



An
Bord
Pleanála

Regularisation FSC Inspector's Report

ABP-307164-20

Appeal v Refusal or Appeal v Condition(s)	Appeal v Refusal.
Development Description	Change of use from retail to café and material alterations
Building Control Authority Fire Safety Certificate application number:	F25037
Appellant & Agent:	Robert Riordan and Kevin Harrington (Priory Coffee) c/o Nationwide Fire Safety
Building Control Authority:	Cork County Council
Date of Site Inspection	8 th October 2020
Inspector	Patricia Calleary

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1.0 Introduction

1.1. This case relates to a first party appeal against a refusal for a regularisation fire safety certificate. The development which is proposed comprises a change of use from retail use to café together with material alterations. The principal reason for the refusal by the Building Control Authority (BCA) centres on their contention that adequate means of escape at first-floor level has not been demonstrated. The building is a two-storey protected structure located on a main shopping street in Mallow, County Cork.

2.0 Information Considered

2.1. The information considered includes:

- Copy of Regularisation Fire Safety Certificate Application and supporting drawings and documents (including compliance report) submitted to the BCA
- Revised report and revised drawings submitted to the BCA
- Request for Further Information from the BCA
- Further information and Drawings received by the BCA
- Copy of BCA decision (Refusal)
- Copy of BCA internal report by Chief Fire Officer/Building Control Officer
- Copy of written appeal and accompanying drawings
- BCA response to appeal
- Appellants response to BCA response to appeal
- Copy of previous Decision related to a fire safety certificate (FSC) for the building with ref: 18/FSC/N/1270

3.0 Decision

3.1. The BCA refused to grant a regularisation fire safety certificate for one stated reason as follows:

- Compliance with **Part B1(means of escape)** of the Second Schedule to the Building Regulations, 1997-2006, has not been demonstrated.

3.2. **BCA Internal Report**

- 3.2.1. The BCA internal report recommends a refusal of the regularisation FSC on grounds that are similar to the points set out in the BCA response to the appeal, as detailed below. It is set out that two escape stairways are required, including one that is a protected stairway, however, only one open stairway is proposed to be provided.

4.0 **Relevant History/Cases**

- 4.1. **18/FSC/N/1270** - Cork County Council BCA granted a fire safety certificate for the same building (November 2018) for the change of use from shop to café and material alterations on the ground floor.

5.0 **Appeal**

5.1. **Appellant's Case**

- 5.1.1. The following is set out in the initial grounds of appeal:
- Planning permission was obtained for the development in November 2018;
 - Building is a protected structure;
 - Proposal complies with recommendations for occupant numbers and recommended internal travel distance by reference to Technical Guidance Document (TGD): Part B 2006 and British Standard(BS)9999:2017;
 - Total number of occupants within the Ground Floor Area = 28 and within the mezzanine area = 20. (Total number = 48);
 - Maximum travel distance within the ground floor is 15.4m and 11m within the mezzanine level.

5.2. **BCA Response**

- 5.2.1. The BCA response to the appeal includes the following:

- The works as constructed, specifically the addition of a mezzanine floor and stairs, has not been laid out in accordance with the previously granted fire safety certificate (18/FSC/N/1270);
- Notwithstanding two requests to the applicant for a pre-development plan, no such plan has been furnished;
- Means of escape provided is not adequate for the following reasons:
 - i. A protected escape stairway leading from the mezzanine floor has not been provided;
 - ii. The open connection compromises the means of escape from the mezzanine floor;
 - iii. The premises do not fit a 'small premises' category;
 - iv. Inadequate fire detection and alarm system provided;
 - v. Risk of spreading fire to timber cladding from ventilation exhaust point;
 - vi. Risks along external escape route has not been addressed;
- Selective use of BS9999:2017 and BS5588:Part 11: 1997 to demonstrate compliance with Part B is not appropriate;
- Inadequate fire detection provided;
- Risk of fire spread not adequately considered;
- Risk along external escape route not addressed.

5.3. Appellant's Response to BCA Response

5.3.1. The main points of the applicant's response are summarised below:

- The scope of the upgrade works was outlined by the fire officer in his request for further information;
- Two exits are provided from the ground floor area, which will comply with Section 1.2.2.4 (Minimum number of escape routes) and Table 1.3 of TGD B:2006;
- Single escape route provided from the mezzanine floor area in compliance with Section 1.2.2.5 of TGD B:2006;

- Number of occupants on the mezzanine floor equalling 20, complies with Section 1.2.1 and travel distance from the mezzanine floor complies with Table 1.2 of TGD B:2006;
- BS9999:2017 was used as assistance to further clarify that the travel distance was compliant;
- Proposal complies with Section 3, Paragraph 10 (Small premises) of BS5588:11:1997, which allows consideration to be given to a reduction in the number of exits and stairs and the omission of a protected stairway;
- Open stairway is permissible by reference to BS5588:11:1997 (small premises provisions);
- Proposes to install an L2/L3X fire alarm system in accordance with IS 3218:2013 + A1:2019 fire detection and alarm systems;
- Risk of fire spread to timber cladding would arise and risks along external escape route have not been addressed.

