

APPEAL AGAINST REFUSAL TO RELAX REQUIREMENT M1 (ACCESS AND USE) IN PART M (ACCESS TO AND USE OF BUILDINGS) OF SCHEDULE 1 TO THE BUILDING REGULATIONS 2000 (AS AMENDED), IN RESPECT OF THE CONSTRUCTION OF LOBBIES FORMING PART OF BUILDING WORK TO ERECT A NEW MANSARD STOREY COMPRISING SIX SELF-CONTAINED FLATS

The building work and appeal

3. The papers submitted indicate that the building to which this appeal relates is a four storey mansion block that was originally constructed in the mid 1930's, consisting of 24 flats served by two self-contained independent internal common stairs and lifts.

4. The papers also indicate that the proposed building work comprised the construction of a new mansard storey to provide six new self-contained flats above the existing occupied four storey block. As the original external fire escape stairways were not considered acceptable for the new accommodation, part of the work consisted of the provision of protected lobbies on each floor between the flat entrance doors and the existing internal common stairs, so that both the new and original flats are entered from lobbies separate from the stairs.

5. Although you first deposited a full plans application for the building work in 2003, there was a delay in commencing with the project and you therefore submitted a further application in 2007, which was approved by the Council on 24 August 2007. The Council originally agreed to the layout of the lobbies but indicates that, following commencement of the work in March 2008, you proposed an amended lobby design to leave "the flat entrance door widths and positions unaltered and making the lobbies as large as possible without blocking the existing common stairway and landings".

6. The Council did not accept your amended proposal on the grounds that it would adversely affect access into three of the 24 existing flats, i.e. nos 14, 10 and 6 (although no 2 is also referred to in the papers submitted), located above each other in the north east corner of the western stairway on the first, second and third floors of the building. The Council considered that the construction of the lobbies was a material alteration and would make the building less satisfactory in relation to Requirement M1 in Part M of the Building Regulations than it was before and that this was non-compliant with Regulation 4(2).

7. However, you considered that the physical restrictions of the existing building made it unreasonable to insist on full compliance and that the lobbies (which you suggest in your email of 29 March 2011 form part of work now completed) would not make access any less satisfactory than beforehand. You formally applied to the Council for a relaxation of Requirement M1 in relation to the lobbies on 22 September 2010 which was refused on 29 September 2010. It is against this refusal that you have appealed to the Secretary of State.

The Secretary of State's consideration

8. The Secretary of State has given careful consideration to the circumstances of this case and the detailed arguments presented by both parties. He notes that the fundamental point in dispute is whether or not the alterations to the building result in the building being less satisfactory in relation to Requirement M1 in Part M of the Building Regulations, than it was before the building work was carried out, with specific reference to access to three of the original 24 flats.

9. The Council takes the view that the alteration work is not acceptable due to the existing access corridors to the flat entrance doors in question on the first, second and third floors (referred to as "Q4" on your drawings) being constrained in width as a consequence of the construction of the new protected lobbies. The Council points out that where a building does not comply with a requirement of the Building Regulations, in this case - Requirement M1, then as required by Regulation 4(2) after a material alteration it should be no less unsatisfactory in relation to that requirement than before the work was carried out.

10. However, you take the view that, given the original restrictions of the building, the lobbies do not alter the existing overall ease of using the building. It is your opinion that due to the original difficulties of access and the work required to rectify this, including: the limitations of the existing lift which has an opening narrower than the width of the flat entrance doors in question and would restrict the size of wheelchairs accessing the upper floors; the lift shaft not capable of being increased to allow bigger cars to be used; and the clearance of the flat entrance doors, the alteration work is reasonable. You contend that the work does not make access to the flats in question any less satisfactory than it is at present.

11. The Secretary of State considers that for a building containing flats the objective should be to make reasonable provision for disabled people to visit occupants who live on any storey within that building and provide for horizontal access between flats on the same storey. As you are aware, guidance on acceptable approaches is provided in the accompanying advisory document to Part M of the Building Regulations – Approved Document M (Access to and use of buildings).

12. Where an existing building does not satisfy the current guidance for access and use of a building and in turn the functional requirements of Part M, this on its own would not be justification for further reducing the accessibility to that building. It is quite conceivable that users of the existing building are fully aware of any existing limiting factors and take the appropriate measures to facilitate their own horizontal and/or vertical circulation.

13. You argue that access to the flat entrance doors in question was already partially obstructed by the stair balustrade wall opposite. Whilst this is apparent from the drawings submitted, the Secretary of State is of the opinion that this would still have enabled a diagonal approach to the flat entrance doors. Following the alteration work, the amenity to such doors will be reduced further due to the

extension of the balustrade wall and the inclusion of an additional lobby door to negotiate. A wheelchair user will be required to traverse this door, turn 90 degrees into a restricted corridor and traverse the flat entrance door by turning through a further 90 degrees. It is therefore clear that access to the flat entrance doors will be worse than it was prior to building work being undertaken.

14. The Secretary of State recognises the physical restrictions of the existing building and notes the views of the relevant existing residents with respect to suggested alterations to their own properties to resolve the matter, as you have proposed. However, he takes the view that these factors do not override consideration of what constitutes reasonable provision both now and in the future. The Secretary of State does not consider the further restricted accessibility resulting from the layout described in this case to be reasonable.

The Secretary of State's decision

15. The Secretary of State is concerned that wherever feasible every effort should be made to secure compliance with the requirements of Part M of the Building Regulations. He is also clear that where a building did not previously comply with a requirement then the result of any material alteration should be that the building is no less compliant than it previously was. As indicated above he considers that, following construction of the lobbies, the building in this case will be less compliant with Requirement M1 than it was before the material alteration was carried out, and therefore compliance with this requirement will not be achieved. He also does not consider that there are extenuating circumstances which would justify relaxing the requirement.

16. The Secretary of State has therefore concluded that it would not be appropriate to relax Requirement M1 (Access and use) in Part M (Access to and use of buildings) of Schedule 1 to the Building Regulations 2000 (as amended), in relation to the construction of the lobbies in this case. Accordingly, he dismisses your appeal.

17. Please note that although the Building Regulations 2010 came into force on 1 October 2010, the Building Regulations 2000 (as amended) will continue to apply to building work which was started before that date in accordance with full plans deposited with a local authority, as in your case.

18. Please also note that the Secretary of State has no further jurisdiction in this case and that any matters that follow should be taken up with the building control.