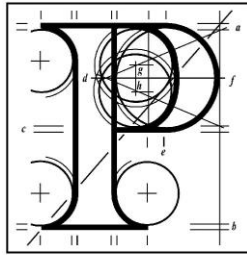


## An Bord Pleanála



**Appeal against;** Refusal of Disability Access Certificate.

**For;** Change bedsits to apartments and provide third floor extension with new apartment.

**At;** No. 22 Little Mary Street, Dublin 7.

**Board DAC appeal ref no:** ABP-302362-18

**BCA Disability Certificate application no.;** DAC/2018/0298

**Appellant/Agent:** James Sheehan/Des Fortune & Associates Ltd.

**Building Control Authority:** Dublin City Council

**Board Consultant name:** Denise Germaine MRIAI, MCIAT

**Site inspection/photographs:** On-line visual inspection of frontage. Photos - None.

# 1. INTRODUCTION

The application for a Disability Access Certificate, submitted to Dublin City Council on May 22<sup>nd</sup> 2018, comprises minor alterations to an existing Ground Floor and Basement retail premises, the material alteration and extension of the existing First and Second Floor flats and bedsits to provide self-contained 1 and 2 bedroom apartments and the extension of a Third Floor to provide a self-contained 1 bedroom penthouse apartment.

The building at 22, Little Mary Street is a Protected Structure.

Following a request for additional information, which was supplied on June 25<sup>th</sup> 2018, Dublin City Council issued a refusal of DAC Certificate on July 24<sup>th</sup> 2018.

An Bord Pleanála received documentation in support of an appeal, which was submitted on August 16<sup>th</sup> 2018.

Following a request for additional information by this Consultant, copies of Planning Permissions and Fire Safety Certificate relevant to the development and referred to in the letter of appeal, were obtained.

The relevant building, 22 Little Mary Street is currently in use as Ground and Basement level retail use and 2 floors of small flat/bedsit accommodation above. The building is a late 19<sup>th</sup> Century, three storey over basement, 2 bay building, with some remaining architectural features. The upper floors are served by a single existing timber staircase. The access to the Basement is via a trapdoor in the Ground Floor Retail Unit

The current proposals are to retain the retail use of the Ground and Basement floors of the building and, by carrying out some internal alterations and rear extensions to the 1<sup>st</sup> and 2<sup>nd</sup> Floors, to convert the existing 4 No. small flats and bedsits to 2 larger, 2 bedroom and 1 bedroom apartments. A Third Floor extension is proposed to provide a further 1 bedroom penthouse apartment.

## 2. INFORMATION CONSIDERED

The full file of documentation, as supplied by An Bord Pleanála was considered in arriving at this recommendation. The several files of documents reviewed, which refer to No. 22, Little Mary Street, included as follows;

- File Ref DAC 2018/0298 - Original Disability Access Certificate Application - May 2018.
- Subsequent Revised Information requested and received – June 2018
- Dublin City Council Building Surveyor's Report and Consultant Architectural Technologist to the Housing and Sustainable Communities Agency Report – June 2018
- File Ref DAC/2018/0298 – Refusal of Disability Access Certificate with 3 Reasons – July 24<sup>th</sup> 2018.

- ABP Ref. 302362-18 – Appeal against Disability Access Certificate Refusal – 21<sup>st</sup> August 2018

Following my request for additional information, I received on November 11<sup>th</sup> 2018;

- Reg. Ref. FSC2336/18/7D - Fire Safety Certificate (7 day notice) – 17<sup>th</sup> May 2018 – with 2 conditions.
- File Ref 2785/13 - Grant of Planning Permission, with 15 conditions, – 6<sup>th</sup> January 2014
- ABP Ref; 29S.243057 – Grant of Permission on appeal against Conditions Nos. 14 & 15.(Financial contributions)
- File Ref; 3285/15 - Grant of Planning Permission, with 4 conditions, and refusal of penthouse apartment extension on Third Floor – 22<sup>nd</sup> July 2015
- ABP Ref; 29N.245593 – Grant of Permission on appeal against refusal of Third Floor penthouse apartment extension.

