

ROYAL TUNBRIDGE WELLS & AREA ACCESS GROUP
Founded 1948



3rd February 2022

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Planning Inquiry – Tunbridge Wells Borough Council Local Development Plan:

The evidence submission concerns S.146 Equality Act 2010, the UN Convention on the Rights of People with Disabilities adopted by the UK 2000 & formally ratified by parliament in 2009, leading to the legally binding UK Disability Strategy 2012 & its Action Plan to meet total compliance by 2025 and how it will affect the proposed Local Development Plan.

To this end I have submitted herewith a copy of the “Five Key Articles” of the said UN Convention and draw your attention to Articles 9, 19 & 28. The definitions are supplied to us by the UN Commission for Human Rights Disability Monitoring Team and the Cabinet Office, the font of all wisdom on government policy, practice and procedure.

At the last inquiry into the Local Development Plan the Inspector accepted the definition set out in Article 28 on page 4:-

“Developers must have due regard for Articles 9, 19 & 28 of the UN Convention on the Rights of People with Disabilities and the UK Disability Strategy 2012 & Action Plan with particular reference to Part 6 to ensure that all new build and refurbished buildings, dwellings and workplaces are independently accessible to all”

Campaigning for the Rights of all People with Disabilities

That means they must be wheelchair accessible throughout involving radical redesign of buildings, dwellings, workplaces and townscapes. Without acceptance and enforcement of the definitions of Articles 9, 19 & 28 and the legal duty under the Equality Act 2010 to:-

“Treat all disabled people more favourably than other groups to enable and empower them to participate fully within society”

That legal duty has been air brushed out of the TWBC Equality Impact Assessment in favour of soft words such as “advance” and “foster” which have little to do with enforcing our rights. Failure to meet the full compliance date of 2025 set out in the legally binding UK Disability Strategy 2012 & Action Plan will have serious consequences for government and local government alike. The example of my concern can be found in the EqIA Page 3 Legal Content 1.9 which should read as follows:-

- * eliminate unlawful barriers to independent access, exclusion in all its forms, discrimination, harassment and victimisation
- * enforce independent access for all in all its forms
- * enforce equality of opportunity between those who share a protected characteristic and those who do not
- * foster good relations between people who share a protected characteristic and those that do not

Lumping disabled people with other protected groups as demonstrated in the EqIA breaches the specific legal duty set out in the Equality Act 2010 and means that meeting the complex pan disability specific needs of all disabled people is costly to achieve and is naturally overlooked by council planning authorities, including Tunbridge Wells Borough Council and Kent County Council as the Highway Authority, that has to change.

The problem is that to meet the disability rights goals by 2025 will now sadly require “direct enforcement” of the “Five Key Articles” of the said Convention and the UK Disability Strategy 2012 & Action Plan to alter totally all townscapes, buildings, dwellings and workplaces constructed post 2009 when the UN Convention was formerly ratified by parliament.

This Local Development Plan will still exclude disabled people, because it is not pan disability specific which remains an offence under the Equality Act 2010 and contrary to the Public Sector Equality Duty & its predecessors the Equality Standards in Local Government Targets 2000 and Disability Equality Duty (England) Regulations 2005 which together with the Human Rights Act and two Disability Discrimination Act's 1995 & 2005, form part of the "Disability Paper Trail" leading to the two judgements by the UK Supreme Court that:-

"UN Convention and the UK Disability Strategy 2012 are "stand alone not part of the Equality Act 2010 but additional to it"

Failure to enforce the exact legal wording of the definitions upon local planning authorities and all developers will undermine successive long standing government policies such as "Welfare to Work" and the requirements of "Personal Independence Payments Regulations" and result in the exclusion and discrimination of disabled people.



Michael Coggles
Chairman RTW&AAG
South East Rep' National Disability Cuts Watch Team
Member All Party Political Group for Disability

Enc. "Five Key Articles"

UN CONVENTION ON THE RIGHTS OF DISABLED PEOPLE

"THE FIVE KEY ARTICLES"

INTRODUCTION:

The Convention was adopted by the UK in 2000, Formerly Ratified by Parliament in 2009, imposing upon the UK certain legal requirements including the creation of the legally binding UK Disability Strategy 2012 & Action Plan to meeting total compliance with all the articles of the Convention by the end of 2025.

