

Date: 03/02/00

Ref: 45/3/138

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 City Council to relax Requirement M2 (Access and Use) and Requirement B1 (Means of Escape) of the Building Regulations 1991 (as amended) in respect of the construction of a modular office complex

The appeal

3. The building work to which this appeal relates consists of the erection of a two storey prefabricated portable modular office complex to accommodate approximately 45 employees. The building is 12m x 33m in plan, with 22 bays or modules on both floors. There is office accommodation and common facilities on both levels, apart from the meeting room and board room which are located on the first floor.

4. The WC compartment for disabled people is on the ground floor. There is ramped access provision for wheelchair users to the main entrance and fire exit which are both at ground floor level. Access from the ground floor to the first floor is via a stair close to the entrance to the building, designed to suit the needs of ambulant disabled people. This stair is shown on the plans to be a protected stair and within the protected first floor lobby adequate space is available for a wheelchair refuge. Alternative escape from the first floor is via an external steel spiral escape stair where there is not adequate space available for a wheelchair refuge.

5. The proposals for this building work were the subject of a full plans application which was rejected by the City Council on the grounds of non-compliance with requirements A1 (Loading), B1 (Means of escape) and M2 (Access and use) of the Building Regulations 1991. The question of compliance with Requirement A1 has since been resolved. However you believe that, for the purposes of complying with requirements M2 and B1, the City Councils request for a passenger lift to be provided for use by wheelchair users to gain access to the first floor, and for means of escape provisions from the first floor to be provided for them, to be unnecessary and an exorbitant expense. You therefore applied to the City Council for a relaxation of Requirements M2 and B1 which was refused by the Council. It is against that refusal that you have appealed to the Secretary of State.

The appellant's case

6. You explain that your clients brief required the use of a portable, modular office complex to be economically viable by using off-site prefabrication and to accommodate the need for your client to relocate these offices in the short term should the operational needs of the business dictate. In developing this brief with your client, it had been specified that only the ground floor should be designed for wheelchair access and that the first floor would be accessed by a stair designed for ambulant disabled people. Furthermore, you report that the manufacturers of the modular office building have never been required to provide a mechanical means of vertical access for disabled people, even in larger office buildings than the one in question.

7. You argue that the cost of providing a fully automated passenger lift to satisfy Requirement M2 would be an exorbitant expense (estimated to be 10-15 per cent of the overall cost) and disproportionate to its purpose, uneconomical and a large intrusion into the usable space. Your client states that the offices will be used by their staff only and that, whilst they currently employ no wheelchair users, any future employees who were wheelchair users could be accommodated on the ground floor. Your client also states that if they decide to sell the building in the future, it would either be dismantled and sold as individual shells, or the prospective purchaser would request an appropriate reduction in value to offset the installation of a passage lift, as required.

8. With regard to the non-provision of a wheelchair refuge associated with the external escape stair you contend that such a provision is unnecessary because your client does not expect to accommodate disabled persons on the first floor.

9. You conclude that non-compliance with the City Councils request would neither be a hazard to health and safety nor discriminating to wheelchair disabled users, whether visitors or employees. Indeed, you take the view that installation of a lift would in fact add increased risk to health and safety and that demanding assessments would be required under health and safety regulations, which is in addition to the detrimental effect the mechanics and construction of the lift would have on the versatility of the prefabricated modular office.

The City Council's case

10. In assessing the need for lift access to the first floor, the City Council based its decision on the guidance in *Approved Document M (Access and facilities for disabled people)*. The Council notes that *Approved Document M* states that it would be reasonable to base the decision with regard to the provision of mechanical means of vertical access on the nett floor area to be reached, and that for a two storey building the Approved Document recommends that a suitable passenger lift should be installed where the nett floor area of the storey requiring access exceeds 280metres square. The

Council has calculated the nett floor area of the first floor to be 362.8meters square.

11. Whilst the City Council notes that your client currently employs no wheelchair users, they take the view that wheelchair users may be employed in the future and should be able to access the first floor; they consider that to confine them to the ground floor would be discriminatory. The Council notes that the Disability Discrimination Act places duties on employers and argues that provision should also be made for disabled people visiting the building. The Council also makes the point that the Building Regulations cannot anticipate or make provision for future ownership and use of the building. In consequence they conclude that it is necessary for a lift to be provided and do not consider the type of construction of the building should limit the application of Part M (Access and Facilities for Disabled People) requirements.