### **3. RELEVANT HISTORY/CASES**

The Disability Access Certificate was refused on 24<sup>th</sup> July 2018 for the following reasons;

#### **Reason 1**

*The applicant failed to provide adequate information showing compliance with the Part M of the Second Schedule of the Building Regulations 2010.*

#### **Reason 2**

*Adequate facilities, in particular sanitary facilities, have not been provided within the retail unit, this store does not seem to be compliant with M1 of the Building Regulation 2010.*

#### **Reason 3**

*The applicant failed to provide adequate information for the proposed circulation through the building.*

As part of my review of this case, I examined several other previous cases, all of which referred to Protected Structures, namely; DS0056 (2017), DS0050 (2014), DS0035 (2012), DS0012 (2010) DS0002 (2010)

## **4. APPELLANT'S CASE**

The Appellant is appealing against the refusal of a Disability Access Certificate and his case, based on documents lodged, is that this application for a DAC Certificate relates to works to a protected structure and that, therefore, the existing stair from Ground to Second Floor, although to be refurbished as much as is reasonably practicable, is part of the protected structure and therefore cannot be brought into compliance with Part M. It is stated that the new stair from Second to Third Floor will be fully compliant with Part K, but, as it is to be accessed from the existing stairs to the floors below, it will not be Part M compliant.

The Appellant states that the existing retail unit on the Ground and Basement Floors, does not currently have sanitary facilities and that therefore, the refurbishment work to the retail unit, which does not include the provision of WC facilities, will not cause a new or greater contravention of the Building Control Regulations. It is claimed that using the lack of provision of new sanitary facilities for the retail unit as a reason for refusal of the Disability Access Certificate is not in accordance with the intent of the Building Regulations.

The Appellant also states that all relevant dimensions of the proposed circulation routes through the building have been shown on the Additional Information supplied and, as no changes are proposed to the existing internal stairs, not providing the dimensional information of this stairs should not be a reason for refusal.

The Appellant also states that Planning Permission and Fire Safety Certificate was granted for the proposals, which will greatly enhance the building by converting existing bedsits into modern apartments. It is also stated that, if the DAC application is refused, the building will remain as it currently is.

## **5. BCA CASE**

The BCA case based on documents lodged and in accordance with their report copied to An Bord Pleanála, claims that insufficient information has been supplied to ascertain if the two main entrances to the building at Ground Floor level are accessible.

It is also stated that the applicant has failed to demonstrate any provision for wheelchair access to the apartments or to the retail area of the building, and that insufficient information has been supplied regarding the layout of the Ground Floor retail unit.

It is stated that no information has been supplied for the buildings floor finishes, or for the new stair to the Third Floor.

It is stated that no sanitary facilities have been shown in the retail unit.

## 6. CONSIDERATION/ASSESSMENT

### Details lodged with application

I consider that the documentation available from 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.

### Content of Assessment

Because of the Protected Structure designation of the building and its quite limited floor area, it is clear that extensive alterations to the building in order to provide full disabled accessibility would damage both the external and internal architectural features of the building in an unacceptable manner.

My assessment addresses the practical impossibility of providing adequate access to this Protected Structure.

It would appear that the extent of the Appellant's demise in these premises is contained within the external walls of the building. The Appellants would appear to have no legal access to or over any external areas to the rear of the building. Therefore I consider that it is physically impossible for the Appellants to provide alternative access to the building other than the existing front entrance doors, which are part of the protected structure.

Likewise, although TGD M 2010 provides for certain relaxations of the guidance as regards accessibility in respect of existing premises, virtually none of the reduced requirements in Section 2 of TGD M 2010 would be physically possible to achieve without damaging the very architectural features of this building which have prompted its designation as a Protected Structure.

TGD M 2010 states *"In the case of material alterations or change of use of existing buildings, the adoption without modification of the guidance in this document may not, in all circumstances, be appropriate. In particular, the adherence to guidance, including codes, standards or technical specifications, intended for application to new work may be restrictive or impracticable. Buildings of architectural or historical interest are especially likely to give rise to such circumstances. In these situations, alternative approaches based on the principles contained in the document may be more relevant and should be considered."*

It is my opinion that the proposal to refurbish this building to retain and improve the existing retail unit at Ground and Basement levels, and to refurbish and extend the residential accommodation above to provide three self-contained, modern apartments instead of the existing, small, substandard flats/bedsits, is a suitable approach to ensure the continued occupancy and maintenance of this protected structure..

The Appellants have stated in their application for a Disability Access Certificate that, apart from the guidance in TGD M 2010 for wheelchair

access, all other recommendations of TGD M 2010 as regards corridor and door widths, door furniture, visual contrast, signage, lighting, switches, outlets and controls etc. will be complied with in the development, so that persons with sight and hearing impairment or other disabilities could be safely accommodated in the building.

