

Disabled Access Scrutiny Task Group

26 August 2014

Report of the Assistant Director, Governance & ICT

Disabled Access to York's Heritage & Cultural Offer

Summary

1. This report presents the agreed remit for this review together with information gathered in support of the objectives.

Background

2. At a meeting in June 2014 the Learning & Culture Overview & Scrutiny Committee considered a number of topics for possible scrutiny review. This included information gathered in support of a topic submitted by Cllr Barnes on disabled access to York's heritage and cultural offer.
3. The briefing outlined the access information currently provided on the internet by a whole range of heritage and cultural providers across the city – see Annex A. This highlighted the many approaches to providing this type of information, the varied quality of the information and in some cases the difficulties in finding the appropriate information on a number of the provider's websites.
4. At the meeting the Committee agreed the topic was worthy of review and set up a Task Group to carry out the review on their behalf. They also invited Cllr Barnes to participate in the review as a co-opted member.
5. The Task Group met for the first time in early August to identify an appropriate remit for their review:

Aim:

To improve all forms of access to York's heritage and cultural offer

Objectives:

- i. To understand legal requirements & identify best practice from elsewhere

- ii. To assess current levels of access for those with a range of impairments
- iii. To identify possible improvements and barriers
- iv. Facilitate the sharing of good practice across York's network of providers

6. The Task Group also agreed a methodology for carrying out their work on the review:

Objectives	Suggested Tasks	Meetings (Dates to be agreed)
1	Consider information on legal requirements, DDA compliance etc and good practice by other providers nationally	Task Group Meeting 1
2	<ul style="list-style-type: none"> • Consider information from user-led organisations e.g. Disabled-Go, Access York, CVS, E.A.G. etc • Hold a consultation session with users to gather evidence on the issues faced by disabled people 	
3	<ul style="list-style-type: none"> • Hold a number of consultation sessions - one with heritage providers and one with cultural providers 	Consultation Sessions 2 & 3
4	<p>Based on information gathered, at previous meetings:</p> <ul style="list-style-type: none"> • Identify an optimum method for sharing good practice • Identify review conclusions and appropriate draft recommendations 	Task Group Meeting 2
	Consider draft final report and draft recommendations	Task Group Meeting 3

Information Gathered

Objective (i) - Legal Requirements & Best Practice

7. Disability Law in the UK – The Equality Act 2010

The Equality Act 2010 is the overarching piece of legislation that protects the rights of disabled people in the UK. It prohibits all discrimination on the basis of a range of characteristics including age and disability. In addition, the Act aims to promote and achieve equal opportunities for all.

8. Prior to the introduction of the Act, duties on service providers towards disabled people had been phased in, over three stages under the 1995 Disability Discrimination Act (DDA):

- From December 1996 it was unlawful for service providers to treat disabled people less favourably for a reason related to their disability;
- From October 1999 service providers had to make ‘reasonable adjustments’ for disabled people, such as providing extra help or making changes to the way they provide their services¹; and
- From October 2004, service providers had to take reasonable steps to remove, alter or provide a reasonable means of avoiding a physical feature which made it impossible or reasonably difficult for disabled people to use a service².

9. The Equality Act 2010 gives rights to people who have, or have had, a disability. ‘Disability’ covers both physical and mental impairments that have a substantial and a long-term effect on the person’s ability to carry out normal day-to-day activities. A long-term effect is one which has lasted, or is expected to last, at least 12 months or the rest of the person’s life (if shorter). Treatment and aids which alleviate or remove the effect of the impairment do not mean a person is not disabled.

10. Progressive conditions are covered, as are conditions that have a substantial effect for short periods but are likely to recur. HIV, multiple sclerosis and cancer are deemed to be disabilities from the date of diagnosis. People with severe disfigurements are also deemed to be

¹ This does not place a duty on landlords to make ‘reasonable adjustments’ to their properties.

² The *Disability Discrimination (Providers of Services) (Adjustment of Premises) Regulations 2001* (SI 2001/3253) were laid before Parliament in October 2001 and came into force in October 2004. These Regulations were amended twice to take account of changes to the Building Regulations – see SI 2004/1429 and SI 2005/1121

disabled by the Act, as are people who are registered as blind or partially sighted with their local authority or an ophthalmologist. People who have had a disability in the past are also protected by the Act. This is the case even if they have now fully recovered.

