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*Note: The following letter was issued by our former department, the Office of the Deputy Prime Minister (ODPM). ODPM became Communities and Local Government on 5 May 2006 - all references in the text to ODPM now refer to Communities and Local Government.*

## **Building Act 1984 - Section 16(10)(a)**

**Determination of compliance with Requirement M2 (Access and use) of the Building Regulations 2000 in respect of the need for provision of a stairway suitable for ambulant disabled people as part of building work to erect a three storey extension to form guest accommodation and alterations at a public house**

### **The proposed work**

4. The building work to which this determination relates is the construction of a new three storey extension to a three storey Victorian Public House in a conservation area.

5. The main building as existing has a south facing frontage of approximately 20m and tapers slightly down the west side to a depth of 10m. There is a projecting two storey rear wing approximately 5.5m deep abutting neighbouring buildings to the west and forming the west side of a courtyard garden, and a single storey covered access to the rear of the main building. At ground floor level the existing building comprises bar areas, a bar counter, male and female toilet facilities and various ancillary spaces.

6. The first floor of the existing building comprises the manager's accommodation and two undesignated rooms above the rear wing, accessible by either two steps from the manager's flat or a separate staircase from the space below. The second floor comprises a bathroom and twelve bed spaces for staff accommodation in six bedrooms. This floor is shown as being uneven as a result of deflection. These two floors and the ground floor are connected by what are described in your letter as a steeply pitched Victorian staircase with winders. The submitted drawings, on the other hand, show two vertically discontinuous stairways. Each consists of three flights of no more than six risers separated by intermediate quarter-landings, arranged around three sides of adjacent wells. The first to second floor stair is shown as having a total rise of 2.805m with 17 risers, giving an individual step rise of 165mm. With a going that is approximately 240mm, this indicates a shallow pitch of approximately 34.5 degrees. The lower flight appears to be steeper, having 15 risers in a total rise of 2.850m, giving an individual step rise of 190mm. This would suggest a pitch of approximately 39 degrees. The foot of the ground

floor stair delivers to the rear and approximate centre of the existing main building.

7. On the east side of the existing building and courtyard garden is an area of 15.5m (frontage) x 34m (depth) used as a yard and car park. The proposed new extension will be constructed on part of this area. The principal part of the extension will be approximately 9m (frontage) x 17m (depth), and will be set back approximately 1m from the frontage of the existing building. It is to be three storeys in height (plus a basement storey) and of concrete and load-bearing brick and block construction; with weather-boarded cladding externally at first and second floor and a pitched slate roof to the front elevation. The ground floor level of the extension will be approximately 250mm below existing ground level to permit the three storeys to be constructed within height limitations imposed by the local planning authority. A secondary, single storey, part of the extension will replace the covered single storey access to the rear of the main existing building, to provide a new dining room giving access to the courtyard garden. The remainder of the frontage of the property will be rail fenced and gated, with swipe card security. The remaining part of the existing yard to the rear will be accessed down the side of the extension where the plans indicate that 14 car parking spaces of approximately 4.8m x 2.4m will be provided.

8. Internal alterations are also proposed on the ground floor of the existing building to provide new male, female and unisex accessible toilets. The width of the accessible toilet is shown as 1500mm, but the plans do not specify whether this is a finished or a structural dimension.

9. The proposed, three storey extension will contain the following accommodation. There is to be a new cellar at basement level. The plans show that at ground level there are three en suite bedrooms, plus a fourth bedroom. The latter is at the end of a corridor leading from the access and designated for disabled persons with en suite facilities in a 2m x 2.4m compartment with a 300mm x 730mm vertical duct in one corner. The corridor connecting these rooms provides access via a lobby (which scales 1500mm x 1300mm) with swipecard controlled door and a ramp to the new dining room, and from there to the reception area of the existing building.

10. The same corridor also gives access to a further lobby containing the stairway at the northern end of the extension. This stairway lobby leads, via two steps and a swipecard controlled door, to an "entrance lobby". This lobby in turn gives access to the car park level at the northern end of the extension, and, via a further swipecard controlled door, to the dining area of the hotel. There are therefore two possible routes to the extension block - one via the stairs lobby containing two steps; and the other via the dining room ramp and lobby.

11.Means of escape in the event of fire is provided by a 1:12 ramp adjacent to the bedroom designated as accessible for disabled people. This slopes upwards at a constant gradient all the way, direct to the threshold of double doors which open outwards onto the public highway with a crash bar escape locking system.

12.The first floor comprises four en suite bedrooms, but will also provide access to an additional two en suite bedrooms created by converting the existing rooms within the eastern end of the existing building and by creating a new opening through the flank wall.

