

Date: 11/02/98
Ref: 45/3/116

Note: The following letter which has had personal details edited out was issued by our former department, the Department for Environment, Transport and the Regions (DETR). DETR is now Communities and Local Government - all references in the text to DETR now refer to Communities and Local Government.

Building Act 1984 - Section 39

Appeal against refusal by the District Council to relax Requirement M3 (Sanitary Conveniences) of the Building Regulations 1991 (as amended) in respect of sanitary conveniences in a small single storey office facility

The appeal

3.The building work to which this appeal relates comprises the construction of a small single storey office in the grounds of, and immediately to the rear of, your dwelling. The plan area is shown as being 8.5m x 4.5m and is to comprise a single office with lobby and WC facilities located at one end taking up approximately a quarter of the total floor area. At the time you lodged your appeal the work was under construction.

4.These proposals were the subject of a full plans application to which the District Council requested various amendments and clarifications, including full access internally and externally in respect of Requirements M2 (Access and use) and in respect of Requirement M3 (Sanitary conveniences). Your full plans application was rejected because of inadequate information under Regulation 13 and non-compliance with Requirement M3.

5.With respect to the latter requirement the District Council took the view that the provision of a full wheel chair accessible WC compartment would be more beneficial and cost effective given the nature of the use of the building and the fact that owners and users could change over time. However, you took the view that for the use and purpose for which the office was being constructed, ambulant toilet provision would be adequate. You therefore applied for a relaxation of Requirement M3 in order that you might provide an ambulant WC compartment rather than one suitable for full wheelchair access. The District Council refused your application. It is against that refusal that you appealed to the Secretary of State under Section 39 of the Building Act 1984.

The appellant's case

6.In the case you put to the District Council for a relaxation of Requirement M3 you opined that the provision of a wheelchair WC compartment was unduly onerous and proposed to provide an ambulant disabled WC instead. You referred to a 1993 determination by the Secretary of State with respect to sanitary conveniences for the disabled in small office premises of 185 square metres where four people - including a husband and wife - were employed. You pointed out that your proposal was one sixth of the size of this particular office.

7.In further correspondence you explained that the office is to accommodate your small company which is concerned with drainage management and site surveys, and the associated reconditioning/upgrading of computer systems and other business support services which go with this main function. The company comprises yourself and your wife as partners, two full time staff, and one part time member. There are no defined jobs functions which means that a member of staff may be involved with computers on one day, and drainage and sight surveys on another. On this basis you consider that a wheelchair user would be unable to meet the requirements of the posts. You do, however, accept that an ambulant disabled person might be suitable and for that reason a relaxation of Requirement M3 was requested in order to make such provision in compliance with the requirement.

The District Council's case

8.The District Council, and its access officer, have made several points in justification of their judgement to refuse your application for a relaxation:

- i)there appears to be no disadvantage in terms of space required between providing a wheelchair WC compartment and an ambulant WC compartment, and there should be no additional cost implications
- ii)wheelchair WC compartments as defined by BS5810 often contain handrails, covering 98 per cent of all disabilities, resulting in many ambulant disabled people gaining better assistance than from ambulant layouts
- iii)the advantages of full wheelchair provision against ambulant ones are immense and must be preferred every time. The District Councils view is that ambulant provision is usually incorporated where either space demands it or to compliment existing wheelchair facilities. Neither circumstance applies in this instance
- iv)although the Disability Discrimination Act 1995 will not apply to companies employing less than 20 people, the District Council takes the view that such issues of non-appropriate jobs are becoming less of a justification for not providing accessible buildings and appropriate levels of service. In this particular instance they consider that a wheelchair user or less ambulant employee could conceivably operate exclusively in the office, even in a small organisation such as this

v) notwithstanding the circumstances of the present occupiers the building may ultimately be owned and occupied by employers who may still work within the office use class. It would not be appropriate to restrict the facilities to exclude their use by wheelchair users, particularly as prospective purchasers might rely on the current minimum requirements expected of a building constructed in 1997.

The Department's view

9. It should be noted that all appeal cases are considered on the facts and their individual merits. Previous determinations and/all appeal decisions may not therefore necessarily be relevant.

10. You appealed to the Secretary of State against the decision of the District Councils decision not to relax Requirement M3 in respect of the provision of a WC compartment suitable for ambulant disabled people as opposed to wheelchair users. Requirement M3 states that:

"If sanitary conveniences are provided in the building reasonable provision shall be made for disabled people".

Except in the exceptional circumstances of a particular case the Secretary of State would not normally consider it appropriate to dispense with a requirement of Part M. Nor would he lightly consider relaxing such a requirement except in exceptional circumstances presented by the appellant.

11. *Paragraph 4.1 of the Approved Document M (Access and facilities for the disabled)* states that the objective of Requirement M3 is that sanitary conveniences should, in principle, be no less available to disabled people than for able bodied people; and that the aim is to provide solutions which will most reasonably satisfy that principle, whilst bearing in mind the nature and scale of the building. In this context the Department notes that the presumption in *Approved Document M* is that reasonable provision normally relates to WC compartments for wheelchair users, and that those for ambulant disabled people relates to compartments installed on storeys to which the only access is by a stairway, or are in some other way inaccessible to wheelchair users. Since in this case the office facility is at ground level only, the Department considers it is appropriate to provide for wheelchair users.

12. The Department does, however, accept that the actual scale of these premises is such that it could be inappropriate to adopt the compartment illustrated in *Diagram 16 of Approved Document M*, always providing that reasonable provision has been made in accordance with an accepted standard for use by wheelchair users, such as that contained in *BS 5810*.

13. The Department also notes that in your submission you have not sought to argue your case for relaxation on the grounds of the lack of space to accommodate a WC compartment for wheelchair users. Moreover, the District Council have observed that the size of the proposed WC compartment is larger than that illustrated in *Approved Document M* and that the proposed

lobby separating the compartment from the office is of an equivalent size. The problem has arisen because the arrangement of the sanitary fittings and the door is such that wheelchair users would not be able to gain access to the WC or be able to use it. In particular, the Department notes that the compartment door opens inwards, which is not recommended for either wheelchair users or ambulant disabled people.

14. Given that the compartment is of sufficient size to accommodate wheelchair users, and the re-positioning of the sanitary fittings and amending of the door arrangement would enable wheelchair users to gain access and use the WC, the Department concludes that compliance with Requirement M3 is readily achievable. This fact must be set against the fact that in the Department's view you have not put forward any substantive case to justify a relaxation of Requirement M3 such that provision should be made only for ambulant disabled persons as opposed to wheelchair users.

The Secretary of State's decision

15. The Secretary of State has given careful consideration to the facts of this case and your particular circumstances, and to the points made by both parties. He has concluded that there is no case to support either the dispensation or relaxation of Requirement M3 (Sanitary conveniences) of Schedule 1 to the Building Regulations 1991 (as amended); and has therefore concluded that the District Council came to the correct decision in refusing your application to relax Requirement M3. Accordingly, he dismisses your appeal.