

Determination

under the

Building Act 1991

No. 97/009: Access for people with disabilities in the alteration of a factory

1 THE MATTER TO BE DETERMINED

- 1.1 The matter before the Authority is whether a building consent issued for a proposed alteration of a factory building should be amended by the omission of a proposed accessible toilet.
- 1.2 The Authority takes the view that it is being asked in effect to determine whether it is reasonably practicable to provide an accessible toilet.
- 1.3 In making its determination the Authority has not considered whether, after the alteration, the building including the new wing will comply with any other provisions of the building code.

2 THE PARTIES

- 2.1 The applicant was the owner acting through a firm of consulting engineers. The other party was the territorial authority.
- 2.2 Neither party wished 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 building is of one storey and contains a factory and attached office with a total floor area of 3,320 m². The floor level of the office is approximately 600 mm above the floor level of the factory. The toilets are at the same floor level as the factory. There is level access from the outside to the factory, but access from the outside to the office is by stairs, as is access between the office and the factory and the toilet.
- 3.2 The toilet facilities are not accessible, meaning that they do not have features to permit use by people with disabilities.
- 3.3 The factory is used for the manufacture of polystyrene sandwich panel used in freezers, coolstores, and the like.

- 3.4 A building consent was granted for alterations consisting of:
- (a) Raising part of the roof to accommodate 5 m high polystyrene blocks;
 - (b) Extending the factory by 959 m² to give a total floor area of 4,279 m²;
 - (c) Constructing new kilns to process polystyrene; and
 - (d) Providing external ramp access to the office;
 - (e) Providing an accessible toilet by:
 - (i) Altering the existing toilets, and
 - (ii) Providing internal ramp access between the office and the toilets.
- 3.5 After tender prices of the order of \$25,000 were received for the proposed access and facilities for use by people with disabilities, an application was made to the territorial authority for the building consent to be amended by the omission of the alterations to the toilets and of the internal ramp (but not of the external ramp).
- 3.6 The territorial authority refused to grant the amendment. The applicant disputed that refusal and applied to the Authority for this determination.

4 THE LEGISLATION

- 4.1 The relevant provisions of section 38 of the Building Act read as follows:

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 -

- (a) Comply with the provisions of the building code for . . . access and facilities for use by people with disabilities (where this is a requirement in terms of section 25 of the Disabled Persons Community Welfare Act 1975), as nearly as is reasonably practicable, to the same extent as if it were a new building . . .
- 4.2 If the building concerned were a new building it would be required to be accessible, which would necessitate the provision of an accessible toilet and of level access or ramp access between different levels within the building and to the building from outside.

5 THE SUBMISSIONS

- 5.1 The territorial authority advised that the alterations for which the building consent had been issued had an estimated value of \$440,000, but made no other submissions.
- 5.2 The applicant submitted that it was not reasonably practicable to provide accessible toilet facilities in that the approximately \$25,000 cost of providing access and facilities for use by people with disabilities was not justified because:

- (a) A total of 39 people are employed in the building, of whom:
- 25, including forklift operators, and supervisors, are required to undertake tasks described as requiring “mobility, agility and strength and not suited to people confined in wheelchairs”,
 - 12, including the production manager, salespersons, managers, an estimator, and a draughtsperson, are described as requiring a “high degree of off and on site mobility . . . at places including construction sites” and
 - 2, the receptionist, and the typist, undertake tasks which the applicant considers can be undertaken by people with disabilities.
- (b) “The site of the proposed facilities for the disabled is remote from the alteration (i.e. the proposed facilities are not in the alteration).”
- (c) The building is essentially purpose-built for the manufacture of polystyrene panels by the current tenant under a long-term lease. “In the event of production of [such] panels discontinuing then it is highly probable that a change of use will be required and this will give the [territorial authority] the opportunity to review the facilities for the disabled in light of a new tenant’s operation.”
- (d) “A ramp at the office entrance will provide facilities for visitors to the reception area.”.

6 DISCUSSION

6.1 The people affected

6.1.1 The applicant did not inform the Authority as to whether the proposed 29% increase in floor area was expected to lead to any increase in the number of people employed in the building. For the purposes of the determination, the Authority assumes, in the applicant’s favour, that there will be approximately 39 people employed, although from the applicant’s submission it is possible that there could be significantly more. The Authority also notes that some of the people currently employed could well suffer temporary disabilities.

6.1.2 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 view¹ 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

¹ See 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* N. 23, June 1993.

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 and the Disabled Persons Community Welfare 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.

6.1.3 On that basis, the Authority considers that, contrary to the applicant's submission, significantly more than 2 employment positions in the building could be filled by people with disabilities.

6.1.4 Nevertheless, only a proportion of the 39 people employed in the building will be employed in positions which could be held by people with disabilities. That is a factor which the Authority takes into account, see Determination 97/002 in which the fact that very few people with disabilities were likely to be present on an upper floor was a factor in the Authority's determination that a lift need not be provided when the building was altered.

6.2 The location of the toilet facilities

6.2.1 The Authority considers that in section 38 the word "building" refers to the building as a whole, not merely to that portion of the building which the applicant wishes to alter. Thus the Authority considers it irrelevant that the toilet facilities and the internal ramp are "remote" from the factory extension.

6.3 Future change of use

6.3.1 The question is whether, taking account of all relevant current circumstances, it is reasonably practicable to provide access and facilities for use by people with disabilities in the building as a whole. It is irrelevant that much the same question might be asked in future if it was intended to change the use of the building. In any case, the Authority notes that there could be a change in the operation of the factory which would not amount to a change of use for the purposes of section 46 but which would be relevant to the need for access and facilities for use by people with disabilities.

6.4 External access to the office

6.4.1 External access to the office is required by section 38. The fact that it is to be provided does not affect the question of whether it is reasonably practicable to provide the accessible toilet facilities.

6.5 Cost

6.5.1 The Authority accepts that cost is a relevant factor to be taken into account.

6.5.2 The tendered costs are expressed as being “for the disabled access contract”, and it is not clear whether those costs include the provision of the external ramp as well as the internal ramp and the alteration to the toilet facilities. For the purposes of the determination the Authority assumes, in the applicant’s favour, that the cost of the internal ramp and the alteration to the toilet facilities will be approximately \$25,000, although from the applicant’s submission it is possible that the actual cost could be significantly less than that.

7 CONCLUSION

7.1 Whether it is reasonably practicable to install the relevant access and facilities for use by people with disabilities depends on whether the sacrifices required for upgrading are justified by the benefits resulting from upgrading.

7.2 The only identified sacrifice is the cost of \$25,000 in a total alteration cost of \$440,000. The benefits are that people with disabilities would be able to work in a building of 4,279 m² floor area in which at least 39 people will be employed.

7.3 On balance, the Authority concludes that the cost is reasonable in relation to the benefit and therefore that the provision of an accessible toilet is reasonably practicable for the purposes of section 38.

8 THE AUTHORITY'S DECISION

8.1 In accordance with section 20(a) of the Building Act the Authority hereby confirms the territorial authority’s decision not to amend the current building consent by the omission of the proposed accessible toilet.

Signed for and on behalf of the Building Industry Authority on this 15th day of September 1997.

J H Hunt
Chief Executive