

Requirement M3

On 5th May 2006 the responsibilities of the Office of the Deputy Prime Minister (ODPM) transferred to the Department for Communities and Local Government.

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Front Cover

Text of ODPM 'appeal' letter dated 26 March 2004 (Reference 45/3/168)

Building Act 1984 - Section 39

Appeal against refusal by the City Council to relax Requirement M3 ("Sanitary conveniences") of the Building Regulations 2000 (as amended) in respect of the provision of sanitary accommodation, forming part of building work at unit 6

The appeal

3. The building work to which this appeal relates comprises the fitting out of the existing shell of Unit 6 for use as a retail outlet. The unit is new and forms part of a development which consists of multi-storey residential accommodation with shop and restaurant units at ground level. The unit comprises a sales area which is rectangular in shape with an additional area to the rear which contains in part sanitary accommodation and a utility room. The maximum dimensions are approximately 12.5m in depth and 14m in width.

4. As existing the shell of the unit comprises on the left of the front door a floor area of approximately 9.5m x 3.5m which is raised 250mm above the main floor area. In the rear right hand corner of the unit a fully separated electricity sub-station intrudes into the volume of the unit. The station is approximately 3.75m x 3.75m in area at a level some 350mm below the main entrance level and accessed only from the exterior of the unit. The top slab of the station is to form a mezzanine area within the unit and is to be used for storage. The unit is entered through two adjoining doors each of 900mm separated by a fixed glazed panel. There is level access to the outside walkway.

5. The proposed fitting out work provides for the installation of floating and display shelving; a cash desk; a steel spiral stair to give access to the mezzanine storage area; and a utility room and toilet facilities running along the rear of the premises. It is the toilet facilities which are the subject of this appeal.

6. When discussing your proposals with the City Council you were informed that the sanitary accommodation and lobby should be designed for disabled persons' access and use. Because your clients maintain they would not be able to employ a wheelchair user in their shop your proposals submitted to the Council incorporated a compartment designed for ambulant disabled persons and containing a WC and wash hand basin. As shown on plan its internal dimensions are 1.6m x 1.5m, with a door width shown as 785mm.

7. Your full plans proposals for the fit out were approved by the City Council subject to various conditions, including "No 4" which requires plans/details etc to be deposited in respect of "Disabled sanitary accommodation including a suitably sized access lobby should be installed in accordance with Approved Document M" ("Access and facilities for disabled people") (1999 edition).

8. In advance of this decision you had applied to the City Council for a relaxation of

Requirement M3 in order to achieve compliance by the installation of WC facilities suitable for ambulant disabled persons only. However, the Council took the view that the building work involved a first fit out to a new building shell and that therefore Requirement M3 should apply in full. They considered that you had not demonstrated that exceptional circumstances existed in your case which would justify a relaxation. The Council therefore refused your application on the same day that they approved your full plans - subject to conditions - as noted in paragraph 7 above.

9. However you maintain that provision of WC facilities for ambulant disabled persons only is appropriate in the circumstances and that a relaxation would therefore be appropriate. You therefore appealed to the Secretary of State against the City Council's refusal to relax Requirement M3.

The appellant's case

10. You have made the following points to support your case for a relaxation of Requirement M3:

(i) You have made sanitary provision for staff members only and - as your clients propose to run their shop with one member of staff - they believe they would be unable to employ a wheelchair user as a shop employee.

(ii) You have proposed, and constructed, a WC compartment suitable for an ambulant disabled person, in accordance with diagram 7 of Approved Document 'M' (1999 edition). You have also had regard to a previous appeal decision letter issued by the Secretary of State.

(iii) The interpretation of reasonable provision for staff in a retail environment appears to have been applied with some flexibility throughout the 'scheme'. You have stated as part of your case that there are several units elsewhere in the 'scheme', of similar or larger size, where the Building Control Service was performed by private sector approved inspectors and where full disabled sanitary provision for staff has not had to be provided.