Whilst the majority of articles of the Convention mirror those of the Human Rights Act 1998, the Equality Act 2010 and the UK Disability Strategy 2012; the following five key articles are designed to create independence and inclusion for all disabled people:-

ARTICLE 9 – THE RIGHT TO INDEPENDENT ACCESS:

Defined as:-

- "The right of all disabled people to independently access, without the assistance of a third party, all goods; services; information modes and platforms; facilities including all buildings, dwellings (see also article 28), railway stations, transport interchanges and townscapes; all modes of public transport (Defined by a joint DRC/DfT document in 1996 as buses, coaches, rail vehicles, taxi's & hire cars, all should be independently accessible by the end of 2017) and workplaces (including all areas, not just those open to the general public, to enable disabled people to enter the workplace)".

Notes|:

Total compliance must be reached by 2025 or sooner if the existing regulations set a compliance date. See also the wider notes in Article 28 in relation to planning and the use of the "Inclusive Mobility" Guide.

ARTICLE 19 – THE RIGHT TO AN INDEPENDENT LIFE AND LIVING:

Defined as:-

- "The provision, irrespective of cost of disability specific support, to enable and empower a disabled person to live an independent life".

Notes:

Taken literally this means that there can be no “means testing” and the old “one size fits all approach” is now illegal on the grounds that it would discriminate and potentially exclude disabled people from such support services; this is the view of the UN’s Disability Monitoring Team. Service providers must ensure their support meets the disability specific needs of the disabled person or they could face prosecution. The UK Supreme Court has already ruled in social care cases that the UN Convention and the UK Disability Strategy 2012 are not part of the Equality Act 2010, but are “stand alone” and must be seen as additional to the Act. The recent damning report by the Parliamentary and Lords Select Committee on Human Rights into Article 19 made clear that without compliance with Articles 9, 20, 25 and 28 this would not be possible to achieve. Likewise, the recent damning report by the UN Commission on Human Rights Mobility Monitoring Team accuses the UK of failing in its duty of care towards disabled people.

ARTICLE 20 – THE PROVISION OF DISABILITY SPECIFIC AIDS, ADAPTATIONS, EQUIPMENT, TRAINING AND SUPPORT:

Defined as:-

“The right of all disabled people to disability specific aids, adaptations, equipment, training and support to meet their special needs”.

Notes:

Local social services, charities acting as a service provider, the NHS and education establishments, are now required by law as set out in the Equality Act 2010 and this Article, the UK Disability Strategy 2012 and Action Plan “Fulfilling Potential” to meet the disability specific needs of a disabled person, irrespective of cost. County Court actions brought by disabled people or their organisations have established a bona fide legal precedent.

ARTICLE 25 – THE RIGHT TO DISABILITY SPECIFIC MEDICATION AND TREATMENTS:

Defined as:-

“The provision of disability specific medication and treatments approved by NICE, irrespective of the cost and the provision of the necessary support, including social care support irrespective of the cost (See also Article 19).

Notes:

The chair of NICE has stated that such approved medications and treatments “must be provided to chronically sick and disabled people, a County CCG cannot refuse such medications or treatments on cost grounds alone”. DfH have made clear that the use of Out of Area Clinical Commissioning Boards is illegal. They were introduced to prevent GP’s from referring a patient to a centre of excellence out of area, thus denying local Acute Hospitals the opportunity to treat a patient.

ARTICLE 28 – THE RIGHT TO INDEPENDENTLY ACCESSIBLE HOUSING:

Defined as:-

“The right of all disabled people to disability specific independently accessible housing” (This article must be seen in conjunction with Articles 9 & 19 of the Convention)

Notes:

Planning Law does not afford a right. However the NDCWT took this issue up with the Department for Communities and Local Government and the Cabinet Office the font of all wisdom with regard to policy matters. Their spokesperson made the following statement in 2016 and this was reiterated in 2018 & 2020:-

“The articles of the UN Convention are non negotiable and must be complied with by 2025 or sooner if resources permit”.

That statement was reiterated to Rt Hon Greg Clark MP in a letter from the then Planning Minister Brandon Lewis MP.

