

BUILDING ACT 1984 - SECTION 39

APPEAL AGAINST REFUSAL BY THE BOROUGH COUNCIL TO RELAX REQUIREMENT M2 (“ACCESS AND USE”) OF THE BUILDING REGULATIONS 2000 IN RESPECT OF THE SQUASH COURTS ACCESS DOORS AT A LEISURE CENTRE

The building work and appeal

3. The papers and plans submitted indicate that the building work to which this appeal relates is a recently completed three storey leisure centre containing swimming pools, a gym and multipurpose rooms, sports hall and two squash courts, on lower ground, ground and first floors, with a floor plan area of approximately 3,600m².

4. The two squash courts – which are the subject of this appeal – are located back-to-back at the southerly corner of the ground floor of the building. They are approached by an approximately 1.2m wide internal sloping corridor at a gradient of 1:21 parallel to the long axis of the courts and are constructed of three solid walls with the fourth rear wall of proprietary glass construction. These rear, shorter, walls are separated by a corridor which is also approximately 1.2m wide, leading at 90 degrees from the access corridor to a fire escape exit. All four court walls are used as rebound surfaces in the game and the rear glass wall also provides access to, and views into, the court. The clear width of the door in each glazed screen installed provides a 640mm clear opening. The entire squash court area, including the long access corridor and the shorter access and escape corridor, is open to a void above, below the roof level.

5. The building work for the leisure centre development was the subject of a full plans application which was approved on 28 March 2002. Following completion of the work, the Council issued a “Certificate of Partial Completion”, dated 20 March 2006, but this specifically excluded the squash courts. Following discussions and exchanges of correspondence with the Council, in relation to the width of the door openings in the completed squash courts, you applied for a relaxation of Requirement M2 of the Building Regulations 2000 on 20 June 2006. The Council refused your application on 10 July 2006, as it was not considered appropriate in this case, and it is against this refusal that you have appealed to the Secretary of State.

The appellant’s case

6. In support of your relaxation application and appeal, you have provided a copy of an 'Access Statement' prepared by This responds to the Council’s statement that “The clear opening width of the squash court doors is required to be a minimum of 750mm” in accordance with the guidance in

paragraph 2.4a of Approved Document M (“Access and facilities for disabled people” – 1999 edition), to enable wheelchair users and other disabled people who use mobility equipment to access the squash courts.

7. The Access Statement "sets out to show" that providing doors to the squash courts with a clear opening of 750mm would be of limited benefit and that the courts were designed in accordance with the briefed requirements, including that of Requirement M2 of the Building Regulations and that of the sport's governing body, England Squash, and Sport England. Issues relating to squash for people with mobility impairments and court design are considered in detail. The statement concludes that the conventional squash courts in this case appear to be fit for purpose, but in their current form they would not be suitable for people with mobility impairments to use due to the safety hazard of low level glazing and the inadequate door opening width. It also questions whether the singles squash courts would be large enough to accommodate two disabled people using mobility equipment, such as wheelchairs and suggests that this would require further research to establish.

8. You have also made the following points to support your case:

- (i) The squash courts are designed for singles squash played in courts meeting the requirements of the World Squash Federation. The glazed screen and door which forms the rear wall is a standard product designed and provided by a contractor specialist in the provision of squash courts and that a number of similar screens are installed in this country in buildings which have building control approval.
- (ii) The Council's comments relating to the "client brief" would appear to be judgements on briefing issues which are not the Council's concern and are not in line with advice given by the sport's governing body – England Squash.
- (iii) The Council refers to Table 2 of the latest Approved Document M (“Access to and use of buildings” - 2004 edition) which in turn refers to the Sport England document “Access for Disabled People” “for specific guidance on the effective clear widths of doors in sports accommodation”. Although this Approved Document was not effective at the time your Building Regulations application was deposited, these documents were referred to extensively in the design of the building. Your understanding is that squash is purposely excluded from the list of accessible sports in the Sport England publication due to misgivings on issues as described in your Access Statement. You believe that the building as constructed allows proper access to the squash courts for those playing the game and that there would be issues beyond those of door width if the courts were to be used by disabled players.

