible to park a stairlift in a position that does not cause an obstruction/hazard, particularly for an escape route. The Council states that a stairlift in the parked and folded position would reduce the stair to a maximum width of 580mm between the stairlift and opposite handrail. However, you argue that although the stairlift will have to remain parked on the stairway this would not unduly affect the usability of the stair, particularly as it only serves two one bedroom flats.

10. Before considering whether there is a case to relax or dispense with either Requirement B1 or K1 of the Building Regulations, the Secretary of State has given consideration to whether in his opinion the proposed installation of the stairlift could comply with these requirements. In this respect, he takes the view that the key issue in this case is whether or not the proposed work would result in the building not complying with the applicable requirements where previously it did or, if the building did not comply with the requirements before the work commences, whether it would be no more unsatisfactory in relation to those requirements thereafter.

11. The guidance on the width of common stairs for this situation in Approved Document B (Fire safety, Volume 1 – Dwellinghouses) states that a stair of acceptable width for everyday use will be sufficient for escape purposes. Given the nature of the building, along with the number of dwellings it serves, it is reasonable to assume that a large number of people would not be required to use the stair at any one time, even in the event of a fire. The prime consideration is, therefore, whether or not the width of the stair at the point where the stairlift would be parked would continue to provide for an individual person to pass safely.

12. The Council has also raised concerns that due to the nature of the occupancy, a continuous handrail should be maintained on both sides of the stairway. The Secretary of State considers that the presence of handrails for support is essential to ensure safe use of the stair, as detailed in the guidance in Approved Document K (Protection from falling, collision and impact). It is likely that in the event of a stairlift being installed this would allow for only one conventionally positioned handrail to be maintained on the opposite side to the stairlift. However, the Secretary of State believes that it would be possible to provide a handrail that sits above the path of the stairlift that would provide useful support for a person using the stair.

13. Taking these issues into consideration, the Secretary of State's opinion is that if a stairlift was provided and:

- a continuous handrail were to be maintained on both sides of the stairway;
- the parked stairlift was sufficiently highlighted to identify the potential hazard to users of the stair; and
- the reduced dimension between the parked stairlift and the handrail on the opposite wall of the stairway was reduced no further than 540mm to 580mm, as identified in the submitted information;

the stair in this particular case could continue to offer an acceptable level of safety, maintain a reasonable means of escape, and sustain compliance with Requirements B1 and K1 of the Building Regulations.

14. However, you have appealed against the Council's refusal to relax or dispense with Requirements B1 and K1 of the Building Regulations in this case. The Secretary of State considers that these requirements make an essential contribution to life safety and, as such, he would normally only consider it appropriate to either relax or dispense with them in exceptional circumstances, which in his opinion do not apply in this case. Moreover, he also considers that the

existing stair could continue to be safe for people moving between different levels within the building, and thus demonstrate compliance with the requirements, if the proposed stairlift is installed in accordance with the circumstances explained in paragraph 13 above.

The Secretary of State's decision

15. In light of the above considerations, the Secretary of State has concluded that it would neither be necessary nor appropriate to relax or dispense with Requirement B1 (Means of warning and escape) in Part B (Fire safety), and Requirement K1 (Stairs, ladders and ramps) in Part K (Protection from falling, collision and impact), of Schedule 1 to the Building Regulations 2010, in relation to the proposed stairlift in this case. Accordingly he dismisses your appeal.

16. Please note that the Secretary of State has no further jurisdiction in this case and that you should discuss any further matters arising with the building control body.