The Cabinet Office spokesperson also stated:-

“Normally International Treaties are not incorporated into UK Law, it is indeed correct that the then Prime Minister Tony Blair did bring the UN Convention on the Rights of Disabled People into UK Law, using the device of the legally binding Equality Standards in Local Government Targets 2000 (ESLG), which required “adoption and full compliance with the said Convention”. The ESLG is the forerunner of the Public Sector Equality Duty (PSED), the requirements of the ESLG still apply and remain in force to this day and you are correct that it is indeed a long held assumption by successive administrations that compliance will be reached by 2025 and many flagship policies of successive government administrations are based upon that long held assumption”.

Based upon this decision, the Royal Tunbridge Wells & Area Access Group gave evidence to the Inquiry by the Planning Inspector into the Tunbridge Wells Borough Council's Local Development Plan. He ruled with the backing of the Planning Minister that the Local Development Plan must include the following:

"Developers must have due regard for Articles 9, 19 & 28 of the UN Convention on the Rights of Disabled People and the UK Disability Strategy 2012 & its Action Plan with particular reference to Part 6, to ensure that all new build and refurbished buildings, dwellings, workplaces and townscapes are independently accessible to all"

In addition there is a requirement for them to include the updated Department for Transport "Inclusive Mobility" Guide. Inclusive Mobility remains the bible of Access Groups in the UK, as it sets the minimum standards to be observed in buildings and highways in England, similar arrangements will apply elsewhere in the UK.

NOTES ON THE EQUALITY ACT 2010 - UPDATED:

Many of the Sections of this Act remain to be enacted and regulations introduced. Successive administrations have chosen not to introduce such regulations which would in many cases establish the rights of disabled people and bring about compliance by the removal of barriers to independent access currently experienced by disabled people.

The only key section that was enacted when the Act became law was the Section that required that:-

"Disabled people be treated more favourably than other Groups to enable and empower them to participate fully In society".

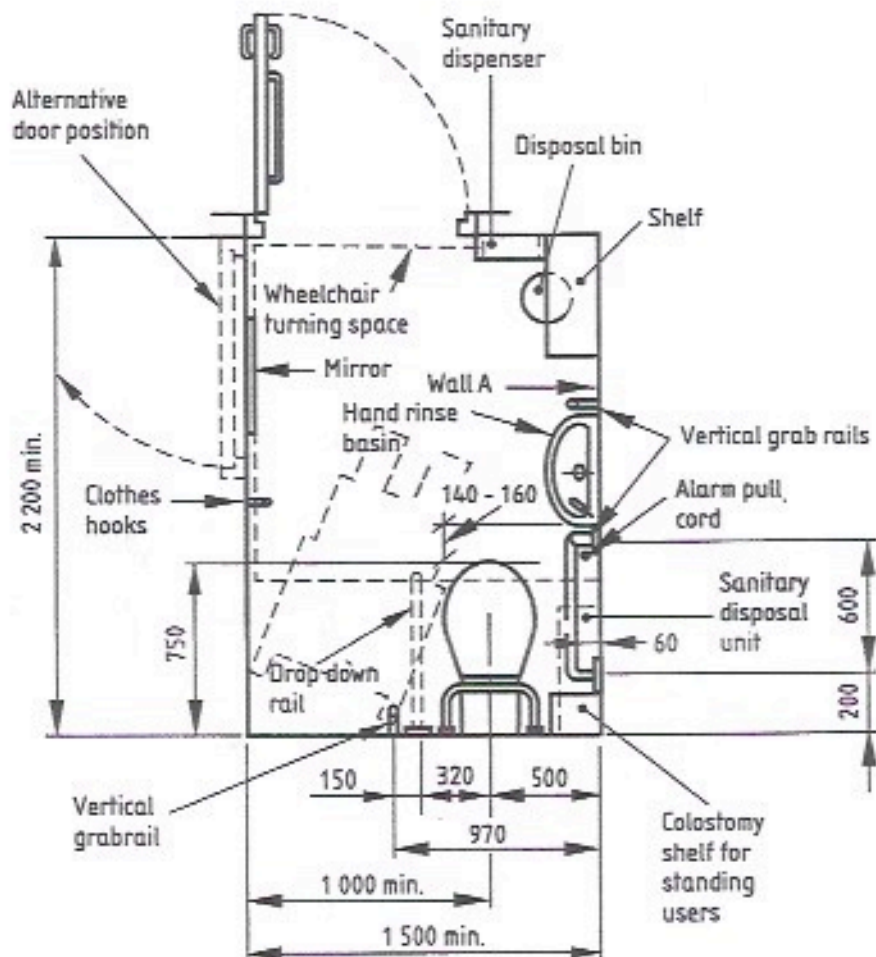
The implications of this legal requirement are often ignored by government and local government alike. However in 2018 the Department for Transport issued its "Inclusive Transport Strategy" which built upon the recent enactment of three sections of the Equality Act dealing with licensed hire cars and taxi's, as well as providing clarity on the provision of inclusive transport 8 years after the Act came into force.

