

Date: 11/04/01

Ref: 45/1/192

Note: The following letter was issued by our former department, the Department for Environment, Transport and the Regions (DETR). DETR is now Communities and Local Government - all references in the text to DETR 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 1991 (as amended) in respect of the need for lift access for disabled people in a temporary modular building

The proposed work

4. The building work to which this application relates is substantially complete and consists of the erection of a temporary building adjacent and parallel to, and at a distance of 5m from, an existing two storey office building occupied by your client. The temporary building comprises three relocatable prefabricated modular elements: a two storey office accommodation block approximately 12m x 40m; a two storey staircase module approximately 3m x 7.5m; and a single storey welfare facility approximately 6m x 7.5m. The building has an occupational capacity, assuming full open-plan use, of 138 people at ground floor and 96 at first floor levels.

5. The layout of the ground floor level in the office block of the temporary building consists of an open plan arrangement of 94 workstations with a separate partitioned space of approximately 3.5m x 5.5m for a supervisor. The first floor level comprises an open-plan arrangement of 71 workstations with a photocopying facility and a separate partitioned training room with 18 workstations. No provision for toilet facilities is proposed in the temporary building, reliance being placed on the existing facilities in the existing office building, together with your proposal for a new unisex wheelchair accessible WC compartment adjacent to the reception area in the existing building.

6. The sole means of access to the temporary building is at ground floor level from the existing building through an existing swipe-card controlled aluminium framed and glazed fire-escape door and by way of a temporary 1.8m wide covered and level walkway connecting into the staircase module. The plan subsequently submitted to the Council and the Secretary of State in . shows proposed modifications to the entrance to the existing building to allow access for wheelchair users to ground floor level, but no alterations to the staircase access to the existing first floor level. The staircase to the first floor of the temporary building is of a pitch that is suitable for use by an ambulant disabled person. The welfare facility is connected to the staircase module, and the latter to the office accommodation, by lobbies with single doors

lacking an unobstructed 300mm space adjacent to the leading edge of the door. An external fire escape staircase serving the first floor of the temporary office accommodation block at the opposite end to the staircase module, and fire escape doors to the ground floor of the office accommodation and to the temporary walkway, provide alternative means of escape, but do not form part of the consideration of this determination.

7. These proposals (excluding the plan subsequently submitted) were the subject of a full plans application, which was rejected by the Council on the grounds that insufficient details had been provided. The Council took the view that in order to comply with Requirement M2 of the Building Regulations a passenger lift should be provided to the first floor of the two storey office accommodation block of the temporary building. However, in the circumstances of the case, you believe that this is unnecessary. It is in respect of compliance of your proposals with Requirement M2 that you applied to the Secretary of State for a determination. The material date for your determination is. (the date of your full plans application) and it therefore falls to be considered in respect of the Building Regulations 1991 (as amended up to and including SI 1999/77).

The applicant's case

8. You have explained that your client wishes to temporarily relocate their Customer Support service from its location on the first floor of the existing building to make way for equipment rooms. New premises are being developed for the Customer Support service elsewhere on the same industrial estate, to be ready for occupation towards the end of 2001. Planning approval was granted for a period of twelve months, extended subsequently by a further six months, for temporary accommodation to be built on your clients current site pending completion of the new premises.

9. Site constraints, and the number of employees to be temporarily relocated, require the use of a temporary two storey building. Your understanding is that Part M (Access and facilities for disabled people) of the Building Regulations will apply; and you state that the ground floor access to the existing building is currently suitable for use by disabled people, and that access through to the temporary building will be designed such that wheelchair disabled access is possible. Your client also intends to carry out modifications to the existing ground floor toilet accommodation in the existing building to improve facilities generally for disabled people. You further maintain that, although disabled employees will be located on the ground floor, access and escape stairs in the temporary building are suitable for use by ambulant disabled persons; that the accommodation provided is serviced and equipped almost identically on each floor; and that the welfare facilities at ground floor will be equally available to all employees. You accept however that the training room at first floor level is unique to that floor, but argue that the training facilities are identical to those in the main area of the offices and that training of wheelchair users could therefore be carried out at a normal desk position at ground floor.

10. You draw attention to the guidance given in paragraph 2.11 of *Approved Document M (Access and facilities for disabled people)* which, together with paragraph 2.13a., would suggest that the provision of a passenger lift would be needed to satisfy Requirement M2. You argue, however, that the temporary nature of the use of the building would render the expense of installing a lift commercially unviable. You say that you have investigated alternative means of providing access to the first floor for wheelchair users but maintain that the prefabricated nature of the building precludes all solutions other than external additions. You have also considered an earlier appeal decision issued by the Secretary of State relating to Requirement M2, which the Council has referred to, but believe that the circumstances of your case are different.

11. You conclude that the provision of a unisex wheelchair accessible WC compartment at ground floor level in the existing building will improve the existing facilities for disabled people, and that you believe your proposals, notwithstanding the absence of a passenger lift, meet Requirement M2 by providing reasonable access to the temporary building. You maintain that disabled people will not be disadvantaged thereby.

