

BUILDING ACT 1984 - SECTION 39

APPEAL AGAINST REFUSAL BY THE BOROUGH COUNCIL TO RELAX OR DISPENSE WITH REQUIREMENT M4 (SANITARY CONVENIENCES IN DWELLINGS) IN PART M (ACCESS TO AND USE OF BUILDINGS) OF SCHEDULE 1, IN RELATION TO REGULATION 4(3) OF THE BUILDING REGULATIONS 2010 (AS AMENDED), IN RESPECT OF THE RELOCATION OF A GROUND FLOOR BATHROOM WITH A WC TO A FIRST FLOOR

The building work and appeal

3. The papers submitted indicate that the building to which this appeal relates is a three storey, three bedroom, terraced Victorian dwelling. The ground floor has a living/reception room and kitchen with a small bathroom, with a WC therein, accessed directly from the kitchen. There are two bedrooms on the first floor with a further bedroom on the second floor, which you refer to as an "attic space". You explain that in its original form the property would not have had a ground floor bathroom but would have had an external WC located in a small outbuilding.

4. The proposed building work comprises internal alterations to relocate the ground floor bathroom, incorporating the WC, to first floor level to replace an existing bedroom and to create external door openings on the ground floor. This work was the subject of a building regulations full plans application which you deposited with the Council on 10 August 2011. In response to the Council's request for a WC to be maintained at ground floor level, you requested a relaxation which the Council refused on 25 August 2011 on the grounds that "with careful design the proposed building work has the potential to comply with requirement M4 [of the Building Regulations] and that there are no extenuating circumstances which would justify a relaxation or dispensation". It is against this refusal that you have appealed to the Secretary of State.

5. The Council also subsequently rejected your full plans application on 6 October 2011 on the grounds that the plans were defective as insufficient information was provided to ascertain compliance with the Building Regulations.

The appellant's case

6. You explain that the reasons for your clients' proposal to move the ground floor bathroom with the WC to first floor level are to allow the existing kitchen to be adapted to accommodate a small eating area and to avoid what your clients consider to be an unacceptable situation where a bathroom facility is accessed directly from a food preparation area. You add that your clients are keen to provide modern facilities, which includes a bathroom with a WC on the first floor.

7. You argue that the alternative proposal by the Council to provide a cloakroom/WC at ground floor level in the cupboard beneath the existing stairway would lead to the loss of a valuable storage area and produce a very small and

unusable facility. You say that the existing cupboard has a width of 700mm, length of 1900mm and a sloping ceiling rising from 750mm to 2200mm at its highest point, which in your view makes it impractical and unsuitable and would leave the occupants in a worse position than they are currently. You also acknowledge the Council's other suggested alternative that it would be possible to convert the existing bathroom, but state that this would not meet your clients' objectives and the reduced space would negate the case for doing the work.

8. You believe that the Council's demand for the retention of a ground floor WC is beyond the spirit of the guidance in Approved Document M (Access to and use of buildings) and should be assessed against the original building which had no such facility. You consider that it is inappropriate to apply today's standards to a property that is well over 100 years old, as when the property was built bathrooms/sanitary appliances were very much a secondary consideration, and that home owners should not be prevented from making improvements to their home.

The Council's case

9. In its letter to you of 25 August 2011, the Council explained its reasons in detail for rejecting your clients' proposal to remove the existing WC on the ground floor of their property, having regard to the requirements of regulations 3(2) & (3) and 4(3) and Part M of Schedule 1 to the Building Regulations 2010, together with the guidance in Approved Document M.

10. The Council states that it has treated your request for a relaxation as a request to relax or dispense with requirement M4 of the Building Regulations and does not accept your arguments as valid reasons because:

- the original facilities met the minimum standards set out in the Building Regulations relating to the separation of food preparation from sanitary conveniences;
- the guidance in the revised Approved Document G (Sanitation, hot water safety and water efficiency - 2010 edition) now demonstrates that you can access a WC direct from a food preparation area if there is a hand wash basin within the room containing the WC;
- in the Council's view it is not impossible to incorporate a WC in the cupboard under the stairway with some storage space, while still maintaining the open plan kitchen/dining area on the ground floor with the bathroom on the first floor; another option suggested by the Council would be to create a new cloakroom by incorporating the WC and hand wash basin in part of the area occupied by the existing bathroom on the ground floor.