6.0 Assessment

6.1. Introduction

- 6.1.1. This appeal is made against the BCA refusal to grant the regularisation fire safety certificate for a coffee shop. The building is a two-storey protected structure located on a main shopping street in Mallow, County Cork. It has a gross floor area of 118.5 sq.m at ground level and it contains a mezzanine with 27.5 sq.m containing a seating area. The minimum performance requirements that the works must achieve, including change of use and material alteration, is set out in Part B – Fire Safety of the second schedule to the building regulations. The main issue that has arisen centres on whether or not the proposal meets the requirements of B1: Means of Escape.

6.2. Technical Assessment

- 6.2.1. The matters that informed the BCAs reason for refusal and arise in this appeal, include the following:
- Clarity of scope of works

- Adequate Means of escape (from the mezzanine floor);
- Other Fire Safety Matters;

6.3. Clarity of Scope of works

- 6.3.1. The scope of works, as represented on the drawings and application documents, include the **change of use** from retail use to use as a coffee shop. **Material alterations** are also proposed, and this includes the provision of a mezzanine floor with seating for 20 patrons, while seating at ground floor accommodates 38 patrons. Two escape routes are provided at ground floor, one at each of the front and rear of the building, and the escape from the mezzanine level would be provided by an open accommodation stairs, to the ground floor. A drawing received by the Board from the BCA in its response to the appeal on 11th day of June, 2020, presents the existing (previous) floor plans. The drawing is stated as having been submitted as part of a previous application for a fire safety certificate (18/FSC/N/1270) referenced above.
- 6.3.2. Having reviewed the drawings and documents on file and having regard to the above, I am satisfied that the extent of the scope of works are sufficiently detailed such as to enable me to carry out my assessment of the appeal.

6.4. Adequate Means of escape (from the mezzanine floor)

- 6.4.1. A single escape route is provided from the mezzanine level via the accommodation stairs that also serves access to and from the mezzanine level by patrons/occupants of the coffee shop. The BCA contend that this means of escape is not adequate because of the absence of a protected stairway from the mezzanine level and that the open connection between the mezzanine and the ground floor compromises the means of escape for occupants who occupy the mezzanine floor. The appellant contends that the single escape route leading from the mezzanine follows Section 1.2.2.5 of TGD B:2006 and is therefore compliant with the requirements of B1 of the Building Regulations.
- 6.4.2. Having reviewed the technical guidance set out in TGD:B 2006, I note that section 1.2.2.5(c) allows for a single escape route where the **purpose group** is not 2(a) residential (institutional), where **occupancy** is no more than 50 and where **limits on travel** in one direction are satisfied. I have considered each of these matters directly below.

6.4.3. Classification of buildings by purpose groups are set out in Table 0.1 of the guidance document. The specific building fits within **purpose group 5(b)** (Assembly and recreation - other) and is therefore not within the category 2(a) (Residential – Institutional). The **occupancy** has been outlined in the application and set out above. With a maximum total occupancy of 48 for the building, including an occupancy of 20 at mezzanine level, this is below the 50 occupancy limit outlined above. In relation to **travel distance**, the maximum 'one directional distance' is 11m and the maximum total distance (part one directional and part alternative two way) is 15m. By reference to Table 1.2 (Limitations on Travel Distance), allowing for 18m (one direction) and 45m (in more than one direction) set out in Diagram 2(c) of TGD: B 2006, the **limits on travel distance** in the proposal have been met. Having regard to the above, I am satisfied that the provisions of section 1.2.2.5(c) has been met such as to allow for a single stair arrangement leading from the mezzanine in this case.

6.4.4. Provisions set out on page 3 of TGD: B 2006 (existing buildings) are also relevant in consideration of this appeal. It sets out that in the case of material alterations or changes of use of existing buildings, the adoption of the guidance in TGD:B 2006 without modification may not, in all circumstances, be appropriate and that adherence to guidance intended for application to new work may be unduly restrictive or impracticable. It also states that alternative approaches based on the principles contained in the document can be considered. Clearly, even if a protected stairs were warranted to meet strict compliance with TGD:B (2006), when taken this provision into account and noting the technical constraints that would arise in context of an existing building, it is clear that the guidance allows for alternative approaches and flexibility. Therefore, the strict requirement for a protected stair leading from a small mezzanine area would be disproportionate and unwarranted.