However the legal duties imposed by the ESG Targets 2000 the forerunner of the PSEG, remain in force and must be complied with. This remains a potent weapon that can be used to greater effect when dealing with local government. The UK Disability Strategy 2012 without

its Action Plan adds weight to any legal action, as do the articles of the Convention and the often forgotten Human Rights Act 1998, forming part of the "DDA paper trail", especially when attempting to create a legal precedent or application for Judicial Review.

The Supreme Court in two landmark cases have ruled that the Convention and the UK Disability Strategy 2012 are "stand alone not part of the Equality Act but additional to it".

View from above of the layout of a typical accessible unisex toilet.



For the location of the mirror and associated fittings see Fig 58

© BSi (see Appendix 6)

• **Technical note 74**

Wall view of the layout of a typical accessible unisex toilet.

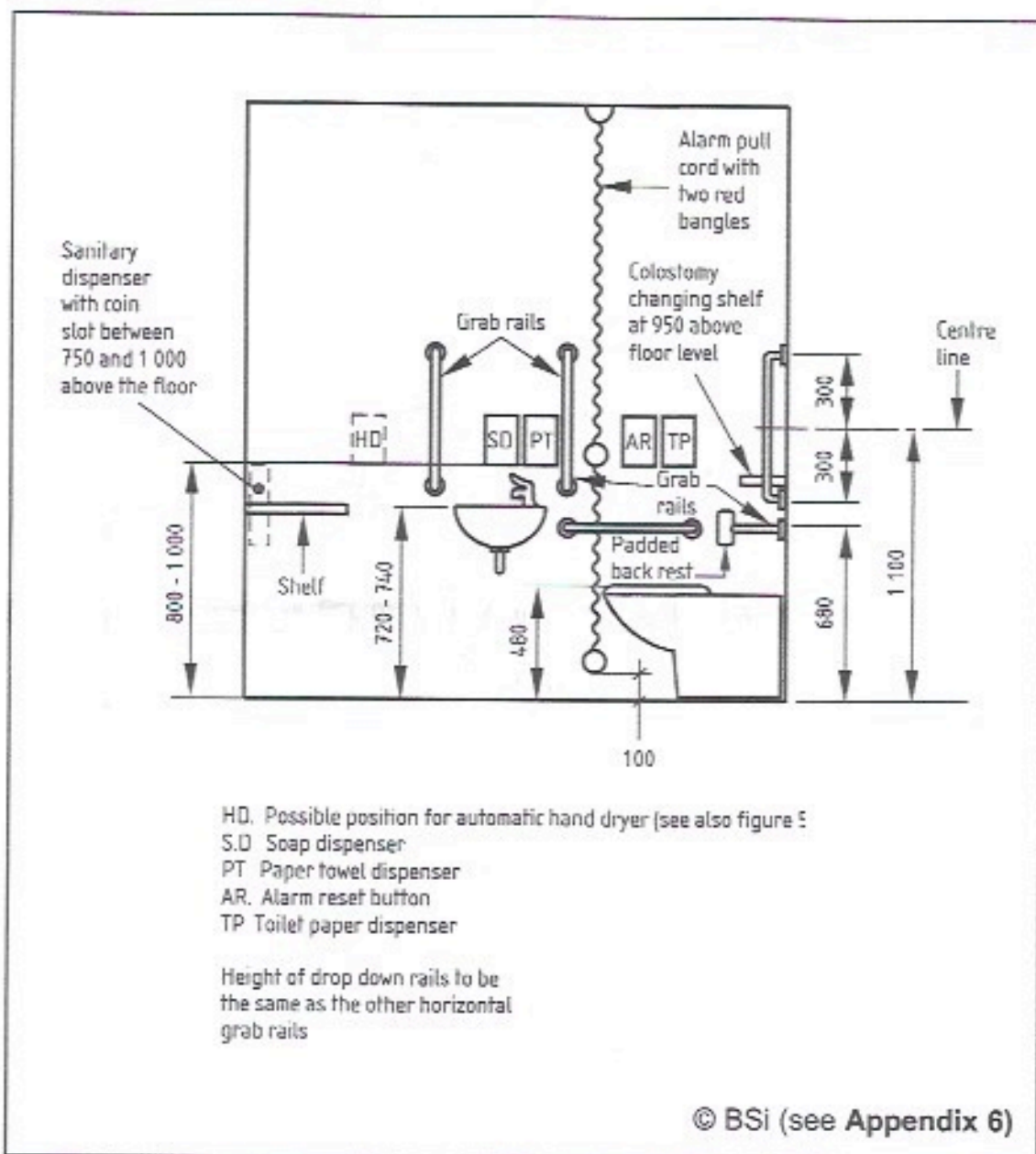
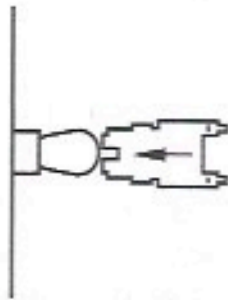


