

Requirements M1 and M3: Appeal against refusal in respect of building work to convert the centre of a former Odeon cinema building into a nightclub (Ref 45/3/189)

Text of Communities and Local Government 'appeal' letter dated 19 October 2007 (Reference 45/3/189)

BUILDING ACT 1984 - SECTION 39

APPEAL AGAINST REFUSAL BY THE COUNCIL TO RELAX REQUIREMENTS M1 AND M3 IN PART M OF SCHEDULE 1 TO THE BUILDING REGULATIONS 2000 (AS AMENDED), IN RESPECT OF BUILDING WORK TO CONVERT THE CENTRE OF A FORMER ODEON CINEMA BUILDING INTO A NIGHTCLUB

The building work and appeal

3. The papers submitted indicate that the building to which this appeal relates is a Grade II Listed former Odeon Cinema constructed about 1920. Apart from the nightclub in question, the building contains a show bar occupying the former cinema stage, stalls and dress circle, constructed in 2000, and a late night bar at first floor and an upper mezzanine level below the upper circle structure, constructed in 2002. The building work that forms the subject of this appeal was completed in 2005/06 and comprised the conversion of the centre of the building (formerly the upper circle and void over the dress circle of the original cinema) into a nightclub with a capacity for 2000 occupants. The nightclub was opened in January 2006.

4. The main building work comprised the introduction of three tiered floor levels above the upper and dress circles in the style of a theatre to overcome the problems of the existing continuous raked cast in situ concrete floor. The levels comprise:

- Level 1 (approx. 600m²) - the main area which incorporates the dance floor, two bars, seating, and the principal male, female and unisex accessible w.c. facilities. The access lift from the ground floor discharges at this level;
- Level 2 (approx. 500m²) - an overspill area incorporating a further bar and a large DJ box, with loose seating, accessed via two stairs suitable for access by ambulant disabled people, plus separate office and ancillary accommodation above the sanitary facilities; and
- Level 3 (approx. 380m²) - fixed seating and a further bar, accessed by two further stairs suitable for access by ambulant disabled people.

In addition, at the highest level of the former cinema is an existing floor, which was formerly the projector room. This has become:

- Level 4 (approx. 240m²) - and now incorporates a small bar, dance floor and internet room.

5. Work was also carried out to erect an external side extension on the south side of the building to provide ground floor access to the upper floor levels via stairs and a lift to Level 1 of the nightclub only, although you indicate that the Listed Building Consent for this work received strong opposition.

6. The above building work was the subject of a Building Regulations full plans application which was rejected by the Council on 8 August 2005 on the grounds of non-compliance with Requirements M1 and M3, which fall within Part M. Following further correspondence and a resubmission of your plans, the Council issued a "Stage Approval" on 7 December 2005 but this did not cover Part M issues. For the reasons stated below, you subsequently applied for a relaxation of the Part M requirements in question relating to vertical circulation between the new floor levels of the nightclub and provision of sanitary conveniences at the upper levels, which was refused by the Council on 11 September 2006. It is against this decision that you have appealed to the Secretary of State.

The appellant's case

7. You advise that structural alterations to the building were severely restricted by planning considerations to those that were essential only to assist means of escape and prevent building decay, and that there was reluctance on the part of the Local Planning Authority (LPA) to permit penetration of the existing raked structural floor formerly forming the upper and dress circles, which led to the design of three tiered floor levels in the nightclub.

8. You state that, conscious of the limitations for vertical circulation between floor levels, your clients provided all facilities on Level 1 which has both ambulant and disabled access from the ground floor. By restricting wheelchair users to Level 1, this has provided safe evacuation to a refuge area in the external side extension with separate access onto fire escape stairs, which was agreed with the 'Fire Safety Officer' to enable independent access to wheelchair users. The safety of users on the upper floor levels would not therefore be compromised by prohibiting wheelchair access to those levels. You add that the means of escape from the nightclub required a "fire engineered solution" due to the limitations imposed upon the building by the LPA for structural alterations; the safe evacuation period requested by the Fire Safety Officer could not have been met if wheelchair access was allowed to the upper floor levels.