9. You also commented further in response to the Council's representations to the Secretary of State (see below). You reiterate that your

client's brief required a glass back wall screen to the squash courts constructed by a specialist squash supplier. These screens incorporate a standard access door for players and provided in line with "The England Squash (The Squash Rackets Association) Technical Information Sheet Number 6" (ESTIS 6). You refer to the need to give consideration to other requirements for glass walls set out in the World Squash Federation Court Specification and cite paragraphs 6.2 – 6.4 of that document. You believe that the use of wheelchairs would be detrimental to the glass screen and door and other elements of the squash courts through impact damage, and that this needs to be considered along with the safety of the player in the wheelchair.

10. You acknowledge that England Squash supports the idea in principal of people with mobility impairments playing the game. However, you believe that modifications would be required to allow successful, safe play from wheelchairs, including using a larger (doubles) court, as referred to in your Access Statement, which cannot now be incorporated in the building. You comment that as the technical guidance from governing bodies is not specific where disabled use is concerned and, with regard to your own research with the Access Consultant, it would be unreasonable to assume that you would have designed squash courts for disabled use without it being a brief requirement. Your view was that had this been the case, you would have had to consider if a glass back was the right thing to use, amongst many other considerations.

11. You conclude that given the issues of: safety surrounding a glass screen which is provided as effectively a standard component; the lack of a formal structure to any game of squash that may be played from wheelchairs; and the further considerations in court size; you do not believe that wheelchair use of the squash courts can be offered by the operator and that it would therefore be reasonable to relax Requirement M2 of the Building Regulations in relation to the opening width requirement of the doors to the squash courts.

The Council's case

12. The Council has made the following points to support its case for refusing your relaxation application:

- (i) The building work was subject to Requirement M2 ("Access and use") of the Building Regulations 2000 and the guidance in the 1999 edition of Approved Document M (i.e. excluding the amendments to Part M in May 2004 made by SI 2003/2692 and the accompanying Approved Document M 2004 edition - see also paragraph 14). As such, reasonable provision for disabled people to gain access to, and to use, the building is required.
- (ii) The Council raised the issue of the squash courts door widths with you and the developer at various stages in the project, and requested that all doors – including those of the squash courts - provide a clear opening of 750mm wide. Despite receiving

confirmation that this would be addressed, full details were not submitted and the issue of non-compliance was noted during a site inspection once the doors had been installed.

- (iii) The Council contacted both the English Federation of Disability Sport and England Squash who confirmed that wheelchair users are able, and do, play squash. England Squash raised the issue of potential hazards with glazing but confirmed that access for wheelchair users should be facilitated. The technical guides available are not specific to disabled access issues, however the guidance published by England Squash and the World Squash Federation state that a door larger than the 826/900mm leaf they recommend respectively may be required for disabled access.
- (iv) The Council has considered the Access Statement you have submitted but cannot see any compelling argument why the doors should not have provided the minimum clear recommended opening of 750mm in Approved Document M 1999 edition, which was applicable at the time of your Building Regulations application.
- (v) The Council notes that the main argument in the Access Statement for not providing reasonable access is due to the fact that squash is not specifically included in the Sport England guidance "Access for Disabled People", which is referred to within the 2004 edition of Approved Document M. However, this guidance recommends door widths with dimensions in excess of those provided within the 1999 edition of Approved Document M to ensure they are more appropriate to the type and scale of the facility.
- (vi) In the Council's view, although the demand for the squash courts may not be high, the development is a new public leisure centre available for all members of the public and as such a reasonable level of access should be provided to anyone, in whatever capacity they need, who wishes to use the facilities. The squash courts may be designed to competition standards, but they are not provided exclusively for that use. While wheelchair squash may not be a recognised sport at this time, individuals may wish to play at a recreational level either individually or with a companion.
- (vii) The Council considers that while there may be issues regarding the logistics of disabled people playing squash, these are outside the scope of the Building Regulations and are not for the Council to determine.

