

Inspector's Report

Appeal against Refusal to issue a Disability Access Certificate for Material Alterations at Windmill Therapeutic Training Unit, Sinnott's Place, Wexford, County Wexford.

Board DAC appeal ref. no.:	ABP-300591-18
Building Control Authority Ref. No.:	DAC 052/17
Appellant/Agent:	Windmill Therapeutic Training Unit Ltd. Larkins Lane / Sinnott Place South Main Street Wexford Co. Wexford Y35 XE48 Staples Owley Ltd. (SOL) (Agent) Unit M6 Wexford Enterprise Centre Kerlogue Co. Wexford
Building Control Authority:	Wexford County Council
Inspector:	Michael Mohan, FRIAI
Appendix Attached:	Photograph of Exterior

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1.0 Introduction

1.1. Site description

The building is an existing semi-detached, two-storey, corner building located off South Main Street, fronting onto Sinnott Place and Larkins Lane in the centre of Wexford town. It is used for social, recreational and educational purposes for inhabitants in the locality and is classified as Purpose Group 5 for Assembly and Recreation with respect to Building Regulations. It comprises general purpose/activity rooms with ancillary offices, kitchen/dining area and toilets. The existing floor plans show a lift and three staircases.

1.2 Subject Matter of Application

The application is for internal material alterations which include:

- Conversion of a garage/store to an office on the ground floor.
- Provision of two accessible bathrooms, one on each floor and one of which includes a shower.
- Alterations to stores/offices on the first floor.
- Removal of Stairs no.3.

The Disability Access Certificate application was submitted by Staples Owley Ltd. (SOL), Fire Safety Engineering Consultants, on behalf of Windmill Therapeutic Training Unit Ltd. and was received by the Building Control Authority (BCA) on the 17th October 2017 and included:

- Completed DAC application form
- 2 No. copies of drawings:

Drawing Number	Title	Scale
01-03	Site Layout Plan and Site Location Maps	Various scales
02-03	Existing Floor Plans, Sections and Elevations	1:100
03-03	Proposed Floor Plans, Sections, Elevations and Details	Various scales

- 2 No. copies of the Disability Access Technical Report
- An exemption from the requirement to pay a DAC application fee was sought on the grounds that the applicant is a Registered Charity. There is no evidence on file to say if this exemption was granted or if a fee was paid.
- Letter from Applicant dated 14th June 2017 claiming exemption from fee.

1.3 Building Control Authority decision

- The BCA issued a letter, dated 10th November 2017, requesting clarification regarding the full scope of the works.
- The BCA issued a letter, dated 20th November 2017, outlining further information required.
- The BCA issued a Refusal of the application for a Disability Access Certificate, dated 7th December 2017, DAC No. DAC052/17, Decision Order No.: 57/2017; Decision Date: 6th December 2017.

2.0 Information considered

The following information was considered as part of the appeal process:

1. Notification to Grant Planning Permission

Reg. Ref. No.: 20160519:

The planning application file was examined on Wexford County Council's website.

Permission was granted for *conversion of existing garage to office/reception use with associated site development works.*

2. Fire Safety Certificate

Ref. No. F039/2017

A Fire Safety Certificate was granted, dated 23rd August 2017, for *Internal Material Alterations*. There were no conditions attached.

3. Disability Access Certificate application:

Ref. No. DAC052/17

Application including Technical Report and drawings, listed at 1.2 above, was lodged by Staples Owley Ltd., Fire Safety Engineering Consultants. It was received by the BCA on 17th October 2017 and received by the Board from the BCA 29th January 2017.

The BCA issued a request for further information, dated 20th November 2017, which was received by the Board on 4th January 2018.

In response to the BCA request for further information, the Agent amended the description on the application form and Technical Report from *Internal Material Alterations* to: *Internal Material Alterations & Material Change of Use from Store 1 to office area at ground floor level, and from store to one on one room at first floor*. These were submitted

with a letter to the BCA, dated 14th November 2017, which was received by the Board on 4th January 2018.

The Agent wrote a further letter to the BCA, dated 23rd November 2017, which was received by the Board on 4th January 2018, stating that they wanted to revert the application form and Technical Report to represent a material alteration and not a material change of use.

The BCA issued a refusal of the DAC application on 7th December 2017, which was received by the Board on 4th January 2018 attached to the appeal from the Agent.

4. Appeal Documentation submitted by Agent:

The appeal documentation was received by An Bord Pleanala on 4th January 2018 and included:

- Letter from Mr. Jim Staples, Staples Owley Ltd. (SOL), Fire Safety Engineering Consultants, dated 29th December 2017.
- Copy of documents submitted with DAC application and BCA decision, Ref. No. DAC052/17.
- Decision to refuse a Disability Access Certificate.
- Cheque for €500.

