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Note: This letter has had personal details edited out.

BUILDING ACT 1984 - SECTION 16(10)(a)

Determination of compliance with Requirement M1 (Access and Use) of the Building Regulations 2000 (as amended) in respect of access to the first floor of a two storey extension to a church.

The proposed work

4. The proposed building work comprises the erection of a two storey building in the form of a cloister extension to an existing Grade II Listed Victorian Church, which is sited within a Conservation Area. As scaled from the drawings provided the proposed extension has a plan area of approximately 320m² at ground floor and 105m² at first floor levels.

5. The ground floor of the extension will consist of a single storey link from the existing church forming one side of the cloister, leading to a double-height meeting hall which forms the bulk of the second side of the cloister. Adjoining this will be a suite of single height rooms comprising a meeting room, kitchen and toilets and a reception / foyer opening onto the courtyard, with a stairway to the first floor. These will complete the second side of the cloister and give access to a parish office, which, with the adjoining vestry in the north transept of the existing church, completes the enclosure of the cloister. The first floor over the suite of single-height ground floor rooms will consist of three meeting rooms within the roof void of the extension.

6. The above proposals were the subject of a full plans application which was rejected by the Borough Council on 31 August 2005 on the grounds that insufficient details had been submitted to cover all parts of the Building Regulations, including Part M (Access to and use of buildings). The Council had earlier advised you that - with reference to the supporting guidance in Approved Document M - in its opinion your proposals do not demonstrate compliance with Requirement M1 (Access and Use) of the Building Regulations, due to the non-provision of lift access to the first floor of the extension. It is in respect of this question that you have applied to the Secretary of State for a determination.

The applicant's case

7. You make the following points to support your case that your proposals demonstrate compliance with Requirement M1:

(i) the Church is not trying to shirk its responsibilities. The purpose of the proposed extension is to provide facilities for use by the Church and the whole community. You have enclosed copies of an Access Statement and background information to demonstrate that the Church Building Committee has given careful consideration to the issues involved and is keen to ensure that the extension is well equipped and can be used by the widest possible cross section of the community. One of the members of the Church Building Committee is himself disabled and serves on 'The Access Group' which advises the Borough Council.

(ii) Requirement M1 states that "Reasonable provision shall be made for people to - (a) gain access to; and (b) use the building and its facilities". In your case, visitors to the extension will be able to enjoy all the activities and services on offer without the need to go upstairs. The first floor will contain duplicate meeting rooms only, which provide no facility that will not already be available on the ground floor. There will be at least three meeting spaces at ground level, including the meeting room in the existing church (at the base of the tower) and the hall itself. It will be part of the management policy of the extension that these rooms will be allocated on a preferential basis to any group that has members with mobility difficulties.

(iii) Paragraph 3.1 of Approved Document M states that "The objective is for all people to travel vertically and horizontally within buildings conveniently and without discomfort in order to make use of all relevant facilities". Where there are relevant facilities at first floor level the Approved Document goes on to say that the best way of providing access to these is via a passenger lift. However, you argue that in your case the first floor is irrelevant in that the facility in question can be fully enjoyed without the need to go upstairs.

(iv) The first floor rooms will be essentially attic accommodation and are included within the roof void to make effective use of the limited site area and to avoid wasting useable space. The nature of the layout and the restricted headroom available would make it very awkward to insert a lift.

(v) The cost of a lift and its future maintenance would in your opinion be out of proportion to the area served. The nett usable area of the first floor meeting rooms will be 75m² and - with reference to the *1999 edition of Approved Document M* - it was not previously deemed reasonable to insist on a lift for anything less than 280m² of nett floor area. Although this is not included in the present 2004 edition of the Approved Document you consider that this is still a useful benchmark.

(vi) In your view, there are two key principles to have regard to: the need to provide good access for all and the equally important need to make effective use of dwindling land resources. If the legislation is interpreted to mean that lifts are to be used even in uneconomic situations then there is a danger that there will be a move away from two storey accommodation in favour of single storey with the result that sites will not be developed to an appropriate density. You consider that there needs to be a sensible compromise reached for each individual building or site.

(vii) you believe that these issues are likely to be relevant to many projects in addition to your own and that, if your interpretation is correct that there are circumstances where lift access is not compulsory, you suggest that it would be beneficial if a simple set of criteria could be developed to help decide borderline cases.

The Borough Council's case

8. To support its request for full access to be provided to the first floor of the proposed extension, the Borough Council also refers to the wording of Requirement M1 of the Building Regulations and that of the guidance in *Section 0 of Approved Document M*. The guidance states that buildings should be accessible and usable and that "People, regardless of disability, age or gender, should be able to: a. gain access to buildings and to gain access within buildings and use their facilities, both as visitors and as people who live or work in them".