The Secretary of State's consideration

13. The Secretary of State notes that you suggested in your original appeal letter that you are appealing against the decision made by the Council not to relax the requirements of Approved Document M 1999 edition, paragraph 2.4a, which requires that "an internal door contains a leaf which provides a

minimum clear opening of not less than 750mm”, in relation to the access doors to the squash courts.

14. However, the guidance in Approved Documents cannot be relaxed, as the powers in Sections 8 and 39 of the Building Act 1984 provide for applications to local authorities for the relaxation or dispensation of a requirement contained in the Building Regulations (as enabled by regulation 11 of the Building Regulations 2000) and an appeal to the Secretary of State against refusal. Although the Council did not make it clear, your appeal therefore relates to the Council’s refusal to relax Requirement M2 of the Building Regulations 2000 (excluding the amendments to Part M made by SI 2003/2692), i.e. that “Reasonable provision shall be made for disabled people to gain access to and to use the building”.

15. Turning to the case in question, it is clear to the Secretary of State from the papers submitted that in 2002/03:

- the Council drew attention to the applicable requirements of Part M (“Access and facilities for disabled people”) of the Building Regulations 2000 - i.e. that the building should make reasonable provision for access and use by disabled people;
- the Council made clear its view that the appropriate means of achieving this was by compliance with the guidance in Approved Document M 1999 edition, i.e. including the requirement that all internal doors – including the squash court doors - should have a clear opening width of 750mm; and that
- your client and their representatives indicated their intention to comply.

16. However, the Council advises that full details of the squash courts door proposals and dimensions were not subsequently submitted, and the issue of non-compliance was noted on site in February 2006, once the doors had been installed. It appears that only then did your client issue an Access Statement, which sought to justify the dimensions of the doors as constructed, i.e. with a 640mm clear opening.

17. The Secretary of State acknowledges that reference to an Access Statement is not called for by the guidance in Approved Document M 1999 edition, but notes your contention that Approved Document M 2004 edition, while not in force in relation to this case, has been referred to extensively in the design of the building. She therefore considers that the arguments made in the Access Statement are relevant to this appeal, and will consider them.

18. When commenting on the Council’s submission to the Secretary of State you stated that the client’s brief required a glass back wall screen to the squash courts which incorporates a standard access door for players in line with ES/TIS 6. You also suggested that when considering the door width, attention must also be given to other requirements for glass walls set out in

the World Squash Federation Court Specification (WSFCS), citing specific paragraphs.

19. The Secretary of State has consulted with the relevant governing bodies regarding the information sheets you refer to. It is noted that ES/TIS 6 only specifies the height of the door, not the width, which is specified in ES/TIS 2 as a minimum of 860mm, or greater where required for use by disabled wheelchair players. The WSFCS paragraphs you cite relate to the strength of the court walls and do not appear to have any relevance to door widths. Where the WSFCS does deal with door widths it states (paragraph. 7.4):

“The door shall not normally be more than 900mm wide and 2130mm high. Note should be taken that local conditions may require disabled access greater than this which should be referred to manufacturers when transparent materials are being used.”

It is therefore clear to the Secretary of State that if the guidelines given by the World Squash Federation and England Squash were followed they would enable a clear door opening of at least 750mm to be achieved.

20. You also question the lack of a formal structure to any game of squash that can be played from wheelchairs and raise concerns about safety. These points are discussed in detail in the Access Statement, to which the Secretary of State now turns.

