

Date: 09/02/98

Ref: 45/3/117

*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 dispense with Requirement M3 (Sanitary Conveniences) of the Building Regulations 1991 (as amended) in respect of a WC Compartment in a newly constructed Dental Surgery**

#### **The appeal**

3. The building work to which this appeal relates comprises a newly constructed single storey dental surgery built onto one side of a large detached dwelling. The new building comprises a surgery and associated reception and storage facilities; together with a WC compartment contained in the lobby at the front of the building. The access to the lobby is ramped and provides independent access from any associated with the dwelling.

4. Your full plans application was accompanied by drawing 1119/1B (No1) which shows a disabled WC compartment contained within the reception area rather than the lobby area. Following a written request from the District Council concerning three points on provisions relating to Part M, the drawing was amended to show provision in that WC compartment for handrails and a mirror etc. Following a further written request concerning provisions for requirements relating to Part A and Part B, full plans approval was given.

5. Construction commenced and following one inspection the District Council wrote to you itemising a number of matters which did not appear to comply with the building Regulations. Among these was a WC compartment which had been provided in the lobby, as apposed to the reception area, with dimensions smaller than those shown on the plan. The letter advised that the compartment should accord with *Approved Document M (Access and facilities for the disabled)* in respect of size, and fixtures and fittings, in order to comply with Requirement M3. This matter was still outstanding when the District Council wrote to you giving 21 days notice for the work to be brought into compliance and warning that failure to do so would result in enforcement action.

6. You took the view that the WC facilities as provided were appropriate for the amount of use to which your client will be putting the surgery and applied on his behalf for a relaxation of Requirement M3. The District Council treated this application as one for a dispensation which was refused. 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**

7. You acknowledged that the WC compartment had not been constructed in accordance with the approved plans but consider that it is adequate for the scale and nature of the dental practice. Your client's main practice is in another town and his use of these premises is limited to 3 days a week of which one or two are part-time only. The new building replaced a similar sized surgery elsewhere with similar facilities, but you believe that the new facilities are an improvement on those offered there.

8. In addition you make the point that the WC is contained in the entrance lobby and therefore is separate from the reception area. You explain that the receptionist will be able to help any disabled person from the lobby to the WC.

### **The District Council's case**

9. In explaining its reasons for refusing the dispensation, the District Council comment that the building has not been built in accordance with the approved plans. They explain that if sanitary conveniences are provided within the building, reasonable provision should be made for people with disabilities. They also explain that sanitary conveniences should be no lesser available for people with disabilities than for able-bodied people. With regard to assistance being available from a receptionist, they take the view that custom precludes assistance from a member of the opposite sex.

10. In considering the size of the WC compartment for wheelchair users, the Council state that the design should:

- a) enable necessary wheelchair manoeuvre
- b) allow for transfer to the WC
- c) have facilities for hand washing and hand drying within easy reach from the WC, prior to transfer back to the wheelchair
- d) have space to allow a helper to assist in the transfer
- e) ensure that the cubicle door can open outwards in the event of an emergency.

11. However, in a note to the refusal notice the Council state that they are mindful of the small size of the building and the nature of its use, and would consider a smaller WC compartment having overall dimensions and facilities as indicated in BS5810 (Figure 13).

## The Department's view

13. You have appealed to the Secretary of State against refusal by the District Council to dispense with Requirement M3 (Sanitary conveniences).

Requirement M3 states that:

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

14. The point at issue is not the different location but the size of the WC compartment as constructed, which is shown with dimensions 910mm wide and 1730mm long and in consequence is smaller than the WC compartment illustrated in *Approved Document M* or the alternative illustrated in *Figure 13 of B 5810*.

15. *Paragraph 4.1 of the Approved Document M* states that the objectives 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 the willingness of the District Council to accept a smaller compartment based on BS 5810. The Department also notes and accepts the District Councils suggested requirements of a WC compartment as expressed in paragraph 11 above.

16. In the Departments view the size of the WC compartment as constructed is such that it would will be too small to enable a wheelchair user to enter and close the compartment door before transferring onto the WC.

17. 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.

18. In this case, it is clear that the premises may be used by any member of the public who happens to be one of your clients patients. It is reasonable to assume that some of those patients may well be disabled persons who will require access to sanitary facilities as specified under Requirement M3. The fact that the premises may only be used on a limited number of days does not appear to be material to what the needs of a disabled person may be when the premises are in operation. The Department does not therefore accept your case as being a substantive one for dispensing with, or indeed even relaxing, Requirement M3. The Department does, however, accept that irrespective of the number of days the premises may or may not be in use, the actual scale of those 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, such as that illustrated in *Figure 13 of BS 5810*, and therefore is considered to be in compliance with Requirements M3.

## **The Secretary of State's decision**

19. The Secretary of State has given careful consideration to the facts of this case; the particular circumstances that have led to this appeal becoming necessary; and the particular circumstances of your clients case. He has concluded that there is no case to support either the dispensation or the relaxation of Requirement M3 (Sanitary conveniences) of Schedule 1 to the Building Regulations 1991 (as amended); and has concluded that the District Council came to the correct decision in refusing your application to dispense with Requirement M3. Accordingly he dismisses your appeal.