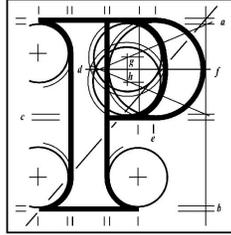


An Bord Pleanála



Appeal against; 1 No. Condition imposed by Dublin City Council on Disability Access Certificate issued by Dublin City Council on March 16th 2012.

For; Material alteration and extension into adjacent building

At; 18 – 19, South William Street, Dublin 2.

Board DAC appeal ref no: 29D DS 0034

BCA Disability Certificate application no.; DAC GC10/317/11

Appellant/Agent: Postridge Trading Ltd., 3, Elm House, Millennium Park, Naas, Co. Kildare

Building Control Authority: Dublin City Council

Board Consultant name: Denise Germaine MRIAI, MCIAT, ICIOB

Site inspection/photographs: None.

INTRODUCTION

The application for a DAC Certificate to Dublin City Council consists of the change of use from retail/wholesale at ground floor level and storage at basement level to a restaurant at ground floor level and associated stores and staff facilities at basement level, all accessed from William Street South with fire escape exit onto Drury Street. The development also includes those material alterations resulting from this change of use. Following the invalidation of the first DAC application, a subsequent application submitted on December 16th 2011 was validated, and following requests for additional information, which resulted in revised drawings and details being submitted to Dublin City Council, a Disability Access Certificate was issued by Dublin City Council on March 16th 2012, with 10 conditions.

An appeal was lodged by the applicant, Postridge Trading Ltd., with An Bord Pleanála on April 12th 2012 against Condition No. 10.

An Bord Pleanála received a full file of documentation in support of the appeal.

INFORMATION CONSIDERED

The full file of documentation, as supplied by An Bord Pleanála was considered in arriving at this recommendation. The documents reviewed, which refer to the proposed development, were as follows;

- Validated Disability Access Certificate Application including Site Location Map, Plans, Sections & Elevations of proposed works and Compliance Report – December 2011, together with additional information submitted in February 2012.
- Disability Access Certificate with 10 conditions – Ref. DAC GC10/317/11 – March 2012
- Appeal against condition No. 10, including grounds of appeal – April 2012
- Dublin City Council Building Surveyor's Comments on the appeal – May 14th 2012
- A final response from the appellant - June 5th 2012.

5. RELEVANT HISTORY/CASES

The proposal is to carry out the change of use and subsequent material alterations to provide a restaurant with ancillary stores and staff facilities within part of a pair of existing, interlinked, 4 storey over basement inner city buildings with frontage onto South William Street and Drury Street. It is stated that the building was built in the 1950s and that the landlords, Flairline Fashions, purchased the building in 1983. The current applicants, Postridge Trading Ltd., are tenants of part of the building at Ground Floor and Basement level only.

A Disability Access Certificate was issued on March 16th 2012 for the proposed development, subject to 10 conditions, as follows;

Conditions Nos. 1 to 8

These conditions relate to technical issues of the interior fit-out of the proposed restaurant premises. These conditions are not appealed, and therefore I have not reviewed them in detail.

I have, however, reviewed Conditions Nos. 9 (not appealed as such by the appellant) and No. 10 (the subject of the appeal).

Condition No. 9

- a. Storage facilities within the basement shall not impede access or egress to or from the designated accessible car parking space.
- b. Accessible car park line markings, symbols for access and markings relative to the accessible route to be permanent and contrast visually with the surface to which applied. Such markings to be maintained to ensure high visibility.

Reason

To secure independent and safe use of the building and space about the building.

Condition No. 10

This certificate is furnished on the basis that the written commitment of 13th February 2012 to submit the necessary certificate relative to 47 Drury Street is honoured and that such application or applications secure the necessary certification.

Reason

To secure adequate independent, safe and sustainable access to the building and space about the building and to ensure no new or greater contravention of Building Regulations is created by virtue of these works.

6. APPELLANT'S CASE

The Appellant is appealing only against Condition No. 10 and his case, based on documents lodged, is that this application for a DAC Certificate relates to the change of use and material alterations to the restaurant and ancillary stores/staff facilities in part of the premises only, and that conditions which impose requirements on other parts of the building, beyond the control of the appellant as lessee, are unjustified. It is stated that the appellant will not have any access to the basement car parking, which is operated autonomously as a separately owned lease demise providing contract car parking in the Drury Street area and not to any occupants of the areas of the building to which this appeal relates. It would appear from the drawings submitted, that there is no direct access from the appellant's demise to this adjoining car park area, which is completely separate and not connected with the restaurant use.

The appellant also makes reference in his appeal to a DCC requirement to provide a ramped access within the proposed Kitchen area. The appellant appears to be requesting that this ramp should be either deleted or replaced with steps. This does not appear to be a matter of appeal against either the Disability Access Certificate itself, or any of its 10 conditions.

