
Original Article

The refurbishment of small-scale retail premises in relation to the Disability Discrimination Act 1995

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ABSTRACT In the area of refurbishment of properties problems can often be encountered in conforming to the requirements of the Disability Discrimination Act (DDA). The aims of this research were to focus on the DDA's impact on refurbishment of small-scale retail premises and to examine implementation problems encountered in the process. The analysis examined pre-contract, contract and post-contract occupancy phases of small-scale retail premises using three case studies. This study revealed that risk of emergence of problems can increase because of: projects location being on sloping site, lack of space, incomplete DDA design work, lack of architect's involvement. Subcontractors', labourers' and operatives' knowledge on the Part M requirements of the Building Regulations can help in coping with DDA implementation difficulties. Architect's and contractor's involvement in design stage is observed to facilitate the DDA work of the project and determination of the scope of 'reasonable' changes. The success of refurbishment process can influence the success of DDA regulations' implementations. The readers will benefit from this paper by getting an idea of possible difficulties which can be encountered during the execution of similar projects.

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INTRODUCTION

As defined by the Disability Discrimination Act (DDA) of 1995 early, 10 million people in the United Kingdom are disabled. It was estimated by

the Corporate and Social Responsibility Organization that in 2004, 15 per cent of the UK population classed themselves as being disabled. Therefore, the issue of disability and how it is catered for the needs of disabled people in the built environment has developed into how inclusive access can benefit everyone.

LITERATURE SURVEY

Disability discrimination legislation is a relatively new concept. In the United Kingdom, the first legislation, The Chronically Sick and Disabled Persons Act (1970) sought to require a degree of accessibility to public places for people regarded as disabled. In 1981, the British Council of Organizations of Disabled People was established. The main aim of these organizations was to campaign against the discrimination they suffered and lobby the government to address their concerns through legislation. DDA, which is the cornerstone of disability legislation in Britain, was passed in 1995. The act was a watershed in disability legislation and public awareness of what constitutes disability. However, it was criticized because of the definition of disabled person. According to the DDA of 1995, disabled person is 'someone who has a physical or mental impairment that has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities'. This medical definition of disability has however been widely criticized as putting the disabled person as being the abnormal person in a normal society. It has been suggested that it always puts disabled people as in the minority and effectively makes them second-class citizens (Imrie, 2000).

The Disability Rights Commission Act of 1999 led to the establishment of the Disability Rights Commission (DRC) in April 2000. The creation of the DRC was to strengthen the legislation by having a body that could publicize the Act. In addition, the DRC's role was to advise the government on the workings of the disability legislation principally the DDA. It also held the power to investigate and assist in bringing civil cases to the courts and so assist in developing a set of case law precedents.

The effects of DDA on buildings

There are two principle sources of practical guidance 2004 Building Regulations Approved Document M and BS 8300:2001 Design of Building and their approaches to meet the needs of disabled people – Code of practice. Part M is the regulatory guidance that is generally used by the construction industry. It is in the area of new build that the DDA and Part M have had the most impact. All new buildings have been designed with Part M or another document such as *Access by Design* or BS8300:2001 *Designing for Accessibility produced by the centre for Accessible Environments*. Part M is a workable achievable document and is used throughout the construction industry as the standard. However, the DDA and Part M 2001 have not made any significant impact on refurbished buildings. The decision to incorporate 'reasonable adjustments' when an existing property was being refurbished was taken even though the government at the time was concerned with cost implications to building owners. Since 2004 and the new Part M



including refurbishment, there has been a steady improvement in the existing built environment which is the majority of the buildings in the United Kingdom. The key areas of debate on the impact of the DDA regulations on refurbished buildings are: the lack of impact on the existing stock by waiting for refurbishment or a complaint before something is changed and the varying extent of change when making reasonable adjustments to physical features. According to the study by the DRC into access to services as experienced by disabled customers, when asked about complaining only 10 per cent said they had complained in 6 months and only 11 per cent of those who did complain saw any significant difference (DRC, 2003). As Male and Spiteri (2005) point out the statement of 'reasonable adjustments' is a matter of uncertainty. Barnes and Mercer (2006) argued that the DDA is failing in particular in relation to accessibility in the built environment because of the term 'reasonable' and the vast variety of poor to excellent provision for disabled access that it allows in the built environment.

