

Date: 04/02/99

Ref: 45/3/126

Note: The following letter which has had personal details edited out was issued by our former department, the Department for Environment, Transport and the Regions (DETR). DETR is now Communities and Local Government - all references in the text to DETR now refer to Communities and Local Government.

Building Act 1984 - Section 39

Appeal against refusal by the Borough Council to relax Requirement A1 (Loading) of the Building Regulations 1991 (as amended) in respect of an Existing First Floor in an Existing Building Designed as a Retail Shop and Dwellings

The appeal

2. The proposed building work relates to a two-storey detached building approximately 19 metres in frontage x 23 metres in depth, the main shell of which was constructed in 1994 with the intended use as a retail shop on the ground floor and two self-contained flats on the first floor. The first floor is of concrete slab construction with load-carrying capacity as described in paragraph 5 below. The original building was never completed but sold on in this condition to the present owners.

3. At present, the ground floor comprises all retail area with two internal stairs giving access to the first floor. The stair in the centre of the retail area has been blocked off at the upper level. The second stair to the side of the retail area now has a goods lift or hoist beside it. The first floor appears to provide a space for some storage of goods and an office.

4. The proposed building work is for a rear extension at ground floor level to the retail area and alterations to the first floor to change the use from the originally intended residential use to a large reception area, office, store, kitchen staff facilities and two staff toilets to be used in conjunction with the retail area below.

5. These proposals were the subject of a "full-plans application". The Borough Council took advice from their Structural Engineer in respect of the strength of the first floor and its acceptability for receiving and storing incoming goods. The Borough Council took the view that the load-carrying capacity of the floor was less than the minimum imposed load corresponding to its intended function given in *Table 1 of BS6399: Part 1:1996 ('Loading for buildings - Code of practice for dead and imposed loads')*. They suggested adopting a solution for strengthening the floor and upgrading its load-carrying capacity. However, you took the view that there were no practical and economic

methods for increasing load-carrying capacity of the existing floor slab. Instead of strengthening the floor, you proposed that the loading on the floor could be kept below the existing load-carrying capacity of the floor by the present users with good management and signage and, for the benefit of the future users, the limitation on loading could be expressed in legal terms within the lease. You therefore applied to the Borough Council for a relaxation of Requirement A1. The Borough Council refused this application and it is in respect of their refusal that you have appealed to the Secretary of State.

The appellant's case

6. You make a point that the property was originally constructed as a retail unit but, unfortunately, the suitability of the floor loading was not addressed at that time. Consequently, the first floor was constructed with inadequate capacity for a full storage building. You claim, however, that the concrete floor is strong enough to carry loading greater than 2.5 kN/m² and that the Local Authority checking engineer has agreed with an estimate of 3.31 kN/m² as the load-carrying capacity of the floor, equivalent to some 1.38 metres storage height, but well below the figure given in BS6399: Part 1.

7. While conceding that the load-carrying capacity of the floor is not adequate according to BS6399: Part 1, you suggest that the recommended load may not actually occur. You also suggest that the Building Regulations approval should be given on the condition that the floor load will be controlled so as to ensure that the loading will not exceed 2.5 kN/m², by using signage specifying the capacity of the floor. You wish to reassure the local authority that the delivery system for the shop has controls to ensure the correct loading on the floor. You are prepared to request your client's solicitors to append a loading restriction to the lease and counterpart lease to ensure that the future owners are aware of the restriction on the use of the first floor for storage.

The Borough Council's case

8. The Borough Council accept that, as the current owner, your client may use the first floor for storage in a sensible manner but they are not convinced that the future owners would do so, in spite of the proposed inclusion of loading restriction in the terms of the lease. They claim that the layout of the floor and provision of the lift/hoist could present a continued opportunity for future owners to significantly overload the floor. The Borough Council have cited the criteria as outlined in the Building Act 1984 Section 16(3), which preclude the grant of any condition approval such as signage for restricting the floor loading.

9. The Borough Council point out that the Building Regulations do not allow for continuing control and that the lease conditions are beyond the scope of the current Building Regulations. At some future point, such conditions could possibly be altered, dispensed with, or just ignored. The Borough Council agree with you that any scheme to upgrade the load-carrying capacity of the floor could be expensive but they do not accept this as a basis for justifying

the relaxation of Requirement A1. Under these circumstances, the Borough Council consider that the first floor area can only be used for the occupancy category associated with an imposed load of less than 2.5 kN/m² - for example, an office area without storage.

The Department's view

10. The Department takes the view that the current Building Regulations require the Borough Council to satisfy themselves that the plans comply with Requirement A1, as applicable to the intended use of a particular building. In the present case, the first floor is required to have the load-carrying capacity given in the BS6399: Part 1 for storage purposes. The Department accepts the Borough Council's judgement that they feel unable to relax any criteria on the basis of any controlling measures for restricting the applied load on the floor to the capacity of the floor as constructed. Such action would involve stipulating a load-carrying capacity well below the magnitude stipulated in the BS6399: Part 1, and would require continuing control which is beyond the scope of the Building Regulations.

The Secretary of State's decision

11. You have appealed to the Secretary of State against the refusal to relax Requirement A1 in connection with the premises first floor superimposed load. He has carefully considered the facts of this case and the arguments put forward by both parties. He has concluded that the circumstances are not such that would justify the relaxation of the requirement in this case. In his view, the Borough Council came to the correct conclusion in refusing to relax the Requirement A1 in connection with the premises first floor superimposed load. Accordingly, he dismisses your appeal.