

Determination

under the

Building Act 1991

No. 96/001: Installation of a wheelchair stairlift in an existing local government administration building

1. The matter to be determined

- 1.1 The matter before the Authority was the proposed alteration of an existing two-storey local government administration building by the installation of a wheelchair stairlift, and specifically whether section 38 of the Building Act 1991 required that building consent for that installation should be refused unless a conventional lift was installed.
- 1.2 The Authority takes the view that it is required to determine whether, after the proposed alteration, the building will:
 - (a) Comply as nearly as is reasonably practicable with the provisions of the building code (the First Schedule to the Building Regulations 1992) for access and facilities for use by people with disabilities, and
 - (b) Comply with the other provisions of the building code to at least the same extent as before the alteration.
- 1.3 In making its determination, the Authority has not considered whether the proposed building will comply with any other provisions of the building code.

2. The party

- 2.1 The applicant, and the only party to the determination, was the local authority (“the Council”) which owns the building. Being in doubt about the matter, the Council applied to the Authority for a determination.

3. The building and the proposed chairlift

3.1 General

- 3.1.1 The building was erected in 1976 and 1977. It is a two storey building of some 4,300 m². There is no lift, but there is access for people with disabilities to all parts of the ground floor, which contains the main reception area, enquiry counters, and cashier stations. There is no current provision for access by people with disabilities to the upper floor, which contains the

council chamber, a committee room, the mayor's office, a councillors' lounge, a staff conference room, staff offices, the staff cafeteria, and other facilities.

3.1.2 The Authority notes that the Disabled Persons Community Welfare Act 1975, which required a lift to be provided in the construction or major reconstruction of such a building, came into force on 5 November 1976, presumably while the building was under construction.

3.1.3 The proposed wheelchair stairlift is an 'inclined platform lift', consisting of a platform supported on steel tubes which follow the inside core of a stairway. The tubes bear a superficial resemblance to the handrail and kneerail of stair banisters. The model concerned is described as complying with ASME A 17.1 Part XX and CSA B355.

3.2 *Previous alterations*

3.2.1 In its initial submission, the Council said:

There have been no extension or substantive alterations to that part of the building occupied by the Council, except that a number of individual offices have been converted to open plan working environments.

3.2.2 At first reading, that gave the impression that the building has not been significantly altered. However, in response to the submission outlined in 4.2.1(e) below, the Council said:

Where the [residents who made that submission] appear to be confused is that there was a physical extension carried out to the overall building last year however this ground floor extension was carried out to that part of the building comprising commercial offices which are completely independent of the Council offices. The extensions were paid for and constructed by the tenant with no internal access to the Council areas.

3.2.2 In the Authority's opinion, it is the Council not the residents which appears to be confused. The fact is that there was an alteration to the building. It is irrelevant for the purposes of the Building Act whether those alterations were paid for by the Council or its tenants and whether the part of the building concerned is occupied by the Council or its tenants. A building consent should have been issued for the alterations (which are clearly not exempted as of right under the Third Schedule) and the upgrading of the building's access and facilities for people with disabilities in terms of section 38 should have been considered at that time.

4. The submissions

4.1 From the Council

4.1.1 Within the Council there were two views, with the property department contending that a building consent should be issued while the regulatory department raised doubts about whether that could properly be done in compliance with the Building Act. The Authority was thus assisted by thorough and extensive submissions from the Council. The Authority also obtained reports from independent experts. Those reports were copied to the Council.

- 4.1.2 Both departments accepted that if the building were a new building it would require a lift. They also accepted that there are no significant technical difficulties in providing a lift.
- 4.1.3 The Council submitted a firm quotation of approximately \$50,000 for the installation of a wheelchair stairlift. It also submitted two detailed independent estimates of approximately \$250,000 for the installation of a conventional lift.
- 4.1.4 The property department contended that the \$200,000 increase in costs makes it unreasonable to require a conventional lift to be installed.
- 4.1.5 The regulatory department pointed out that the situation is similar to that in Determination 95/002, in which the Authority determined that a lift was to be provided, and that presumably the costs would have been similar. The property department responded that whereas Determination 95/002 “addressed the request for a full dispensation”, in this case the need to provide access for people with disabilities was acknowledged but it was proposed “to provide it in a different manner”.
- 4.1.6 The Authority’s attention was drawn to several wheelchair stairlifts currently in use in New Zealand. The manufacturer’s sales literature features many overseas examples, including the White House in Washington, the Parliamentary Buildings in Canberra, and various transport terminals in North America and Asia.
- 4.1.7 At a later stage in the processing of the application the Authority was told:

The Council . . . wants you to consider the question “does the proposal of the Council to install this chairlifter meet the requirements of the building code for mechanical means of access?” The question is not “must the Council provide a mechanical means of access to the first floor?”