However, the Appellants state that the new stairs to be provided to the Basement under the retail unit will be suitable for Ambulant Disabled use. Drawing No. DAC 003, supplied as part of the Additional Information, shows a single flight of 15 risers which does not comply with TGD M 2.3.4.3, (which refers to 1.3.4, i.e. a maximum rise of 1800mm per flight). To provide a single flight of 15 risers (approx. 2,700mm) without an intermediate landing is not compliant.

I also note that Condition No. 1 of the Fire Safety Certificate issued on May 17<sup>th</sup> 2018, requires a new 60 minute protected lobby between the protected internal stairway and the Bicycle/Bin Store on the Ground Floor. This lobby should be constructed in accordance with TGD M 1.2.5 and Diagram 11.

I also note that Condition No. 2 B of the original Planning Permission for the development, which has not been appealed and therefore is still relevant, requires the modification of the shopfront and the submission of revised plans, drawings and particulars to the Planning Authority. In this case I would advise that the two main entrances should be re-designed to ensure a level threshold from the street and that the clear width of the entrance doorways should comply with TGD M 2010.1.2.4 Table 2 (1,000mm)

My views on the three reasons given for refusal of the Disability Access Certificate are as follows;

**Reason No. 1** – *The applicant failed to provide adequate information showing compliance with the Part M of the Second Schedule of the Building Regulations 2010.*

In my view, the Appellant has given an adequate explanation of the reasons why full compliance with the requirements of Part M1 of the Building Regulations cannot practicably be met in this instance.

It would appear that the different departments of Dublin City Council are at odds as to an appropriate and sustainable use of this protected structure, as both Planning Permission and a Fire Safety Certificate have been granted for the proposals.

In my view, It would be regrettable if, due to the impossibility of providing full accessibility in this building, the building would be rendered unusable and might consequently fall into dereliction. The existing small flats/bedsits would also remain sub-standard at a time when adequate rental accommodation in the city centre is urgently needed.

**Reason No. 2** – *Adequate facilities, in particular sanitary facilities, have not been provided within the retail unit, this store does not seem to be compliant with M1 of the Building Regulation 2010.*

The retail unit is an existing part of the building which, apart from modifications to the shopfront required by the Planning Permission and the provision of a stairs to the basement in lieu of the current trapdoor, is not being materially altered. Therefore I consider that there is no justification for requiring the provision of sanitary facilities where none previously existed and where none are proposed.

Note TGD M 2010 1.4.3 states “*Section 1.4.3 requires the provision of accessible sanitary facilities where sanitary facilities are provided in a building, whether this is for customers, visitors, or staff working in the building. It does not create a requirement for the provision of sanitary facilities in a building or for different user groups e.g. for visitors where provision has only been made for staff.*”

**Reason No. 3** – *The applicant failed to provide adequate information for the proposed circulation through the building.*

The plans and details of the proposals submitted clearly show the circulation through the building, which has been modified to separate the access to the retail unit from the apartments above. The timber stairs to the First and Second Floors is existing and therefore form part of the protected structure. The new stairs to the Third Floor is clearly detailed and dimensioned on Drawing No. DAC 003, and it is stated that, as it is a continuation of the existing, non-compliant stairs, it is in compliance with Part K, but not with Part M.

## **7. CONCLUSION/RECOMMENDATION**

My final conclusion/recommendation is that;

A Disability Access Certificate should be granted, subject to 3 conditions, namely;

### **Condition No. 1**

Any modifications to the shopfront required by Condition No. 2B attached to the original Planning Permission File Ref 2785/13 should ensure that level thresholds are provided from the street and that the two main entrance doors provide an adequate clear width of 1,000mm, in accordance with TGD M 2010 Table 2.

### **Condition No. 2**

The new stairs from the Ground Floor retail unit to the Basement below shall be constructed strictly in accordance with the guidance in TGD M 2010, 2.3.4.3, (which refers to 1.3.4, i.e. a maximum rise of 1,800mm per flight).

**Condition No. 3**

The 60 minute protected lobby between the entrance hall to the Apartments and the Bike/Bin Store on the Ground Floor, which is required by Condition No. 1 of the Fire Safety Certificate Reg. Ref. FSC2336/18/7D, shall be constructed strictly in accordance with the guidance in TGD M 2010, 1.2.5 and Diagram 11.

**REASONS AND CONSIDERATIONS**

It is considered that, subject to the issue of a Disability Access Certificate with the inclusion of these three Conditions, the development would comply with the requirements of Part M of the Second Schedule to the Building Regulations 1997 to 2017.

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

**Dated; 14<sup>th</sup> November 2018**