Diagram of transfer positions.

Frontal transfer:



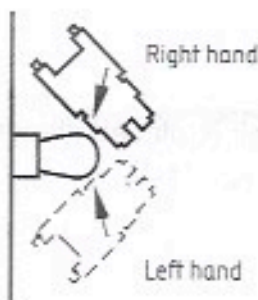
Using grab rails to pivot from wheelchair to w.c.

Oblique transfer:



Using grab rails and/or grasping w.c.

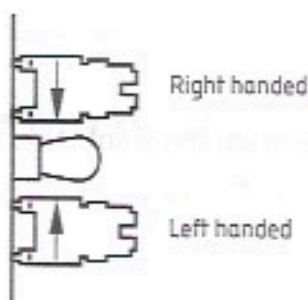
Lateral transfer:



Using grab rails and/or grasping W.C.

One wheel backed up to rear wall with chair at an angle to W.C.

Lateral transfer:



Using grab rails and/or grasping W.C.

Both wheels backed up to rear wall with chair parallel to W.C.

© BSi (see Appendix 6)

- Doors.** The door must be wide enough. **75** Embossed signs located on the latch side must contrast in colour with their surroundings. See **Section B4.2 Embossed Signs** for more details. The door must always open outwards to allow access in an emergency. Door handles and locks must be large enough to be easy to grasp by people with impaired hand movement (see specifications given in **Section B4.1 Doors**). There must be a horizontal pull bar to make it

easy to pull the door shut. Some means of indicating whether the toilet is in use should be provided, preferably using the words 'vacant' or 'occupied'. It must be possible for staff to unlock the door from outside in an emergency.

• Technical note 75

Doors must be at least 1000mm wide. Rising butt hinges will ensure that the door does not open unnecessarily and therefore perhaps into the path of visually impaired people. They will also help to ensure that the needs of the disabled person using the toilet to reach or stretch uncomfortably is reduced. Bi-folding doors opening outwards can be used but these should not be secured on runners set into the floor and ceiling as these can restrict their movement. Any door will need to be well maintained and have the hinges and locks regularly lubricated for ease of use.

• **Space.** The room must have sufficient unobstructed space to allow wheelchairs to manoeuvre and turn. The toilet must be large enough to allow wheelchair users to transfer from the front, side or when the chair is placed diagonally alongside the pan (for diagram see **Technical note 74**). There must be enough space for an assistant to help with the transfer to and from a wheelchair. **76**

• Technical note 76

The following specification reflects British Standard BS8300:2001. The internal dimensions of an accessible toilet must be at least 1500mm wide and 2200mm deep so it is big enough to accommodate people using powered scooters and also allow more room for transfer (see **Technical note 74**). There must be a clear wheelchair turning space of 1500mm x 1500mm, which must not be reduced by obtrusive pipework or fittings below 700mm. Sharp edges and rough surfaces must be avoided throughout to lessen the risk of injury to people who make involuntary movements.

