



**Ministry of Housing,  
Communities &  
Local Government**

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Our Ref: APP 007/002/27

14 January 2020

Dear Mr Shah,

**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) AND REQUIREMENT B1 (MEANS OF WARNING AND ESCAPE) IN PART B (FIRE SAFETY) OF SCHEDULE 1 TO THE BUILDING REGULATIONS 2010 IN RESPECT OF THE CREATION OF FOUR FLATS ABOVE EXISTING RETAIL PREMISES AT 10 MAIDENHEAD STREET, HERTFORDSHIRE, SG14 1DR**

I am directed by the Secretary of State for Housing, Communities and Local Government to refer to the appeal made by you under section 39 of the Building Act 1984, against the decision by the Council to refuse to relax requirement K1 (Stairs, Ladders, Ramps) in Part K (Protection from falling, collision and impact) and requirement B1 (Means of warning and escape) in Part B (Fire Safety) of Schedule 1 to the Building Regulations 2010 in respect of the above building work.

Details of the appeal are set out in an appeal form received on 12 March 2019 (with enclosures). The enclosures included plans of the building work but not sections except a part-section through the staircase subject to the appeal. The building control body, (hereafter referred to as "the Council"), wrote to the appellant refusing the application to relax requirements on 11 March 2019.

**The building work and appeal**

The papers submitted state the works consist of the alteration to the existing ground floor shop premises, together with the construction of 4 x 1 bedroom flats at the first and second floor levels, with two flats per floor within the footprint of the existing shop.

The issue with the Council is that the appellant considers the headroom on the stairway leading to the flats is adequate. [The appellant states the as-built headroom is 1724mm. However, headroom under Approved Document K is measured vertically from a straight line linking the stair nosings, so this corresponds to a lower headroom].

The Council does not consider the headroom to be adequate and has rejected the application for relaxation of requirement K1 on the minimum amount of headroom (2000mm). It is against this refusal that the appellant has appealed to the Secretary of State.

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

The appellant's case is as follows (from the appellant's letter of 11 March 2019):

*All of the works have been completed and carried out as per the approved plans, within the existing frame work of the building, which can at best be described as irregular in shape, awkward, and with tight constraints, by being confined within the steel structure and walls, which cannot be reconfigured. The staircase had been installed at the time of the site visit on the 24th July 2018, and the A.I. raised no objections then, perhaps because the contravention is insignificant and can be said to be De Minimis.*

*However to rectify the problem now that all the works have been completed and with the ground floor shop occupied, the task will be very onerous, if not impossible. The current staircase is wholly compliant save for headroom clearance over a 30mm wide strip at the nosing end of step 5 at 1.724M, and the remainder 220mm at 2.854M. as per the diagram attached. Upon ascending or descending, off step 5, there would be an immediate increase of an average of 200mm of space above the head, as one step is taken after the other, and by tilting the head by a few degrees, impact can be avoided. Secondly in order to achieve head room clearance of 2m the number of steps would have to be increased by 2, and this could only be achieved by reducing the going to 220mm, And this would give rise to yet another contravention. This is therefore not only a "No -Win" situation!!, but to achieve absolute compliance would be a very onerous task if not impossible.*

*The appellant acknowledges that the requirement for headroom is 2000mm as K1 diagram 1.3, and further states that 1900mm is accepted elsewhere within the Building Regulations. In an endeavour to avoid impact over the said narrow strip, signage, "Mind the Head" has been affixed. The ONS states that the average height of male is 1.753, and that of female is 1.613M, therefore the likelihood of any impact is minimal for the reasons stated above and with the warning signs applied.*

*Currently, with change in a house from single to multi occupancy, it would have to meet the current building regulations applicable nationally in England. The appellant is aware of change of use approved in buildings which have height clearance of as low as 1.65m, spanning some 3-4 steps. Examples include 14,16,20,22, Egerton Road Liverpool. People have inhabited buildings for with such low height clearances for years, and still do so, and by comparison the contraventions at the appellant site in Hertford pales into insignificance!!*