The Council's case

12. The Council has calculated the first floor area of the temporary building to be just over 500m² and concluded that provision of mechanical means of vertical access would need to be made and that the building should therefore be fitted with a passenger lift to comply with Requirement M2. The Council supports this view by reference to *paragraph 2.11 of Approved Document M and to paragraph 2.13a.*, stating that the 280 square metre limit specified in paragraph 2.13a. has clearly been exceeded. The Council also argues that in the context of the Building Regulations the definition of temporary is limited to Schedule 2 Exempt Buildings and Work, Class IV.

13. The absence of such vertical access has led the Council to the opinion that reasonable access for disabled people to the first floor of the temporary building has not been provided. The Council notes that no other comparable means of satisfactory vertical circulation has been offered or proposed and is of the opinion that wheelchair users should have the same freedom of movement throughout the building, including access to the first floor, as able bodied people as this is considered very important in a working environment. The Council also refers to the provisions of the Disability Discrimination Act 1995 (DDA) which they say places duties on employers to make adequate provisions for disabled visitors.

14. In conclusion, the Council states its opinion that a lift should be provided to the first floor and that neither the building construction nor its temporary use warranted limitation of the application of the guidance given in *Approved Document M*.

15. In relation to the plan subsequently submitted and received by the Council, which provides further details of the access to and modifications to toilet provision in the existing building, the Council has made the following points. They are unable, from the plan, to ascertain the travel distance that a person in a wheelchair would have to travel to reach the proposed wheelchair accessible WC. They consider that *paragraph 4.14 of Approved Document M* recommends that the travel distance required to satisfy Requirement M3(3) (Sanitary conveniences) of the Building Regulations should be no more than 40m. They also stress that the Building Regulations and the DDA are not one and the same. While they believe that the provision of a wheelchair accessible WC in the existing building would go some way towards satisfying your clients responsibilities under the DDA, the temporary building is in their opinion a matter for the Building Regulations, and one to which Part M applies. They note that no toilet facilities are proposed in the temporary building but are of the opinion that these could be provided.

The Secretary of State's consideration

16. The Secretary of State has much sympathy with the Council's view that wheelchair users should have the same freedom of movement throughout the temporary building, including access to the first floor, as able bodied people and that this is considered very important in a working environment. He takes the view that, were this a separate building with independent access, the full provisions of Part M would apply, notwithstanding the limited duration of intended use and temporary nature of the construction of the building. He does, however, note as a relevant consideration that the building forming the subject of the determination is not capable of independent access from the site. The plans indicate that its only access route is via the main entrance to your clients existing building. In his view it is therefore appropriate to consider it as an extension to the existing building. That being the case, the guidance in *paragraphs 0.3 to 0.5 of Approved Document M* will be relevant.

17. While paragraph 0.3 makes it clear that Part M applies to an extension with a ground floor, paragraph 0.5 states 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..*" In addition, paragraph 0.4 makes it clear that "*.. there is no obligation to carry out improvements within the existing building to make it more accessible to and usable by disabled people than it was before. However the extension should not adversely affect the existing building with respect to the provisions of the Building Regulations for access to, and use of, the building by disabled people..*"

18. The Secretary of State notes that your client has exceeded their obligation under Requirement M2 by providing higher standards of stair access within the extension than are available in the existing building and also by carrying out improvements to their existing building to make it more accessible to and usable by disabled people than it was before. The Secretary of State therefore considers that in the circumstances it would be unreasonable to require the

installation of a passenger lift in the extension given that none exists in the existing building.

19. Finally, the Secretary of State has noted the Council's reference to *paragraph 4.14 of Approved Document M* which states that Requirement M3 will be satisfied by provision for wheelchair users of both sexes on alternate floors: provided that the cumulative horizontal travel distances from a work station to the WC is not more than 40m .. However, in the context of this particular determination the guidance in paragraph 4.14 is not directly relevant.

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. He has also noted that the Council has referred to a relatively recent appeal decision to which you have responded. However, the Secretary of State is required to consider all cases on their individual merits, and issues specific to previous cases will not necessarily be relevant to subsequent ones.

21. On the basis of the proposals as submitted, together with your subsequent amplification of the proposal for a new unisex wheelchair accessible WC compartment, the Secretary of State has concluded that the temporary modular building should be considered for the purpose of compliance with the requirements of the Building Regulations as an extension to the adjacent, existing office building. He has not considered it appropriate to have regard to the temporary nature of the building but he has considered the determination in the context of the statutory guidance for an extension. He has concluded and hereby determines that that your proposals which exclude any form of mechanical means of vertical access between the two floors of the office accommodation in the new building - in the particular circumstances of this case nevertheless comply with Requirement M2 (Access and use) of Schedule 1 to the Building Regulations 1991 (as amended up to and including SI 1999/77).