9. In your clients' opinion, they have complied with Part M of the Building Regulations and the guidance in Approved Document M (Access to and use of buildings - 2004 edition), except for complete vertical circulation. You stress that:

- The nightclub has a level approach and access externally with access widths well catered for.
- The main Level 1 is served and accessed via a lift compliant with the guidance in Approved Document M, which will also be used as an evacuation lift in case of fire.
- The stairs throughout are ambulant designed to provide compliant risers and goings, with intermediate landings.
- The w.c. facilities allow for both disabled w.c. compartment and ambulant cubicles on Level 1, with further ambulant cubicles provided at Level 3.

10. You comment that your clients, as service provider, are fully aware of their duties under the Disability Discrimination Act (DDA) and that any relaxation of

Building Regulations would not exonerate them from their duties. You believe that the Council has relaxed the Part M requirements in question in relation to Level 4 and request that these are relaxed with regards to vertical circulation between the other floor levels in the nightclub. You conclude by reiterating that the grounds of your appeal are:

- (i) The Listed status of the building and limitation for alterations.
- (ii) All facilities are on Level 1.
- (iii) The means of escape will not be compromised.
- (iv) Compliance has been achieved with the guidance in Approved Document M, except for vertical circulation.
- (v) Service providers' duties under the DDA.

11. You also provided further comments in response to the Council's representations to the Secretary of State below, which refuted some of the points made and explained the history of the nightclub. You commented that the owner considers that there is a general community spirit within the nightclub to help one another and that the absence of vertical lifts to the upper floor levels should not be an issue with the occupants of the new building.

The Council's case

12. The Council has provided details of its correspondence and meetings with you and your clients when your attention was drawn to the work needed to comply with the applicable requirements in Part M of the Building Regulations, in particular vertical circulation issues.

13. The Council comments that in its opinion Levels 1 – 3 are new floors and they are therefore subject to the applicable requirements of the Building Regulations. Level 4 of the nightclub as an existing floor with existing access is subject to a material alteration which would not in the Council's view require provision of access in accordance with Requirement M1 to this level. The Council refers to the relevant paragraphs in the guidance in Approved Document M and considers that the requirement to provide a lift to the new floor levels is not unreasonable in this case. The Council notes that the guidance suggests that in exceptional circumstances a platform lift could be considered as an alternative option to a passenger lift and would view this as a suitable solution in your case, subject to an access statement supporting this argument.

14. The Council also makes the following points in response to some of the issues raised in your appeal submission:

- (i) With reference to your statement that Listed Building Consent was granted for the side extension by the LPA "...against strong opposition", the Council refutes this statement and encloses a copy of the Committee report for this proposal. The Council states that no restrictions were imposed that would impede the designer from providing internal lifting devices and that the LPA actively encourages inclusive design as part of planning policy.

- (ii) With reference to your statement that the fire engineering solution imposed would compromise the means of escape for wheelchair users from the upper floor levels, the Council has submitted a copy of comments received from the 'Fire Engineering Consultant' which indicates a proposal to provide a separate evacuation lift.
- (iii) The Council has not relaxed Requirement M1 on Level 4 as you suggest, as this is the only existing floor level with existing access and is "...only subject to a material alteration under Regulations 3 and 4". Consequently, the Council believes that Requirement M1 does not apply to this level.

15. The Council concludes that reasonable provision has not been made for people to gain access to use the nightclub and its facilities, as required by Requirement M1 and is not prepared to relax the requirement. The Council also states that you have not provided "...sanitary conveniences compliant with [Requirement] M3 to the upper levels" of the nightclub.

