



**Fire & Risk Solutions Ltd.**  
*Chartered Engineers*  
*Professionals in Fire and Safety*

**Report 3483 R2**

**An Bord Pleanála Appeal regarding the attachment of Condition by Dun Laoghaire-Rathdown County Council to grant of Regularisation Certificate for retention of existing fire-fighting infra-structure and final exits at Block A, The Atrium, Sandyford, Dublin 18.**

Client: An Bord Pleanála,  
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**BUILDING CONTROL ACT, 1990 – APPEAL**

**REGULARISATION CERTIFICATE APPLICATION  
FOR OMISSION OF FIRE-FIGHTING LIFT AND RETENTION OF FINAL EXIT  
WIDTHS AT BLOCK A, THE ATRIUM, SANDYFORD, DUBLIN 18**

**APPEAL AGAINST THE ATTACHMENT OF CONDITION NO. 1  
TO REGULARISATION CERTIFICATE (REF. 17/8037/REG) ON 31<sup>st</sup> JANUARY 2018**

**AN BORD PLEANÁLA APPEAL REFERENCE ABP-300888-18**

Local Authority: Dun Laoghaire-Rathdown County Council

Appellant: Astra Office Nominee Ltd. c/o Jeremy Gardner Associates

**RECOMMENDATION**

In my opinion, the Board may rely on Article 40(2) of the Building Control Regulations and consider the subject appeal on the basis of Conditions only. It is recommended that this appeal be rejected.

The subject Condition No. 1 attached to the Regularisation Certificate as granted by Dun Laoghaire-Rathdown County Council (under Reference 17/8037/REG) on 31<sup>st</sup> January 2018 should remain.

**Reason:**

To comply with Part B of the Second Schedule to the Building Regulations, 1997 to 2017. Section B5: Facilities required to assist the Fire Service in the protection of life and property.

The remaining 1 no. Condition (Condition No. 2) attached to the granted Regularisation Certificate is not subject of this appeal and should also remain. The granted Regularisation Certificate should therefore remain subject of 2 no. Conditions.

**Dr. Raymond J Connolly**

BE, PhD, CEng, MIEI, MIFireE, MSFPE

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**1. RELEVANT INFORMATION**

- i. Application for Regularisation Certificate by Astra Office Nominee Ltd. to Dun Laoghaire-Rathdown County Council dated 8<sup>th</sup> March 2017.
- ii. Regularisation Certificate (17/8037/REG) granted by Dun Laoghaire-Rathdown County Council on 31<sup>st</sup> January 2018 (subject of 2 no. Conditions).
- iii. Compliance Report ZI/3359/R2/Issue 1 (dated 14<sup>th</sup> February 2017) by Jeremy Gardner Associates and associated drawings.
- iv. Letter of appeal from Jeremy Gardner Associates on behalf of Astra Office Nominee Ltd. to An Bord Pleanála dated 6<sup>th</sup> February 2018.
- v. Letter sent by Dun Laoghaire-Rathdown County Council to An Bord Pleanála dated 6<sup>th</sup> March 2018 outlining observations/comments by Fire Prevention Officer.
- vi. Letter from Jeremy Gardner Associates on behalf of Astra Office Nominee Ltd. to An Bord Pleanála dated 25<sup>th</sup> July 2018 commenting upon the Fire Prevention Officer's observations.

## **2. BACKGROUND**

Jeremy Gardner Associates on behalf of Astra Office Nominee Ltd. made an application to Dun Laoghaire-Rathdown County Council for a Regularisation Certificate for the retention of:-

- (i) Existing passenger lifts within a fire-fighting shaft in lieu of the previously approved arrangement comprising fire-fighting lifts
  
- (ii) Existing 1100 mm clear final exits widths serving 1200 mm wide stairways

at The Atrium Building in Sandyford, Dublin 18. The Regularisation Certificate was granted by Dun Laoghaire-Rathdown County Council (under Reference 17/8037/REG) on 31<sup>st</sup> January 2018 subject to 2 no. Conditions including *inter-alia*:-

### Condition No. 1

*Fire-fighting shafts shall contain fire-fighting lifts*

### Reason:

*To comply with Part B5 of the Second Schedule to the Building Regulations, 1997 to 2017. Section B3: Internal Fire Spread (Structure).*

On 6<sup>th</sup> February 2018, Jeremy Gardner Associates on behalf of Astra Office Nominee Ltd. appealed against the attachment of this Condition (Condition No. 1) to the Regularisation Certificate. The residual Condition (Condition No. 2) is not subject of the current appeal.