13.The second floor comprises four en suite bedrooms aligned with those below.

14.The three floors of the extension are connected by the lobbied stairway which will also extend to the cellar below. The storey height is 2.66m. The stairs serving the residential floors comprises two risers to a quarter landing, five risers to a second quarter landing, two risers to a third quarter landing and a final five risers to the next floor level landing. They are of precast concrete with a going of 250 mm, and a maximum rise of 190 mm, and a width of 900 mm.

15.These proposals were the subject of what was a third full plans application which was rejected by the Borough Council on the grounds, inter alia, that the proposed stairway in the extension is not suitable for ambulant disabled people and does not therefore comply with Requirement M2 (Access and use) of the Building Regulations. However, you take the view that because access will be gained through the existing building the extension should be regarded for the purposes of Part M of the Building Regulations as an extension to an existing building, rather than a new building, and should therefore only be expected to comply with the less onerous requirements of Part M in respect of extensions. On this basis you believe that a stair suitable for ambulant disabled people is not necessary for the building work to comply with Requirement M2 and it is this question which you have referred to the First Secretary of State for determination.

### **The applicant's case**

16.You state that the proposed stair in the extension complies with Requirement K1 (Stairs, ladders and ramps) of the Building Regulations. To address the issue of accommodating an ambulant stair, you state that you have considered the possibility of introducing a further tread between each floor level but concluded that a 2.0m headroom clearance could not be achieved on the upper levels.

17. You also make the following points in support of your case:

(i) there is no ambulant disabled stair within the existing building, therefore the manager and all resident members of staff do not benefit from this facility when accessing the accommodation on the first floor or above. In response to the Borough Council's concern about access for disabled staff to the upper floors of the extension, you advise that due to the nature of the work the staff have to be able bodied.

(ii) access to the extension will be gained, at least initially, through the existing building. It will not be possible, when arriving at the building for the first time, to gain access either into the car park or into the stairway in the extension. The doors to the stairway will be electronically locked and effectively only form a means of escape or an access after registration to the rooms. The entrance from the car park will also be restricted to guests who have registered at the reception counter within the existing building and received swipe cards to operate the proposed electronic security.

(iii) you refer to *paragraph 0.4 of Approved Document M (Access and facilities for disabled people)* and state that, although there is no obligation to do so, ramps are being proposed from the existing ground floor levels of the existing building to the ground floor of the extension for the benefit of disabled guests, and that the proposals will also include the provision of a new disabled toilet.

(iv) you also refer to *paragraph 0.5 of Approved Document M* and state that improvements are in fact being made to the existing building to improve the standards and that facilities in the extension will be linked to the existing building. You add that in your view as the proposed extension is neither approached independently nor entered from the boundary of the site it should not be treated as a new building.

(v) with reference to *paragraph 0.8d. of Approved Document M*, you state that disabled people will be able to access all of the public building facilities which are located on the ground floor, together with a specifically designed disabled bedroom and three other guest bedrooms.

(vi) you have also offered to alter the existing ground to first floor stair to further improve the situation in the existing building as well as the extension.

18. You conclude that you have carried out similar projects in other areas where the local authorities have not interpreted the Building Regulations in the same way that the Borough Council has done in this particular case.

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

19. The Borough Council considers your argument that access to the extension will be through the existing building is correct in so far as initial access is concerned. However, the Council points out that there will also be separate independent access to the extension which can be entered directly from the car park following registration.

20. The Borough Council also argues that the access route through the entrance of the existing building to the reception area is suitable for ambulant disabled people, as will access from this area through the bar area to the proposed extension. The Council takes the view, therefore, that it follows that it is reasonable that provision should be made for ambulant disabled people to gain access to all levels of the extension, thus enabling staff to carry out their duties and guests to access all the bedrooms.

## **The First Secretary of State's consideration**

21. The proposed extension is not a domestic one and has a ground storey. As such it is subject to the requirements of Part M, and in particular Requirement M2. The functional requirement of M2 is that "reasonable provision shall be made for disabled people to gain access to and to use the building". The First Secretary of State's view, as set out in the 'Guidance' section of *Approved Document M* is that "the requirements of Part M will be met by making it reasonably safe and convenient for disabled people to gain access to and within buildings other than dwellings and to use them. The provisions for access and facilities are for the benefit of disabled people who are visitors to the building or who work in it."