Factors affecting the progress of the DDA regulations on buildings are mainly related with enforcement and funding:

- DDA is an act under civil law and it is not enforced by any public body. It is for the individual to bring to the attention of the courts the discrimination they feel they have suffered and the wrong redressed. The act is a general one that guides rather than enforces. It relies on case law to define its boundaries by private legal action by individuals. Day (2005) and Prideaux (2006) questioned the 'rigor and consistency' of enforcement when left to building control officers and consultants. It has no certificate process where the provider to show statutory compliance.
- The lack of funding to assist with the cost of disabled works in new build and refurbishment has limited the impact of the DDA particularly in the area of refurbished buildings. Prideaux (2006) states that the limited use of tax relief is simply inadequate. He suggests that the European Union could show its commitment to improving their commitment to equal rights for disabled people by providing a European grant to improve access to buildings.

The effects of disability discrimination regulations on retail outlets and their refurbishment

In 2004, the DRC commissioned a research project from the JMU Partnership and RNIB UK to provide a snapshot across four city/town centres to assess the barriers to services for disabled people before the 2004 Part iii DDA. Their findings revealed that in this study the retail sector had the most barriers to disabled people. The study also found that the retail sector had the least guidance to date of all the service providers with the exception of a very small number of the largest retailers.

Wall (2004) points out that the Federation for Small Business, with a membership of 185 000 had reported that 42 per cent of their members

had performed nothing to comply with the act despite potential fines of up to £50 000. Goss and Goss (1998) reported in the results of their survey that only 5 per cent of people in SME's of 20 employees or under felt that they were well informed about the DDA with 17 per cent reporting that they had never heard of it. In the study, the lack of awareness was attributed to some degree by the fact that they were excluded from the legislation as they had less than 20 employees.

Factors determining the level of impact of the DDA and their effects are briefly explained as follows:

- *Position and size of stores:* Larger stores have greater financial resources and can afford to get access statements done which will assist them in complying with the DDA. However, even in larger stores, it is sometimes impossible with older buildings to change some physical features. Large stores are expected to comply with Part M to a greater extent. The smaller retail businesses that are the most difficult for disabled customers to access are often situated in already traditional, established shopping centres. As Bromley *et al* (2007)'s study emphasizes the older city and town centre shopping areas where there are smaller shops provide often the most difficult shopping environments for wheelchair bound customers. These shopping centres as well as having difficult to access premises usually already suffer from poor access outside of the individual shop environment because of the lack of dropped kerbs, narrow pavements, non-pedestrianized areas and poor or distant parking.
- *The threat of civil action:* The DRC received 15 934 queries regarding service providers and had 25 000 potential cases against service providers between 2004 and 2007. The data for retail providers have not been published separately. In 2003, the DRC called for equality tribunals that could deal with discrimination cases in relation to service providers more quickly and efficiently than the court system. This has not materialized. A sizeable number of larger organizations engage in voluntary binding agreements with DRC which allows them to progressively adjust their premises in line with the requirements.
- *The cost of DDA compliance to retailers:* Generally, the costs for larger stores and chain stores are higher than for smaller establishments. The criteria for deciding what was reasonable depend upon the assets of the owner, the size of the store and how practicable the adjustments are.
- *Impact on profits:* Businesses that make their services open to all are benefiting from fair access laws and from disabled shoppers who have a disposable income estimated at £80 billion a year. The title 'Real consumers just are not normal' of Mueller (1990)'s paper demonstrates this point. Burnett (1996) stresses the short-sighted nature of the retailing industry that has a stereotyped image of shoppers.

METHODOLOGY

This project aims to research DDA's effects upon the retail sector and in particular its effects on small-scale retail refurbishment. Its second aim



was to examine and analyse the issues that professionals meet in the refurbishment of small-scale retail premises in relation to the DDA.

The objectives were to: (1) determine and reflect upon the impact of the DDA on buildings; (2) examine how the Disability Discrimination Regulations have impacted upon retail outlets and their refurbishment; (3) examine problems encountered related with DDA work in the pre-contract and contract phases and (4) examine post-contract occupancy phase, the effect of the changes and occupants attitudes to them.