The Secretary of State's consideration

16. The Secretary of State notes the Council has stated that it has refused to relax Requirement M1 and Requirement M3 of the Building Regulations in this case, although neither party has made substantive representations in their submissions relating to Requirement M3. She has therefore given consideration to both requirements.

17. With regard to Requirement M1, the Secretary of State takes particular account of the following points in this case:

- the designation in the Local Plan of the area surrounding the application site as a Main Holiday Area, with a concentration of holiday accommodation;
- the fact that the nightclub venue has a designed capacity each night of 2000 people;
- the statement in the Fire Engineering Consultant's response to the Council that "It is not proposed to control the number of persons on each floor level or the flow of occupants between floor levels"; and
- the further statement in the same document that "...the specific evacuation of disabled persons has not been considered in this assessment".

18. It is the Secretary of State's view that, given the length of the area's holiday season and the likelihood that the customer base for such a venue is largely transient, the potential number of visitors will be very significant and among them are likely to be a considerable number of people with disabilities. And, given the fact that people tend not to visit such venues alone but with partners and/or friends, without provision for vertical circulation there will be an effective control on the flow of some people between floor levels - the simple fact that for a member of their party such a feat may be physically impossible. Of course, nobody can say with precision what numbers may be affected. One train of argument would hold that just one person affected is one too many. But clearly there is an issue of proportionality and

reasonableness. The Secretary of State considers that the balance of reasonableness here lies very clearly in favour of inclusiveness.

19. The Secretary of State applauds the LPA's stated aim to "...actively encourage inclusive design as part of Planning Policy" and considers that insufficient attention has been paid to the issue of reasonable provision for vertical circulation within the nightclub. However, she recognises that further consideration of this issue will have implications for means of escape under Requirement B1 in Part B (Fire Safety) of the Building Regulations, which are not within the scope of this current appeal. The Secretary of State also recognises, given the unusual geometry of the project and the planning constraints on the external elevations, the practical difficulty of constructing a lift shaft capable of serving all three new floor levels.

20. Notwithstanding the above, it is the Secretary of State's view that you have not made a sufficient case for relaxing Requirement M1 of the Building Regulations. Whilst clearly there are practical constraints on what can be achieved, all of the options for making reasonable provision for vertical circulation within the nightclub have not been properly explored. It is apparent, for example, that the Fire Engineering Consultant's report was predicated on the design decision that lift access would only be provided to Level 1. No assessment has been submitted of the fire engineering consequences of provision of lift access to the upper floor levels. You also assert that the safe evacuation period requested by the Fire Safety Officer could not have been met if wheelchair access was allowed to any level above Level 1, but again no evidence to that effect has been submitted.

21. The Secretary of State now turns to the question of Requirement M3 of the Building Regulations relating to the provision of sanitary conveniences in extensions to non-domestic buildings. The limit on application of Requirement M3 specifies that the requirement "...does not apply where there is reasonable provision for sanitary conveniences elsewhere in the building..." which can be accessed and used. The Secretary of State considers that this issue is contingent on the resolution of the Requirement M1 issue in this case. If it can be convincingly demonstrated that it would be unreasonable to provide lift access to Levels 2 and 3, then it would be equally unreasonable to require wheelchair accessible toilets at those levels. If however that case cannot be made, then it must follow that reasonable provision of sanitary conveniences has not been achieved and a sufficient case for relaxation of Requirement M3 has not been made.

The Secretary of State's decision

22. 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.

23. 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 a sufficient case has not been to relax the requirements in question in this case. She has therefore concluded that it would not be appropriate to relax Requirement M1 (Access and use) and Requirement M3 (Sanitary conveniences in extensions to buildings other than dwellings) in Part M (Access to and use of buildings) of Schedule 1 to the Building Regulations 2000 (as amended),

in relation to the provision of vertical circulation between Levels 1 – 3 of the nightclub and the provision of sanitary conveniences at Levels 2 and 3. Accordingly, she dismisses your appeal.