5. Application Documentation from BCA

Wexford County Council submitted a letter to the Board, dated 22nd January 2018 (in response to a request from the Board, dated 9th January 2018), which was received by the Board on 23rd January 2018 and included copies of the following:

- Copy of the application documents including submitted drawings and Disabled Access Technical Report and letters of correspondence between the BCA and Appellant's Agent.
- Certified copy of Executive Order No.57/2017, dated 6th December 2017 and Memo re Explanation for Refusal of DAC application.
- Certified copy of letter to Appellant's Agent, dated 7th December 2017, informing of the BCA's decision.
- Copies of all Technical Reports in connection with the application.

6. Notification of Refusal of a Disability Access Certificate:

- Refusal of DAC, Ref. No. DAC052/17, issued by the BCA on 7th December 2017, was received with the appeal by An Bord Pleanala on 4th January 2018 and a further copy was received by the An Board Pleanala from the BCA on 23rd January 2018.

- The reason given for the refusal was:

“Failure to supply the necessary information, as requested, in support of this application to enable the Building Control Authority appropriately assess the application with specific but not exclusive reference to the following:

- *A Material Change of Use (MCU) to part of an existing building, from a previous garage space of 29m² to an office/reception space within an existing building classified as a place of assembly.*
- *Material Alterations.”*

7. Observations from the BCA in relation to the appeal:

The BCA submitted a letter to An Board Pleanala, dated 16th January 2018, which was received by the Board on the 23rd January. The observations from the BCA are referred to below in Section 6.0 Building Control Authority’s Case

3.0 Relevant history/cases

This Inspector is not aware of a previous DAC application relevant to this building.

4.0 DAC application

Disability Access Certificate application: Ref. No. DAC052/17 Application including the Technical Report and drawings, listed at 1.2 above, was lodged by Staples Owley Ltd., Fire Safety Engineering Consultants. It was received by the BCA on 17th October 2017 and received by the Board from the BCA on 29th January 2017.

5.0 Appellant’s case

Staple Owley Ltd., Fire Safety Engineering Consultants lodged an appeal on behalf of the applicant/appellant, dated 29th December 2017, against the BCA’s Decision to refuse a Disability Access Certificate, which was received by the Board on 4th January 2018.

In response to an invitation from An Board Pleanala, dated 14th March 2018, the Agent made a submission, dated 21st March 2018, which was received by the Board on 26th March 2018, in response to the letter from the BCA, dated 16th January 2018.

The following is a brief outline of the Appellant's case:

- Planning Permission was issued by Wexford County Council for *the conversion of the existing garage to office/reception use*.
- A Fire Safety Certificate was issued by Wexford County Council for *Internal Material Alterations*.
- The DAC application was submitted for *Internal Material Alterations*.
- The Access Officer in Wexford County Council is incorrect in stating that the application was for a *Material Change of Use*.
- The use of the building will not be changing.
- The use of the entire building will still be Purpose Group 5: Assembly and Recreation use.
- The use of the building will not change to another Purpose Group therefore there will be no Material Change of Use.
- The present use was in operation prior to the introduction of the Building Regulations.
- The garage/store was ancillary space which was originally used for a vehicle for transporting wheelchair users. That vehicle has been replaced by a bigger vehicle which will not fit into the garage. The space is to be converted to a much-needed office/reception. This will not change the use of the building.
- The Agent amended the description on the application form and Technical Report in a letter to the BCA, dated 14th November 2017, and which the Board received a copy of on 4th January 2018, from *Internal Material Alterations* to: *Internal Material Alterations & Material Change of Use from Store 1 to office area at ground floor level, and from store to one on one room at first floor*. This was in response to the request for Further Information from the BCA, dated 20th November 2017 and which the Board received a copy of on 4th January 2018.
- The Agent subsequently reverted to describing the application as Internal Material Alterations in correspondence issued to the BCA dated 23rd November 2017 and which the Board received a copy of on 4th January 2018.

6.0 Building Control Authority's case

The BCA submitted a letter, dated 16th January 2018, which was received by the Board on 23rd January 2018, commenting on the appeal.

The following is a brief outline of the BCA's case:

- The BCA is of the opinion that the proposed works consist of a Material Change of Use to part of a building and are not solely Material Alterations.