The literature study was conducted on DDA's impact on buildings. Following this, three real life small-scale retail refurbishments case studies were analysed examining pre-contract, contract and post-contract occupancy phases. Data on pre-contract and contract phases of these case studies were obtained by Anthony Dever Construction Limited who worked as contractor in these projects. These projects were small-scale retail refurbishment around the Merseyside and West Lancashire regions. In order to get post-contract information on these projects, interviews were conducted with staff of these case studies. One employee per retail was interviewed. The interviews were conducted with a semi-structured questionnaire, which is presented in the Appendix B. To ensure accuracy of collected data, the interviews were recorded using a Dictaphone and then transcribed. Because of the confidentiality reasons, while presenting data obtained, the names of the retails are referred as Project 1, Project 2 and Project 3. Similarly, the interviewees are presented as Interviewee 1, Interviewee 2 and Interviewee 3 in accordance with the project number referred.

DATA OBTAINED THROUGH CASE STUDIES

Data obtained through case studies is presented under three headings, namely: pre-contract, contract and post-contract occupancy phases.

Background information for three case studies is presented in Table 1. In all of the case studies, the percentage of the final sum for the work required under Part M was less than 5 per cent of the projects' whole costs. The cost of the overall refurbishment was proportional to the size of the building. In these three case studies, the type of client did not make a difference to the extent of the work carried out. Size, situation and retail value were observed to be criteria in deciding the extent of DDA.

Pre-contract phase

Pre-contract phase characteristics of the case studies are comparatively presented in Table 2. The key points are briefly explained as follows:

- An analysis of whether the DDA issues were addressed at the design stage in the three case studies does not show a pattern. Project 1, the access to all parts of the shop, remained as restrictive as earlier. Other DDA elements such as a ground floor disabled toilet, vision panel doors, user friendly handles and stair rail were installed. Similarly, Project 3 failed to address the fact that an employee using a wheelchair or who had difficulty with steps would be unable to use the staff entrance at all yet there were disabled toilet facilities and a lift in the shopping area.

Table 1: General information for case studies

General information	Project 1	Project 2	Project 3
Owner type	Property investment/ developer group	Owner occupier	Private owner
Retail type	Estate agents	Lighting shop	Two units smaller unit a betting shop (non retail) and larger unit a women's clothes shop
Tenant type	Commercial tenant, long term lease	Owner occupier	Commercial tenant short term lease
Location	Busy out of town shopping parade in Walton, Liverpool set to pavement	Main road location on edge of busy town centre of Ormskirk, Lancashire. Set back from pavement	Prime location city centre store in Liverpool. Set on pavement
Parking availability	None, busy road with edge protection	Yes, parking bays at front of premises	None, pedestrian area of city centre
Number of stories	2	2	2
Cost of shell refurbishment	£48 615	£47 106	£299.960
Retail rental value	£40 000/year	£35 000/year	£100 000/year
Existing structure	Two storey Edwardian brick building brick in a row of terraced shops	Formerly two brick terraced Edwardian houses	Large three storey shop with cellar and attic Edwardian
Building type	Brick load bearing	Brick load bearing	Frame and masonry
Extent of refurbishment	Extensive shell and fit out	Extensive shell and fit out	Extensive shell and fit out
CDM applies	Yes	Yes	Yes
DDA work % of whole costs	3	5	5

- Projects 1 and 3 were Minor JCT (2005) works contracts. The Project 2 was an informal contract by letter.
- The architect's engagement in the pre-contract phase made the DDA work of the project easier for the contractor. In Project 1, the problem with the disabled toilet wall and the upper load bearing wall was resolved quickly by the architect and structural engineer providing a solution in 2 days. The architect in Projects 3 and 1 had really provided the solutions for the building control officer. In the case of Project 2, the lack of an architect caused the building control to take responsibility rather than the architect.
- All three clients had little knowledge or interest in the DDA element of the work except from a cost perspective. There were no client led disability access or provision changes. In Project 2 where the client was involved in the design and planning of the project, there was conflict with the DDA requirements for access and what the client wanted as the image of the shop.
- The contractor was involved in all three case studies at the design stage. This was perceived by contractor as useful for all parties. Contractor's involvement also affected decision on the reasonableness of a physical change.
- Building control was involved in an advisory capacity with architects on all three projects. In the pre-contract phase the architect and