### **3. REPRISE OF APPEAL (AS PRESENTED)**

The subject works comprise the relaxation of the requirement that the fire-fighting shaft contain a fire-fighting lift which is justified by the appellant on the following basis:-

- (i) The initial proposal to install a fire-fighting shaft and lifts (made as part of the original Fire Safety Certificate application for the building) was as a compensatory feature for lack of vehicular access to the building's perimeter.
- (ii) The building does not include a storey 20 metres or more above ground level and does not require a fire-fighting shaft in absolute terms, i.e. as reflected in the guidance contained in Technical Guidance Document B.
- (iii) The shortfall in vehicular access could be sufficiently compensated for by inclusion of a dry mains system alone.
- (iv) The use of passenger lifts instead of fire-fighting lifts has a negligible impact on the overall fire-fighting facilities of the subject building (as is installed).
- (v) The fire-fighting shafts are protected by 120 minutes fire-resisting construction and smoke ventilated protected lobbies.
- (vi) Similar examples of dry risers alone being used to compensate for reduced vehicular access exist within the locality and have been previously approved by Dun Laoghaire-Rathdown County Council.

In addressing the appeal, the Local Authority express the view that the height of the top storey when measured in accordance with Diagram 38 of Technical Guidance Document B, i.e. from the topmost floor level to the ground level on the lowest side of the building, exceeds 20 metres. In such circumstances, Section 5.3.2 of Technical Guidance Document B requires that buildings be fitted with fire-fighting shafts containing fire-fighting lifts.

The appellant responded to the invitation from An Bord Plenála to comment on the Local Authority's on 25<sup>th</sup> July 2018 and explained in detail the basis for his measuring of the height of the top floor level with respect to the external ground floor access level..

#### **4. CONSIDERATION**

The appeal may be considered as presented and no new issues arise as would demand a *de novo* consideration.

It is not in dispute that the subject building was proposed to be constructed with fire-fighting shafts containing fire-fighting lifts. Should fire-fighting lifts not have been a requirement of the original Fire Safety Certificates (99/8016 and 00/8103), then there would have been no requirement to regularise the absence of fire-fighting lifts.

The appellant is seeking to re-visit the original basis for including the fire-fighting shafts and lifts – arguing that provision of dry mains alone would be sufficient to compensate for inadequacies in the vehicular access to the building’s perimeter. The appellant is essentially seeking to redesign the original fire safety strategy for the building – notwithstanding the fact that there has been a multiplicity of Fire Safety Certificate applications for the building in the intervening years – each relying on the parent Fire Safety Certificates to some extent.

The Local Authority avoids this issue entirely by deciding that the building’s height (if measured as recommended in Diagram 38 of Technical Guidance Document B) in fact exceeds 20 metres and in such circumstances fire-fighting shafts and fire-fighting lifts are required. Whilst, the information presented by the Authority to validate their height measurement is robust, it is clearly not the case that the building was originally approved on such a basis given that the fire resistance rating for the building’s structure does not achieve the 90 minutes standard appropriate to buildings of such height. The logic of the Local Authority’s current position is that the original parent and subsequent Fire Safety Certificates granted for the building are flawed due to their incorrect height measurement and the associated shortfall in structural fire protection.

The appellant has offered an opinion regarding the measurement of the building’s height based on the top floor level (5<sup>th</sup> Floor – Level 8) being at +103.975 metres and the access level (Ground Floor – Level 3) being at +86.200 metres, yielding a relevant height of 17.75 metres. The original FSC application described the building height as 19.5 metres, with the appellant stating that the additional 1.725 metres is a result of the sloping site on the building’s northern elevation. The appellant’s conclusion is that the building is properly described by a height of less than 20 metres and therefore should never have required a fire-fighting lift. In this context, the levels of the adjoining public access roads are instructive. Blackthorne Road sits at +83.630 metres and Arkle Road sits at +83.260, Carmanhall Road sits at +86.200 metres and the private site access road sits at in or around +83.225 metres. Given that Arkle Road, Blackthorne Road and the private site

access road (which offers access to the fire-fighting stairway) sit marginally lower than +83.975 metres, a strict application of the guidance in Diagram 38 of Technical Guidance Document B concludes that the building's top storey level is in excess of 20 metres, supporting the view of the Fire Authority).