*Further, occupancy in this small scale development within the town centre location, are more likely to be inhabited by working people, who are likely to use the stairway only a few times a day, and by being made aware, or being aware of the low headroom at step five, are likely to avoid impact, and with the passage of time are likely to be conditioned to bend slightly to avoid impact, if their height is in excess of 1.725m. Also with no free access to wider public, high volume pedestrian traffic is highly unlikely.*

The stairs have been used during the later stages of the construction process, and no fatalities had occurred, and there is no reason to believe that the occupants current or future, whose height is over 1.725m would not take the necessary steps to avoid impact like the workers did.

Under the circumstances in light of the above facts it would be unreasonable to disallow relaxation and/or dispensation for the requirement of 2m headroom clearance over a very narrow 30mm strip at step 5. With the warning signs, the risk to the health and safety of the occupiers and users of the building would be no greater than which exists with occupiers of other buildings where the height clearance is less than the prescribed 2M. We request the secretary of the state to uphold the appeal, with conditions as appropriate

### **The Council's case**

The case is set out as follows (from the Building Control's letter of 24th April 2019):

Hertfordshire Building Control Ltd (HBC) is a private company wholly owned by seven District Councils. The Company carries out the statutory building control function on behalf of these authorities including East Hertfordshire District Council.

The property in question is an end of terrace three storey building currently consisting of a shop at ground floor with a first floor and second floor both containing two apartments each. It is HBC's understanding that the original building consisted of two storeys only i.e. ground and first floors. During the building operations the original internal structure was substantially removed and a loadbearing steel frame erected inside the remaining building shell enabling the construction of new first and second floors and new roof. A new staircase was also installed. There were no limitations on the internal design imposed on the existing structure other than that imposed by the existing external superstructure.

The applicant had previously submitted a Full Plans application for Building Regulation approval for the works to East Hertfordshire District Council. The Council were unable to give approval due to non-compliance issues and the applicant then employed the services of at least two Approved Inspectors, the last one being MLM Ltd.

The issue of the headroom problem was raised on site by the Approved Inspector (AI) during a pre-final site inspection carried out on the 19th December 2018.

It is HBC's understanding that there then followed a series of discussions on the matter between MLM and the applicant, who had requested a relaxation/dispensation of Requirement K1 (Stairs, ladders and ramps) of Requirement K (Protection from falling, collision and impact) and from Requirement B1 (Means of warning and escape) of Approved Document B2 (Buildings other than dwellinghouses) of Schedule 1 to the Building Regulations 2010 (as amended).

As it is not in the power of the AI to grant such requests, HBC was asked by the AI if HBC would be willing to do so if formally asked. HBC responded, advising that due to the serious nature of the non-compliance, any request for relaxation or dispensation would not be granted. The applicant subsequently appealed to the Secretary of State for a formal relaxation/dispensation.

The current situation on site is that the staircase serving the first and second floor apartments, which is a Means of Escape stair, and is the only stair in the building, has been incorrectly constructed and installed. Table 1.1 of Approved Document K requires a

maximum rise for each step on a general access stair as 170mm. The specification notes on the proposed drawings originally approved by the AI show a maximum rise of 170mm. The staircase on site has been installed with a rise of 200mm to each step.

The specification correctly states that the minimum headroom should be a minimum of 2000mm. Section 5.26 of AD B2 states that all escape routes should have a minimum headroom of at least 2000mm and there should be no projection below this height (except for door frames).

The headroom provided to the staircase reduces to 1724mm over the pitch line at one location on the ground to first floor flight at the 4th/5th tread location. This reduction in head height is across the whole stair width. The obstruction is due to a main loadbearing steel beam which spans the entire property width and is supporting wall, floor and roof loads.

Please see the sketch attached – which is not to scale, just for illustrative purposes only.

Also in the attached file are two photographs of the staircase

This headroom is 276mm less than the required minimum. In HBC's view this is unacceptable for a new staircase where there are no design limitations imposed by the existing building. A person of average height – say 5ft 9inches – would hit the top of their head ascending. Descending the stair the obstruction would hit them at nose height. This has been demonstrated on site.

