

Building Regulations (Northern Ireland) 2000 (as amended)

Appeal against a Rejection of Plans

The following is a summary of the Department's determination of an appeal against a rejection of plans made under Article 17 of the Building Regulations (Northern Ireland) Order 1979 (as amended).

Appeal AP03/10 – Regulation R2: Access and use as applied by Regulation A9 (Application to a material change of use)

The proposed work

The appellant is proposing to alter, extend and materially change the use of a building.

Regulation R2 Access and use

Regulation R2, as applied in the circumstances of the work by Regulation A9: Application to material change of use, states –

Reasonable provision shall be made for people to have access to, into, within and to use a building and its facilities:

Provided that in a dwelling this requirement shall be limited to the entrance storey or, where that storey contains no habitable room, to the principal storey.

The council's decision

The district council rejected the plans as, in their opinion, the submission did not demonstrate that the requirements of regulation R2 were satisfied. The Council's Notice of rejection of plans stated "Regulation R2. A suitable passenger lift is required to facilitate access to the upper storeys."

The appellant's grounds for the appeal

The appellant produced an appeal statement outlining the grounds to support the case that the proposals meet the requirements of Regulation R2. This statement is précised as follows –

- "The property is a three storey end terrace building with a two storey rear return. The buildings nature is long and narrow which currently occupies the site fully."
- "This project gives full accessibility throughout the ground floor of the building and facilitates both patients and staff should any of them be disabled."
- "The building does not have a lift due to the restrictions of the available space and requirements of facilities such as X-Ray room and de-contamination rooms."

- "A lift car to serve the three floors in the existing front section of the building would call for re-organisation of all of the floor layouts."
- "It would impinge on and restrict the free space in the reception area."
- "It would affect the layout of the Waiting Area and Surgery 3 at first floor level with reductions in usable space."
- "It would not allow access to the rear section of the building as the floor level here is 400 mm below the level in the front area."
- "We feel that to make all floors, 3 at the front and 2 at the rear, fully accessible would require either the installation of 2 lift facilities or the rebuilding of the back return to eradicate the change in first floor level from front to rear."
- "Either solution has prohibitive cost implications and serious restrictions and therefore reductions in floor space."
- "No visitor or employee will be disadvantaged in their use of this practice. Full accessibility will be achieved throughout the entire ground floor. Given the constraints of the existing building an acceptance must be considered that full access for all cannot be reasonably provided."
- "Due to the layout of the existing building (long and narrow) provision of a passenger lift will reduce the usability of the accommodation on each of the three floors."
- "The installation of a lifting device will have limited benefits to those requiring access."
- "The anticipated frequency of use of a lifting device, if installed, would be negligible given that all facilities are already accessible at ground floor level."

Department's consideration of the appeal

In coming to a decision on this appeal, the Department considered –

- the application of A9 Application to material change of use – therefore the application of Part R to the proposals;
- the cases submitted by both the district council and the appellant;
- the plans indicating the development proposals;

Conclusion

From note 7 to the Table to Regulation A9: Application to material change of use, in this case as independent access is not offered as a solution, there must be suitable access through the building to that part materially changed in use. The provision of "suitable access" means that the access through the building should meet the requirements of Regulation R2.

Regulation R2 requires reasonable provision for people to have access to, into, within and to use a building and its facilities. The regulation is focused on all people and not solely disabled people.

In the circumstances of this case and the application of Part A and Part R –

- a means of access incorporating an existing private stair that containing 2 no. straight flights each having 6 no. rises and a winding flight with 6 rises, allowing the stair to turn through 180°, cannot be considered suitable access to a storey to which the public have access.
- a means of access incorporating an existing private stair containing 2 no. straight flights and a winding flight, may be considered suitable access to an existing storey containing ancillary storage to which the access is infrequent and restricted to members of staff.

Decision

The detailed examination and consideration of this case has determined that -

- In relation to the first floor public area, Regulation R2 (Access and use) as applied by Regulation A9 (Application to a material change of use) the drawings failed to demonstrated that access to the first floor was provided by suitable access through the building. In relation to this storey, the Department confirmed the decision of the district council to reject the plans.
- In relation to the second floor ancillary storage area, Regulation R2 (Access and use) as applied by Regulation A9 (Application to a material change of use) the drawings demonstrated no contravention in relation to access to this storey from the first floor. Insofar as it referred to this storey, the Department directed the district council to withdraw the Notice of Rejection of Plans