9. In the Borough Council's view, the needs of disabled people are encompassed in Requirement M1 and the guidance referred to above, including those experiencing a temporary impairment of mobility. However, the Council adds that inclusion and sustainability has regard to the needs of all and whilst disabled people are included within Requirement M1, it is not specifically aimed at them. The Council considers that other groups who also stand to benefit from improved accessibility, include families with small children, elderly people, people carrying papers or bags etc, and carers, friends or relatives who accompany disabled people.

10. Whilst the Borough Council appreciates your comments about the proposed management of the extension, in the Council's experience, particularly regarding churches and church halls, this is often a matter of someone opening up and locking up later - no one is usually on hand to provide assistance or change room allocations or priorities.

11. In the light of the above considerations, the Borough Council concludes that the non-provision of lift access to the first floor of the extension would fail to comply with Requirement M1.

The Secretary of State's consideration

12. The Secretary of State notes the points you make to support your view that the proposal you have designed complies with Requirement M1 and the guidance in *Approved Document M*.

13. You state that the Church is not trying to shirk its responsibilities, and that an Access Statement has been provided along with other supporting information. The Secretary of State commends the Access Statement for its clarity and attention to detail and has taken this into account when deciding whether your proposals achieve compliance. He would, however, comment that it would have assisted his consideration if the origin and authorship of the Access Statement was made clear. He notes too your statement that a member of the Church Building Committee, who is himself disabled, serves on the Access Group. While he accepts that it is highly probable that the views of the Access Group were represented to the Building Committee by this means he believes that it would have materially assisted his consideration of the case had the specific views of the Group been presented as part of the Access Statement. Similarly, given the listed status of the Church, the views of the Conservation Officers and English Heritage would have been helpful.

14. The Secretary of State also notes your comment that if the legislation is interpreted to mean that lifts are to be used even in uneconomic situations then there is a danger that there will be a move away from two storey accommodation. However, *Approved Document M* is guidance and as such it is not mandatory, which allows for the fact that some sites may have constraints which may make it unreasonable to require the installation of a lift. Nonetheless, the thrust of the guidance is clear - the normal expectation is that a lift will be provided.

15. Turning to the case in question, you state that all visitors will be able to enjoy all the facilities on offer without the need to go upstairs to the first floor of the proposed extension, and management policy will be to allocate ground floor rooms on a preferential basis to groups with members having mobility difficulties. But against this, the Borough Council refers to Requirement M1 and argues that in addition to those with mobility difficulties, other people could benefit from being able to access the first floor facilities, including elderly people and families with children. The Council also expresses its view, based on experience of the management of church halls, that there is rarely anyone on hand to provide assistance or change room allocations or priorities.

16. In this respect the Secretary of State does not agree that in this case the existence of the facilities on the first floor is irrelevant, as you suggest. He has to take account of the fact that the policy for use of the building may change in the future. He is though aware that the Church wants to make reasonable provision in the circumstances and is likely to see its duties under the Disability Discrimination Act 1995 in a positive light.

17. You also argue that the first floor rooms are included within the roof void to make effective use of the limited site area. You add that as the headroom is restricted and space is limited on both the ground and first floors, it would be difficult to integrate a lift and that due to the small nett usable area on the first floor, the long term maintenance liability and cost of a lift cannot be justified. To support your arguments, you also refer to the guidance in previous editions of *Approved Document M*, that for a nett floor area of below 280m² it was not deemed reasonable to provide a lift, which you consider to be a useful benchmark.

18. The Secretary of State does not consider that an arbitrary floor area threshold sits comfortably any longer with other Government policies aimed at achieving equality of opportunity for all disabled people by 2025, and believes that each case should be considered on its merits. However, in this case, he agrees that the site has restrictions and that space is severely limited. Installing a lift would reduce the facilities on the ground floor as well as resulting in the loss of limited space and one of the three meeting rooms on the first floor. This would reduce the potential for providing an overall quality service for all visitors. He also notes that all facilities, as well as further meeting rooms, are available at ground floor level and that you will be putting appropriate management plans into place for these.

19. It is therefore the Secretary of State's view that, taking account of all the factors considered above, the benefits to be gained by providing full access to, and use of, the first floor of the extension are outweighed, in this particular case, by the practical difficulties and disproportionate use of space entailed by the provision of a lift.

The determination

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

21. As indicated above, in the particular circumstances of this case, the Secretary of State considers that your proposals, as submitted, make 'reasonable provision' for people to gain access to the proposed extension to the Church and to use the facilities therein. He has therefore concluded and hereby determines that your proposals comply with Requirement M1 (Access and use) of Schedule 1 to the Building Regulations 2000 (as amended).