

## **Mechanism and Criteria for Varying the Requirements of Section 72 of Building (Planning) Regulation**

### **Purpose**

This paper provides information on the mechanism and criteria for varying the requirements of section 72 of the Building (Planning) Regulations (B(P)R).

### **Background**

2. Section 72 of the B(P)R sets out the requirements for the provision of access to and use of buildings and their facilities for persons with a disability which should be provided in the buildings concerned.

3. Section 84 of the Disability Discrimination Ordinance stipulates that a public authority which has the power to approve building works shall not, in respect of those works, approve building plans, whether for a new building or for the alteration or additions to an existing building unless the person seeking approval satisfies the public authority that such access as is reasonable in the circumstances to the building or premises will be provided for persons with a disability. The said section also stipulates that in considering whether reasonable access will be provided, the public authority may take into account the following:

- (a) whether it is practicable to provide such access within the curtilage of the building, bearing in mind the physical location and immediate environs of the building; and
- (b) whether providing such access would impose unjustifiable hardship on the person seeking approval or on any other person.

### **Variation of Requirements**

4. There are special circumstances where proposals for building works are unable to meet the full requirements specified in the section 72 of the B(P)R . Variation of the requirements will be considered by the Building Authority (BA) on the individual merits of each case.

5. In considering applications for variation of the requirements, the BA has established an advisory committee, the Advisory Committee on Barrier Free Access (ACBFA), to provide a forum for the deliberation and discussion of the proposals. The membership of the ACBFA is at

Appendix A. The BA will take into account the advice given by ACBFA in making decisions on the applications. In arriving at an advice, the ACBFA will consider the following:

- (a) the standards and requirements contained in regulation 72 of the B(P)R:
- (b) whether it is practicable to provide such access within the curtilage of the building, bearing in mind the physical location and immediate environs of the building; and
- (c) whether providing such access would impose unjustifiable hardship on the person seeking approval or any other person.

6. While an application for variation of the requirements in regulation 72 of the B(P)R would be considered on a case by case basis taking into account the merits of the case, the ACBFA over the years has established the following factors in considering such applications:

- (a) whether there is any topographical constraint;
- (b) whether the works for the provision of facilities for persons with a disability have to be carried out in an area to which the applicant has no control;
- (c) whether there is structural constraint of the existing building (e.g. presence of structural ground beam rendering the provision of an access ramp not possible);
- (d) whether there is a functional need for the design and whether persons with a disability are expected to have access to the premises (e.g. guard tower, railway maintenance workshop);
- (e) whether the provision of facilities for persons with a disability in a very small site would render the proposed works not feasible; and
- (f) whether the proposed alteration and addition works is minor in nature. (e.g. removal or addition of partition wall).

7. As practices established over the years, the BA will consider waiving or varying the requirements for the provision of facilities for persons with disabilities in the following types of buildings as these buildings are not buildings to which persons with disabilities may reasonably be expected to have access or full compliance with the

specified requirements would have imposed unjustifiable hardship to the applicants.:

- (a) buildings for plant rooms or unmanned electricity substations with no ancillary office accommodation;
- (b) godowns, provided that access and facilities for persons with disabilities are provided at ground floor level and to any office accommodation;
- (c) purpose-built specialised industrial buildings where the manufacturing process is hazardous and unsuitable for persons with disabilities;
- (d) the top floor of a building without communal facilities and not provided with a lift due to a height restriction imposed by the Hong Kong Airport (Control of Obstructions) Ordinance (Cap 301);
- (e) buildings served by steep access road/ driveway.

8. In addition, the BA will also consider accepting the following alternative provisions:

- (a) keypad control device for lifts as a replacement of conventional lift buttons in high-rise buildings; and
- (b) vertical lifting platform in lieu of a ramp or disabled lift.

### **Cases considered by ACBFA**

9. Since 2005, the ACBFA has considered a total of 173 cases. A breakdown on the types of premises and the acceptance rate is at Appendix B.

**Buildings Department**  
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## **Appendix A**

### Membership of ACBFA:

- An Assistant Director of the Buildings Department
- A representative of the Commissioner for Rehabilitation
- A representative of the Director of Architectural Services
- An authorized person appointed by the Director of Buildings
- Three representatives nominated by the Commissioner for Rehabilitation representing the physically handicapped, visually impaired and hearing impaired respectively
- A lay person appointed by the Director of Buildings
- A Senior Building Surveyor of the Buildings Department
- A Building Surveyor of the Buildings Department acting as the secretary of the committee.

## Appendix B

### Cases considered by ACBFA since 2005

Type of Building	Nos. of Cases	Accepted cases	
		No. of cases	%
Commercial	85 (8)*	68 (5)*	80%
Industrial	11	7	64%
Institutional	30	18	60%
Domestic	11	7	64%
Others	36	24	67%
Total	173	124	72%

\* Restaurant cases in brackets