11. The Act places duties on those providing goods, facilities or services to the public and those selling, letting or **managing premises in the UK**. The Act makes it unlawful for service providers, landlords and other persons to discriminate against disabled people in certain circumstances.
12. People associated with a disabled person and people who are wrongly perceived to have a disability are also protected from direct discrimination and harassment but do not benefit from the duty to make reasonable adjustments.
13. Reasonable adjustments – A key aspect of the Equality Act that can impact on organisations is the duty to make reasonable adjustments. A service provider or provider of public functions has a duty under the Equality Act to make reasonable adjustments to prevent a disabled person from being placed at a substantial disadvantage by any provision, criterion or practice, or a physical feature of premises or the lack of an auxiliary aid.
14. Where this is the case reasonable steps must be taken to remove or alter the feature or provide a reasonable means of avoiding the feature. The Equality Act also covers the provision of information which must be provided in an accessible format.
15. The key provision governing reasonable adjustments for disabled people is in section 20 of the Equality Act 2010 and the explanatory notes to the Act explain the duties of service providers under section 20 – see relevant extract from the Act at Annex B.
16. The duty comprises three requirements which apply where a disabled person is placed at a substantial disadvantage in comparison with non-disabled people:
 - The first requirement covers changing the way things are done (such as changing a practice),
 - The second covers making changes to the built environment (such as providing access to a building),
 - The third covers providing auxiliary aids and services (such as providing special computer software or providing a different service).

17. Section 20 makes it clear that where the first or third requirements involve the way in which information is provided, a reasonable step includes providing that information in an accessible format.
18. It sets out that under the second requirement, taking steps to avoid the disadvantage will include removing, altering or providing all reasonable means of avoiding the physical feature, where it would be reasonable to do so. It also makes it clear that, except where the Act states otherwise, it would never be reasonable for a person bound by the duty to pass on the costs of complying with it to an individual disabled person.
19. The Equality Act 2010, as with the DDA before it, cannot require anything to be done that would contravene another piece of legislation. For example, where a service provider must get statutory consent to a particular alteration, including listed building or scheduled monument consent, and that consent is not given, the Equality Act 2010 will not have been contravened. However, a service provider would still need to take whatever other steps under the Act were reasonable to provide the service.
20. Planning Guidance on Disabled Access to Historic Buildings
Planning Policy Guidance Note (PPG 15) issued by the Department of the Environment, Transport and the Regions makes it clear that:

'It is important in principle that disabled people should have dignified easy access to and within historic buildings. And that with a proper approach, it should normally be possible to plan suitable access for disabled people without compromising a building's special interest.'
21. There is a National Register for Access Consultants and auditors (see www.nrac.org.uk), and some architects and surveyors are also able to undertake this type of work. For example, 'Access Staintons'³ have previously carried out access audits for the following venues in York:
 - St Mary's Church for York Museums Trust
 - The Merchant Adventurers Hall
 - The Castle Museum
 - Yorkshire Museum & Gardens
 - York Art Gallery

³ An Access Consultancy, exclusively advising on issues relating to disabled access, established in 1972, based in Leeds.

22. Reconciling the aims of improving access with the needs to conserve the importance and significance of the historic building is the next step, and owners of historic buildings are advised to seek the advice of the local authority Conservation Officer, English Heritage, the relevant National Amenity Society, the local Access Officer, depending on the sensitivity and importance of the building, to ensure that proposals for alterations protect or enhance the historic building, and are of a suitable quality and effectiveness for people with disabilities to justify the alteration.
23. It is not envisaged that every building will have ramps and lifts everywhere, for all sorts of reasons, and on occasions a strategic review of the services provided might be useful. For example if several premises are owned, would it be acceptable and desirable if one venue is easier to adapt and the others left unaltered? Economic constraint is another aspect of reasonableness.
24. Where physical barriers cannot apparently be overcome by making alterations, the Equality Act 2010 allows for alternative means of providing a service (for example such as by mail order or a 'virtual' visit or an alternative venue) or using an alternative route into the building, or providing personal assistance, or ensuring good access to services is provided on the ground floor. These may be referred to as managed solutions. Part M of the Building Regulations 2000 requires the submission of an Access Statement which will explain why the historic specialness of the building requires a deviation away from standard solutions. The Society for the Protection of Ancient Buildings⁴ (SPAB) believes this flexible approach is to be welcomed:

"It is our experience that most buildings can be successfully and effectively altered to provide reasonable access, but this does require a good understanding of both historic building conservation and how to accommodate the needs of people with disabilities. For example, you may have to look at good effective lighting which helps visually and hearing impaired people; sensible choice of colours and tones need not be garish to provide effective contrast to aid identification of possible hazards and changes in levels make the environment safer; automatic

⁴ The Society for the Protection of Ancient Buildings was founded by William Morris in 1877 to counteract the highly destructive 'restoration' of medieval buildings being practiced by many Victorian architects. Today it is the largest, oldest and most technically expert national pressure group fighting to save old buildings from decay, demolition and damage. The Society has a statutory role as adviser to local planning authorities, and must be notified of listed building applications that involve total or partial demolition.

door openers may avoid alterations to building fabric being required; and we like to emphasise that beautifully designed and manufactured handrails, for example, and any other additions and alterations, keep our traditional arts and crafts alive.”

25. The View of English Heritage

English Heritage updated its booklet ‘Easy Access to Historic Properties’, in December 2012 to take account of the 2010 Act and changes to planning legislation – see copy at Annex C. The booklet is designed to help those who own, manage, or are professionally concerned with historic properties to strike a balance between conservation and access.

26. In addition, the English Heritage website contains the following statement on the need to reconcile access requirements without compromising the nature of historic buildings:

‘Historic buildings, landscapes and monuments, the physical survivals of our past are protected for their sake and for ours. They are irreplaceable but sometimes they need to be changed. Appropriate or sensitive alteration will have due regard for what it is that makes a particular building special or significant. In most cases access can be improved without compromising historic buildings. The key lies in the process of information gathering about the building, understanding its significance and vulnerabilities and knowledge about the needs of people with disabilities.’

27. English Heritage also provide information on the process through which service providers, including owners of historic buildings that are open to the public, should develop an “access strategy” – see Annex D.

28. For further Information on access to historic buildings for disabled people see:

- Communities and Local Government: Planning and Access for Disabled People: A Good Practice Guide (www.communities.gov.uk)
- Easy Access to Historic Buildings. English Heritage 2004
- Easy Access to Historic Landscapes. English Heritage 2005
- Overcoming the Barriers: Providing Physical Access to Historic Buildings. Cadw 2005
- Disability: Making Buildings Accessible Special Report (Third Edition). Keith Bright (ed.): Workplacelaw 2005
- Access Audit Handbook. Centre for Accessible Environments: RIBA Publishing 2005

- Heritage Providers – National Good Practice

29. The Benefits of Attracting Disabled Customers

Beyond the moral and legal perspectives, there is a compelling business case for making an organisation's products and services fully accessible to people with disabilities. For example:

- A third of people in the UK are disabled or close to someone who is.
- 10 million disabled people live in the UK with a combined annual spending power in excess of £80 billion.

30. In 2006, the Business Disability Forum⁵ and the Royal Association for Disability and Rehabilitation (now Disability Rights UK) undertook a survey into the opinions and shopping habits of disabled customers. What emerged was a picture of informed consumers who will reward good customer service and punish providers who don't make any effort to meet their needs. However, 83% of disabled people had 'walked away' from making a purchase, unable or unwilling to do so. The most important factor was inaccessible premises. Other important factors that discouraged disabled consumers from spending were poorly designed products and staff that were not disability confident, rude or appeared prejudiced.
31. Poor or inappropriate communications was another area that affected spending. Inaccessible websites, telephone systems and printed information were all cited by respondents as reasons they did not make a purchase.
32. Over a third of disabled people said that good disability service was the primary reason for choosing a provider or product. Two thirds chose businesses where they had received good customer service related to their disability. Companies that told disabled people about the accessibility of their products attracted those consumers.
33. The Business Disability Forum has also developed a communication tool to explain how disability is likely to affect a customer base. These disability profiles provide some basic management information which helps to explain why an organisation needs to be disability-smart. A

⁵ Business Disability Forum is a not-for-profit member organisation that bringing together business people, disabled opinion leaders and government to understand what needs to change if disabled people are to be treated fairly so that they can contribute to business success, to society and to economic growth.

disability profile can help managers learn how to meet the needs of a wide range of customers and they can be tailored to reflect the reality of any particular business or industry sector. Their UK customer profile for 2014 is shown at Annex F.