(iv) Your clients had three separate telephone conversations with the City Council's access officer and on each occasion it was indicated that there was no requirement for a full disabled WC facility. It was not made clear that the access officer's comments were only based on Disability Discrimination Act 1995 (DDA) legislation and that there might be a need for a full disabled WC under Requirement M3 of the Building Regulations.

11. In response to the City Council's representations to the Secretary of State (as stated below), you subsequently reiterated some of the above comments and added the following:

(i) You do not consider your clients' approach to be discriminatory. The sanitary accommodation is only for use by members of staff. The shop is relatively small and requires only one member of staff. There is a raised section in the shop floor; a stair to the mezzanine storage area; and display shelving at high level. A wheelchair user would have significant difficulty with these aspects of staffing the shop.

(ii) There are two restaurant/coffee shop proprietors (operating within the A3 Planning Use

Classes (i.e. 'Food and drink')) in close proximity to your clients' unit who have full disabled WC facilities for their customers and you say that both proprietors have agreed that these facilities can be used by users of Unit 6. The opening hours coincide with those of Unit 6.

(iii) You conclude that you have sought to find an appropriate definition of "reasonable provision" and consider that, for the reasons you have given, the City Council's approach has been very inflexible.

The City Council's case

12. The City Council has referred to Approved Document 'M' (1999 edition) and states that it has taken a consistent view on this issue with regard to other units for which they have received Building Regulations applications. As indicated above, the Council considers that you have not demonstrated that exceptional circumstances apply in your case and has made the following points to support its case for refusing to relax Requirement M3:

(i) There are no other sanitary facilities available in the complex that could be used by the occupiers of Unit 6.

(ii) If the size of the WC was increased by 400mm and an independent approach provided, a compliant WC could be installed for a small loss of floor space. The utility area could be marginally increased in width and the door rehung to make it accessible.

(iii) The City Council considers that where sanitary accommodation is provided in a shop unit it should be no less available to disabled people than for able-bodied people. In the Council's view your statement that your clients would be unable to employ a wheelchair user is discriminatory.

(iv) As your proposals relate to the fitting out of a shell unit, any future occupier may expect that the design of the unit and WC provision built at this time would not be restrictive with regard to the employment of wheelchair users.

(v) The provision of a compliant disabled WC suitable for wheelchair users would also benefit people with other disabilities.

(vi) Your clients' conversations with the City Council's access officer were focused on issues relating to the DDA and would not be grounds for the Council to relax Requirement M3.

(vii) In response to your assertion that varying standards of disabled facilities have been installed within other premises in the development complex, the City Council notes that where fit out schemes have been completed under a Building Control Service provided by an approved inspector any variation of standards would not have been the responsibility of the Council.

(viii) The previous appeal decision you referred to, in support of your request for a relaxation, related specifically to the provision of accommodation within a constrained building design and is not comparable to your proposals.

The Secretary of State's consideration

13. The Secretary of State accepts the City Council's view that Requirement M3 is applicable to this case and has had regard in particular to the guidance at paragraph 4.13 of Approved Document 'M' (1999 edition) which states "Requirement M3 will be satisfied if WC provision for disabled people is 'integral' within the traditional separate facilities for men and women, or is 'unisex'."

14. In the circumstances of this particular case the Secretary of State further accepts the City Council's view that appropriate wheelchair accessible unisex provision could be made very straightforwardly and with the loss of minimal additional floor space. He does not therefore believe that a case for relaxation of Requirement M3 has been made. The Secretary of State has noted your reference to a previous appeal decision made in 1997 but considers that the circumstances of that case are not relevant in this case. He is in any event required to consider all cases on their own individual merits.

The Secretary of State's decision

15. 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 - especially in the context of new build situations.

16. The Secretary of State has noted that the request for a relaxation is in respect of a new build situation. He has also noted that no specific constraints, such as the fabric or design of the building, have been put forward by you which might justify relaxation of Requirement M3. He has therefore concluded that the City Council came to the correct decision in refusing to relax Requirement M3 ("Sanitary conveniences") of Schedule 1 to the Building Regulations 2000 (as amended). Accordingly, he dismisses your appeal.