Table 2: Pre-contract phase characteristics

Pre contract phase	Project 1	Project 2	Project 3
Information provided	Drawings and specification	Drawings and specification	Drawings and specification
Number of drawings provided	2	2	6
Specification detail	Good, specific to site	General, all specific information on drawings	Good, specific to site
Access audit conducted?	No	No	No
DDA issues addressed in drawings and specifications	Disabled toilet. Vision panels on doors for wheelchair users. Easy grip handles	Ramp access for wheelchair users. Steps design and handrails. Level access of entrance threshold. Single wide entrance door. Ironmongery to entrance door DDA Part M compliant	Lift installation compliant with Part M for wheelchair use. New staircase to second floor Part M compliant. Disabled toilet facilities on second floor. Ironmongery. Level access to premises
DDA issues not addressed in shell only refurbishment	Step at the entrance to shop. Level change in the centre of retail space. Level change between rear of retail space and disabled toilet. Corridor from shop to toilet narrow for wheelchair and blocked partially by boxed in water main	No disabled toilet facilities	New shop front frames size of doors not addressed at this stage left for tenant
Type of contract	JCT Intermediate Contract 2005 edition	An informal non standard contract by letter between client and contractor	JCT Intermediate Contract 2005 edition
Contract type	Lump sum	Lump sum	Lump sum
Level of involvement of client in design phase	Little	Very involved	Moderate
Pricing issues highlighted by contractor	Initial levelling of front entrance highlighted by contractor as being very expensive due to out of hours working because of disruption to foot traffic. Also health and safety implications to ensure no accidents with public	Ramp could not be priced at tender stage except on provisional sum as design based on the building inspector and constraints of area and client requirements	Lack of prior knowledge of condition of wooden frame and basement walls pricing of levelling the floors a slight risk
Time issues highlighted by contractor	Level changes too difficult and time consuming	Ramp and steps needed design revision and consultation with building inspector	Lift installation
Level of involvement of architect	Architect to do drawings and specification and to administer contract	Architect to produce drawings and specification only	Architect to do drawings and specification and to administer contract
Level of client awareness of DDA issues	Reasonable	Little	Little
Client led DDA changes	None	None	None
Contractor involvement at design stage with DDA design	Discussion with architect on space for disabled toilet at ground floor level. Discussion on waste from toilet potential problems. Rear door opening outwards problem with lock choice compliant with DDA	Discussion on new shop frontage from subcontractor with relation to DDA requirements. Originally client envisaged double doors. Discussion on ramp design to allow maximum frontage view and comply with Part M	Discussion on how to effectively level floors. Discussion and planning of steel frame and lift installation.
Building inspector involvement	The architect consulted building control in design phase to ensure reasonableness accepted	Architect consulted in design phase and contractor consulted contract phase in relation to ramps, steps and access to premises	The architect consulted building control in design phase to ensure reasonableness accepted
Structural engineer involvement at design stage in relation to DDA	No	No	Structural calculations and drawings required for supporting structure for lift in the steel frame
Planning involvement re DDA	None	None	None

building control department were in discussion as the design developed.

- The structural engineer was only involved with DDA work at pre-contract phase when there was a general structural issue. For example, in Project 3 the lift shaft had to fit in with the new steel frame.

Contract phase

Problems encountered with respect to DDA work in Project 1 were related with: change of levels at main entrance, step change of level in the middle of shop floor, step entrance from shop floor to rear of premises and disabled toilet, inward opening emergency exit on ground floor, support of first floor brick wall to the right of the new disabled toilet stud wall, moving toilet stud wall to support brick wall on first floor created a chicane which would be difficult for a wheelchair user to negotiate, unisex toilet on ground floor waste removal, knowledge deficit of labour only subcontractors, height of handles and disabled toilet facilities, stair rail, material supply, supply of and cost of extra handles not included in Part M doc pack.

In Project 2, problems in contract phase were related with: level change at principal entrance, ramp design angle, height and design of steps, lighting in disabled walkway, position and extent of tactile paving, permitted height of walls, interface with pavement, design of doorway, door ironmongery type and heights and lighting in disabled walkway.

