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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, forming the Education Resource Suite and Consultants' offices at the Adult Psychiatric Unit, City Hospital.

The proposed work

4. The documentation submitted indicates that the proposed building work to which this determination relates is the erection of a two storey extension to the Adult Psychiatric Unit at a City Hospital to provide an Education Resource Suite and Consultants' Offices. The proposed extension will be linked at ground floor level to the existing Phase III consultants' office accommodation. The existing accommodation within the psychiatric unit comprises:

- phase I, consisting principally of two storey ward accommodation arranged around an approximately triangular courtyard, served by two lifts accessed from a common lift lobby, adjoining, to the north, a single storey occupational therapy, recreation and catering block arranged around a rectangular courtyard, the whole amounting to approximately 2,500m² at ground floor and 1,750m² at first floor levels
- phase II, to the east of the Phase I two storey ward block, consisting of an octagonal, single storey, mother and baby unit arranged around a square courtyard, the whole amounting to approximately 350m²
- phase III, to the north of Phase II and to the north-east of the Phase I single storey therapy block, consisting principally of a two storey ward block in the form of a blunt arrow-head pointing north, served by a single lift. At the 'foot' of the arrow-head there is a single storey element projecting towards the east, which, together with the ground floor element of the 'arrow-head' immediately adjacent, forms the consultants' office accommodation and gives access to the proposed extension which is the subject of this determination. The floor area of this phase amounts to approximately 1,200m² at ground floor and 1,100m² at first floor levels
- a single storey access corridor linking all three phases at their nearest points, amounting to approximately 120m².

The total floor area of the existing building is approximately 7,000m², of which some 4,200m² is at ground floor and 2,800m² at first floor (approximate dimensions stated above have been scaled from the drawings submitted and rounded).

5. The proposed two storey extension will be approximately 235m² in plan area. You advise that a single storey extension was originally proposed to house the education facility, but two storeys are now proposed to accommodate the relocation of various offices within the existing building, including existing consultants' offices, to allow for the internal reconfiguration necessary for the creation of a Psychiatric Intensive Care Unit elsewhere within the building. Your drawings indicate that the extension will comprise:

- ground floor: an entrance/waiting area, five offices, photocopy/store room, two interview/study rooms, male, female and unisex wheelchair-accessible toilets, beverage room and a study area, plus a link to the existing consultants' corridor/accommodation
- first floor: fifteen offices, photocopy/store room, male and female toilets and beverage room.

6. Your proposals also indicate that access to the ground floor level of the extension can be gained in the following ways:

- directly with no change in level via the link from the existing consultants' accommodation in Phase III, primarily for the use of the consultants;
- from the access road and car parking via a pedestrian ramp or flight of three steps leading to the entrance/waiting area, primarily for the use of students; and
- to external paving at the rear (north-west elevation) of the extension via two steps in the single stair enclosure, primarily as a means of escape from the first floor level.

7. As there will be 'staff only' access to the first floor of the extension, a single stair has been proposed to accommodate the number of offices required while meeting means of escape requirements on maximum travel distance. Access to the first floor level of the adjoining two storey building is precluded by the location at that point of a plant room serving the entire Phase III suite of buildings.

8. The above proposals were the subject of a full plans application which was conditionally approved by the City Council on 24 March 2005. One of the conditions was that further details were required to be submitted and approved to demonstrate compliance with Part M (Access to and use of buildings). The Council subsequently advised that the only Part M issue outstanding is whether your proposals provide suitable independent access to the first floor of the extension, particularly for wheelchair users. The Council considers that vertical circulation by the proposed stair only will not satisfy this requirement and such access could only be delivered, in what essentially will be a new building, by the installation of a vertical platform lift. It is in respect of

this question that you have applied to the Secretary of State for a determination.

The applicant's case

9. You state that full access will be provided to the ground floor of the proposed extension, but you consider that it is not reasonably practicable to provide a platform lift to access the first floor accommodation, as requested by the City Council.

10. You refer in particular to your letter of 29 April 2005 to the City Council, a copy of which you have submitted, which provides detailed information about the psychiatric unit's design and functionality and the site restrictions to explain the proposed layout of the extension and support your case for omitting a platform lift to the first floor. This includes the following points:

(i) as indicated above, the extension will be connected to the existing Phase III consultants' corridor on the ground floor, but it is neither feasibly practical nor financially viable to link back at first floor level due to the position of the Phase III plantroom. You state that ideally it would have been preferred to link back into the first floor as this is serviced by a single lift but that, whilst in the long term there may be circumstances which may occasion such a possibility, it is not thought imminently likely.

