

An  
Bord  
Pleanála

**Board Order  
ABP-308260-20**

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**Building Control Acts 1990 to 2014**

**Building Control Authority: Kilkenny County Council**

**Building Control Authority Register Reference Number: DACA 20-036**

**Appeal** by Johnnie McGrath care of Terry Brennan Consulting Engineers of Coote's Lane, College Road, Kilkenny in relation to the decision made on the 26<sup>th</sup> day of August, 2020 by Kilkenny County Council to refuse a disability access certificate under section 6 (2)(a)(ix) of the Building Control Act, 1990, as amended by section 5 of the Building Control Act 2007 in respect of the proposed development comprising of works to a Protected Structure (218 square metres), and including the change of use of a retail shop to restaurant café at ground floor and the change of use from restaurant and storage at first and second floor to provide four number AirBnB bedroom units at Circle of Friends, Main Street, Inistioge, County Kilkenny in accordance with the plans and particulars lodged with the said Building Control Authority:

**Decision**

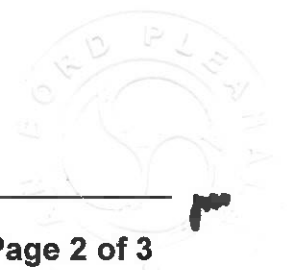
**Pursuant to the powers conferred on it by section 7 of the Building Control Act 1990, as amended by section 6 of the Building Control Act 2007, An Bord Pleanála hereby allows the appeal and directs the Building Control Authority to issue a disability access certificate, in accordance with the said plans and particulars, based on the reasons and considerations under and subject to a condition set out below.**

## Reasons and Considerations

Having regard to the existing building being a protected structure, to the nature and scale of the building works and change of use proposed, and to the spirit of Technical Guidance Document: M (Building Regulations 2010) which notes the adoption without modification of the guidance contained in said document may not, in all circumstances, be appropriate for existing buildings and historic buildings in particular, the Board considered it unnecessary, and would be unduly restrictive or impracticable, to require the same range of services, comprising an accessible bedroom and sanitary facilities on the ground floor as is provided at the upper floor levels, as an alternative to the provision of a lift access to the upper floors.

The Board further considered that the works or building to which the application relates, if constructed in accordance with the plans, calculations, specifications and particulars submitted the works proposed would achieve an adequate level of 'access and use' that would in turn demonstrate compliance with the requirements of Part M of the Second Schedule to the Building Regulations, 1997 to 2019.

In deciding not to accept the Inspector's recommendation to refuse permission, the Board was satisfied that having regard to the spirit of the overall guidance set out in Technical Guidance Document: M (Building Regulations 2010) outlined above, it is not necessary to provide a lift in the building or as an alternative to provide the same range of services/facilities on the entry or accessible level to those that are available on other levels (bedroom and sanitary facilities).



## Condition

The proposed material alterations and change of use shall be carried out in accordance with the plans, specifications and other relevant information submitted with the application to the Building Control Authority and the further information received by the Building Control Authority on the 16<sup>th</sup> day of July, 2020.

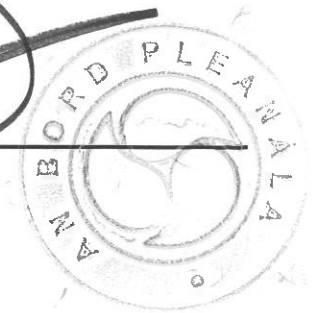
**Reason:** In the interest of clarity.

## Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Building Control Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

  
Paul Hyde

Member of An Bord Pleanála  
duly authorised to authenticate  
the seal of the Board.



Dated this 2<sup>nd</sup> day of  2021