34. Although current UK equality law says disabled people must receive an equal experience to non-disabled peers, the reality is different. Scotland made disabled access part of its entertainment licensing laws in October 2011 (provision for disabled visitors is now a condition for getting a new alcohol licence), the rest of the UK has no such requirements, and disabled music fans often find themselves excluded from events.
35. Best Practice - Cinemas & Theatres
Cinemas and theatres are popular places for spending leisure time. Most cinemas, especially modern multi-screen types, are able to provide good facilities for people with disabilities, whilst some theatres are more restrictive due to the age and fabric of the buildings. However many disabled people feel that as a disabled customer they often fail to receive the same service as a non-disabled person.
36. In many cinemas and theatres only certain auditoriums are accessible to people with mobility difficulties. This has the effect of leaving disabled people with fewer options and facing discrimination. Disabled people often also have to call cinemas and theatres in advance to find out where performances are taking place which means they cannot make spontaneous choices.
37. Trailblazers, a nationwide organisation of 190 young disabled and non-disabled campaigners⁶ reported in 2009 that wheelchair users often had no other option but to sit at the front of the auditorium or stage. This means that they had to lean back to watch the screen or stage - a position that proved tiring and painful for someone with a muscle-wasting condition - rather than straight ahead as a person seated further back in the auditorium would. They also told of being labelled a 'fire risk' by staff members at cinemas, when they transferred from their wheelchairs into a cinema or theatre chair to avoid sitting in an area of the auditorium that caused discomfort.

⁶ Trailblazers are part of the Muscular Dystrophy Campaign, the leading UK charity focusing on all muscle disease. They aim to fight the social injustices experienced by young people living with muscle disease and ensure they can gain access to the services they need.

38. They also found it was common for wheelchair users to be refused entry to theatres unless they were joined by a non-wheelchair user and seated in an expensive area, thus being forced to buy a more expensive ticket (although receiving a concession for the PA/carer).
39. The cinema industry however can be commended, due to its use of the Cinema Exhibitors Association card (CEA) which gives concessionary tickets for carers and personal assistants across the cinema industry. The Cinema Exhibitor Association introduced their card scheme 10+ years ago to assist cinemas in meeting their duties under the Equality Act 2010. It was devised by the CEA in consultation with its disability advisers and representatives from several disability charities.
40. All of the major cinema operators and many smaller cinema companies in the UK accept the CEA card, including all of the cinemas in York. Whilst it is not the only way cinemas can provide assistance to disabled customers, it is widely recognised and accepted as good practice. Most cinemas hold application forms at the box office but they can also be downloaded from The Card Network website: www.ceacard.co.uk/
41. The card entitles the cardholder (the person with the disability) to a free ticket for someone to accompany them when they visit the cinema (when one full price ticket is purchased). The CEA card is valid for 1 year, and the cardholder can visit the cinema as many times as they wish during the year. To apply, applicants need to supply a passport-sized photo with their application to appear on the Card, and submit proof to show that they meet one (or both) of the following criteria:
 - Be in receipt of Disability Living Allowance, Attendance Allowance or Personal Independence Payment.
 - Be registered blind.
42. Best practice for cinemas suggests the following should be made available:
 - For blind and visually-impaired customers, many cinemas offer, and more and more films contain, audio description. This is a service where the action, scene changes and the actors' body language is described in addition to the dialogue. You listen to the commentary through a lightweight headset. Some cinemas have the system for all their screens which means that every screening of a film can be audio-described. At others, audio-described films are indicated in listings on the cinemas websites.