This staircase will serve four apartments which we understand will either be rented out or used as a House in Multiple Occupation, consequently it is likely that there will be a high turnover rate of occupancy. Hertford is a 'nightlife' town with a multitude of bars, restaurants and nightclubs. There is a high possibility of people using this staircase who are unfamiliar with it's height impediment and who could also be in an intoxicated state.

Requirements relating to Part B1 Means of Escape are also designed to enable safe access for the local fire service and the significant reduction of headroom below the regulatory minimum would be an impediment to the fire service undertaking search and rescue activities within the building.

A brief trawl of the internet brings up a number of statistics in relation to deaths and injuries on staircases. The following are just a few examples:

1. BBC news report 14/06/2000 UK – more than 1000 people die in the UK each year due to falls on staircases. 100,000 people are treated for injuries. This is likely to increase due to the ageing population. It is estimated that the NHS spend in the region of £1billion each year as a direct result of falls on stairs.
  2. Office for National Statistics – Annual Mortality Statistics – 2010 – After motor accidents, falls on stairs gives the highest fatality figures in the UK, 655 in 2010, 644 in 2009.
  3. Health and Safety Executive Lab Report no HSL/2005/10 – The younger population are growing physically in size. In elderly people the high prevalence of accidents on stairs is due to deterioration of balance and vision, 250,000 non-fatal incidents on stairs require medical attention each year in the UK.
- The above statistics give an indication of the serious nature of the problem when staircases are incorrectly installed in buildings.

In addition, the following references relate to appeals made to the Secretary of State in relation to headroom issues on staircases. They are the only cases listed that refer to headroom problems. In each case the appeal was rejected.

45/3/160

SB/007/002/017

SB/007/002/016

45/3/198

45/3/185

As stated previously, the staircase at 10 Maidenhead Street has been fabricated incorrectly with the incorrect riser height and then subsequently incorrectly installed giving the headroom problem. This would have been obvious when the stair was first installed and should have been corrected at that point.

It is understood that the premises are now partially occupied resulting in dangerous situation for anyone using the stair, as all first and second floor occupiers must. There is no reason why the stair could not have been constructed and installed in compliance with the Approved Document guidance.

In summary:

- This is a new stair serving effectively a new building at first and second floor levels therefore there is no reason why compliance with normal guidance should not be achieved
- The applicant was advised by East Hertfordshire District Council's Building Control team (as it was then) at the earliest time that the stair would be non-compliant and before building work started
- The Approved Inspector (MLM Ltd) has advised the applicant that the stair as installed is non-compliant
- The stair is the only stair serving the four flats at first and second floor levels; occupants have no alternative escape route
- The Approved Document guidance is designed to ensure safe buildings in terms of means of escape in case of fire, prevention from falling and safe use of stairs and it is difficult to see how such functional requirements could be reasonably relaxed or dispensed with
- The reduction of headroom would impede fire service access for search and rescue actions
- There is a reasonable solution available to the applicant insofar as it is technically feasible to undertake works to achieve a compliant stair although there will be cost and disruption implications for the developer to reconcile. The costs of doing so will be small in relation to the total costs for the scheme as a whole and the developer may wish to seek advice relating to the recovery of these costs from his advisers and/or contractor.

For the above reasons it is HBC's firm view that there are no grounds for relaxation or dispensation of Requirements B1 and K1 and we would therefore ask the Department to give consideration to refusing the applicant's request on these grounds.

### **The appellant's response to the local authority submission**

Appellant's letter of 2 May 2019 is set out below [scanned using OCR software]:

We acknowledge receipt of the statement of case from Hertfordshire Building Control Ltd (HBC) and we reply as follows:

Firstly for correctness, and by reference to the "existing plans" lodged, the original building consisted of a single storey with a flat roof - Ground floor only.

