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Note: The following letter which has had personal details edited out 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 39

Appeal against refusal by the Borough Council to relax Requirement M2 (access and use) of the Building Regulations 2000 (as amended) in respect of the provision of a vertical passenger lift in a new four storey building at an academy

The appeal

3. The building work to which this appeal relates involves the construction of a new building as part of an Academy, which is a charitable organisation established in September 1997. Student numbers have reached nearly 350 and exceed the capacity of the existing building. The new building is of four storeys and rectangular in shape, being approximately 50m x 20m in plan area. The front elevation has two minaret towers on either side, and a central 8.5m x 8.5m square protruding bay extending the full height of the building which contains the main entrance and main offices on the upper floors.

4. The ground floor comprises primarily a prayer hall and a private prayer area, together with a reading room, ablution area, and toilet and shower area. Between the entrance lobby and inner lobby/waiting area there is a WC compartment for disabled persons. Also within the inner lobby the plans show a lift designated for ten persons connecting the ground with the three upper floors.

5. The first floor accommodation comprises twelve study rooms which are accessed by a central corridor running between the two compartmented stairs. The corridor also gives access in the centre of the building to the lift lobby and main office located over the main entrance bay. On the left side of the building there is an ablution toilet area, a disabled persons' toilet adjacent to the lobby to the ablution/toilet area and a designated wheelchair refuge adjacent to the stairwell.

6. The second floor is virtually identical to the first, with a central corridor serving thirteen study rooms and giving access to the lift lobby, a further main office in the central bay, ablution/toilet area and disabled persons toilet and designated wheelchair refuge.

7. The third floor accommodation is contained within the roof space and is lit by roof lights. It comprises three large study rooms to the rear and a further three study rooms to the front elevation. There is a central corridor as for the other upper floors, together with the centrally positioned lift lobby and main office located in the central bay. As for the first and second floors, there is a designated wheelchair refuge, together with a disabled persons toilet accessed via the lobby to the ablution/toilet area.

8. The upper three floors are connected with the ground floor via two compartmented stairs - one located in the centre of the left hand side of the building, and the other located in the front corner of the right hand side.

9. The new building is located at right angles to an existing building. Although no site plan has been provided it is understood that the buildings are approximately 6m apart at their nearest point.

10. The existing building is four storeys and approximately 35m x 19m in plan area. The ground floor comprises in the main of a prayer hall, together with an office, kitchen, guest room and ablution area. The first floor contains twelve bedrooms (including one designated for a disabled person with en-suite bathroom and one for staff) - six being on the front and six on the rear elevation and accessed by a central corridor.

11. The second and third floor bedrooms have a similar central corridor and contain nine bedrooms and eight bedrooms respectively. Of the total number of bedrooms, twenty four have the approximate dimensions of 8m x 5.5m. The ground floor accommodation and the connecting corridors to each of the floors above, connect to common stair enclosures abutting both flank walls of the building and serving all floors. The stair enclosure on the left of the front elevation plan contains WC and shower facilities on each of the ground, first, and second floors. The left hand stair enclosure also has a lift shaft and tower near to the front elevation which serves the ground, first and second floors.

12. The proposals for the new building were the subject of a full plans application which was approved by the borough council. Since then the building work has progressed and is nearing completion. The building work has incorporated the proposed lift shaft, but you have requested a relaxation of Requirement M2 in order to achieve compliance of this requirement without the installation of a lift. Your reasons for this request were primarily the absence of need for a passenger lift given the duplicate facilities elsewhere in the existing building; the potential to link the two buildings; and the cost of installing a lift. However, the borough council refused your application on the grounds that the guidance to the Building Regulations indicated that the requirement to have a lift was not unreasonable. It is against that refusal that you then appealed to the Secretary of State.

The appellant's case

13. You consider that the provision of a lift is unnecessary in the new building for the following reasons:

(i) all the facilities required by a disabled student are accessible in full in the existing building which has a functioning lift, including en-suite disabled facilities in one of the bedrooms, and these facilities will be retained. In the event of the existing building being full, all the able bodied people would be transferred to the new building and priority would be given to the disabled people who would remain in the existing building

(ii) disabled access will be provided in the form of a ramp to the ground floor of the new building, which will be primarily a prayer hall. The accommodation on the upper floors of the new building will not be unique or exclusive in any way and all of the facilities on these floors will be available in the existing building

(iii) you do not believe it is necessary for the whole complex, comprising of two buildings, to be accessible to a disabled student as long as all the facilities are available to that person, as in the case of many public facilities, such as sporting stadia. You also consider that many universities across Britain do not have lift facilities for their residential students

(iv) in seven years since establishment, the Academy has yet to receive an application from a student who could require use of the lift. You have however retained the lift shaft in the new building to ensure that if, in the future, a student does not have access to facilities provided in the new building, a lift can be installed

(v) it is planned that the ground and first floors of the existing and new buildings will be linked - near to the existing lift - when it is financially prudent to do so, which you hope will be within the next five years

(vi) in your view, installing a lift in the new building will not offer any additional access to facilities for disabled persons, but it would mean that funds would be diverted from the educational programmes and would delay the completion of the new building and the enrolment of students currently on a lengthy waiting list.