Problems encountered in Project 3 were related with: level at principal entrance, rough levels in shop floor space, lift installation, disabled toilet installation, manifestation/fenestration, knowledge deficit, staircase to second floor and material supply.

Data on problems emerged, actions taken against them and their outcomes are presented in Appendix A Tables A1–A3.

Key points in the contract phase of the three case studies are briefly summarized as follows:

- All of the three projects had been built with a non-level threshold and steps to different levels on the ground floor. All three projects were on sloping sites ranging from mild in relation to Project 3 to medium in Projects 1 and 2. The Project 2 was the most successful one as it has full access for customers and employees and the general public at ground floor level and at its paved entrance area. In Project 3, the disabled access for the customer is excellent but the staff entrance has two steps to the rear area that houses the staff entrance. It would cause some difficulty, although staff could come through the shop itself but that would mean raising the shutters. Project 1 is the least successful one as it does not address the threshold access problem or the steps in the centre of the shop. It is not accessible to a person who could not negotiate steps.
- In Project 1, the issue of lack of space was most evident. The changing of the doorway posed serious health and safety questions as the shop front was very close to a busy pedestrian crossing and there were railings at the roadside. The installation of the ground floor



- disabled toilet also had problems with the narrowness of the corridor. In contrast, Project 2 had the advantage of good space to create the ramp access to the shop. In Project 3, the amount of space in the large store meant that changes could be made that had viable alternatives.
- The contract phase of all three case studies identified a problem with knowledge of the requirements of Part M among labour only subcontractors and labourers. In Projects 1 and 2, the contractor had to provide guidance drawings and explain the requirements to people doing the work. There appeared to be little knowledge and also from the contractor's own experience there was little specific external training for operatives to learn the requirements. On the larger job Project 3, the subcontracting firms specializing in joinery, mechanical and electrical and lifts had much greater knowledge of what was required to conform with Part M requirements in relation to their trade.
 - Client and DDA conflict arose in the Project 2 because the design was not finished at the design stage and that client was closely involved with the work as an owner occupier. In Projects 1 and 3, the client's position in discussion with building control was always taken by the architect. As the architect is engaged throughout the project most discussion on design and changes to the design were controlled by the architect.
 - Incomplete DDA design work and lack of architect in the contract phase caused problem in Project 2. As there was no architect, the building inspector was judging what was reasonable and everyone had to go along with it without negotiation.

Post-contract occupancy phase

Key points arose in the interviews are briefly summarized as follows: (For detailed information, see Appendix B.)

- In all of the three case studies, the respondents who had long-term knowledge and experience of the retail industry had not had any experience or knowledge of conflict or discussion about complaints about disabled provision.
- The DRC has produced booklets for small and medium enterprises. However, these booklets were not seen in these case studies.
- None of the interviewees had pointed out any further disabled improvements in the store except minor ones such as providing a chair, making sure the layout was not difficult. These were seen as being inclusive to everyone not just disabled customers. In the case of Project 1 where stepped entrance and steps in the middle of the shop still remain and the drawings state 'to be addressed by tenant', this was, as asserted by the interviewee, an issue that they would not even consider addressing.
- The interviewees' answers reflected the 2001 Part M attitude that disability was a medical condition and 'they' needed provisions making for them. The interviewees did not perceive the adjustments as being done for inclusive access but as for disabled access.

- In all three cases, the occupiers believed that the level of DDA work was about right in their shop. In the case of Project 1, interviewee had the view that spending a lot of money on disabled access was not a commercially viable decision. In Project 2 where the expenses of the changes at the front of the shop were quite expensive, it was interesting that they still perceived the works as worthwhile. Project 3's DDA work was quite acceptable bearing in mind the overall budget and the fact that without it the second floor would not be available. There was a clear financial equation in the minds of the respondents of the cost of the access provisions to the shop owner and the benefits to disabled people. Generally, the interviewees saw the improvements as complying with what the law insisted upon rather than enabling them to get greater sales revenue from 'the disabled pound'.
- In all three cases, the occupiers believed that the adjustments for disability had improved the value of the premises.
- The general consensus over the three interviews was that the expense and extent of the improvements were reasonable and not too onerous. The interviewees felt that their store had done enough.
- The area surrounding the stores is crucial to how valid the changes made are. Interviewees in Projects 1 and 2 raised the issue that getting to the stores was perhaps the bigger challenge than getting in the store.

