

18 May 2015

## **BUILDING ACT 1984 - SECTION 39**

### **APPEAL AGAINST REFUSAL TO RELAX OR DISPENSE WITH REQUIREMENT K1 (STAIRS, LADDERS, RAMPS) IN PART K (PROTECTION FROM FALLING, COLLISION AND IMPACT) OF SCHEDULE 1 TO THE BUILDING REGULATIONS 2010 (AS AMENDED), IN RESPECT OF A LOFT CONVERSION**

I am directed by the Secretary of State for Communities and Local Government to refer to the appeal made under section 39 of the Building Act 1984, against the decision by The Council to refuse to relax or dispense with requirement K1 (Stairs, Ladders, Ramps) in Part K (Protection from falling, collision and impact) of Schedule 1, to the Building Regulations 2010 (as amended), in respect of the above building work.

Details of the appeal are set out in the appeal form received on 29 January 2015 (with enclosures) and letter of 12 February 2015. The building control body, (hereafter referred to as "the Council") provided representations in its letters to you on 31 October and 17 December 2014 and 18 February 2015. The enclosures submitted include copies of plans/drawings of the building work.

#### **The building work and appeal**

The papers submitted state the works consisted of a conversion to create a habitable room in the loft, with limited headroom on the stairs leading to the loft.

The issue the appellant has with the Council is that the appellant considers the headroom on the stairs leading to the loft is adequate. The Council does not agree with this view and on 18 February refused the application for a relaxation of or dispensation with requirement K1 on the amount of headroom, the Council considers is required. It is against this refusal that the appellant has appealed to the Secretary of State.

#### **The appellant's case**

In the appeal form, the appellant stated that:

"We would like the head room requirement to be relaxed as per Approved Document K, Para 1.13 and Diag 1.4. The stairs were built as per the architects drawings. This is the only way to fit the stairs without losing a bedroom and the reason for having the loft converted is to gain a bedroom.

We currently have 1.9 metre headroom in the centre of the stairs

Many existing older buildings have less head room.

Space saving stairs are dangerous but deemed satisfactory. The architect who did the drawings is qualified to sign off work and would have signed his own work off, as the stairs were deemed satisfactory with a 1.9 metre headroom at centre.”

To support your appeal, on 12 February 2015, you wrote to the Council asking for a relaxation or dispensation:

“Please accept this letter as a formal request on behalf of our client to relax/dispense the requirement for 2-meter headroom on the ground floor staircase, after new stairs being built for the loft conversion. This application is being made under section 8 of the Building Act 1984 and regulation 11 of the Building regulations 2010.

The reason for the request is that there is no other way for the stairs to be built without our client losing a 1<sup>st</sup> floor bedroom and the reason for the loft conversion is to gain a new bedroom. As 1.9 metres has been achieved, and this is acceptable elsewhere, I feel this requirement is unreasonable and resulting in our client being unable to use their loft space efficiently. Our client’s architect had designed the loft conversion/stairs, and after seeking independent advice, I have been informed that this is the only way to gain access to the loft, without impinging on one of the existing bedrooms

Thank you for your consideration and I look forward to your response.”

### **The Council’s case**

The Council wrote to the appellant on 31 October and 17 December 2014 and twice on 18 February.

Council’s letter dated 31 October 2014:

**“The Building Act 1984**

**The Building Regulations 2010**

**Proposal: Loft conversion to add a 4th bedroom**

I refer to the above application; this is currently an incomplete and invalid application as the Building Regulation charge payment has not been made. At the recent inspection undertaken in respect of works on site, my Building Control Surveyor advises that the Building Regulations have not been complied with as follows:-

1. I note that the Building Regulation charge payment remains outstanding, please contact my office and arrange to make a telephone payment to settle this matter

2. I note the electrical works were being completed at the time of my visit, please arrange for confirmation to be provided that Part P (electrical safety) requirements have been met. Please provide details of the registered competent person that carried out the electrical installation, alternatively provide a BS7671 certificate showing that the installation has been designed, installed and tested satisfactorily.

3. The doors to the ground and first floor habitable rooms are to be fire resisting doors (FD20 doors). Fire doors are required at the first floor bedrooms, ground floor kitchen, lounge and dining room

Please contact the Building Control Department when the work has been rectified to arrange a further inspection, which should be no later than 28 day from the above date. Failure to rectify will prevent the issue of a completion certificate and possible formal enforcement action may be taken.”

