

BUILDING ACT 1984 - SECTION 39

APPEAL AGAINST REFUSAL BY THE BOROUGH COUNCIL 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 A SINGLE STEP, FORMING PART OF BUILDING WORK TO AN EXISTING VISITOR CENTRE, BOTANICAL GARDENS

The building work and appeal

3. The Access Statement, which you have submitted with your papers, states that the main function of the project, to which this appeal relates, is to “...tie together a series of existing facilities, and create a much improved visitor facility suitable to accommodate the growing number of public visitors to this important Botanic Garden”.

4. The papers indicate that the building work is virtually complete and comprised the redevelopment of existing structures within the complex and the construction of a new extension to an existing visitor centre to provide facilities for visitors and staff, including: a resource centre, exhibition area, shop, cafe, kitchen, general office, toilet facilities, external plant sales and café courtyard. The single storey extension has a plan area of approximately 900m², the bulk of which was previously undeveloped, but it also replaces a much smaller area formerly occupied by an exhibition space, circulation spaces and toilet facilities which have been demolished. The demolished structures abutted an existing kitchen, restaurant and lecture theatre, and a plant house, which are retained and integrated into the new extended building.

5. A new car park, in addition to an existing facility, has also been constructed, with provision for disabled motorists, and located as close as possible to the principal entrance to the extended building. A footpath, oriented diagonally to the main axis of the building and rising at a gradient of 1:22.5 with an intermediate landing leads from the main car park to the principal entrance. There are also other entrances to the building, some of which have ramped and stepped or sloped access.

6. The principal entrance opens into a large open-plan space, approximately square in plan in the new extension to the building. Immediately opposite the entrance, adjacent to the upper edge of the square, lies the existing lecture theatre, with the existing kitchen and restaurant alongside forming the upper-left edge of the square. The floor level within the square in front of these parts of the building, where the demolished corridors and toilet block once stood, is at the same level as the entrance to the lecture theatre, which rakes downwards towards the stage at the far end of the building. The floor level of the bulk of the square is, however, 380mm higher than this, the reason given being that this area,

previously undeveloped, has 'bed-rock' approximately 200mm below the finished floor level.

7. The difference in level within the building is accommodated by the provision of a ramp, with an intermediate landing two thirds of the way up, running parallel to the top edge of the square, and rising from right to left. A flight of steps runs transversely across the ramp, incorporating the ramp landing. The geometry thus dictates that there are two steps up to the landing from the lower level, and a single step up from the landing to the bulk of the square, which is the subject of dispute in this case. Adjacent to the foot of the ramp, and parallel to it, there is an additional flight of three steps.

8. The above building work was the subject of a full plans application which was conditionally approved by the Council on 25 May 2006. This included a condition stating that "The internal single step is not considered satisfactory" within the new extension and should be attended to prior to the issue of a completion certificate. However, as you considered that you had a case justifying the provision of a single step, you applied for a relaxation of Requirement M1 of the Building Regulations (see paragraph 16) which was formally refused by the Council on 9 February 2007, as the Council did not consider your proposal to be reasonable. It is against this refusal that you have appealed to the Secretary of State.

The appellant's case

9. You state that the single step in question identifies an important processional route from one area of the extended building to another and is in addition to other fully compliant means of changes in level. The single step is clearly identified by the use of contrasting nosing, riser colour and handrails and it is your strong opinion that it is highly visible and does not form a trip hazard to members of the public. You claim that the situation as built has presented no difficulties for users since the building's occupation.

10. You emphasise that the single step is one part of a large, fully identifiable series of steps and ramps providing the level change from the new to the existing parts of the building. As such, while you fully appreciate the reason for the inclusion of the 'no single step' guidance in Approved Document M ("Access to and use of buildings"), you believe that the reasoning for this cannot be applied to your particular situation.

11. You add that while you acknowledge that the 'use-class' of this building type has a 'potential' for housing large numbers of people, the actual number of people that the building regularly accommodates at any one time is not significant.

12. With regard to the Council's point that the rise of the step in question is 127mm and is less than the recommended minimum of 150mm in Approved Document M, you take the view that with an overall change in floor level of 380mm in the building there is no means of satisfying this guidance. You say that the Council has accepted the flight of three steps adjacent to the foot of the ramp which have similar risers.