The borough council's case

14. The borough council has referred to the guidance in *Approved Document 'M' (1999 edition)* and considers that the requirement to provide a lift in the new building in order to comply with Requirement M2 is not unreasonable in this case.

15. The Borough Council has considered alternative solutions for achieving compliance. However, the Council comments that linking the existing and new buildings at each floor level would not be possible as there is a considerable difference in floor levels between the two buildings.

The Secretary of State's consideration

16. In considering this appeal the Secretary of State has first considered the degree to which the Academy building as proposed to be defined for completion (ie with a lift shaft but no passenger lift installed, and the two stairways at the side of the building as the sole means of vertical access between the four floors) would or would not fall short of achieving compliance with Requirement M2. Within that context, he has then considered the appropriateness of relaxing the requirement.

17. In seeking a relaxation of the requirement from the borough council you have argued that because of the proximity of the new building to the existing one they can be managed in such a way as to enable any in-coming disabled student to be fully accommodated; that there is the potential in the future to link the ground and first floors of the two buildings so that the lift in the existing building would provide access to the new building; and that the Academy's educational resources would be better spent other than on a passenger lift.

18. The material date for this appeal is the date your application for a relaxation was refused by the borough council, which means that the relevant requirement for this case is Requirement M2 (Access and use) of the Building Regulations 2000 (as amended - excluding *SI 2003/2692*), and that the relevant guidance on how to comply with this and the other requirements of Part 'M' of the Building Regulations was the 1999 edition of *Approved Document M (Access and facilities for disabled people)*. Both the requirement and the document were superseded by amendment to the regulations in May 2004 (ie *SI 2003/2692*), but these are not applicable to this case.

19. Requirement M2 requires that:

"Reasonable provision shall be made for disabled people to gain access to and to use the building."

The guidance in the 1999 edition of *Approved Document M* addresses two types of building - 'dwellings' and 'buildings other than dwellings'. On 1 April 2001 the exemption of schools from the Building Regulations was revoked and from that date all educational buildings have been required to comply with the regulations. Since then it has therefore fallen to Building Control Authorities to decide on the compliance of such buildings with Requirement M2, having regard to the guidance for 'buildings other than dwellings' in *Approved Document M*.

20. *Paragraph 2.13 of Approved Document M (1999 edition)* sets out the considerations for buildings other than dwellings which apply when considering whether the provision of a lift would be reasonable in a particular

case. It states that a passenger lift is the most suitable means of access for disabled people when passing from one storey to another and advises that it would be reasonable to base a decision on the nett floor area of the storey to be reached. The recommended nett threshold area for an upper storey of a building of more than two storeys is 200m², which in this case represents approximately 20 per cent of each of the floor areas above ground floor.

Access, use and management of the new and existing building

21. You have argued with respect to the application of Requirement M2 to the new building that access and use for disabled people can be achieved without the installation of a lift because the new building is not an isolated one. As such its use and management should therefore be seen as integral with that of the existing, immediately adjacent, building. The Secretary of State has therefore addressed the issue as to whether the potential to use and manage the two buildings as one could be regarded as "reasonable provision" to achieve compliance with Requirement M2.

22. It is evident from your submission that a student using a wheelchair would have equal access to all of the formal facilities in the new building enjoyed by other students such as the teaching spaces, the prayer hall and the ablutions area, and could be accommodated in the existing building. However, in the absence of a lift any such student would clearly not be able to visit the study rooms of fellow students in the new building, and could thereby also be denied full social as well educational participation of the life of the Academy.

23. In considering the degree of compliance with Requirement M2 which would be achieved without the installation of a lift, the Secretary of State has also been concerned to consider the degree of vertical access which will be afforded to any teaching staff, administrative and other employees, and visitors who have disabilities and who may well require access to any of the upper floors - all of which, for example, contain office accommodation. No reference is made in your submission to the needs of these other potential users and of the effect which non-provision of a lift might have on them.