- Some cinemas may have the layout of the cinema complex in Braille as well as other information. Programme times are available as a recorded message over the telephone.
 - For deaf and hearing-impaired customers, most cinemas have induction loops - infrared, induction or both. Many cinemas also run subtitled screenings on a regular basis. This is usually indicated in listings.
 - For physically or mobility-impaired customers, wheelchair users or those with restricted mobility, are encouraged to contact a cinema in advance to check their facilities. Cinemas must provide an area for wheelchair users.
 - For those with an Assistance dog, most cinemas ask to be informed in advance so that they can allocate the most appropriate seating. Full details of the facilities offered by York's cinemas were given in the introductory briefing paper - see Annex A.
43. The 'Your Local Cinema.com' website has country-wide listings of audio-described screenings and subtitled screenings in cinemas, as well as available audio-described DVD titles.
44. Best Practice - Live Music Venues
The charity 'Attitude is Everything' improves Deaf and disabled people's access to live music by working in partnership with audiences, artists and the music industry.
45. Having begun as a pilot project in 2000, they are now a fully independent charity and part of Arts Council England's National Portfolio of Organisations. Their aim is to encourage events producers to go beyond the legal obligations set out in the Equality Act and implement best practice, providing a fair and equal service to their Deaf and disabled customers.
46. They also support the music industry to understand Deaf and disabled people's access requirements at music venues and festivals by building equality into the strategic process using a Charter of Best Practice.
47. They created a Charter Toolkit in order to bring together all of the knowledge, guidance and best practice advice they had developed from working with the live music industry. It was designed to guide event

organisers through a wide range of accessibility topics, and ultimately enable organisations to be awarded the Charter and improve their accessibility.

48. The ethos of the Charter is that Deaf and disabled people should be as independent as they want to be at live music events and over 90 venues and festivals have already signed up.
49. In 2014, as part of their initiative to help live music venues adapt, the charity produced its latest 'State of Access' report, a comprehensive study based on 228 mystery shopping reports, 159 from venues and 69 from festivals, 40 questionnaires, and 13 interviews collated between April 2011 and March 2013. The study had to exclude establishments where the mystery shoppers couldn't even enter the building. Not just access but also the attitude of staff was rated. – The detailed findings can be viewed at:
<http://www.attitudeiseverything.org.uk/resources/publications/state-of-access-report-2014>
50. Best Practice - Tourist Attractions
VisitEngland's Visitor Attraction Quality Assurance Scheme, through its network of regional assessors, boasts an incredible reputation for instigating, modifying and shaping change to the customer experience at visitor attractions across England.
51. Signing up to its National Code of Visitor Attractions is the first step in its accreditation process. The 15 simple points of the Code, compiled by an independent panel of industry experts, are the basic fundamental actions that all well managed attractions should already be following. It acts both as a checklist but also provides a certificate for display in a public area, preferably at admission point. The Code confirms that a site is recognised by VisitEngland as a visitor attraction and that it fulfils the basic requirements of a recognised industry standard. The code also includes what is expected of an attraction in regard to addressing the needs of disabled visitors – see copy of code at Annex F.
52. A new study published in April 2014 by disability charity [Vitalise](#)⁷, revealed the best and worst UK tourist attractions for wheelchair access to disabled visitors. The study rated 85 of the nation's most popular destinations by wheelchair access, number of disabled toilets and

⁷ Vitalise is a national charity providing short breaks and holidays (respite care) for people with physical disabilities and carers.

disabled parking spaces, as well as additional wheelchairs and disability and carer concessions. The tourist destinations that made top place, with equal ratings for the best access for disabled visitors included York's National Railway Museum. There were no York attractions in the Top 10 worst ranking attractions.

Objective (ii) – Current Levels of Access

53. Annex A details the information currently being made available on the various providers' websites. In some cases this information was easy to find and in others it was not. This in itself highlights the difficulties faced by potential patrons. In a few instances, information on a website was minimal and patrons were recommended to ring the venue to discuss the access requirements. In one or two cases there was no access information provided on a venues website.
54. In order to properly assess the current access to York's many heritage and cultural venues, and identify possible improvements (review objectives ii & iii), the Task Group have already agreed they would like to consult with a number of user-led organisations e.g. Disabled-Go, EAG, CVS etc – see agreed review methodology at paragraph 6 above.
55. **DisabledGo** is the leading provider of access information for disabled people in the UK, featuring over 120,000 places of interest. Their aim is to provide information so that a disabled person can make up their own mind whether somewhere is right for them, before they get there.
56. Every single venue they feature has been visited in person by one of their own specialist surveyors, and they cover any type of venue that a member of the public would visit, including:
 - Council offices
 - Parks
 - Leisure and sports centres
 - Stadiums and sports grounds
 - Tourist Attractions
 - Colleges
 - Restaurants
 - Libraries
 - Cinemas
 - Hotels
 - Hospitals
 - Pubs
57. There are currently 250 entertainment, leisure and culture venues in York listed on their website. The Head of Communities and Equalities is responsible for commissioning DisabledGo to inspect 25 York venues per year on the Council's behalf. Venue suggestions come from community groups, EAG and CYC officers e.g. the Sport and Active Leisure Team. The findings are uploaded onto DisabledGo's website to inform potential disabled visitors to those venues.