Secondly the Local Authority Building Control (LABC) were approached at their invitation for an appraisal of the Full Plans: and there was a difference of opinion between the then Building Engineer and Building Control Department. The same plans were then submitted to an Approved Inspector (AI), MLM, which were approved and a "plans certificate" issued with just a few queries for clarification.

Although the staircase had been in a fitted position at site visit by AI on the 24th July 2018, as per the photographic evidence sent, the headroom issue was only raised at the final inspection visit on 19th December 2018. A request for a final visit was made on 15<sup>th</sup> November 2018, a month earlier. By return an auto message was received that Monika Fabri was on Holiday till 21<sup>st</sup> November 2018, The "auto message" suggested to contact Miss Kate Watts for an urgent visit, A request was made for a replacement surveyor, and MLM did not oblige. There was a lessee interest in Ground floor shop premises, who wanted to move in quickly to take advantage of the Christmas Trade, as a result of which all the works were completed for the handover of the ground floor shop.

Had the AI arrived for the final visit as requested, and the contravention brought to our attention then the engrossment of the lease would have been deferred and the rectification carried out. To carry out the works are now very onerous for what we consider to be a "De Minimis" contravention. Mr John Swainson of HBC, agreed that it would have been much easier to rectify with a vacant shop.

The current situation is as we have stated, and noted in correspondence between the AI and the HBC as below:

No issue was raised by the AI with the riser at 200mm as ( $2 \times \text{Riser} + \text{Going } 250\text{mm}$ ) = 650, which is within approved range of (550-700). The only issue raised was the headroom height at step 5. The sketch provided by HBC in respect of the contravention is not correct, as it implies that the ceiling has a protrusion, and the low headroom contravention is much wider than it actually is. The correct sketch was submitted with the first statement of case, and another is attached again. Exhibit 1 & 2

In respect of HBC's comment in relation to the impact the contravention would have, we counter the argument as follows: It would affect less than half of the population: as females are shorter than men, and if we take average to represent 50%, then only 25% of the population would be affected, and of those, there would be natural tendency to negotiate low headroom height to avoid impact, as has been by the users in buildings with low headroom clearances in the examples cited. As explained in the earlier statement: one can stand on 220mm of step 5, and 250mm of step 4 where there is acceptable headroom height, and the 30mm strip of narrow band can easily be avoided, by bending slightly when ascending and descending. We believe that most persons would do that as they do in everyday life instinctively to avoid impact and with the passage of time would be conditioned to do so. Every day in our lives we avoid danger and/or impact with activities such as walking driving, running etc., and such behaviour is natural and exercised sub-consciously.

The appellant acknowledges, the duty of care owed to the occupiers and visitors to the building, and to that end the stair way is well lit, and has placed notices for any users to take heed of the low headroom clearance. But disagrees with HBC that it extends to users who may be in an impaired state due to alcohol and/or drugs to such an extent that their own sense of responsibility is diminished. Such duty of care also would not extend to those who

do not use the stairway responsibly, and engage in activities on the stairs that can be dangerous, such as fighting etc

Hertford's area's night life has no relevance to the issue in contention, as the building is not open to the public as a thoroughfare etc.

Further the risk to Fire and Rescue, upon attendance to this building is no greater than that, they face in buildings as per examples in our penultimate statement: where the headroom clearance is less than 1.65m, which are houses in multiple occupation (HMO), and in which the turnover of occupants in all probability is just as great if not greater than in this building. Photograph enclosed Exhibit 3

In respect of the statistics provided, we do not wish to trivialise them but will say as follows:

1) The BBC report refers to falls on staircases generally: and not specifically due to staircases with low Headroom Clearance etc. The falls could be due to a multitude of causes such as vertigo, fainting, obesity, old age frailty, poor vision, drug and alcohol intoxication etc. No conclusion can be drawn in respect of the fatalities associated with low head room clearances.

2) As above the mortality statistics from the Office for national statistics do not provide any guide to the cause of falls and deaths: Is it due to faulty staircase or the low Headroom Clearance??, if so what are the numbers??