The Secretary of State's consideration

11. 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 your clients' proposals, including the relocation of the existing bathroom/WC on the ground floor to the first floor of the dwelling, form part of a full plans application deposited with the Council and in this respect both parties have accepted that the proposed work is 'building work' as defined in regulation 3 of the Building Regulations 2010.

12. By virtue of regulation 4(1) the building work is required to be carried out so that it complies with the applicable requirements in Schedule 1 to the Building Regulations 2010. The Secretary of State observes that the Council has requested that a ground floor WC should be maintained and has treated your request for a relaxation in this regard as an application to relax or dispense with requirement M4 in Part M of Schedule 1.

13. Requirement M4 in Part M states that *Reasonable provision shall be made in the entrance storey for sanitary conveniences.....unless the entrance storey in the building (i.e. that containing the principal entrance) contains no habitable rooms which does not apply in this case. But the general Limits on application of Part M state that: The requirements of this Part do not apply to – (a) an extension of or material alteration of a dwelling;, so the building work itself in this case is not required to comply with the requirements of Part M.*

14. However, regulation 4(3) of the Building Regulations 2010 further requires that:

Building work shall be carried out so that, after it has been completed -

- (a) *any building which is extended or to which a material alteration is made; or*
- (b) *any building in, or in connection with, which a controlled service or fitting is provided, extended or materially altered; or*
- (c) *any controlled service or fitting,*

complies with the applicable requirements of Schedule 1 or, where it did not comply with any such requirement, is no more unsatisfactory in relation to that requirement than before the work was carried out.

Therefore, although the building work itself is not required to comply with the requirements of Part M, regulation 4(3) requires that the *building* as a whole still has to comply with Part M, or comply as much as it currently does, after the work has been completed. In this case, your clients' proposal to relocate the only WC on the ground floor to the first floor will result in the building not complying with requirement M4 in Part M of Schedule 1, or being more unsatisfactory in relation to the requirement than before the building work was carried out. Accordingly, the Secretary of State regards your appeal as an appeal against the Council's refusal to relax or dispense requirement M4 in relation to regulation 4(3).

15. The Secretary of State appreciates your clients' desire for modern facilities and the reasons for wanting to relocate the bathroom with a WC on the ground floor to the first floor. He also notes that you have rejected the Council's alternative suggestions as impractical or unsuitable, which would provide for a WC to be retained on the ground floor and thereby potentially achieve compliance with the applicable requirements of the Building Regulations, including requirement M4.

16. Whilst a property of this age may not originally have had the provision of an internal WC on the ground floor as you suggest, over the lifetime of the dwelling alterations have taken place to accommodate such a facility which in turn has improved access to a sanitary convenience for occupants and/or visitors. As a result the Secretary of State is mindful that in the spirit of Part M consideration should be given to the impact that the removal of such provision could have on the mobility needs of not only current but future occupiers, and also occasional visitors who may have a temporary or permanent disability, as the Council has indicated to you.

17. The Secretary of State has given consideration to the arguments you have put forward for omitting the ground floor bathroom with a WC, but takes the view that 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 in future they may have to be helped up or down a flight of stairs to reach a WC.

18. Notwithstanding the size constraints of the dwelling and having regard to the alternative suggestions made by the Council, the Secretary of State agrees with the Council that with careful design there is potential for the relocation or resizing of the existing WC on the ground floor, both of which would work towards your clients' objectives of providing modern facilities. Such an approach could also achieve a layout being no worse than the current situation in relation to sanitary conveniences and therefore satisfy requirement M4 in relation to regulation 4(3) of the Building Regulations. The Secretary of State considers that there appears to be no particular circumstances in this case to justify either relaxing or dispensing with requirement M4 in relation to regulation 4(3).

The Secretary of State's decision

19. With reference to his considerations above, the Secretary of State has concluded that it would not be appropriate to relax or dispense with requirement M4 (Sanitary conveniences in dwellings) in Part M (Access to and use of buildings) of Schedule 1, in relation to regulation 4(3) of the Building Regulations 2010 (as amended) in this case. Accordingly, he dismisses your appeal.

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