

APPEAL 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 PROVISION OF VERTICAL CIRCULATION WITHIN A UNIT IN A BUSINESS PARK

The building work and appeal

3. The papers submitted indicate that the building to which this appeal relates is a light industrial unit (Unit x) set amongst a total of 23 industrial units in a business park. The unit has ground and first floors, each floor containing a useable space of approximately 80m². The building work in question which you say has been completed comprised internal first floor alterations to Unit x, including partitioning. The Council states that this was the first fit-out of a newly constructed shell as it had not previously been occupied, but you claim that this was not the case as the first floor had already been fitted out.
4. The ground floor of the unit contains a wheelchair-accessible unisex toilet, has a stair to the first floor mezzanine area and is intended for use as a warehouse/storage space. The first floor will be used as office space. You explain that Units 1-9 and 17-23 (i.e. including Unit x) in the business park were designed without a lift installation as it was not deemed reasonable at the design stage due to the nature of the business units, but future provision was made for this.
5. The Council rejected your original full plans application on 11 August 2008 citing the main reason as being the lack of vertical circulation for the purpose of compliance with Requirement M1 of the Building Regulations. Your resubmitted plans were also subsequently rejected by the Council on 27 May 2009 on the grounds of non-compliance with a number of requirements, in particular Requirement M1 which is the subject of this appeal.
6. Following the latter rejection of your plans you applied to the Council on 23 June 2009 for a relaxation of Requirement M1 relating to the non-provision of a lift to the first floor of Unit x on the basis that your client's access statement dated May 2009 is indicative of your commitment to the Disability Discrimination Act 2005 (hereafter referred to as the "DDA") and Requirement M1 of the Building Regulations. However, the Council refused your request for a relaxation on 23 July 2009 with the main reason being that when a regulation requires "reasonable provision" it is not possible to apply a relaxation as - in the case of disabled access - this would not be considered "acceptable". It is against this refusal that you have appealed to the Secretary of State.

The appellant's case

7. You make the following points to support your case for a relaxation of Requirement M1:
 - Although a lift has not been currently provided within the internal works carried out in Unit x, a designated area has been kept clear should the need for a lift arise in the future.
 - Your client presently has no members of staff who would require disabled facilities and visitors to the unit are not anticipated. The ground floor is used for storage and the first floor of the unit is used by three employees only.
 - A wheelchair user entering the building can be accommodated at ground floor level, where meetings can be held. There is a call point for visitors which provides contact to staff.
 - In the event of a person with a disability being employed in an administrative position in the future an office will be created on the ground floor for them or a lift will be installed.
 - A disabled employee would have access to health and welfare facilities and equipment, including a disabled toilet situated in the ground floor lobby.
 - As detailed in the access statement submitted with your building regulations applications, your client is committed in taking all necessary steps to remove any barriers preventing equality and in ensuring compliance with the DDA requirements and Requirement M1 of the Building Regulations.
 - The access statement approved by an Approved Inspector for the previous fit out of the units in the business park did not include a lift.

The Council's case

8. The Council refers to points made in your access statement and the earlier statement agreed by an Approved Inspector in relation to the application for the new shell and explains that your plans relating to alteration work in Unit x were rejected mainly because they did not demonstrate adequate provision for vertical circulation to achieve compliance with Requirement M1 of the Building Regulations. The Council had regard to the current guidance in paragraphs 3.17-3.49 of Approved Document M (Access to and use of buildings) (hereafter referred to as "AD M") relating to vertical circulation within buildings and provisions/requirements relating to lifting devices, and considered the following points:
 - Given the size of the development and the removable section of floor, the option of a lifting platform was discussed, which you declined as you indicated that you did not want to provide any type of lifting device. This is not an option for the construction of a new building of this type within AD M.
 - While it was accepted that customers could be accommodated on the ground floor, it was not accepted that a member of staff that is employed

to carry out office based work can be appropriately accommodated without a lift.

- It is not appropriate to provide a lift “as the need arises”. For example, a mobility impaired person would not be able to reach the offices to attend an interview.
- Financial considerations should have been considered prior to occupying the unit.
- As the original access statement made the point that it was not reasonable to include a lift in the units at development stage, it was assumed that a decision would be taken to provide a lift on an individual basis. For example, if the building was to be put to identical office use on both floors it could be argued that adequate provision had been made as a mobility impaired person could be accommodated on the ground floor. As the floors are not similar uses of space, in this case it was felt appropriate to request a lift.