3) The third report states that the younger population is growing physically in size, this does not indicate how, whether it is in height and/ or general physique?? Further the report states that there is a high prevalence of accidents in elderly that is due to Balance & Vision, and does not say due to stairs and low headroom. In the elderly the latter is a least likely cause, as men and women with old age tend to become shorter in height.

In respect of the "Appeal" cases referred to, each case is different, and with one of those there is no relevance to the issue of "Head Room" Clearance, but of the other three with head room issues, there were several other accompanying issues noted, and perhaps more serious than the current one being appealed.

1) In the case of SB/007/002/017

In this case the minimum required head room of 2m had not been achieved over any of the new applicable stairway flight. Approximately 38% to 40% Of the top section of the stairway flight only achieves 1.8m headroom across the full width of the flight and the top landing only achieves 1.95m over only 36% of the landing area with the headroom of the remaining landing area reducing with the sloping roof rafters down to approximately 1.5m. The clearance as measured at right angles to the pitch line, is also well below the minimum British Standard requirement of 1.5m.

2) In the case of SB/007/002/016

The head room clearance varied from 1.6m to 1.72m at the centre to 1.8m to the right string and it was over the whole of the stairway, with a tight "going" not mentioning the dimensions of the latter

3) In the case of 45/3/198:

In this case the new stair as installed is straight stair with winders as in the case. It has a rise of 225mm and going of 190mm, a pitch of 50 degrees, and the Council indicates that the required headroom is less than 2m in places

In this case there are several issues, such as the pitch, going, riser, including headroom less than 2M. These multiple issues, give rise to severe safety concerns.

Comparing the above three to our case, a 30mm wide strip of step 5, at 1.725m headroom clearance over the stairway of 3.5meters in length is 0.85%, which pales into insignificance compared to the above cases

4) In the case of 45/3/1 85

In this case the the stair as installed gives headroom at the centre of the upper landing of 1950mm, but this reduces to around 1600mm at the side of the landing due to the slope of the ceiling. The completed stair has a different layout to that shown on the drawings due to the presence of the two existing oak beams which cross the building parallel to the landing and perpendicular to the upper part of the stair. The floor level of the upper landing had been lowered to give more headroom under these beams and the oak trusses above.

In this case the secretary of state is of the opinion that the the stair and landing in question does demonstrate compliance, as per schedule 1 of the building Regulations 2000, but still considers that it is neither necessary nor appropriate to relax the requirement!! Appears to be a contradictory statement.

5) In the case of 45/3/01 60

In this case, the general staircase for public use is wider at 1.05M than 1M by 5% and without hand rail on both sides as per regulations.

Key differences with this are that this is a much larger building for public use, and the addition of an hand rail on the other side would not have been onerous.

This case are no parallels to our case.

HBC states the in all the cases, the appeals have failed, but the statistics that are not in the public domain are the number of cases the LABC application on relaxations and dispensations that have been adjudicated upon and agreed to relaxation and/or dispensation.

The Building Act 1984 makes provisions for the relaxation of and dispensation from a requirement of a particular compliance, which clearly implies that the departure from the absolute compliance is considered and discretion applied accordingly. The main criteria for consideration are whether the contravention is minor, and/ or too onerous to achieve compliance.

By reference to the above cases, and the appellants statement of case, we believe the contravention in this case is "De Minimis" and to achieve compliance will be too onerous.

*We would further say that there is very little health & Safety risk to the occupiers, visitors, and fire & rescue personnel, for if were significant, then those dwellings and others cited, with a low headroom clearance of 1.65m would be decommissioned or demolished altogether.*

*In light of the above, given the the contravention recorded is 0.85% of the entire stairway, we respectfully ask the secretary of state to uphold the appeal, but if is minded not to do so, to then to give due consideration to the either of the two options, and uphold appeal with conditions as hereunder.*

*Possible options for achieving full head room clearance of 2m:*

*1)The head room clearance could be achieved by trimming the "Going" at step five by 30mm, which will give full head room clearance of approximately 2m across the whole stairway, and a "Going" of 220 mm at step five, and 280mm at step 4.*

