

Determination 2005/144

Stairs to a raised storage area in the alteration of an equipment maintenance and sale building at 709 Halswell Junction Road, Christchurch

1. The matter to be determined

- 1.1 This is a Determination under Part 3 Subpart 1 of the Building Act 2004 (“the Act”) made under due authorisation by me, John Gardiner, Determinations Manager, Department of Building and Housing, for and on behalf of the Chief Executive of that Department.
- 1.2 The applicant is AB Equipment Ltd (“the owner”) acting through Hamilton Perry Industries Ltd. The only other party is the Christchurch City Council (“the territorial authority”).
- 1.3 The application arises from a dispute about a stairway to a raised storage area, including whether it should have features to permit use by people with disabilities (“be accessible”) in order to comply with section 118 of the Act and clause D1 of the Building Code (the First Schedule to the Building Regulations 1992).
- 1.4 In making my decision I have not considered any other aspects of the Act or of the Building Code.

2. The building work

- 2.1 The alteration is to an existing two-storey building containing a maintenance workshop with associated office and showroom facilities. The ground floor is of approximately 416 m² and the upper floor of approximately 112 m². The upper floor is served by accessible stairs. There is no lift.
- 2.2 The alteration consists of the installation of a raised storage area or mezzanine floor of approximately 26 m² for storing spare parts.
- 2.3 The owner proposed that the raised storage area would be served by a flight of stairs with 13 risers and a riser height of 196 mm. Those stairs would not have features to permit use by people with ambulant disabilities.
- 2.4 There was no dispute that:
 - (a) The building was one to which the requirements of access and facilities for persons with disabilities applied in terms of section 118; but

- (b) The design occupancy and floor area of the upper floor were such that a lift was not required.

3. The legislation and the Acceptable Solution

3.1 The relevant provisions of the Act are:

- (a) Section 17:

“All building work must comply with the Building Code to the extent required by this Act, whether or not a building consent is required in respect of that building work.”

- (b) Section 112:

“(1) A building consent authority must not grant a building consent for the alteration of an existing building, or part of an existing building, unless the building consent authority is satisfied that, after the alteration, the building will—

“(a) comply, as nearly as is reasonably practicable . . . , with the provisions of the Building Code that relate to—

“(ii) access and facilities for persons with disabilities (if this is a requirement in terms of section 118)”

- (c) Section 118:

“(1) If provision is being made for the construction or alteration of any building to which members of the public are to be admitted, whether for free or on payment of a charge, reasonable and adequate provision by way of access, parking provisions, and sanitary facilities must be made for persons with disabilities who may be expected to—

“(a) visit or work in that building; and

“(b) carry out normal activities and processes in that building.

“(2) This section applies, but is not limited, to buildings that are intended to be used for, or associated with, 1 or more of the purposes specified in Schedule 2.”

- (d) Section 119 provides in effect that NZS 4121 “is to be taken as a compliance document” in respect of requirements for people with disabilities.

3.2 The relevant provisions of the Building Code are:

“**D1.3.2** At least one access route shall have features to enable people with disabilities to:

“(a) Approach the building from the street boundary or, where required to be provided, the building car park,

“(b) Have access to the internal space served by the principal access, and

“(c) Have access to and within those spaces where they may be expected to work or visit”

3.3 There is no need to set out the relevant provisions of the acceptable solution D1/AS1. Suffice it to say that:

- (a) The acceptable solution distinguishes between on the one hand, “accessible stairways” and on the other “common stairways” and “service stairways”.
- (b) An accessible stairway is less steep than the others, must have handrails on both sides, must not have open risers, and therefore takes up significantly more space than the others.
- (c) The definition of “accessible stairway” says that buildings required to be accessible “shall have at least one accessible stairway leading off an accessible route whether or not a lift is provided”.
- (d) A common stairway is defined as one that is “used, or intended to be used, by the public . . . and is not a . . . service stairway or accessible stairway.”
- (e) A service stairway is defined as one that is “used, or intended to be used, infrequently by service personnel to gain access to spaces for the purposes of maintenance and the movement of goods”.
- (f) The main differences between common stairways and service stairways are that:
 - (i) A common stairway may have open risers only if there is an accessible stairway available as an alternative.
 - (ii) A service stairway may be steeper than a common stairway and may always have open risers.

4. The submissions

4.1 The territorial authority submitted:

- “5 Section 118(1) of the BA’04 requires that ‘*reasonable and adequate provision*’ be provided for people with disabilities. Thus, the stairs to the new mezzanine floor require some consideration for the ambulant disabled.
- “6 Without any particular reference to the accessible requirements of the Building Act/Code, the [owner] designed a ‘*Service stair*’ [defined as] *a stairway that is used, or intended to be used, infrequently by service personnel to gain access to spaces for the purpose of maintenance and the movement of goods.*”
- “7 Our understanding of this definition was that it was not suitable for the proposed use because (a) the use of the stair was not ‘*infrequent*’, and (b) the ‘*movement of goods*’ definition refers only to goods carried in conjunction with the maintenance, and (c) the stair should cater for persons with ambulant disabilities.
- “8 We believe that a compromise between a fully *Accessible stair* and a *Service stair* is required . . . [and accordingly] the features of a *Common stair* would be more appropriate.

