

Lift case highlights enforcement farce

Rick Riding, Principal Building Control Surveyor at Blackpool Borough Council, highlights some of the farcical legal constraints local authorities face in attempting to enforce the Building Regulations, in this case a change in use to a building



The goods lift at the centre of the case

The case in question involves an existing four-storey warehouse in Blackpool that changed its use to form a shop under the Building Regulations 2000, as amended.

Building Control considered the existing goods lift with manual doors to be unacceptable in achieving the requirements under Part M of the Building Regulations.

The Council, as a last resort, served a notice under Section 36 of the Building Act

requiring the owner to alter the existing goods lift or provide a vertical passenger lift. An appeal to the notice was brought to the Magistrates Court and the following decision made:

The District Judge concluded that the Notice was inappropriate. Section 36 requires the owner to:

- a) pull down or remove the work or,
- b) if he so elects, to effect such alterations in it as may be necessary to make comply with the Regulations.

“BUILDING CONTROL CONSIDERED THE EXISTING GOODS LIFT WITH MANUAL DOORS TO BE UNACCEPTABLE IN ACHIEVING THE REQUIREMENTS UNDER PART M OF THE BUILDING REGULATIONS”

He concluded the work would have to be substantive to use Section 36. This means that if there was no physical work carried out then there is no work to pull down, remove or alter.

With the change of use in question, no work had been carried out to the lift and therefore no contravention existed, according to the Judge. He dismissed the fact that the building as a whole had undertaken building work to change the use of the building.

The Council argued that it

was “absurd” for a local authority to have no power to remedy a contravention of the Building Regulations.

The Applicant had argued that a more appropriate action would be prosecution or injunction. This, however, would not remove the contravention. In this case, the six-month time constraint for prosecution had passed and an injunction would only be likely to succeed if the concern was a life safety issue.

The Judge summarised that the primary legislation (Building Act 1984) was probably written at a time

when a change of use under the Building Regulations did not require prescriptive physical work to be undertaken for premises to comply with the Building Regulations, and the Act has not kept pace with the rapidly changing Building Regulations.

The Council’s solicitor commented: “There is a big question mark on whether or not we could have prosecuted here in any event. If the applicant’s arguments and District Judge’s comments are correct, then the same argument would have to apply for any prosecution regarding

“WITH THIS CHANGE OF USE IN QUESTION, NO WORK HAD BEEN CARRIED OUT TO THE LIFT AND THEREFORE NO CONTRAVENTION EXISTS, ACCORDING TO THE JUDGE”

the lift. As no works were done to the lift, they are possibly open to use the same arguments.”

What is absurd is that with the recent wealth of legislation, including the Disability Discrimination Act and Approved Document Part M, to help provide an inclusive community and provide access to all, Blackpool is now left with a newly formed shop which does not comply with the Building Regulations, and yet the local authority is powerless to insist on compliance.

Blackpool celebrates Charter Mark success

Blackpool Council’s Building Control Department has been awarded Charter Mark status for excellent public service.

The department was praised as a “model of public service” by assessors: it uses resources effectively; responds to customer’s needs; has helpful staff; and readily accessible information.

Assessors also praised the strong team approach, and its emphasis on customer care.

Charter Marks are awarded by an independent panel of judges, working on the recommendations of experienced Charter Mark assessors.

They are awarded only after a rigorous assessment by accredited assessors, including a site visit to witness and assess the service being delivered.

Cllr Eddie Collett, Blackpool Council’s Deputy Leader, with responsibility for Building Control, said: “We can’t underestimate the



Pictured above (left to right) are members of the Building Control team at Blackpool: Dave Snelson, Paul McNeill, Adrea Robinson, Rick Riding, Alan Taylor, Michelle Wilson, Dave Clarke, Chris Frost, Dave Mason

importance of meeting the public’s needs, and it’s great that dedicated staff are going the extra mile.

“Building Control is an area that’s continually evolving and recognises

the need for change. Charter Mark status officially recognises the hard work of the staff in bringing about continuing improvements to the service.”