Council’s letter dated 17 December 2014:

**“The Building Act 1984  
The Building Regulations 2010  
Proposal: Loft conversion to add a 4th bedroom**

I refer to the above application, deposited on 14/11/2014, and the recent final inspection undertaken in respect of works on site. My Building Control Surveyor advises that the Building Regulations have not been complied with as follows:-

1. Please provide a minimum 2.0m clear headroom above the pitch line of the ground floor stair to afford safe passageway, in accordance with paragraph 1.13 and Diagram 1.3 of Approved Document K. Can I suggest that a full survey is carried out by a competent person and that a design proposal is submitted to myself for approval prior to any further works being undertaken. May I also ask that the loft accommodation is not used until this situation has been rectified as to do so may invalidate any insurance.

2. An adequate handrail is required to the winder side of the new first floor stair. Please contact the Building Control department on 0300 300 8635 when the work has been rectified to arrange a further inspection, which should be no later than 3 months from the above date. Failure to rectify will prevent the issue of a completion certificate.”

Council’s first letter to appellant on 18 February 2015:

**“The Building Act 1984  
The Building Regulations 2010  
Proposal: Loft conversion to add a 4th bedroom**

Thank you for your letter.

A regularisation application was registered with this Council for the work on 14 November 2014, as the work had been seen to have been in progress on 08 October 2014.

A regularisation application is a voluntary retrospective application for approval of works and does not have an appeals procedure. If work does not comply with the Building Regulations then a regularisation certificate cannot be issued.

The problem we have here is that the existing stairway had a compliant headroom dimension before the loft conversion was started, we now have a lesser headroom dimension which does not now comply with the building regulations and is therefore worse than before and is not allowed.

The reduced headroom allowance of 1.9m in the Regulations is only available when a new stairway goes from the first floor to a new second storey loft conversion where the existing roof impinges over the new stairway.

I hope the above explanation answers your query.”

Council’s second letter of 18 February, which contains its refusal for a relaxation of requirement K1:

**“The Building Act 1984**

**The Building Regulations 2010**

**Proposal: Loft conversion to add a 4th bedroom**

The Building Act 1984 Section 8.2 request to Council to relax or dispense with a Building Regulation.

A regularisation application was received on 14/11/14 after work was seen to have started on 8/10/14. No architectural plans have been provided.

The applicant has made a request to relax the Requirement K 1 (Stairs, Ladders and Ramps) of the Building Regulations 2010 (As Amended) in respect of headroom over the ground to first floor stairway as part of the work to install a double winder stairway to a new second floor loft conversion.

The building work to which this relates is for the conversion of the roof space of a three bedroom two storey semi detached house. The existing ground to first floor stairway comprises of a straight flight with single quarter space landing at the top and single step at 90 degrees up to the first floor. A new double winder stairway has been installed directly above the lower flight to give access to the new second storey.

The tighter overall going dimension of the new stairway has caused compromising of the headroom to the existing stairway. Current headroom available on the centre pitch line from left to right ascending the stairway are 1600mm left side string, 1720mm worst pinch point on centre pitch line of tread, 1800mm right side string. No

handrail is currently in place yet. The nature of the current exposed soffit of the winder stairs indicates this is the best dimension available as no boarding/ finishing plaster is in place which will lessen the headroom further.

The requirement is for a headroom of 2000mm as K1 diagram 1.3 although as an existing stairway it was previously compliant. The applicant letter states that 1900mm headroom is available, however on site inspection on 29/04/15 this does not appear to have been measured on the centre pitch line of the stairway. The applicant states that 1900mm is accepted elsewhere within the Building Regulations, however K1 diagram 1.4 refers to reduced headroom for loft conversions and the 1900mm headroom is shown measured on the centre line of the stairway to be acceptable.

The stairway would be expected to be used by occupants walking on the centre path line of the treads utilising the reduced headroom. A reduced headroom of less than the 2000mm required could cause injury and accident particularly during an emergency egress from the first floor. The fact that the headroom limitation only applies to a few treads is not relevant, but that a fall from the upper part of the stairway could result in the greatest injury. The stairway currently does not afford safe travel for all occupants. The original house construction avoided the current headroom problem.

Having fully reviewed the case, in view of the reduced headroom of 1720mm on the centre pitch line of the existing stairway and the applicant's lack of demonstrating reasonable compliance this Council rejects the application for relaxation of K1 in this instance."