- “9 We requested information from the occupier as to the frequency of use of the proposed stair and were told that this would be a max. of two times per week (ie. Twice up and down). . . .
- “10 We believe that a use of two times per week is not *infrequent* in terms of the definition of *Service stair*. We think that 2-12 times per year, for maintenance, would be considered as *infrequent*.”

- 4.2 I understand that the owner is reluctant to provide an accessible stair or a common stair because of the floor area that would be occupied by such stairs. The owner submitted:
- (a) The mezzanine floor should more properly be referred to as a raised storage area.
 - (b) “This part of the building would be a single person operation. It would be unreasonable to employ a disabled person for this position.”
 - (c) The owner “is trying to free up floor space to reduce workplace hazards by putting away infrequently required items”.
 - (d) “The [territorial authority’s] interpretation of ‘infrequent use’ is extreme. For usage as infrequent as . . . 2-12 times per year a ladder would surely suffice?”
 - (e) “. . . the stair could not be expected to be used by a disabled person. Making facility for this [by treating the stair as a common stairway rather than a service stairway] is an increase to the hazards in the workplace. . . .”

5. Discussion

- 5.1 The fact that the building work concerned is the alteration of an existing building means that:
- (a) After the alteration the building as a whole must comply as nearly as is reasonably practicable with the provisions of the Building Code for access and facilities for use by people with disabilities.
 - (b) The building work concerned, including the stairs, must comply with the Building Code subject to any waivers or modifications issued by the territorial authority under section 67 or by me under section 69.
 - (c) The territorial authority has no power to grant any waiver or modification of the provisions of the Building Code for access and facilities for use by people with disabilities.
 - (d) I do have the power to grant such a waiver or modification but only if it relates to the alterations of an existing building.
- 5.2 The section 112 requirement for mandatory upgrading of the building as a whole as a result of the alteration is irrelevant because after the alteration the rest of the building will continue to comply completely with the provisions of the Building Code for access and facilities for use by people with disabilities.

- 5.3 In Determination 97/0091 the then Building Industry Authority (“the Authority”) said:
- “It is not for the Authority to adjudicate what people can or cannot achieve in a work environment, that will depend on the abilities of the individuals concerned. The Authority takes the view that:
- “(a) The provisions of the Building Code for access and facilities for use by people with disabilities apply to a building as a whole but do not apply to a building or to any part or portion of a building in which people with disabilities, solely because of their disabilities, cannot work, and which, for some specific reason, will not be visited by people with disabilities.
- “(b) It is important not to underestimate the extent to which people with disabilities are capable of overcoming those disabilities. The clear intention of the Building Act . . . is that buildings must not be constructed in such a way as to prevent people with disabilities from undertaking work which they are capable of undertaking or from visiting buildings which they are capable of visiting.”
- 5.4 I agree with that approach. In this case, I consider that people with ambulant disabilities may be expected to visit or work in the building as a whole. However, the raised storage area is to be used solely for storage, and the stairs to that area will therefore be used only by people carrying items into or out of storage up or down those stairs. Even if the stairs were accessible I consider that people with ambulant disabilities, solely because of their disabilities, would not be expected to use such stairs for that purpose.
- 5.5 Accordingly, I conclude that it is not necessary for the stair to the raised storage area to be accessible.
- 5.6 As to whether the stair is a common stairway or a service stairway, D1/AS1 says that a service stairway is “used, or intended to be used, infrequently by service personnel . . . for the purposes of maintenance or the movement of goods”. The acceptable solution does not define “infrequently” in terms of so many times over any particular period, and I cannot do so in this Determination because that would be to effectively amend the compliance document without following the procedure required by section 29 of the Act. I accordingly take account of the fact that as a matter of common sense the raised storage area will be used to store items that are required less often than items stored at ground level. I therefore consider that in this case the stair will be used “infrequently . . . for the purposes of . . . the movement of goods”. Accordingly, I conclude that the stair is not required to be a common stairway.
- 5.7 The stairs, as described in 2.3 above, comply with Figure 11 of D1/AS1 for a service stairway.

¹ See also Determinations 95/003, 95/006, and 95/008, and the Authority’s statement “Access and Facilities for People with Disabilities” published in *Building Industry Authority News* No. 23, June 1993.

6. Decision

- 6.1 In accordance with section 188(1) of the Act, I hereby determine that this particular stair, with a slope of 40°, 13 risers, a riser height of 196 mm, a tread of 240 mm, and a tread projection of 15 mm all in accordance with Figure 11 of D1/AS1, complies with clause D1 of the Building Code.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 9 November 2005.

John Gardiner
Determinations Manager