24. If a lift were not to be installed the Secretary of State considers it is particularly important to consider the design of the completed stairs in terms of their suitability for all categories of user who may have some degree of mobility impairment, including those who may be temporarily impaired due to accident or other medical condition. *Paragraph 2.20 of Approved Document 'M' (1999 edition)* provides guidance on internal stairs in buildings other than dwellings. It recommends that "*If there is no lift access in a building, a stair suitable for people with walking difficulties should be provided....*". The riser height in your new building at ground to first floor is shown as 179mm and for all other flights as 180mm. This is some 10mm in excess of the riser height recommended for a stair suitable for use by ambulant disabled people. Thus, although this is not excessively different from the recommended riser height, students and other users with an ambulant disability might experience some difficulty in gaining access to the upper floors of the new building.

25. Because of the juxtaposition of the new and old buildings the Secretary of State accepts that it might well be possible to accommodate future individual students who are wheelchair users by managing the two buildings as one. However, the Building Regulations can only control the physical attributes of a building, not the manner in which it is managed. Moreover, the objective of Requirement M2 is to achieve access for all potential users of a building who may have disabilities, and managing the two buildings in an integrated manner would not address the need for vertical access to the upper floors of the new building by staff and other employees, or visitors, who may be disabled. In particular, the problem of access for ambulant disabled users would certainly not be helped by the slightly reduced standard of the risers on the stairs compared with the recommended measurements.

Potential linking of new and existing buildings

26. Another argument which you raised to support your request for a relaxation is the potential to link the ground and first floors of the new building with those of the adjacent existing building, thereby enabling the existing lift to be used in conjunction with the first floor of the new building. You discussed this idea with the borough council and state that you hope this is a building project which you could implement within 5 years.

27. In earlier discussions the borough council had suggested that a compromise solution might be to link all the floors of the new and existing buildings. However, the Secretary of State notes from the borough council's last submission that the council believes it is not possible for any links to be constructed above ground floor level because of the differences in relative floor heights. In any event, even if all the floors could be linked the Secretary of State notes that the lift in the existing building does not extend to the top (fourth) storey and that this would result in the top floor of the new building similarly not being served by a lift. In short, linking of the buildings could only be a partial solution to achieving full lift access to all the floors of the new building.

28. Over and above these considerations, there remains the fact that irrespective of whether the technical issues could be overcome to link some or all of the floors in the two buildings at some future date, this appeal relates to a decision made by the borough council in respect of building work carried out to-date, and in respect of approved plans, and requires a decision which relates to the work as currently proposed to be defined as 'completed'. The Secretary of State's decision cannot be conditional upon, or take account of, building work which might or might not be completed in the future, and the implementation of which cannot be controlled by the Building Regulations.

Resource costs

29. Finally, the Secretary of State has noted your concern about what you see as the diversion of the Academy's funds from the educational programme. He has sympathy with your concerns about resource allocation, but his locus in this appeal is with the physical compliance of the building work with the Building Regulations. In his view the provision of a passenger lift - the provision of which was anticipated in the submitted and approved full plans - cannot be regarded as disproportionate in the context of the overall construction and fitting out costs of a building of this scale. In this context, the Secretary of State also notes that resources have already been expended in providing the lift shaft and that it is the provision of the lift alone which is required.

Conclusion

30. Having regard to all of the above (paragraphs 16 - 29) the Secretary of State has therefore concluded that in all the circumstances of this case the new building should be considered as an independent one for the purposes of compliance with Requirement M2. In this context he considers that acceptance of the new building for the purposes of 'completion' with no installed passenger lift, and stairs which do not fully accord with the guidance given in *Approved Document 'M' (1999 edition)* for use by ambulant disabled persons, would not achieve compliance in terms of access for all potential users who may have disabilities - ie students, staff and other employees, and visitors. Moreover, in view of the way in which that non-compliance would fail to meet the objectives of Requirement M2 for all users - whether wheelchair users or ambulant disabled users - the Secretary of State considers that it would not be appropriate to relax Requirement M2 in order to facilitate compliance of the building with that requirement.

The Secretary of State's decision

31. The Secretary of State has given careful consideration to the facts of this case and the arguments put forward by both parties. He is particularly concerned that wherever feasible every effort should be made to secure compliance with the requirements of Part 'M' in order to establish what is reasonable provision in the circumstances of the case.

32. As indicated above, the Secretary of State has noted that installation of a lift formed part of the proposals in the approved plans for the Academy building and that because the lift shaft has been constructed there are clearly no design constraints to installing a passenger lift. He has concluded that the omission of the lift will result in the building not being in compliance with Requirement M2 (Access and use) of Schedule 1 to the Building Regulations 2000 (as amended) and that the effect by way of restricted vertical access to all users of the building who may have disabilities is such that it would not be appropriate to relax the requirement in order to secure compliance for the non-provision of a passenger lift. It follows that he considers that the borough

council came to the correct decision in refusing your application for a relaxation, and accordingly he dismisses your appeal.