7. BCA CASE

The BCA case based, on documents lodged and in accordance with their report copied to An Bord Pleanála, states that a written undertaking from the landlord to submit an application for a Disability Access Certificate for the areas of 47 Drury Street outside the appellant's demise, and that such an application has not been submitted. Therefore, by the inclusion of Condition No. 10, they have made the Disability Access Certificate granted for the appellant's demise conditional upon the landlord obtaining a Disability Access Certificate for his areas of the building.

By the inclusion of Condition No. 9 b, they have imposed a requirement regarding car park markings and signage in the adjoining basement car park area.

The BCA also state that the other issues referred to in the appellant's appeal are irrelevant, as they do not refer to specific conditions of the DAC.

8. CONSIDERATION/ASSESSMENT

Details lodged with application

I consider that the detailed and comprehensive documentation included in the file supplied to me by An Bord Pleanála, and which I have reviewed, is sufficient for me to make an informed recommendation to the Board and for the Board to determine the merits of the case, having regard to the requirements of Building Regulations Part M.

De Novo assessment/appeal v conditions

Having considered the drawings, details and submissions on the file and in light of the relatively minor nature of the appealed condition of the Disability Access Certificate application, I am satisfied, from the extent of the detailed documentation supplied and the plans, sections and elevations of the building, that the determination by the Board of this application as if it had been made to it in the first instance would not be warranted (i.e. a De Novo approach is not necessary). Accordingly, I consider that it would be appropriate to use the provisions of Article 40(2) of the Building Control Regulations, 1997 (as amended).

Content of Assessment

The appellant has not appealed against Conditions Nos. 1 to 8, and so there is no recommendation that these conditions be removed or amended.

The DAC application was originally made on the basis of compliance with the guidance in TGD Part M – 2000, in accordance with the transitional arrangements set out in that document.

As there is no reference in TGD Part M 2000 to the provision of designated disabled access car parking, I consider that to impose conditions relating to car parking in an area of the building which is not accessible to, or to be used by the appellant, and is under the separate control of the landlord, is unwarranted, and that Conditions Nos. 9 b. and 10 should be removed from the Disability Access Certificate.

Condition No. 9 a. imposes no requirement on the appellant, as the proposed storage facilities and staff facilities in his area of the basement demise do not in any case impede access or egress to or from any of the car parking, as there is no physical connection between the applicant's demise and the adjoining basement car parking. Although this condition appears to me to be unnecessary, there is no reason why it should not remain.

However, I consider that the imposing of Conditions Nos. 9 b. and 10 relating to areas of the building outside the subject area of the appellants demise and outside his control, is unwarranted.

Although not appealed by the appellant, I consider that Condition No. 9 b. is unwarranted.
The appellant has appealed against Condition No. 10.

Each of these conditions is addressed in sequence, as follows;

Condition No. 9 – Car Park markings

b. Accessible car park line markings, symbols for access and markings relative to the accessible route to be permanent and contrast visually with the surface to which applied. Such markings to be maintained to ensure high visibility.

I consider that this condition goes beyond the recommendations of TGD M 2000. The appellant confirms and the documentation shows that the area of basement car parking is outside his demise, and that he has neither access to, use of or control over this area of the landlord's demise. I recommend that this condition be omitted.

Condition No. 10 – Disability Access Certificate for adjoining part of building 47, Drury Street.

This certificate is furnished on the basis that the written commitment of 13th February 2012 to submit the necessary certificate relative to 47 Drury Street is honoured and that such application or applications secure the necessary certification.

I consider this condition should be omitted as it makes the issued Disability Access Certificate conditional on actions of person or persons other than the applicant, relative to an area of the building to which he has no access or use of and over which he has no control. I consider that any requirements of the BCA regarding the landlord's premises at 47 Drury Street should be a matter dealt with between the BCA and Flairline Fashions Ltd.

Second Issue

The matter of the ramp in the Kitchen area, which is shown on the revised plans submitted in February 2012, is not conditioned in the Disability Access Certificate and I therefore consider that to introduce this issue as part of this appeal is incorrect. As advised by the DCC in their Building Surveyor's comments, this issue might be more properly dealt with in the form of an application for a 'Revised Disability Access Certificate'.

9. CONCLUSION/RECOMMENDATION

My final conclusions/recommendations are that the Building Control Authority should be directed as follows;

Conditions Nos. 1 to 8 should be retained, along with their respective reasons.

Condition No. 9 a. Storage facilities within the basement shall not impede access or egress to or from the designated accessible car parking space.
Reason To secure independent and safe use of the building and space about the building.”

This condition should be retained.

Condition No. 9 b. should be removed.

Condition No. 10 should be removed

REASONS AND CONSIDERATIONS

It is considered that, subject to the revision of the wording of the Disability Access Certificate to remove Conditions Nos. 9 b and 10, the development would comply with the requirements of Part M of the Second Schedule to the Building Regulations 1997 to 2006.

Signed;.....
Denise Germaine, MRIAI, MCIAT, ICIOB

Dated; 08.06.12