58. CYC's **Equality Advisory Group (EAG)** is a group of organisations which represent the communities of identity in York. Their role is to advise the Council's Cabinet on new Council policies and strategies by assisting services in the development of Community Impact Assessments through comments and suggestions at group meetings. For the purpose of supporting the work on this review, it is suggested that representatives from the following EAG member organisations be consulted:
- York People First
 - York Carers Forum
 - York Blind & Partially Sighted Society
 - York Older People's Assembly
 - York Independent Living Network
 - York Racial Equality Network
 - York Access Group
 - Guide Dogs
59. York **Community Voluntary Sector (CVS)** plays a big role in representing the voluntary, community and social enterprise sector in the city. They manage several important forums e.g. the Forum for Learning Difficulties which works to improve the quality of life for people with learning difficulties in York and the surrounding area. They also help public bodies work with voluntary and community groups, and work in partnership with the statutory sector to tackle inequalities and improve the design and delivery of services.
60. It has also been suggested that the Task Group consult with **Health Watch** - a recently new organisation set up to influence local health and social care services – hospitals, care homes, GP surgeries, home care services and many others. In June 2014 Health Watch produced a report entitled 'Discrimination against Disabled People in York' – see Annex G.
61. Future Consultation Session
Representatives from the above organisations are to be invited to the planned consultation session and ahead of it being arranged, representatives from DisabledGo, CVS, EAG and Health Watch have been written to asking for their initial views.

62. A representative from Health Watch has already responded, suggesting the following additional consultees (all of whom very helpful when they were working on their report, shown at Annex G):

- The Self Advocates Forum co-ordinated by York Advocacy (for people with learning difficulties)
- York University Student Union's Disability Groups
- The Retreat
- The Independent Service User Forum facilitated by York Mind
- York Carers Centre
- Independent Living Scheme
- the Wilberforce Trust
- York Deaf Society
- The Resource Centre for Deafened People

63. Any further feedback received will be tabled at this meeting.

Options

64. Having considered the information provided in this report, Members may choose to progress the work on the review by:

- Revising the agreed review methodology shown at paragraph 6.
- Requesting additional information in support of objective (i)
- Identifying additional consultees
- Agreeing a date and time for the suggested consultation session

Council Plan 2011-15

65. The work on this review supports the 'Protect Vulnerable People' priority within the Council Plan 2011-15.

Implications & Risk Management

66. At this early stage in the review, there are no known implications or risks associated with the review work. Once the review reaches a stage where draft recommendations are being identified, the associated implications and risks will be explored.

Recommendations

67. Members are recommended to:

- i. Identify what if any additional information is required in support of Objective (i) – Legal Requirements & Best Practice

- ii. Identify a suitable date for the proposed consultation session referred to in paragraph 54 & 61 above
- iii. Agree any additional consultees other than those identified within paragraphs 53-61 above

Reason: To progress the review in line with scrutiny procedures and protocols

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Wards Affected:

All



Background Papers: None

Annexes:

- Annex A** – Access Information on York’s Heritage & Cultural Venues
- Annex B** – Equality Act 2013 Extract (available online only due to large size)
- Annex C** – English Heritage Booklet
- Annex D** – English Heritage Access Strategy Information
- Annex E** – UK Customer Profile on Disability
- Annex F** – Visit England Code of Practice for Visitors
- Annex G** – Health Watch Report on Discrimination against Disabled People in York

Report Abbreviations:

CEA – Cinema Exhibitors Association
CVS – Community Voluntary Sector
DDA – Disability Discrimination Act
EAG – Equality Advisory Group
GP – General Practitioner