

# *Determination*

## *under the*

### *Building Act 1991*

#### **No. 97/003: Access for people with disabilities in the alteration of an office building with a carparking area beneath it**

##### **1. The matter to be determined**

- 1.1 The matter before the Authority is whether a lift should be installed in the alteration of an office building in order to comply with section 38 of the Building Act.
- 1.2 The Authority takes the view that it is being asked in effect to determine whether the altered building, without a lift, complies as nearly as is reasonably practicable with clause D1 “Access routes” of the building code (the First Schedule to the Building Regulations).
- 1.3 In making its determination, the Authority has not considered whether, after the proposed alteration, the building will comply with any other provisions of the building code.

##### **2. The parties**

- 2.1 The applicant was a Government department which leases part of the building, acting through a firm of designers, the other party was the territorial authority concerned.
- 2.2 Neither party requested the Authority to hold a hearing at which they could speak and call evidence.

##### **3. The building and the sequence of events**

- 3.1 The plans, photographs, and other information submitted to the Authority show that the rectangular building is on a sloping site at the intersection of two streets. What the applicant referred to as the ‘ground floor’ is approximately half-storey height above street level at the front of the building with a pedestrian ramp giving access from the street. The “ground floor” contains all facilities to which the public need access.
- 3.2 Beneath the ‘ground floor’ is a carparking area served by a vehicle ramp adjacent to the main entrance. There is no internal access from the carparking area to the ‘ground floor’.
- 3.3 Above the ‘ground floor’ is the top floor, which is served by stairs. That part of the top floor leased by the applicant contains offices, a seminar room, a staff room, and a storeroom. Also on the top floor are offices and a reception area for another tenant.

- 3.4 The carparking area, the 'ground floor', and the top floor each have a gross area of approximately 350 m<sup>2</sup>.
- 3.5 The applicant leases the 'ground floor' and approximately 65% of the top floor.
- 3.6 The applicant applied for a building consent for various comparatively minor alterations. The territorial authority considered that a lift was required by section 38 of the Building Act, and refused to issue a building consent unless a lift was installed.
- 3.7 The applicant disputed the need for a lift. However, so as to avoid any delay in commencing work while an application for determination was being processed, the applicant applied for a building consent for construction in two stages, the first stage being all alterations other than the installation of a lift, the second stage being the installation of a lift.
- 3.8 Having obtained that building consent, the applicant commenced work on the first stage and applied for this determination. In effect, therefore, the applicant is asking the Authority to determine that the building consent should be amended by deleting the requirement for a lift. If the Authority were to determine that a lift was not required, then the applicant would install a pedestrian ramp from the carparking area to the street at the side of the building. The carparking area is to include accessible parking positions for two cars.

#### **4. The submissions and the Authority's responses**

4.1 The applicant submitted that:

- (a) The public were not admitted to that part of the top floor leased by the department.

The Authority responds that it is the building as a whole which must be considered, not any particular tenancy.

- (b) The lift would cost an additional \$155,000 compared with \$145,000 for the other alterations.

The Authority responds that the cost of installing a lift is one of the sacrifices or disadvantages to be taken into account when deciding whether it is reasonably practicable to install a lift in all the circumstances of the case.

- (c) Installing a lift would reduce the available floor area, require renegotiation of the other tenant's lease, and involve considerable disruption during a construction period estimated at least 8 weeks more than for the other alterations.

The Authority responds that those are also sacrifices or disadvantages to be taken into account when deciding whether it is reasonably practicable to install a lift in all the circumstances of the case.

- (d) The building should be regarded as being two rather than three storeys high. As such the design occupancy of the top floor, applying Table A2 of Appendix A to Approved Document C4, is less than the minimum design occupancy of 40 above which a lift is required by clause D1.3.4(c)(iii) of the building code. Furthermore, the

top floor has a gross floor area of less than the minimum of 400 m<sup>2</sup> at which a lift would be required by clause 304 of NZS 4121. If a lift was not required for a new building then it clearly could not be required for an existing building.

The Authority agrees with this submission for the reasons set out in 5 below. Accordingly, from here on the ground floor will no longer be in inverted commas.

- 4.2 The territorial authority did not make any specific submissions, but its correspondence with the applicant indicate that it regarded the building as being three storeys high. The territorial authority also referred to the fact that the top floor would be used as a central government office and mentioned clause D1.3.4(c)(iv) of the building code, which in effect requires a lift to an upper floor which includes a public reception area of a government office.
- 4.3 From the plans submitted, the Authority understands that the top floor does not contain a public reception area for a government department, although it does contain a reception area for another tenant. The Authority understands that tenant to be such that clause D1.3.4(c)(iv) does not apply.

## **5. How many storeys?**

- 5.1 The building code does not include a definition of the word “storey”, and accordingly the word must be given its ordinary and natural meaning in the context in which it is used.
- 5.2 In this case, the Authority considers that the ordinary and natural meaning could be used to describe the building as having three storeys, one of them a carpark, or as being a two storey building with a carpark beneath it. Thus it is necessary to consider the context, in this case that of access for people with disabilities.
- 5.3 In the context of structural design, the building must clearly be treated as having three storeys. In the context of means of escape from fire it must clearly be treated as having two storeys.
- 5.4 In the context of access for people with disabilities, the carparking area is different in kind from the ground and top floors and need not be regarded as a storey of the building. As far as a user of the building is concerned, the carparking area might just as well be beside rather than beneath the building.

## **6. Conclusion**

- 6.1 The building is to be regarded, in the context of access for people with disabilities, as being two storeys high. It therefore complies with the relevant provisions of the building code without a lift provided that access to and from the carparking area complies with the building code.
- 6.2 Clause D1.3.2(a) of the building code requires an accessible route to be provided so that people with disabilities are able to “Approach the building from the street boundary or . . . the building car park”. The proposed access by way of the pedestrian ramp and the street and would be acceptable if the carparking area were beside the building. The Authority concludes that it is equally acceptable when the carparking area is beneath the building.

## **7. The Authority's decision**

- 7.1 In accordance with section 20(a) of the Building Act the Authority hereby determines that the building consent is to be amended by:
- (a) Adding to the first stage accessible parking for two cars in the carparking area and an accessible pedestrian ramp between there and the street, and
  - (b) Deleting the second stage, being the installation of a lift,

because after the proposed alterations, but without a lift, the building will comply with the provisions of the building code for access and facilities for use by people with disabilities.

Signed for and on behalf of the Building Industry Authority on this 29<sup>th</sup> day of April 1997

J H Hunt  
Chief Executive