6.5. **Other Fire Safety Matters**

6.5.1. The BCA consider that the appellant's **selective use of BS9999 and BS5588-11:1997 is not appropriate**. The appellant states that Section 14.2 (acceptable means of escape) of this guidance was used as a further measure to demonstrate that the travel distance was also in compliance with this guidance. It is also submitted by the appellant that BS5588-11:1997 was used to demonstrate that the building could be considered a 'small premises' and therefore supports a reduced number of exits. As

outlined in my assessment above, I am satisfied that the means of escape, including from mezzanine level, is acceptable. While it was not necessary to rely on supporting guidance outside of TGD: B 2006 in this particular instance, the use of such provisions are acceptable and they also demonstrate compliance with Part B1 (Means of Escape) of Schedule B to the Building Regulations as relevant.

- 6.5.2. In their response to the appeal, the BCA state that the **fire detection is inadequate**, having regard to the adjoining building, which is horizontally and vertically separated from the subject coffee shop. It is submitted by the appellant that it is proposed to install an L2/L3X fire alarm system in accordance with IS 3218:2013+ A1:2019 fire detection and alarm systems and that it will include a sounder. The proposed arrangements also include an automatic (quick response) fire suppression system within the cooking area. Compliance with this standard, which is NSAI approved, is reasonable and technically acceptable and if adopted would demonstrate compliance with B1 (Means of Escape).
- 6.5.3. It is submitted by the BCA that there is a **risk of fire spread to timber cladding from the ventilation exhaust plant**. In response the appellant states that the outlet from the extractor hood will not have any effect on the escape route and that in the unlikely event of a fire outbreak, the fire suppression system will operate. The outlet vent is located 5.2m from the main entrance door. Given the nature and scale of the building and its use as a coffee shop, the risk of fire spread has been adequately mitigated and is acceptable to meet the requirements of Section 1.4.11 of TGD:B and hence the requirements of B1 (Means of Escape).
- 6.5.4. It is further submitted by the BCA that the **risks along the external escape route were not addressed**. This appears to refer to concerns around a storage area containing fridge units located at the rear of the building within a small yard. A doorway at the end of the yard opens into the laneway, which in turn leads to the street. The final door that leads out of the yard area has a clear width of 900mm and is stated to comply with Table 1.4 (Width of escape routes and exits) of TGD:B 2006. It is also stated at appeal stage that the rear exit door of the building will be replaced with a 60-minute fire resistance door. I am satisfied that the risks are not such that escape by occupants of the building would be inhibited. It is relevant to note that there are two escape routes (front and rear) and there is no requirement for this rear escape routes to function as a protected corridor.

7.0 Recommendation

- 7.1. I recommend that An Bord Pleanála hereby allows the appeal, based on the Reasons and Considerations set out below, and directs the Building Control Authority to grant a regularisation fire safety certificate in accordance with the said plans and particulars and subject to the conditions set out under.

8.0 Reasons and Considerations

- 8.1. Having regard to the form and layout of the building, the nature and extent of the of the change of use and the material alterations proposed, the submission lodged with the regularisation fire safety certificate application and the appeal, the reports received by the Board from the Building Control Authority and the Appellant and to the report and recommendations of the reporting inspector, it is considered that, subject to compliance with the conditions set out below, the proposed change of use and material alterations would achieve an adequate level of fire safety that would comply with the requirements of Part B of the Second Schedule to the Building Regulations 1997 to 2020.

9.0 Conditions

1.	Mechanical ventilation and air conditioning systems shall be in accordance with Section 1.4.11 of Technical Guidance Document B (2006) Reason: To ensure compliance with B1 of the Second Schedule to the Building Regulations 1997-2020.
2.	Fire Safety signs shall be provided in accordance with Section 1.4.13 of Technical Guidance Document B (2006). Reason: To ensure compliance with B1 of the Second Schedule to the Building Regulations 1997-2020.
3.	The proposed fire detection and alarm system shall be designed and installed in accordance with IS 3218:2013 + A1:2019 fire detection and alarm systems

	Reason: To ensure compliance with B1 of the Second Schedule to the Building Regulations 1997-2020.
4.	The protection of openings and fire-stopping shall be in accordance with Section 3.4 of Technical Guidance Document B (2006) Reason: To ensure compliance with B3 of the Second Schedule to the Building Regulations 1997-2020.

Patricia Calleary

13th October 2020.