- 4.1.8 The Authority does not accept that submission. The matter to be determined by the Authority is as stated in 1 above.

4.2 *From local residents*

- 4.2.1 Two residents in the territorial authority’s district submitted that the Council’s proposal was “inappropriate” because, in outline:

- (a) Public meetings are held on the upper floor.
- (b) “Most people are not familiar with this type of lift.”
- (c) “It will not accommodate people who cannot transfer from their wheelchairs.”

This comment does not apply to the particular wheelchair stairlift concerned.

- (d) “There will be a stigma attached to using it by people being told that it is only for the disabled. This means it will not give equal access.”

- (e) “There has been extensive modernisation alteration and additions recently to the building. A passenger lift should have been installed at the time of these additions.”
- (f) If the territorial authority is “granted a dispensation” then it will have to do the same to others.

5. The legislation

- 5.1 Section 25 of the Disabled Persons Community Welfare Act requires that in the construction or alteration of certain buildings, including local government offices and facilities, reasonable and adequate provision shall be made for disabled persons who may be expected to visit or work in the building. The Authority also notes that Local Government Official Information and Meetings Act 1987 requires that meetings (as defined in that Act) of the Council itself, its committees, and its subcommittees shall be open to the public except in special circumstances.
- 5.3 Section 6(2)(e) of the Building Act refers to the need to provide, both to and within buildings to which section 25 of the Disabled Persons Community Welfare Act applies, reasonable and adequate provision for people with disabilities to enter and carry out normal activities and processes in those buildings.
- 5.4 Section 38 of the Building Act provides that no building consent shall be granted for the alteration of an existing building unless the territorial authority is satisfied that after the alteration the building will comply with the provisions of the building code for access and facilities for people with disabilities as nearly as is reasonably practicable as if it were a new building.
- 5.5 The relevant provisions of the building code are in clause D1 “Access routes” and clause D2 “Mechanical installations for access”. Clause C2 “Means of escape” is likely to be relevant also.

6. Compliance with clause D1

- 6.1 The relevant objective of clause D1 is stated in clause D1.1 as being to:

- (c) Ensure that *people with disabilities* are able to enter and carry out normal activities and functions within *buildings*.

Which corresponds to section 6(2)(e) of the Building Act.

- 6.2 Clause D1.3.4 requires that an *accessible route*, defined as an access route useable by people with disabilities, shall:

- (c) Include a lift complying with clause D2 . . . to upper floors where:
 - (iv) an upper floor . . . is to be used for the purposes of public reception areas of . . . local government offices

- 6.3 The Authority does not accept that a wheelchair stairlift is “a lift” for the purposes of clause D1. The word “lift” is not defined in either the Building Act or the building code, and must therefore be given its ordinary and natural meaning. Clearly, that meaning does not include all mechanical installations for access because escalators and travelators, for example, are obviously excluded. In the Authority’s opinion the word “lift” does not include a wheelchair stairlift. To put it another way, someone who was told that access to the council chamber was by lift would be surprised to find that in fact access was by wheelchair stairlift.
- 6.4 The Authority is reinforced in that view by the fact that “lifts” and “wheelchair stairlifts” are recognised as different things in the UK Approved Document M “Access and facilities for disabled people” (similar in status to our own Approved Documents). That document indicates the different design considerations which justify the installation of “passenger lifts”, “wheelchair stairlifts”, and “platform lifts” to provide access for people with disabilities. The relevant passages are in respect to passenger lifts and wheelchair stairlift are:

REQUIREMENT

M2. Reasonable provision shall be made for disabled people to gain access to and to use the building.

PASSENGER LIFTS

Provisions

2.13. Requirement M2 will be satisfied if a suitable passenger lift is provided to serve

- a. in a two storey building, more than 280m² of nett floor area

WHEELCHAIR STAIRLIFTS

Design considerations

2.15 In a building containing small areas with a unique function, it may be reasonable to expect access for wheelchair users to upper and lower storeys but be impracticable to provide a passenger lift. In such circumstances, a wheelchair stairlift to BS 5766: 1979 *Specification for powered stairlifts* would constitute a reasonable alternative.

A unique facility which anyone using the building should reasonably expect to use may consist, for example, of a small library gallery, a staff rest room or a training room. In the absence of a practical alternative, it would be reasonable to install a wheelchair stairlift.

Provisions

2.16 If a storey, with a net floor area exceeding 100 m², contains a unique facility but is not large enough to warrant passenger lift access . . . it should be accessible to wheelchair users.