21. Although the Access Statement refers to a web search which found examples of squash being played by wheelchair users in other countries, it stresses the lack of reference to, and guidance for, squash for disabled people in authoritative documents. The Statement draws attention to a number of issues, including: the size of sports wheelchairs, which typically require clear door opening widths of 1100mm; to the possible need for a doubles court to accommodate the greater space required for manoeuvrability by two wheelchair users; and to the potential dangers of impact on glass walls of wheelchairs and other mobility equipment.

22. The Secretary of State accepts that the game of squash may be in its infancy as regards provision for disabled people, but takes the view that if they are unable to gain access to squash courts it is unlikely to grow at all. The point here is very much that, although there may be difficulties for sports administrators and facilities providers in making reasonable provision for disabled people, it is important that physical obstacles that could have been avoided are not put in the players' way.

23. The Secretary of State considers the point made in the Access Statement regarding the size of sports wheelchairs to be significant, and accepts that (unlike the 2004 edition of Approved Document M) this was not generally reflected in the 1999 edition of Approved Document M. However, a door opening of at least 750mm as recommended in 1999 would permit a wheelchair user to gain access to a squash court to transfer, once inside, to a

sports wheelchair assembled in-situ which, while not ideal, is better than no access. It would also permit easier access for players with other mobility impairments. The question of whether a doubles court would be more appropriate for wheelchair users than a singles court is a matter for the sport's governing bodies to determine.

24. The Secretary of State also wishes to comment about the choice of a glass back wall screen to the squash courts. The primary reason for choosing a glass back wall, as ES/TIS 6 makes clear is that "...it provides the opportunity for many more spectators to view the play compared with the traditional gallery." But, in this case, on the evidence of the plans submitted, there appears to be no gallery at all at first floor level and only a small number of possibilities for viewing positions at ground floor. It is noted that your appeal submission does not provide justification for the choice of a glass back wall, other than the client's brief, and it is not clear if other options were considered which could have addressed the width of the squash court door openings and the safety concerns you have raised about glass walls.

25. The Secretary of State therefore concludes that a sufficient case has not been made to relax Requirement M2 of the Building Regulations in this case and considers that reasonable provision should be provided for all people to access and use the facilities, including the squash courts, within what is a newly erected building. It is recommended that both parties should give further consideration to achieving what would be reasonable in the circumstances to achieve compliance.

26. Finally, although it does not have a bearing on her consideration of this appeal, the Secretary of State would also like to draw attention to other legislation which should be borne in mind by the facility provider. As the guidance in Approved Document M 2004 edition explains, the duty to make reasonable adjustments set out in Sections 21(2)(a), (b) and (c) of the Disability Discrimination Act 1995 came into force on 1 October 2004. It applies to all those who provide services to the public irrespective of their size. It requires service providers to take reasonable steps to remove, alter or provide a reasonable means of avoiding a physical feature of their premises, which makes it unreasonably difficult or impossible for disabled people to make use of their services.

27. An exemption from the above duties has been provided by regulations made under the 1995 Act - the Disability Discrimination (Service Providers and Public Authorities Carrying Out Functions) Regulations 2005 (SI 2005/2901). The regulations provide that, if a physical feature accords with the relevant objectives, design considerations and provisions of whichever edition of Approved Document M was in force in relation to the construction of those features, the service provider will not have to make adjustments to that feature if ten years or less has passed since it was constructed or installed. By implication, a physical feature of a building which does not so accord, will not benefit from the protection offered by the exemption and, if challenged, the service provider may need to consider making reasonable adjustments to that feature before the period of ten years has elapsed.

The Secretary of State's decision

28. In coming to her decision, the Secretary of State has given careful consideration to the particular circumstances of this case and the arguments presented by both parties. She is concerned that wherever feasible every effort should be made to achieve compliance with the requirements of Part M.

29. As indicated above, the Secretary of State has concluded that it would not be appropriate to relax Requirement M2 ("Access and use") of Schedule 1 to the Building Regulations 2000, in relation to the width of the door openings in the squash courts in this case. Accordingly, she dismisses your appeal.