- The BCA stated: *“In this instance part of a building used for the particular purpose of a garage/store becomes used as the main office/reception area for a place of assembly.....the proposed development as outlined is for a change of use of part an existing building....”*
- The BCA quoted the following extracts:
 - Article 3. (3) (c) of the Building Control Act 1990 (re Material Change of Use) states:

where building regulations contain special provisions in relation to buildings used for any particular purpose, a building to which the regulations apply and which was not being used for that purpose, becomes so used.
 - S.I. 497/1997 – Building Regulations, 1997, states:
 - (a) *a change of use, deemed by Section 3(3) of the Act to be a material change of use, takes place, or*
 - (b) *a building which was not being used as—*
 - (i) *a day centre, becomes so used, or*
 - (ii) *a hotel, hostel or guest building, becomes so used, or*
 - (iii) *an industrial building. becomes so used, or*
 - (iv) *an institutional building, becomes so used, or*
 - (v) *an office (which is not ancillary to the primary use of the building), becomes so used, or*
 - (vi) *a place of assembly, becomes so used, or*
 - (vii) *a shop (which is not ancillary to the primary use of the building), becomes so used, or*
 - (viii) *a shopping centre, becomes so used.*
 - TGD M 2010 Section 0.6: *The Requirements of Part M apply to: (d) an existing building or part of an existing which undergoes a material change of use..... [The BCA did not quote the complete sentence which continues: to a day centre⁽ⁱ⁾, hotel, hostel or guest building⁽ⁱⁱ⁾, institutional building ⁽ⁱⁱⁱ⁾, place of assembly^(iv), shop^(v) (which is not ancillary to the primary use of the building) or shopping centre^(vi)].*
- The BCA state that Planning Permission was granted for a change of use from garage use to office use. [In fact, the description on the Grant of Planning Permission states that it was for *“conversion of existing garage to office/reception use with associated site development works”*].
- They also state that *“the correlation between the application of the Building Regulations and the planning permission approval pursuant*

to the Local Government (Planning and Development) Act 2000 and the development, a change of use, as approved is consistent with the decision of the BCA”.

- While considering the application, the BCA issued a letter to the Agent, dated 20th November 2017, which was received by the Board on 4th January 2018, outlining additional works/queries which would be required to the building as they deemed it to be a Material Change of Use. These works/queries referred to:
 - Approach Route to the proposed Development
 - Internal Circulation
 - Sanitary Fittings

7.0 Considerations

7.1 Level of detail provided in the application to meet the requirements of the Building Control (Amendment) Regulations 2009

Section 20 (D) 3(b) of the Building Control (Amendment) Regulation 2009 states that a DAC application should:

- *Identify and describe the works or building to which the application relates;*
- *Enable the building control authority to assess, whether the said works or building would, if constructed in accordance with the said plans and other particulars, comply with the requirements of Part M of the Second Schedule to the Building Regulations;*
- *Identify the nature and extent of the proposed use and, where appropriate, of the existing use of the building concerned.*

Section 20(D) 4 of the Building Control (Amendment) Regulation 2009 states:

(c) Where a building control authority consider that an application for a disability access certificate does not comply with paragraph (3), they may, as they consider appropriate, having regard to the extent of the failure to comply with the said paragraph, by notice in writing—

(i) inform the applicant that the application is invalid and cannot be considered by the authority, or

(ii) require the applicant to furnish such further plans, calculations, specifications or particulars, or such additional fee, as may be necessary to comply with the said article

(d) Where a building control authority serve a notice in accordance with sub-paragraph (c), they shall return to the applicant all the documents and the fee which accompanied the application.

7.2 Meeting the requirements of Part M of the Building Regulations

Legislative Considerations

Part M of the Second Schedule to the Building Regulations, (as amended), provides as follows:

To meet the requirements of M1: *Adequate provision shall be made for people to access and use a building, its facilities and environs.*

Technical Guidance:

In their Technical Report, SOL indicated that compliance with Part M of the Building Regulations is demonstrated by reference to TGD M: 2010. In addition, they stated that reference may also be made to the following documents:

- Building for Everyone Inclusion, Access and use (National Rehabilitation Authority)
- Irish Wheelchair Association Best Practice Guidelines Designing Accessible Environments (2014).

8.0 Assessment

This appeal is against a refusal to issue a Disability Access Certificate.

The main issue to resolve is whether the proposed works constitute a Material Change of Use and not just Material Alterations. In addition, there are other issues which need to be considered. These are all dealt with below:

(A) Material Change of Use?

- The Agent states that (a) the garage/store is ancillary space which was originally used for a vehicle for transporting wheel chair users. That vehicle has been replaced by a bigger vehicle which will not fit into the garage, (b) the space is to be converted to a much-needed office/reception and (c) the use of the building is not changing.
- Building Control Regulations link Disability Access Certificates and Fire Safety Certificates so that where a Fire Safety Certificate is required a Disability Access Certificate will be most likely be required. The Fire Officer accepted that the application was for Internal Material Alterations. It appears that he/she did not consider it to be a Material Change of Use, otherwise one would

have expected that a request for further information, perhaps to amend the application, would have issued.

- The BCA refers to the “*correlation between the application of the Building Regulations and the planning permission approval pursuant to the Local Government (Planning and Development) Act 2000 and the development, a change of use, as approved is consistent with the decision of the BCA*”. However, the categories of use/purpose groups are not directly comparable between Planning Regulations and Building/Building Control Regulations. Planning Permission was required because the proposals also affected the exterior of the building where the garage doors were being replaced by a window. The application was for a conversion of an ancillary space but that did not change the use of the building with respect to Planning Regulations.