9. In response to your appeal against its refusal to relax Requirement M1, the Council makes the following additional points:

- You have confirmed that only three people will use the office space on the first floor but this does not make provision for future use. Potentially an office of this size could accommodate around thirteen people.
- To date, plans have not been provided showing a suitable area on the ground floor where a mobility impaired person could meet a member of staff.
- Within Part M of the Building Regulations the expectation is that buildings should be user ready and not adapted as and when needed. It is not, as you propose, in the spirit of Part M or the DDA to accommodate a mobility impaired person in a different part of the building to other persons carrying out similar jobs, as this would isolate that person.
- The Council questions your client’s equal opportunities statement and argues that as you are not following the guidance in AD M or providing a suitable alternative in this case, it would appear that you are not demonstrating compliance with Requirement M1.

The Secretary of State’s consideration

10. The Secretary of State has given careful consideration to the particular circumstances of this case and the arguments presented by both parties. He notes that the matter in dispute relates to the lack of adequate vertical circulation provided between the ground and first floors of the unit in question for the purpose of compliance with Requirement M1 of the Building Regulations.

11. The guidance provided in AD M in relation to vertical circulation sets the objective for all people to travel vertically within buildings conveniently and without discomfort in order to make use of all relevant facilities. It is therefore necessary, in this particular case, for the Secretary of State to examine the use and provisions that are available on the entrance level of the unit and any other subsequent level. He takes the view that what must be considered is what is reasonable in the circumstances of the use of this unit and in this respect the appropriate provisions for such a use.
12. You state that although a lift has not been provided, a designated area has been kept clear should the need for a lift arise in the future. It is the Council's opinion that it was reasonable not to include a lift at development stage as it was assumed that a decision would be taken to provide a lift on an individual basis depending on the use of the units in the business park. The Secretary of State agrees with the Council that in a development such as this, it may be reasonable to delay the decision of installing a lift until the actual use of each of the units is confirmed. However, it is also his opinion that where AD M is explicit with regards to a particular requirement, then it would also be reasonable to assume that necessary works would take place to ensure the functional requirements of the Building Regulations are satisfied in relation to a particular use.
13. In addition you state that your client does not presently employ a member of staff that requires disabled facilities and that visitors to the unit are not anticipated. Your access statement also highlights your client's commitment to removing any barriers preventing equality. The Secretary of State acknowledges that access statements are a useful tool in identifying the philosophy and approach to the design that has been adopted. However, the limitations of such a document should also be recognised. It is his opinion that where access statements are used to justify measures which do not follow the guidance provided in AD M the presumption must remain that these alternatives provide equivalent amenity in enabling access to and use of a building and its facilities.
14. The guidance in AD M sets out that where required, movement between levels in a building can be facilitated by the provision of an accessible lift, platform lift or wheelchair stair lift. It does not suggest that making future provision for a lift installation meets the functional requirements where movement between levels is necessary. In the Secretary of State's view this indicates that adopting such an approach would tend to demonstrate a lower level of compliance than the options explained in AD M. Moreover, it should be appreciated that the building control system cannot enforce an undertaking to make such provision in the future and the building control body must decide whether compliance has been achieved at the time the works are completed. Aside from the possible difficulties presented to visitors who are wheelchair users, the additional cost to the owner or occupier of making future lift provision would be more likely to create conditions where wheelchair users might be discriminated against when being considered for employment.

15. Whilst you indicate that your client currently employs only three people on the first floor, the Council quite rightly suggests that an office of this size could accommodate around thirteen people and therefore this number may change in the future. Regardless of the number of staff, the Secretary of State notes that the use of the first floor is significantly different to the ground floor. He takes the view that in this particular case what may be seen as reasonable would be the provision of offices of the same use and storage on both floors, i.e. not providing a particular facility or use that is not accessible to all.
16. In the event that your client does not wish to include suitable provisions in the unit for a wheelchair user, it is imperative that appropriate justification be provided. However, the Secretary of State considers that no such justification has been provided and there appear to be no extenuating circumstances. As a result a case has not been made to relax Requirement M1. Furthermore, he notes that the Council made a reasonable suggestion for an alternative approach to achieve compliance, i.e. a lifting platform, which you declined and that you have not suggested an alternative approach.

The Secretary of State's decision

17. The Secretary of State is concerned that wherever feasible every effort should be made to secure compliance with the requirements of Part M. As indicated above, he considers that compliance has not been achieved with Requirement M1 in this case and that appropriate justification has not been provided to relax the requirement. He 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 provision of vertical circulation between the ground and first floors of the unit in question. Accordingly, he dismisses your appeal.
18. 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.
19. You should 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 body.