• **The Toilet.** It is recommended that where possible a cantilevered toilet pan should be used so that male wheelchair users can get close enough to use it as a

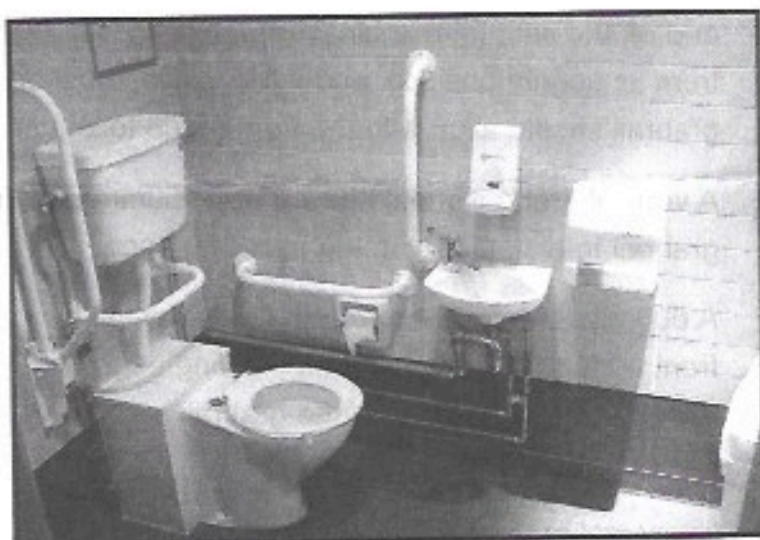
- urinal without having to move their feet off the wheelchair's footplates. The front of the pan must be far enough away from the back wall to allow a wheelchair to be lined up with it for transfer. **77**

• Technical note 77

The centre line of the toilet pan must be 500mm from the side wall and the rim must be 480mm above the floor. Open seats (those with a gap in the front) make transfer more difficult and must be avoided.

The flush must be easy to operate. A large easy to grip handle must be used, placed on the side of the cistern adjacent to the transfer space to be within reach of someone sitting in a wheelchair. It must be designed so that a

passenger with limited reach, or passengers using a fist or an elbow, can operate it. Where possible, a flushing lever attached to the cistern should be used in preference to the pull type, as pull types might get confused with the emergency call for aid control. **78**



Accessible toilet ■

• Technical note 78

Where a chain pull is used, it should be positioned adjacent to the transfer space, at a height between 800mm and 1000mm above floor level. It should terminate with a ring handle of 50mm diameter.

● **Grabrails.** Grabrails are required to give support and stability when transferring, standing up or sitting down and when adjusting clothing. They must be firmly fixed. They must be placed so they do not cause an obstruction themselves. **79**

● **Technical note 79**

All grabrails should be 35mm in diameter and give good grip in wet conditions. They must contrast with their surroundings. All horizontal grabrails must be 680mm above the floor and vertical grabrails, at least 600mm in length, must be centred at a height of 1100mm above the floor.

A drop-down or hinged grabrail must be located on the transfer side of the toilet, 320mm from the centre line of the toilet pan. This is used for getting on and off the seat (in combination with a fixed grabrail). It must be easy to release from its upright position, and when down, must be very steady. The front of the grabrail should align with the front of the toilet pan.

A vertical grabrail should be located 150mm beyond the drop-down or hinged grabrail to aid stability in the transfer space.

A 600mm long fixed horizontal grabrail must be located on the side wall with the front edge 100mm beyond the leading edge of the toilet pan. There must be 60mm clearance between the grabrail and the wall.

If the cistern is situated behind a duct or at a high level, there must be a horizontal grabrail located behind, and centred on, the toilet pan. The grabrail must not stop the toilet seat remaining in the raised position.

There must be two vertical grabrails, either side of, and centred, on the washbasin. As a guide, the first should be located 100mm beyond the leading edge of the toilet pan, above the horizontal grabrail.

● **Colour and contrast.** Colour and contrast must always be used in every cubicle when toilets are being refurbished as visually impaired people do not necessarily need to use accessible toilets. In all toilets, if either white walls or white fittings are used they must contrast appropriately with their surroundings. They must not be used together. All walls and other surfaces must have a matt