6.5 The Authority notes that the provision of a wheelchair stairlift in the building which is the subject of this determination would not comply with the UK requirements because the upper floor exceeds 280m² and the Council chamber and committee room are different in kind from the “unique facilities” for which wheelchair stairlifts are acceptable in the UK.

6.6 The Authority considers that the building with the proposed wheelchair stairlift but not a conventional lift does not comply with clause D1.

7. Compliance with clauses C2 and D2

7.1 Clause C2 is relevant because of the possible effect that a wheelchair stairlift might have on the adequacy of the stairs as an escape route in a fire. The Authority does not need to make any determination on that point in this case, but notes that it seems unlikely that a wheelchair stairlift would be in use at the time a fire alarm was given and the building began to be evacuated.

7.2 Clause D2, in contrast with clause D1, does not use the word “lift” but covers all types of mechanical installations for access.

7.3 The relevant objective of clause D2 is stated in clause D2.1 as being to:

- (c) Ensure that *people with disabilities* are able to carry out normal activities and processes within *buildings*.

Which corresponds to section 6(2)(e) of the Building Act.

7.4 Clause D2.3.1 requires mechanical installations for access to:

- (c) Be constructed so as to avoid the likelihood of people falling, tripping, becoming caught, being able to touch or be struck by moving parts, sharp edges or projections, under both normal and reasonably foreseeable abnormal conditions of use.

7.5 The wheelchair stairlift concerned includes sensors and audiovisual alerts to lessen the chances of impact and to reduce the consequences of impact, but the possibility remains. However, the Authority does not consider that the words “avoid the likelihood of . . . impact” require that impact shall be an absolute impossibility.

7.6 Clause D2.3.5 requires that mechanical installations on accessible routes shall:

- (a) Where the passenger conveyer is manually controlled, provide:

- (i) controls which are easily identifiable and easy to use,
- (d) Have *handrails* within the passenger conveyer.

7.7 As regards those provisions, reports obtained by the Authority said, amongst other things, that:

- (a) As to controls:

“A similar stair lift . . . is regularly used by two staff in wheelchairs. [It] is popular with those users, but is not used by the public, who may find it more difficult to use.”

“To a frequent visitor to a building [the controls] are unlikely to prove any obstacle. However, to a casual visitor, (particularly one with reduced cognitive abilities) the logic of the control and the sequence of operations could be a major obstacle.”

“Constant pressure controls, which are a feature of the stair lift which provide additional safety, can be tiring to use. They can even be difficult to release during a seizure.”

- (b) By way of general comment:

“[T]he staircase [is] not wide enough to permit an unfolded platform and ambulant people to pass each other”

“I understand that there is some reluctance within the disabled community to accept the installation of stairway lifts in public buildings as their use (particularly the audio/visual alerts) can be seen as drawing attention to and highlighting the disability.”

7.8 The Council responded to that report by saying, amongst other things:

- (a) As to controls:

“If [a] stairlift is ‘popular with those users’ there would appear to be no reason why it wouldn’t be ‘popular’ with other non-staff regular users. For these infrequent users, the main reception desk is nearby, and I would not anticipate any problem with staff providing occasional assistance to newcomers to the building.”

“[T]he controls are straightforward and simple to use. This observation would seem to be supported by the extensive use of similar stairlifters world-wide.”

- (b) On the general comments:

“There is an alternative staircase available within the building when the stairlifter is in use.

“The likely frequency of use (minimal) should be an assessment consideration when addressing the egress width argument.

“Egress space in an emergency is easily created by manually folding the platform wherever it is after removing the passenger.”

7.9 The Authority considers that whether the controls are sufficiently easy to use will depend on the purpose of the wheelchair stairlift concerned. For purposes such as those envisaged by the UK Approved Document M, a wheelchair stairlift would almost always be used by people who were working in or were frequent visitors to the building.

7.10 The Authority accepts that a wheelchair stairlift could be capable of complying with clause D2. However, the proposed wheelchair stairlift needs further consideration, and it might well be necessary to use a different model from the same manufacturer which incorporates handrails and perhaps differently-positioned or duplicated controls.

8. Discussion

8.1 The various submissions, reports, and comments received by the Authority have been outlined above. Several points made in those documents were not described or discussed in this determination, but they were all taken into account by the Authority.

8.2 Given that that the wheelchair stairlift (with some modifications) would comply with clause D2, the questions are whether:

(a) The building, after the installation of the wheelchair stairlift but not a conventional lift, would comply with clause D1 as nearly as is reasonably practicable, and

(b) The building, after the installation of the wheelchair stairlift but not a conventional lift, would comply with clause C2 to the same extent as before the alteration.