*2)Replace the GF to FF stairway by increasing the number of steps by 1 to 15, and retrospectively reducing the "Goings" by 20mm to 230mm, This will reduce the riser to 186mm. This would be too onerous and cause a logistical nightmare for a contravention that is "De Minimis "*

*Therefore Option 1 is the most economical and preferred option, for full head room clearance across the entire stairway.*

**The Secretary of State's consideration**

The appellant made an application on 12 March 2019 for a relaxation of requirements of Part K and Part B in respect of the headroom provided for the staircase from the ground to the first floor of the property, which serves as the only means of access and egress for four newly-built flats.

The Council refused the application on 11 March 2019. The appellant has appealed to the Secretary of State against that refusal.

The Secretary of State has given careful consideration to the particular circumstances of this case and the arguments presented by both parties. In considering the application under section 8 of the Building Act 1984 he would need to be satisfied that compliance with requirement B and K would be unreasonable in relation to the circumstances of this particular case before supporting your appeal against the refusal of the Council to grant a relaxation of that requirement.

Requirement K1 of the Building Regulations states:

***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 2000mm clear headroom above the pitch line of stairs. This is intended to make it is reasonably unlikely that a person ascending or descending the stairs will bang his or her head on an obstruction, as such an impact could cause injury.

The risk of serious injury when hitting an obstruction whilst moving up or down stairs is significantly increased by the likelihood of also suffering a fall (either as a result of the collision with the obstruction or in an attempt to avoid hitting the obstruction).

Falls on stairs pose a serious risk to the health and safety of current or subsequent occupants of a property and are often fatal.

In this case, the stairs have been installed with a clear headroom of less than the 2000mm recommended for safety. The appellant measures the lowest headroom at 1724mm. However, using the methodology for measurement of headroom of stairs set out in Approved Document K, Diagram 1.3 (which corresponds to practice in the UK construction industry generally) the actual headroom appears to be lower. The minimum headroom set in Approved Document K has been set with regard to the average height of people in the UK.

It should be noted that the measured vertical headroom for any particular stair does not mean that people of that height can safely use the stair without hitting their head. Additional dimensional tolerance above this is required to account for the actual vertical and horizontal dynamic effects of moving up or down the stair. Bearing this in mind, the majority of adult females using this stair could be at risk. Consequently, the majority of stair users are likely to be at risk from the reduced headroom of this stair.

From the plans, it appears that the reduced headroom occurs just below a circa 90 degree turn with three winders. This has the potential to increase the safety risk of the reduced headroom. The lower headroom is less visible to stair users when they descend as it is only seen as the corner is turned. Stair users descending may be looking down to ensure they navigate the winders safely, increasing the chance of being unaware of the very low headroom as they turn.

From the information provided by the appellant, the risers on all the stairs in the building do not appear to comply with Approved Document K. Please refer to Table 1.1, which states the maximum rise as 170mm for a general access stair (please note this is not a private stair as it serves more than one dwelling). Increasing the riser height above the maximum level set in Approved Document K will make the stair less safe than this standard.

Photos of the stair provided by The Building Control Company show additional hazards which make the stair as constructed significantly less safe than a stair which follows the guidance of Approved Document K. The handrail appears not to be continuous immediately below the area of reduced headroom; the handrail profile is less safe than one compliant with Approved Document K; a handrail is only provided on one side, the treads do not extend to the full stair width and the single provided handrail is placed a noticeable distance from the treads of the stair. However, I do not consider it necessary to include these further elements of non-compliance with Approved Document K in being able to fairly consider this appeal.

Overall the likelihood of colliding with an obstruction is much higher than if the stairs were to follow the guidance set out in Approved Document K.

In the appellant's letter of 2<sup>nd</sup> May 2019, he cites five cases to support his appeal.

Case 1 relates to loft access in a new-build bungalow and provides a higher headroom than that of this appeal. The appeal was dismissed by the Secretary of State.