- The Planning Officer’s Report with respect to the application Ref. No. 20160519 stated, *inter alia*:

“The overall use of the building at 544 meters sq. will remain unchanged.....The proposed office use is ancillary to the main use of the premises.....”

- The use of the building is for Assembly and Recreational Use, Purpose Group 5, with respect to Building Regulations. It is not changing to any of the other purpose groups listed in S.I. 497/1997 – Building Regulations, 1997, i.e:

- (i) a day centre or
- (ii) a hotel, hostel or guest building, or
- (iii) an industrial building, or
- (iv) an institutional building, or
- (v) an office (which is not ancillary to the primary use of the building), or
- (vi) a place of assembly, or
- (vii) a shop (which is not ancillary to the primary use of the building), or
- (viii) a shopping centre.

- The garage/store is ancillary space used as part of the function of the building. It is linked internally to the rest of the building by an internal door. It was and will continue to form part of the Assembly and Recreational Use.
- The building was not subdivided into separate compartments.

(B) Sanitary Facilities:

- Two unisex accessible WCs are proposed, one on each floor.
- The one on the ground floor will also include showering facilities.
- There is a right-hand transfer proposed to the WC both toilets. A choice of layouts for left-hand and right-hand transfer should be provided when more than one unisex accessible WC is provided in a building in accordance with TGD M 2010 1.4.3.4.
- There are numerous WCs in the building. These could be reduced in number to allow for increasing the size of the WC & shower room on the ground floor.

(C) Unisex WC & Shower Room on Ground Floor:

- The internal dimensions of the WC & Shower room are shown 1990 x 3120mm on the Agent's drawings.
- TGD M 2010 Diagram 21 recommends these dimensions should be 2500 x 2500mm.
- BS 8300 Part 2, 2018 recommends 2400 x 2500mm.
- The Agent states that the area of this room is in accordance with Diagram 21. That may be so but the width of the room is not in accordance with the recommendations.
- Locating the shower beside the door is not ideally located as it will allow water to flow across the floor and under the door out into the lobby.
- The door opens inwards. The Agent states that there is adequate unobstructed turning area provided and that the door can be opened from the outside in the case of emergencies.
- The internal dimensions of the room should be increased to 2500mm x 3210mm to allow for turning space which would be clear of the inward opening door swing. Increasing the width of the room to 2500mm will allow for relocating the shower away from the door and conform to recommendations in the guidance in TGD M 2010.

(D) Aids to Communication

- The Technical Report states that no audible aids will be provided. An induction loop should be provided at the hatch in the office/reception room and the presence of the induction loop system should be clearly indicated by a standard symbol/sign at the approach to and outside the hatch.

9.0 Conclusions / Recommendations

In conclusion, I am of the opinion that the proposed works do not constitute a Material Change of Use and should be considered to be Material Alterations. I recommend that the Board directs that the BCA grants the DAC subject to the following Conditions:

Condition 1:

The internal dimensions of the proposed wheelchair accessible unisex WC and shower room on the ground floor shall be increased to measure 2500mm x 3210mm to allow enough space inside for a turning space of 1800mm x 1800mm to be clear of the inward opening door swing.

Reason: To facilitate safe and independent use of the building.

Condition 2:

The inward opening door in the WC & shower room on the ground floor is to be used with pivot hinges, in conjunction with an emergency release door stop and bathroom lock, openable from the outside, to allow access in the case of emergency.

Reason: To facilitate safe and independent use of the building.

Condition 3:

As two accessible WCs are proposed in the building, a choice of layouts suitable for left-hand and right-hand transfer are to be provided.

Reason: To facilitate safe and independent use of the building.

Condition 4:

An induction loop system shall be installed at the hatch at the office/reception in accordance with BS 7594, to perform in accordance with BS EN 60118-4. The presence of the induction loop system shall be clearly indicated by the symbol shown in BS 8300 Part 2, Figure 9 both at the approach to and outside the hatch.

Reason: To facilitate safe and independent use of the building.

9.1 Reasons and Considerations

Having regard to the provisions of the Building Regulations 1997 to 2017, Second Schedule, Part M, to the form and layout of the existing building and the nature of the proposed works and to the submissions made in connection with the DAC application and appeal, it is considered that the works or building to which the application relates, if constructed in accordance with the plans, calculations, specifications and particulars submitted, and subject to compliance with the conditions as set out above, will comply with the requirements of Part M of the Second Schedule to the Building Regulations 1997 to 2017.

Michael Mohan, FRIAI

Inspector, 14th May 2018

APPENDIX



Photograph of Exterior