8.3 The Authority approaches the question of whether a building complies as nearly as is reasonably practicable with particular provisions of the building code by balancing the sacrifices and difficulties of upgrading against the risks and disadvantages of not upgrading. That approach has been discussed in several previous determinations and has been approved by the High Court¹.

8.4 In this case, the only sacrifice is the cost of installing a conventional lift as well as or instead of a wheelchair stairlift. That cost is considerable, and the Authority recognises that the Council has a duty to be fiscally responsible and minimise its costs wherever possible.

8.5 The Authority considers that the major disadvantage of the proposed wheelchair stairlift, as compared with a conventional lift, is in the inconvenience and difficulty that some users would experience in using a wheelchair stairlift, particularly on an occasional basis.

8.6 The Authority considers that it is reasonable to expect Council staff and other frequent users of the building to become familiar with the use of a wheelchair stairlift, but not people with disabilities who might wish to attend Council and other meetings open to the public. The

¹ *Auckland City Council v New Zealand Fire Service*, 19/10/95, Gallen J, HC Wellington AP 336/93.

suggestion that in such cases they should seek assistance from counter staff is not considered adequate.

- 8.7 The Authority is not aware of any jurisdiction where a wheelchair stairlift is accepted as the equivalent of a conventional lift for access for people with disabilities. The Authority is attracted to the UK approach of providing a wheelchair stairlift for access to a unique feature on a floor too small for a conventional lift to be required.
- 8.9 The Authority concludes that a wheelchair stairlift does not provide reasonable access for people with disabilities in this particular building.
- 8.10 On balance, therefore, the Authority considers that the disadvantages of installing a wheelchair stairlift instead of a conventional lift outweigh the additional cost of a conventional lift. Accordingly, the Authority does not consider that the building with a wheelchair stairlift would comply as nearly as is reasonably practicable with the provisions of the building code for access for people with disabilities as required by section 38 of the Building Act. On that basis, building consent for the installation of a wheelchair stairlift without a conventional lift should be refused.

9. Would it be unreasonable to refuse consent?

- 9.1 The Authority takes the view, for the reasons set out in Determination No. 95/001, that section 38 is to be interpreted as including an implied proviso to the effect that building consent shall not be refused unreasonably.
- 9.2 Would it be reasonable in this case to refuse consent for the installation of a wheelchair stairlift unless a conventional lift is installed?
- 9.3 It would be both unreasonable and unrealistic to expect the Council to install both a wheelchair stairlift and a conventional lift. Thus if building consent were granted for a wheelchair stairlift, it is unlikely that a conventional lift would be installed in the reasonably near future, if ever.
- 9.4 On the other hand, if building consent were refused the Council could choose either:
- (a) To install a conventional lift, or
 - (b) To abandon its commendable proposal to improve the access for people with disabilities and make no alteration to the building.
- 9.5 Thus the refusal of building consent could result in no improvement whatsoever being made to the current inadequate provisions for access by people with disabilities. Nevertheless, the Authority considers that it would create an undesirable precedent if consent was granted for a desirable but inadequate alteration on the grounds that the owner was currently unwilling to make a fully adequate alteration.
- 9.6 The Authority therefore considers that it is reasonable to refuse building consent for the alteration of the building unless an accessible conventional lift is installed.

9.7 The Authority cannot direct the Council to install a lift, it can only determine that without such a lift the building does not comply as nearly as is reasonably practicable with the provisions of the building code for access by people with disabilities.

9.8 The Authority trusts that the Council will install a lift as soon as funds are available. The Authority points out that, contrary to the Council's previous approach as outlined in 3.2 above the need for a lift will have to be specifically reconsidered if any part of the building is proposed to be altered in future.

10. Conclusions

10.1 The installation of a wheelchair stairlift will not bring this particular building to compliance as nearly as is reasonable practicable with the provisions of the building code for access for people with disabilities. However, the Authority recognises that there could well be existing buildings in which the installation of a wheelchair stairlift would be appropriate.

10.2 If a new building is required by the building code to include a lift, the provision of a wheelchair stairlift will not satisfy that requirement. There is no provision in the building code for wheelchair stairlifts. The Authority comes to that conclusion with some reluctance because it agrees with the UK Approved Document M that "it may be reasonable to expect access for wheelchair users . . . but impracticable to provide a passenger lift". The Authority intends to address the point in due course when it reviews the relevant requirements of the building code.

11. The Authority's decision

11.1 In accordance with section 20(a) of the Building Act the Authority hereby determines that no building consent is to be issued for the installation of the wheelchair stairlift.

Signed for and on behalf of the Building Industry Authority on this 19th day of March 1996

J H Hunt
Chief Executive