The appellant focuses more of the height of the access level rather than the lowest external ground level to justify his conclusion of building height not exceeding 20 metres. The appellant is correct in the essence of his argument that dry main provisions in isolation should have been sufficient compensation to permit a relaxation in perimeter vehicular requirements for buildings less than 20 metres in height. However, a fire-fighting lift was a part of the package of measures agreed at the time of the original building design (as recorded in Fire Safety Certificate Ref. 99/8106), which in turn was relied upon in various Fire Safety Certificate, 7 Day Notice and Regularisation Certificate applications since, where fire-fighting shafts including fire-fighting lifts were included in the designs. For example, the agent for the appellant in the current case made an application of a Fire Safety Certificate for a material alteration of the second floor level (under Reference 10/8041 in March 2010) and in his compliance report SI/2086/R1 Issue 2 dated 14/07/2010 stated *"Both fire-fighting cores also incorporate fire-fighting lifts"*. A similar application for modifications of the second floor by Salesforce in 2011 (Ref. No. 17/8037/Reg) confirmed that *"the requirements for fire-fighting shafts being set out in the original FSC documentation"*.

The provision of 120 minutes fire resistance to the fire-fighting shafts, dry rising mains and the provision of ventilated fire-fighting lobbies would reasonably lead the operational Fire Service personnel to assume that the associated lifts would include a fire-fighting capacity. This expectation would be further supported by their visual perception of the building as a tall building (> 20 metres) as evidenced by the photographs submitted by the Local Authority as part of this appeal, especially in the case of the private access roadway and its adjacent fire-fighting shaft. Whilst controls within the lift car should make clear that the passenger lifts are not in fact capable of being relied upon, there is a risk that the lifts could be used by the Fire Service and that their lack of various protective measures (including back-up power supply, protection against water ingress etc.) could result in the entrapment of Fire Service personnel within lifts during a fire event.

It is difficult to go against the advice of the Fire Service when it comes to the provision of fire-fighting facilities within buildings. In this case, it is clear that following the 1999 Fire Safety Certificate approval, subsequent applications were founded upon the expectation that fire-fighting lifts be provided in the building. This may well have been an over provision (as argued by the appellant) or part of the minimum package of measures required for a building taller than 20



metres (as argued by the Local Authority). Regardless, there have been a number of Fire Safety, 7 Day Notice and Regularisation Certificates granted in respect of the subject building since the 1999 parent FSC (99/8016) including FSC 00/8103, 04/8316, 10/8041, 11/8115/REG and 16/8081/7DAY. The approvals of these various applications were all predicated on the presence of fire-fighting shafts and fire-fighting lifts. It is not therefore open to the applicant to seek to regularise the omission of the fire-fighting lifts. Rather, he needs to regularise the entirety of those aspects of the building subject of the combined 5 no. Fire Safety/7 Day/Regularisation Certificates granted post-1999. It is those individual approvals that require to be re-visited to understand whether the omission of fire-fighting lifts undermines them. In simple terms, it is not the omission of fire-fighting lifts that should be regularised but rather the range of building layouts previously approved on the presumption such fire-fighting lifts were in place. The scope and more specifically the fee associated with such an application should be determined based on the floor area of the building and not the minimum fee based on the area of the lifts (or the concept that no actual works are being undertaken). This conclusion is founded on my opinion that the basis for design of the entire building needs to be justified should fire-fighting lifts be retrospectively removed from the previous approved designs.

## **5. CONCLUSION**

It is recommended that this appeal be rejected.

The subject Condition No. 1 attached to the Regularisation Certificate as granted by Dun Laoghaire-Rathdown County Council (under Reference 17/8037/REG) on 31<sup>st</sup> January 2018 should remain.

The remaining 1 no. Condition (Condition No. 2) attached to the granted Regularisation Certificate is not subject of this appeal and should also remain.

The granted Regularisation Certificate should therefore remain subject of 2 no. Conditions.

**Dr. Raymond J Connolly**

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