13. Finally, although you accept that "...whilst it would seem simple to have avoided the 380mm level difference between new and existing...", you stress that the finished floor level was determined by a number of factors relating to the site conditions including: providing fully compliant access/egress arrangements for disabled users through the principal and garden entrances on a sloping site; and site conditions which revealed 'bed-rock' across the majority of the new building footprint approximately 200mm below the finished floor level.

The Council's case

14. The Council considers that the guidance in paragraphs 1.33(g) and 3.51(a) of Approved Document M is specific in that single steps are not permitted, presumably for reasons of safety, and is not prepared to agree to a relaxation of Requirement M1. In the Council's view, your case represents a worse case scenario as the building is a public building that potentially will be occupied by large numbers of people of all ages and abilities, many of whom will not be familiar with the change in level arrangements. The Council believes that as the step forms part of the new extension it could have been addressed at an earlier stage.

15. The Council has noted that the step in question is part of a flight of steps which, together with the adjacent flight of steps, has risers of 127mm. Although this is less than the recommended minimum of 150mm in paragraph 3.51(c) of Approved Document M, the Council does not propose to take any further action on this due to the difficulty in meeting the guidance using steps with a change in floor level of 380mm in this case.

The Secretary of State's consideration

16. The Secretary of State notes that you say the matter in dispute relates to the "Refusal by Local Authority to relax approved document requirement Part M: Paragraph 1.33 Section G, not permitting the construction of a single step within the building". In fact, your appeal is against the Council's refusal to relax Requirement M1 of the Building Regulations 2000, not the Approved Document. You should note that Approved Documents give practical guidance on ways to comply with the functional requirements of the Building Regulations (including Requirement M1) and are not statutory requirements. They therefore do not have to be followed if you wish to carry out the building work in another way, providing that the work complies with all the applicable functional requirements.

17. It is also the case, however, that the Approved Documents are "...intended to provide guidance for some of the more common building situations". It is, in the Secretary of State's view, always necessary to consider whether the circumstances of any particular case are sufficiently common for the guidance to be applied without further consideration, or whether there are distinguishing features of the case that may make one want to consider whether the guidance may in whole or part be inappropriate, and if so, what other course of action may be necessary to satisfy the requirements of the regulations.

18. In this case, the Secretary of State is satisfied that the circumstances, i.e. marrying together of old and new with part of the site previously undeveloped, while not especially uncommon, does need careful thought. While it is accepted, as the Council argues, that the single step in question forms part of a new extension and could have been addressed at an earlier stage, in the Secretary of State's view, taking into account the site conditions it would have been difficult to do so other than by raising the finished floor level of the new extension. It would appear that to do so in such a way as to make the risers of the flight of three steps adjacent to the ramp compliant with the guidance in Approved Document M would have required an additional 70mm. To make the risers of the flight of steps crossing the ramp compliant, including the addition of a second step to the step in question, would appear to have required an additional 220mm. Either of these could have had undesirable consequences for the external sloped and ramped access footpaths provided to the extended building and for the internal ramp, which would of necessity have become either steeper or longer, and, as a result, possibly non-compliant.

19. The Secretary of State therefore agrees with the Council's decision not to take any action in respect of the flight of three steps adjacent to the ramp. The outstanding question is whether this reasoning applies also to the flight of steps crossing the ramp, which contain a single step. In principle, the Council is of course right to be wary of single steps, since isolated single steps are a known safety hazard. In this case, however, as you suggest the step in question is part of a flight of steps, the existence of which is well marked, both by association with the ramp and by the provision of handrails. The Secretary of State considers that this arrangement is unlikely to constitute a safety hazard.

20. In these circumstances, it therefore follows that it is not necessary for the Secretary of State to give further consideration to the case for relaxing Requirement M1.

The Secretary of State's decision

21. In coming to her decision, the Secretary of State has given careful consideration to the particular circumstances of this case and the arguments presented by both parties.

22. You have appealed to the Secretary of State against the Council's refusal to relax Requirement M1 of the Building Regulations in this case. The Secretary of State is concerned that wherever feasible every effort should be made to secure compliance with the requirements of Part M and - as indicated above - she considers that the building work in this case does, in fact, demonstrate compliance with Requirement M1, having regard to the particular circumstances. She has therefore concluded that it would not be necessary nor 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 single step in question. Accordingly, she dismisses your appeal.