22. The Guidance section of *Approved Document M* further advises *paragraph 0.5* that "where access to the extension is achieved only through the existing building, it will be subject to the limitations of the existing building, and it would be unreasonable to require higher standards within the extension. On the other hand, it is reasonable that an extension which is independently approached and entered from the boundary of the site should be treated in the same manner as a new building"; and *paragraph 0.8 i) a. and c.* states that "If Part M applies, reasonable provision should be made in buildings other than dwellings so that disabled people can reach the principal entrance to the building and other entrances described in this Approved Document, from the edge of the site curtilage and from car parking within the curtilage [and] for access for disabled persons into and within any storey of the building".

23. Two questions therefore arise in considering this determination. The first is whether or not the proposed extension should be viewed as one having independent access, or as one to which access is achieved only through the existing building. Depending upon the view to be taken on this question, the second question is whether provisions for 'access and use' in the proposed extension achieve compliance with Requirement M2 having regard to the lesser or more onerous standards which should be applied.

24. The objective of Requirement M2 is to improve access for disabled people. Where that is reasonably capable of being achieved, it should be so achieved. In the First Secretary of State's view nothing in the site conditions or constraints necessarily limits access to the extension exclusively through the existing building. It may be the case, as you argue that "it will not be possible, when arriving at the building for the first time, to gain access either into the car park or into the staircase in question." That, however, is because of the choice of entry control system, not because there is no suitable alternative entrance. You have in fact provided a suitable alternative entrance. It is also the case that, once registered, it is possible for any hotel resident to gain access at any time via the car park and the alternative entrance to the rear entrance lobby. In the case of many disabled motorists this may well be the only practicable route of access. It is therefore the view of the First Secretary of State that your proposals for this extension - including the proposed stairway, other access provisions, and sanitary facilities - fall to be judged against a standard appropriate to a 'new build' situation.

25. On this basis, and in respect of the specific question raised about the suitability of the proposed stair for the extension, it is the First Secretary of State's view that this does not conform to the guidance in either Approved Document 'M' or the more recent *British Standard BS 8300:2001 (Design of buildings and their approaches to meet the needs of disabled people - Code of Practice)*. It cannot be regarded as safe and convenient for use by persons with ambulant disabilities for whom in other respects the upper level rooms may be acceptable.

26. Although not put to the First Secretary of State as questions for determination, other aspects of your proposals relating to access and design, in respect of their achievement of compliance with requirements M2 and M3 (Sanitary conveniences), have been noted with concern.

27. Specifically, it is noted that internal access to the extension from the reception area is via a lobby which does not appear to comply with the guidance in *Approved Document M* and which in consequence many wheelchair users will find difficult to negotiate. Once having registered, a wheelchair user entering from the car park will have to negotiate two swipe card controlled doors, as opposed to the one used by ambulant visitors, and travel a more circuitous route to gain access to the bedroom extension. As a result, neither the chosen entry control system nor the internal layout of the extension appear to lend themselves to an access solution for disabled people which is necessarily safe or convenient.

28. It is also noted in respect of compliance with Requirement M2 that the ground floor bedroom designated for use by wheelchair users is at the furthest point from the access. It is further noted that in the event of a wheelchair user being alone in the extension in the event of fire, the means of escape could be inaccessible because of the lack of an internal level landing at the top of the upward sloping ramp, in front of the doors opening onto the public highway. If this proved to be the case compliance with Requirement B1 (Means of warning and escape) of the Building Regulations could be compromised. In

addition, the bathroom to this bedroom lacks space for a disabled user to sit at the head of the bath in order to manoeuvre in and out of the bath. This brings into question achievement of this particular proposal with Requirement M3.

29. The First Secretary of State would further comment that whilst he acknowledges the efforts made to accommodate the needs of disabled people within the existing building and accepts that these are not required by Part M of the Building Regulations, your clients should note that they will have obligations as a 'service provider' within the terms of the Disability Discrimination Act (DDA) 1995, some of which in relation to access to goods, facilities, services and premises will take effect on 1 October 2004. In relation to the standard of provision for people with disabilities in the proposed extension, your clients should also note that physical features of the building will be exempt from challenge under the rights conferred by the DDA only in so far as they accord with the relevant objectives, design considerations and provisions in *Approved Document M*.

### **The determination**

30. The First Secretary of State has given careful consideration to the particular question submitted for determination in respect of the compliance with the Building Regulations of the proposed stairway for the extension in question, and to the circumstances of this case and the arguments presented by both parties.

31. On the basis of the proposals as submitted for the stairway connecting the ground, first and second floor of the proposed extension to the public house, the First Secretary of State considers that they should make reasonable provision for ambulant disabled people to use the extension and that their design fails to do so. He has therefore concluded and hereby determines that your proposals for the stairway do not comply with Requirement M2 (Access and use) of Schedule 1 to the Building Regulations 2000.