12. With regard to your appeal against the City Council's refusal to relax Requirement B1 they state that this issue is closely related to their refusal to relax Requirement M2. In the Councils view if access for the disabled is provided to an upper floor then adequate means of escape should also be provided for disabled persons from that floor. The Council accepts that *Approved Document B (Fire safety)* suggests that it may not be necessary to incorporate special structural measures to aid means of escape for disabled persons and that management procedures may be all that is necessary. However the Council points out that you have not provided any such details and they are therefore asking for a refuge to be provided to the external escape stair.

The Department's view

Requirement M2

13. Since this is a completely new office building the requirements of Part M apply and the Department notes that you have designed the ground floor to be fully accessible to disabled people, including wheelchair users, and have located the WC compartment suitable for disabled people on this floor. However, it notes that you have not provided a lift and that access to the first floor is therefore restricted to ambulant disabled people.

14. The City Council is correct in interpreting the guidance in *Approved Document M* that it would be reasonable to require a mechanical means of vertical access to the first floor because its nett floor area is in excess of 280 metres square. In determining the criteria for reasonable provision, the Approved Document explains that the added cost and intrusion into usable space are relevant, and need to be considered alongside the nett floor area of the storey to be reached. The Department notes that whilst you have designed the building to generally duplicate the facilities on both floors, such as offices, refreshments and interview rooms, there are some unique functions (board room and meeting room) on the first floor. The Approved Document explains that it would be reasonable to expect to provide access for wheelchair users to such small areas with a unique function.

15. In considering your clients requirement to have a building that could be relocated in the future, the Department considers that this objective could be compromised by a fully automated passenger lift with the relative permanence of its associated traditional lift shaft, lift pit and motor room. In such circumstances however it could be reasonable to provide another form of mechanical means of vertical access to the first floor which could be easily relocated with the modular building, such as a prefabricated lift kit or possibly a platform lift or wheelchair stair lift.

Requirement B1

16. With regard to Requirement B1, the Department accepts the principle put forward by the City Council that if access is available for disabled persons to an upper floor then there should be adequate arrangements in place for the evacuation of such persons in fire. In this case two escape routes are available from the first floor and it is reasonable to expect that a disabled person should have access to both stairs and be able to wait in safety at either until rescued. An area for refuge is available in the protected lobby of the internal stair but you have not provided a suitable area for refuge at the top of the external stair.

17. *Paragraph 0.33 of Approved Document B* makes reference to British Standard (BS) 5588 (Fire precautions in the design and construction of buildings): Part 8: 1988 (Code of practice for means of escape for disabled people) and points out that this document introduces the concept of refuges for disabled people. Although the diagrams in this British Standard do not indicate an external stair they do show that a refuge area should be associated with each internal stair. Also sub-paragraph 6.1(b) of the British Standard suggests that an area in the open air, such as a flat roof, balcony or podium could be considered suitable as a refuge. The 1999 edition of BS 5588 clarifies the situation further and now includes a diagram showing a refuge at the top of a flight of external stairs.

18. The Department accepts that *Approved Document B* suggests that it may not be necessary to incorporate special structural measures to aid means of escape for disabled people. However the Department considers that it would not be unreasonable or unduly onerous in this case to provide an external platform to act as a wheelchair refuge at the top of the external spiral escape stairs. In the Departments view such a provision would be much less onerous than altering, for example, an escape stair which was an internal one with no provision for refuge. The Department therefore supports the City Councils view that an external refuge at the top of the external escape stair should be provided.

The Secretary of State's decision

19. Paragraphs 13-18 above have considered, and commented upon, the potential for your clients building work to achieve compliance with Requirements M2 and B1. However, you have appealed to the Secretary of State in respect of the refusal by the City Council to relax these two requirements.

20. The Secretary of State is particularly concerned that wherever feasible reasonable provision should be made to secure compliance with the requirements of Part M - particularly in the context of new build situations. With regard to Requirement B1, the Secretary of State takes the view that this is a life safety matter and as such he would not normally consider it appropriate to relax or dispense with it.

21. The Secretary of State has given careful consideration to the facts of this case and the arguments put forward by both parties. In particular, he has taken note of your concern regarding the cost of making provision for access to the first floor given the temporary and de-mountable nature of your building. However, because there may well be options for achieving reasonable provision for the purposes of complying with Requirement M2 which do not appear to have been explored, he has concluded that there are no extenuating circumstances in this case which would justify the relaxation of Requirement M2 (Access and use) or relaxation of Requirement B1 (Means of escape) of Schedule 1 to the Building Regulations 1991 (as amended). In his view, the City Council therefore came to the correct decision in refusing to relax these requirements. Accordingly, he dismisses your appeal.