Case 2 relates to a loft conversion in an existing dwelling achieving 1.9m headroom. The appeal was dismissed by the Secretary of State.

Case 3 relates to a dwelling house but although the achieved headroom is less than 2m in places, the exact achieved height is not given. The appeal was dismissed by the Secretary of State.

Case 4 dates back to 2003 and relates to the conversion of a listed barn into dwellings. The appeal was dismissed by the Secretary of State.

Case 5 dates back to 2003 and does not relate to stair headroom but to stair width. The appeal was dismissed by the Secretary of State.

In considering these cases it is perhaps most relevant to note that not one was successful, but otherwise their relevance is limited.

The appellant has presented arguments relating to site constraints. This stair is a new stair serving four newly-built flats constructed above an existing shop. I do not consider the site constraints as relevant to the appeal, as it would have been straightforward to have designed and constructed a staircase completely following the guidance of Approved Document K. It should be emphasised that the headroom is constrained by the floor of a newly-constructed bedroom of one of the entirely new flats.

The appellant argues that the approved inspector had approved the plans and not objected to the stair on a site visit. The relevant evidence of approval of the plans by the approved inspector would be in the form of sending a final certificate to the local authority, which is not the case here. The fact that an approved inspector may not have noticed non-compliance with the Approved Documents on a site visit is not evidence of the acceptability of any non-compliance.

It should be noted that drawing 05 states that "all work must conform to current Building Regulations, British Standards [...]". In addition to Building Regulations, the relevant British Standard for staircases is BS 5395-1:2010, which is generally more onerous than Approved Document K and does not recommend lower headroom above staircases than Approved Document K.

Turning to the examples of changes of use of houses in Liverpool, this appeal relates to a new staircase serving new flats constructed above an existing shop, so any precedents from the conversion of the existing building stock are not relevant because they do not share the same types of constraints as new-build staircases. It is also relevant to note that Part K does not apply to existing staircases subject to material changes in use.

The use of a sign, or signs, does not provide the same level of safety or accessibility as compliance with Approved Document K.

Consideration has been given to the fact that the staircase has already been built. As previously set out, the option to have designed a safe, compliant staircase at the outset had

been available to the appellant. The fact of having constructed a non-compliant building is not in itself an argument to allow this appeal.

The appeal is also against Part B1 of Schedule 1 to the Building Regulations 2010. The relevant requirements are set out below.

***Means of warning and escape***

***B1. The building shall be designed and constructed so that there are appropriate provisions for the early warning of fire, and appropriate means of escape in case of fire from the building to a place of safety outside the building capable of being safely and effectively used at all material times.***

The appeal also refers to Approved Document B, Volume 2, paragraph 3.17. The more relevant section of Approved Document B, Volume 2, is paragraph 5.12, which sets out a 2000mm headroom on means of escape.

This staircase is the sole means of escape from four new dwellings. The considerations set out above also generally apply in fire egress and firefighter access scenarios, and thus are not repeated, except to mention that the reduced headroom may be more of a safety hazard in an emergency.

Given the significant risk to current and future occupants of injury or death as a result of collision and/or falling where the stair does not comply with the requirements of K1 or B1, the Secretary of State has 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) and/or B1 (Means of warning and escape) in Part B (Fire safety) of Schedule 1 to the Building Regulations 2010.

The contents of The Building Control Company's letter of 24th April 2019 has been reviewed and the appellant's response of 2<sup>nd</sup> May 2019 has been fully considered.

**The Secretary of State's decision**

The Secretary of State considers that compliance with requirement K1 and B1 could be a life-safety matter and, as such, he would normally only consider it appropriate to relax or dispense with it in exceptional circumstances which in his opinion do not apply 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) or B1 (Means of warning and escape) in Part B (Fire safety) of Schedule 1 to the Building Regulations 2010 and accordingly dismisses the appeal.

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 Council. A copy of this letter is being sent for information to the Council.

Yours sincerely,

  
Nouria Igoinobaro

Senior Casework Officer on behalf of the Secretary of State