

# *Access for people with disabilities in a car service centre*

## **1 THE MATTER TO BE DETERMINED**

- 1.1 The matter before the Authority is whether the building consent for a new car service centre building is to be amended by substituting accessible steps for a ramp between the workshop and the customer facilities.
- 1.2 The Authority takes the view that it is being asked in effect to determine whether section 47A of the Building Act 1991 applies to the proposed building, and if so whether it will comply with the relevant provisions of clauses D1.3.2 and D1.3.4 of the building code (the First Schedule to the Building Regulations 1992).
- 1.3 In making its determination the Authority has not considered compliance with any other provisions of the building code or of the Building Act.

## **2 THE PARTIES**

- 2.1 The applicant was a firm of architects acting for the future tenant under the authority of the owner. The other party was the territorial authority.

## **3 THE BUILDING**

- 3.1 The building concerned is a split-level single story building with a mezzanine floor. Its intended use is as a car service centre. It is on a sloping site.
- 3.2 The area of the main floor is approximately 850 m<sup>2</sup>. The workshop and associated service rooms are on a lower level than the rest of the main floor area and take up approximately three-quarters of that area. Cars enter the workshop from the lower end of the site up a ramp having a gradient of 1 in 10.
- 3.3 The rest of the main floor is 540 mm higher than the workshop and is taken up by an office, customer waiting area, a small showroom, and an accessible unisex toilet. There are windows between the waiting area and the workshop so that customers in the waiting area can see their cars being worked on. There is wheelchair access

from the upper end of the site to the upper level of the main floor. Access between the two levels of the main floor is by a ramp suitable for use by people with disabilities.

3.4 Above the office is a mezzanine floor with an area of approximately 80 m<sup>2</sup>. It contains a staff room and associated amenities. Access to the mezzanine floor is by a flight of stairs.

3.5 The applicant stated that the maximum numbers of people to be employed in the building without expanding its size were:

Office staff:	2
Sales staff:	1
Motor mechanics:	<u>7</u>
TOTAL:	<u>10</u>

#### 4 THE LEGISLATION

4.1 The relevant provisions of section 47A of the Building Act are:

**47A. Access and facilities for persons with disabilities to and within buildings**—(1) In any case where provision is being made for the construction or alteration of any building to which the public are to be admitted, whether on payment or otherwise, reasonable and adequate provision by way of access, parking provisions, and sanitary conveniences, shall be made for persons with disabilities who may be expected to visit or work in that building and carry out normal activities and processes in that building.

(4) The provisions of this section shall apply to, but shall not be limited to, buildings, and parts of buildings, (including driveways, accessways, and passages within and between complexes and developments, and associated landscaping, if any) that are intended to be used for or associated with one or more of the following purposes:

- (s) Showrooms and auction rooms:
- (u) Petrol and service stations:
- (x) Car parks, parking buildings, and parking facilities:
- (y) Factories and industrial buildings where more than 10 persons are employed:
- (z) Other buildings, premises, or facilities to which the public are to be admitted, whether on payment or otherwise.

4.2 On the view taken by the Authority, see 6.2 below, there is no need to consider the provisions of the Building Regulations, including the building code, or of the Approved Documents.

#### 5 THE SUBMISSIONS

5.1 In correspondence with the territorial authority and in submissions to the Authority, the applicant said:

- (a) That the building was an industrial building where no more than 10 people would be employed.

- (b) That it would be “practically impossible” for wheelchair users to work in the workshop, although they could work in the office.
- (c) “Under Occupational Safety and Health Regulations, customers are not permitted to enter the workshop area.”

5.2 The territorial authority did not make any specific submissions.

## **6 DISCUSSION**

### **6.1 General**

6.1.1 The Authority takes the view that section 47A provides that neither the Authority nor anyone else has the power to grant a waiver or modification of the requirements of that section in respect of a new building as distinct from the alteration of an existing building. The only questions before the Authority are therefore:

- (a) Is the building one to which section 47A applies?
- (b) If it is, does it comply with the relevant provisions of the building code?

### **6.2 Does section 47A apply?**

6.2.1 The Authority takes the view that section 47A(4)(y), set out in 4.1 above, means that section 47A does not apply to any factory or industrial building where 10 or fewer people are employed.

6.2.2 The applicant has stated that a maximum of 10 people will be employed in the building. The only question, therefore, is whether the building is an “industrial building” for the purposes of section 47A.

6.2.3 The term “industrial building” is not defined in the Act. The Authority therefore takes the view that the term must be given its ordinary and natural meaning in context.

6.2.4 The Authority recognises that clause A1 of the building code specifies various classified uses, and that regulation 3(2) provides that if any part of a building has more than one classified use then that part “shall achieve the performance criteria for each such classified use”. Under the Regulations, therefore, all of the building has the classified use “Industrial” and the customer service part of the building also has the classified use “Commercial”. Nevertheless, the Authority takes the view that the Regulations are subordinate to the Act and cannot alter its meaning.

6.2.5 On that view, section 47A(4)(y) of the Act does not provide for buildings which come within more than one description. It requires a decision as to whether any

particular building where no more than 10 people are employed is or is not an industrial building.

- 6.2.6 In this case, the building is a car-repair workshop with associated office and staff facilities plus a customer waiting area and a small showroom. It is used for both commercial and industrial purposes. On balance, however, the Authority considers that the industrial purpose of repairing cars is the predominant purpose, and the commercial purpose of making sales to customers is ancillary to that. For that reason, therefore, the Authority considers that this particular building is properly described as an industrial building. Nevertheless, customers visiting the building could well think of it as a commercial building and expect it to include facilities for customers which would not normally be expected in an industrial building. The applicant has wisely recognised that and provided customer facilities accordingly, including wheelchair access and an accessible toilet.
- 6.2.7 The Authority therefore considers that the building is an industrial building in which no more than 10 people are employed. Therefore it is a building to which section 47A does not apply.

### **6.3 Other considerations**

- 6.3.1 Because section 47A does not apply, there is no need for the Authority to decide whether ramp access is necessary for compliance with regulation 3(2) and clauses D1.3.2 and D1.3.4 of the building code. However, the Authority observes that if wheelchair users cannot be expected to work in or visit the workshop then the provision of accessible steps, together with the accessible toilet facilities, is in fact reasonable and adequate provision for people with disabilities who may be expected to work in that building and carry out normal activities and processes in the building so that it does comply with the relevant requirements.

## **7 CONCLUSIONS**

- 7.1 Provided not more than 10 people are employed in the building, section 47A does not apply.
- 7.2 Because the number of people employed in the building is critical to whether or not section 47A applies, it is necessary to include that in the description of the intended use of the building which will appear first on the building consent and subsequently on the code compliance certificate, the compliance schedule, and each annual building warrant of fitness. If more than 10 people are employed, that will amount to a change of use for the purposes of section 46, and the building's provisions for access and facilities for use by people with disabilities may well have to be upgraded, if any upgrading is in fact necessary.

**8 THE AUTHORITY'S DECISION**

8.1 In accordance with section 20(a) of the Building Act the Authority hereby determines that:

- (a) The building consent is to be amended by substituting accessible steps for the ramp between the customer waiting area and the workshop; and
- (b) The amended building consent and subsequent documents issued under the Building Act shall record that the intended use of the building is:

Industrial building (car service centre) in which not more than 10 people are employed.

Signed for and on behalf of the Building Industry Authority on this 23<sup>rd</sup> day of September 1999

W A Porteous  
Chief Executive