DISCUSSION

The background information of the case studies identified the information that led to the decision of what was reasonable for that particular property. The decision of what is reasonable is as Male and Spiteri (2005) assert is often a matter of uncertainty as to who interprets reasonableness and who makes the decisions. However, from the three case studies what is apparent is that the rental value of the property is a principal deciding factor as is its location.

Pre-contract phase

Information was confined to drawings and specifications with smaller scale projects relying on two drawings. The information relating to DDA-specific items were usually in the initial drawings and specification. The lack of specific details caused some problems on site because of a lack of knowledge of Part M details by labourers and small subcontractors. It may be that more detail should be included on drawings at this level.

The contractor's main problems were, in relation to DDA work, the risk both in terms of time and money in a lump sum refurbishment contract. The limited amount of information on the drawings and specification on a Minor Works JCT (2005) contract means that the contractor takes the risk of pricing DDA work that may be costly as it is time-consuming and difficult to achieve in small retail refurbishments. In Projects 1 and 3, the client had liquidated damages in the contract.

From the architect and contractor's perspective, the client's lack of knowledge with DDA requirements or commitment to improving access can engender discussion over perceived unnecessary costs at this stage.



In case studies, building inspectors took a more active role and seemed to favour greater DDA changes if there was not an architect in charge of overseeing the project. If the architect oversees the whole project, they seem to have the authority to act in his or her professional capacity and decide what is reasonable in consultation with building control to ensure their design is acceptable and their interpretation of reasonable is open to account.

The contract phase

The key problems on site for implementing the DDA regulations in small retail refurbishments were the structural constraints of the building and the lack of space. The issue of lack of options is echoed in Bromley *et al* (2007)'s study of wheelchair access which concludes that it is not possible to have universal access to all existing buildings and that there will always have to be some level of compromise. The findings from the three case studies indicate that although a far superior level of access could be achieved the amount of money to address the issues would be unacceptably high for the client.

The lack of knowledge of the requirements of Part M from both labour only subcontractors and labourers created problems on site for the contractor. This revealed the need for training or a higher profile attached to Part M in the workplace.

The lack of an architect in the contract phase in Project 2 resulted in DDA adjustments becoming more time-consuming and the costs uncertain. The building control officer took the role of the architect in deciding what is reasonable. Although the architect is in charge in the contract phase, there seemed to be greater flexibility in the reasonable adjustments. This may be because the architect has the skill and time to consider alternatives and has much more knowledge of the client's resources and level of work already executed as part of the refurbishment.

Post-contract occupancy phase

The general view of all of the interviewees was that the adjustments to improve access and disabled facilities were worthwhile and there was a general positive confirmation that inclusive access did benefit everyone. They also agreed that the improvements increased the value of the premises. However, the findings also revealed a lack of interest and knowledge of the DDA.

Interviewees had a view of disabled people as having a problem in the built environment rather than the built environment being at fault. This view is termed the medical view. Part M 2001 upheld this view in Part M 2004, the wording was changed to embed the view that the regulation was looking at a broader perspective of inclusive access for all. The attitudes of the interviewees in the study focused upon disabled people rather than inclusive access for everyone.

CONCLUSIONS

Refurbishment of small-scale retail units is an opportunity of addressing the issue of better or inclusive access. The success of this process can result in successful implementations of DDA regulations. The analysis of three real life refurbishment projects of small-scale retail premises



provided an idea of possible difficulties which can be encountered during the execution of similar projects. Accordingly, risk of emergence of problems can increase because of: projects location being on sloping site, lack of space, incomplete DDA design work, and lack of architect's involvement. Furthermore, the study also revealed that reducing the risk of emergence of DDA implementation related problems or coping with them can be easier if subcontractors, labourers, and operatives have knowledge on the Part M requirements. Architect's and contractor's involvement in design stage is observed to facilitate the DDA work of the project and determination of the scope of 'reasonable' changes.

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