(ii) as the first floor accommodation in the extension will comprise only staff offices and ancillary facilities, you do not envisage that these rooms will be visited other than by staff. You believe that any person with mobility difficulties would occupy one of the ground floor / clinical level offices out of choice, as this would be more inclusive to their staff function, and there are more offices at ground floor level than at first, in addition to all other facilities.

(iii) the majority of the existing accommodation and clinical areas, within the psychiatric unit are on the ground floor and appropriate management procedures are in place, where there are lifts to wards at first floor level, to accommodate lift failure and evacuation in the event of a fire. Similar robust management procedures would be necessary to accommodate the single installation of a platform lift in the extension, which may place unreasonable duties on the staff of the unit and the lift may not therefore be used for its intended purpose. In this respect, you also draw attention to *section 7.11 of the DDA 1995 Code of Practice (Rights of Access - Goods, Facilities, Services and Premises)*, which you submitted to the City Council on 4 May 2005 in support of your case.

(iv) You refer to the need to comply with *BS 6440:1999 (Powered lifting platforms for use by disabled persons - code of practice)* and the Disability Discrimination Act (DDA) 1995 and add that, due to site restrictions and the accommodation required within the extension, you believe that the installation of a platform lift would need to be within the protected stair enclosure, which would introduce fire and access risks. You have considered the option of a separate motor room but take the view that the space taken up would be

disproportionate and would result in a reduction in the ground floor study area and adjacent offices.

(v) You add that you would have preferred on clinical grounds for there to have been no projections from the building line, however the projection of the proposed stairway outwards from the north elevation of the extension represents a compromise between buildability and the desirability of avoiding "visual black spots which need to be managed" - by which it is assumed that you mean areas where patients may avoid supervision.

11. You summarise your case in your letter of 29 April 2005 by stressing that your proposals involve the extension of an existing building and that the site is restricted by physical limits and existing uses. It will not be a new building but an extension which has to house a specific schedule of accommodation which has justified / brought forward the need. You believe that your proposals offer suitable independent access to the extension where reasonably practicable. You consider that the provision of a platform lift would be inappropriate and unlikely to be used for its intended use due to the health and safety issues you have referred to and personal choice of user. You re-emphasise that appropriate procedures would need to be in place to accommodate wheelchair users and that it is not reasonably practicable on physical, financial or health and safety grounds to provide a lift facility.

12. You conclude that the City Council has dismissed your arguments as the Council is of the opinion that Part M of the Building Regulations requires the installation of a lift / platform lift in all such cases. In your view, the regulations allow for situations such as yours where the management and intended use of the accommodation makes the provision not reasonably practicable and you question the Council's position on this.

13, You subsequently commented further in your letter of 3 August 2005 in response to the City Council's representations to the Secretary of State (see below) reiterating much of your case. You also enclosed further copies of your *drawings (GA.04 & GA.05)* indicating a proposed location for a platform lift, as agreed with the Council, should the Secretary of State determine that such provision would be reasonable. But you add that this will result in the loss of a single office on the first floor and that the functionality of the study area will be impaired. This will affect your schedule of accommodation / user requirements, which will not be achieved.

The City Council's case

14. The City Council comments that it has carefully considered all the information you have submitted, but remains of the view that suitable independent access can only be provided to the first floor of the proposed extension with the installation of a platform lift, as it is essentially a new building. The Council has made its decision on what it feels is suitable and reasonable in the particular circumstances of the case and has no 'policy' of lifts in all cases.

15. The City Council has noted your representations with regard to the requirements of the DDA 1995 and health and safety issues, but points out that the question of whether a lifting device is reasonable in this case is part of the Building Regulations process. The Council also draws attention to the new duty imposed on public authorities by section 3 of the DDA Act 2005.

16. The City Council believes that the main health and safety issue that needs to be considered, should a platform lift be installed, is the safe evacuation of disabled people from the first floor of the extension. Although a platform lift should not be used to assist with emergency egress from the building, the Council draws attention to *BS 5588-8:1999 (Fire precautions in the design, construction and use of buildings - Code of Practice for means of escape for disabled people)* and *Approved Document B (Fire safety)* which contain guidance on both building design issues and management procedures that should be in place to assist the evacuation process. In your case, the Council considers that the extension's stair enclosure could be modified not only to incorporate a platform lift, but also a refuge and any auxiliary aids to assist with the safe evacuation of disabled people from the building. The Council notes you have indicated that such a proposal will be implemented if the installation of a platform lift is required by this determination and considers that there are no overriding health and safety issues that would preclude such an installation.

17. The City Council concludes that whether the proposed building work is considered to be a new building, or an extension to an existing building as you suggest, the installation of a platform lift is reasonable and practical in this case.