The Council also enclosed a photograph of the staircase to illustrate the headroom provided.

### **The Secretary of State's consideration**

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

The appellant made an application on 12 February 2015 for a relaxation of requirement K1 in respect of the amount of headroom provided for the staircase from the ground to the first floor of the property. The Council refused the application on 18 February. The appellant has appealed to the Secretary of state against that refusal.

Part K1 of the Building Regulations requires that;

***K1. Stairs, ladders and ramps shall be so designed, constructed and installed as to be safe for people moving between different levels in or about the building.***

The statutory guidance given in paragraph 1.11 and diagram 1.3 of Approved Document K sets out that one way of complying with Requirement K1 is to have a minimum 2 metres clear headroom above the pitch line of a stair. This is intended to make it is reasonably unlikely that the head of a person ascending or descending the stair will impact on the enclosure above the stair. In itself such an impact could cause injury.

However, the risk of serious injury when being subject to a collision whilst moving up or down a staircase is significantly increased by the likelihood of also suffering a fall (in reaction to or as a result of the collision), and which could be from the top of the staircase. Falls on stairs in domestic properties pose a serious risk to the health and safety of current or subsequent occupants of a property and are frequently fatal.

Where a new staircase is constructed within a loft extension, and the roof form of the dwelling may impinge on the headroom available for this new staircase, paragraph 1.13 and Diagram 1.4 suggest that one way of complying would be to have a minimum headroom of 1.9 metres at the centreline of the new stair in recognition that in undertaking building work in a confined space a 2m headroom is not always achievable. This reduced level of provision is deemed reasonable on the basis that the frequency of people moving up and down the stair to this single room in the extension will be lower than a staircase linking a ground and first floor (or other storey with a number of habitable rooms); that this stair is most likely to be used by people who are familiar with the property and who will be able to manage the increased risk; and that access to this additional space is discretionary in relation to the overall use of the property.

The staircase within the loft extension has been installed with a clear headroom of 1.9 metres and this stair would be considered reasonable in terms of complying with the requirements of K1 within a loft conversion.

However, as a result of installing this stair to the loft extension, the headroom of the existing stair from ground floor to first floor has been reduced from 2 metres (or possibly more - this is not specified) to 1.9 metres and, according to information supplied by the local authority, with the lowest clearance at the centre line of the stair measured at 1.72 metres, and to one side 1.6 metres. Regulation 4(3) of the Building Regulations 2010 requires that where building work takes place, the building after the completion of work should either comply with the relevant part of the Building Regulations or, where it does not already comply, be no less compliant than it was before. In this case the headroom of the existing staircase from the ground floor to the first floor has ceased to comply with the requirement K1 for a clearance of 2 metres.

The Secretary of State then considered whether compliance with this requirement would be unreasonable in relation to this particular case. This staircase is likely to be subject to high levels of traffic, including usage by guests or other people less familiar with the property and access to the first floor accommodation is not discretionary but essential to the habitation of the dwelling.

The installed staircase reduces head room below the minimum 2 metres recommended in Approved Document M and in some areas headroom is well below even the 1.9 metres permitted in loft extensions at 1.72 metres (based on information supplied by the Local Authority). The average male height in the United Kingdom is 1.78 metres, meaning that the likelihood of collision with the soffit of the stair is much higher than if the stair complied with the requirements of Part K1 of the Building Regulations, and the guidance set out in the supporting guidance in Approved Document K.

Given the significant risk to current and future occupants of injury or death as a result of collision and/or falling where the principal stair does not comply with the requirements of K1 (where before the building work taking place it did), the Secretary of State has concluded that it would be reasonable to require full compliance with requirement K1 in this instance.

### **The Secretary of State's decision**

The Secretary of State considers that compliance with requirement K1 could be a life safety matter. As indicated above, he considers that a sufficient case has not been made to relax or dispense with the requirement in this case. He has therefore concluded that it would not be appropriate to relax or dispense with requirement K1 (Stairs, ladders and ramps) in Part K (Protection from falling, collision or impact) of Schedule 1 to the Building Regulations 2010 and accordingly dismisses the appeal.

However, taking into account the difficulties of installing a staircase in this particular circumstance, you may wish to submit to the local alternative proposals for compliance with the requirement of K1 to enable safe movement between levels.

The Secretary of State has no further jurisdiction in this case and that any matters that follow relating to the building work should be taken up with the building control body. A copy of this letter is being sent for information to the Council.