The Secretary of State's consideration

18. The Secretary of State considers that it is important to be clear which requirement of the Building Regulations is in dispute in this case. He notes that you state in your letter of 29 April 2005 to the City Council your understanding that Part M requires that "suitable independent access shall be provided to the extension where reasonably practicable" and your view that full access will be provided to the ground floor of the extension, but that it is not thought reasonably practicable to provide the same for the first floor accommodation.

19. The meaning of 'independent access' to an extension is set out in *paragraphs 0.5 and 0.6 of Approved Document M*. Paragraph 0.5 states: "An extension to a non-domestic building should be treated in the same manner as a new building, as regards its own compliance with Part M. Under the new Requirement M2 there must be suitable independent access to the extension where reasonably practicable. Under the Limits on Application, Requirement M2 does not apply where the building that is extended complies with Requirement M1(a) so as to provide suitable access through the building to the extension. The concept of access encompasses access from the boundary of the site and from on-site car parking where provided."

Paragraph 0.6 states:

"If the owners of a building prefer not to provide independent access to a planned extension, it is open to them either to demonstrate that the existing building and the approach to it already comply with Requirement M1(a), so that the Limit on Application of Requirement M2 applies, or to modify the existing building and/or the approach to it so that the Limit on Application applies. Such modification work would be a material alteration. The extensions and the alterations of the existing building could be planned and carried out as a single project."

20. Since in this case suitable access to the ground floor of the proposed extension will be provided through the existing building, the limit on application of Requirement M2 applies. However, as indicated in our letter of 18 January 2006 to the City Council and copied to you, the Secretary of State considers that the question that has been referred to him for determination in this case is whether reasonable provision has been made for people to gain access to the first floor of the extension, and to use the facilities therein, as required by Requirement M1 of the Building Regulations.

21. Your clients' proposal is for a two storey extension connected at ground floor level to a series of buildings forming the psychiatric unit. You make the point that it is neither feasibly practical nor financially viable to provide a similar link at first floor level, due to the position of the Phase III plant room. The Secretary of State accepts this point and would consider it unreasonable to require level access to be provided in this way.

22. The Secretary of State agrees with the City Council that it falls to Part M of the Building Regulations and not the DDA 1995 to determine if it is reasonable to require the installation of a platform lift in this case. The Council's concern over the new duty imposed on public authorities by section 3 of the DDA 2005 (which comes into force in December 2006), is not directly relevant to the determination.

23. You also make the point that the first floor is only to consist of staff offices and ancillary facilities, and that you envisage that only the occupants of those offices will be visiting these rooms. The Secretary of State notes your view that any staff member with a mobility difficulty would be relocated from the first floor and presumably this could apply to any other visitors with such difficulties should it prove necessary. But, moreover, he takes the view that the use of the first floor could change in the future and it would therefore be reasonable to assume that it may not always be used for staff offices during the building's lifetime.

24. You have stated that the site is restricted by physical limits and existing uses. You also argue that a platform lift would need to be within the protected stair enclosure in the extension and would create a fire risk. The Secretary of State agrees that if the latter were the case the risk would be increased, but notes that the amended drawings submitted with your letter of 3 August 2005, (GA.04 & GA.05) - which you have agreed with the City Council - shows the

lift being outside of the stair enclosure and that this therefore eliminates this risk. However, you add that installing a platform lift in this area would result in the loss of an office and some space within the ground floor study area, which you consider to be unreasonable.

25. It is the Secretary of State's view that the size of the proposed extension is not so small as to make the premises of a platform lift either impracticable or unreasonable. He considers that, with careful thought, it is possible your clients' needs could be accommodated within the extension, and in particular that a platform lift might be so located that the unsupervised 'visual black spot' between the stairway and the male and female toilets could be eliminated and no accommodation lost in consequence. He believes therefore that your argument that accommodation would be lost is not valid.

26. The City Council has suggested that the main health and safety issue raised in this case relates to the safe evacuation of disabled people from the first floor. The evacuation procedures are covered under *Approved Document B* and this, therefore, is not the issue that is being determined in this case. Nonetheless, the Secretary of State agrees that if a platform lift was to be installed this would require appropriate management procedures for evacuation.

27. Having had full regard to the particular circumstances of this case and the arguments presented by both parties, the Secretary of State concludes that, to achieve compliance with Part M, and Requirement M1 in particular, a lift facility will be required within the proposed extension to gain access to the first floor.

The determination

28. As indicated above, the Secretary of State considers that your proposals, as submitted, do not make reasonable provision for people to gain access to the first floor of the proposed extension to the psychiatric unit and to use the facilities therein. He has therefore concluded and hereby determines that your proposals do not comply with Requirement M1 (Access and use) of Schedule 1 to the Building Regulations 2000 (as amended).