

Report for An Bord Pleanala

on

**Appeal against Refusal to Issue Regularisation Certificate
(FA/18/1644/REG)**

for

**Material Alterations to the existing residential building which
contains three stories above ground floor and one basement**

at

4 Upper Gardiner Street, Dublin 1

Client: An Bord Pleanala
An Bord Pleanala Ref: ABP-304090-19
Our Ref: ABP_R002_Issue 1
Date: 15th July 2019

1.0 Introduction

This report sets out my findings and recommendations on the appeal submitted by EOBA, on behalf of their client Eoin Finnegan, Leighton Properties Ltd. against the decision to refuse to issue a Regularisation Certificate (FA/18/1644/REG) by Dublin City Council in respect of an application for Material Alterations to the existing residential building which contains three stories above ground floor and one basement at 4 Upper Gardiner Street, Dublin 1.

1.1 Subject of Appeal

Dublin City Council issued a Refusal of application for Regularisation Certificate for the following reason: -

Reason 1:

The building or works do not comply with the requirements of Part B of the Second Schedule to the Building Regulations, 1997 to 2017, with respect to the following:

B1 – Means of Escape in case of Fire:

The escape routes provided from the galleries in flats 3, 4 and 5 are inadequate and insufficiently protected from the effects of a fire. Should a fire occur in the kitchen area of these flats then persons escaping would be forced, to escape in the direction of fire.

It is also noted that the dimensions of flat 3 are: 4.677 by 2.458 metres. It would not be possible to have a bed positioned anywhere in a flat of this size, such that it would be sufficiently remote from any kitchen, positioned anywhere within a flat of this size.

2.0 Documentation Reviewed

- 2.1 Regularisation Application (application form, compliance report and fire safety drawings) submitted by EOBA on behalf of their client Eoin Finnegan, Leighton Properties Ltd., on 22nd November 2018.
- 2.2 Report on Assessment of Regularisation Application by Mr Seamus McAreyve, Senior Executive Fire Prevention Officer dated 27th February 2019.
- 2.3 Notice of Refusal to Issue a Regularisation Certificate dated 1st March 2019.
- 2.4 Letter of Appeal from EOBA on behalf of their client Eoin Finnegan, Leighton Properties Ltd., on 27th March 2019 with following attached: -
 - Letter to Dublin Fire Brigade dated 8th March 2019
 - Email correspondence from EOBA to Dublin Fire Brigade dated 14th February 2019
 - Email correspondence from EOBA to Dublin Fire Brigade dated 19th February 2019
 - Regularisation Fire Safety Certificate Application Compliance Report (18126-FSC-R01 Rev A)
- 2.5 Fire Officer's report on Fire Safety Certificate Appeal dated 12/04/2019 to An Bord Pleanála.

3.0 Building Control Authority's Case

The decision of the Building Control Authority to refuse the application is for the following reasons: -

- The escape routes provided from the galleries in flats 3, 4 and 5 are inadequate and insufficiently protected from the effects of a fire. Should a fire occur in the kitchen area of these flats then persons escaping would be forced, to escape in the direction of the fire.
- Section 5.3.5 item (b) of the Guide to Fire Safety in Flats states the following:
Unless the cooking area is enclosed with fire-resisting construction, any cooking facilities in a room containing a gallery should be remote from the stairs to the gallery and positioned so as not to endanger escape from the gallery.
- It is their opinion that the positioning of the cooking area in flats 3, 4 and 5 is not sufficiently remote from the stairs to the gallery and is not positioned so as not to endanger escape from the gallery.
- Section 1.2.3.2 of Technical Guidance Document B states that: where means of escape is in one direction only, it should not be within 5m of a void, unless it is leading away from the void.
- It is also noted that the dimensions of flat number 3 are 4.677 by 2.458m. It would not be possible to have a bed positioned anywhere in a flat of this size, such that it would be sufficiently remote from any kitchen, positioned anywhere within a flat of this size.
- Building Control Authority do not consider that the alternative proposals supplied by EOBA adequately address the above concerns. The escape routes provided from galleries in flats 3, 4 and 5 remain inadequate and are still insufficiently protected from the effects of a fire.
- Given the typical fire load within flats of this size and the fact that the flats are provided with cooking facilities, it is the view of Dublin Fire Brigade, that should a fire occur, it would spread rapidly, and given the size and dimensions of these flats, any escape routes to the exit door of the flats, would be cut off almost instantly.

4.0 Appellant's Case

The appellant's case for against the refusal is as follows: -

- They contend that the design as proposed complies with the requirements of Part B of the Second Schedule to the Building Regulations 1997 – 2013.

- With regard to the escape route from the galleries in flats 3, 4 and 5 all three galleries comply with Section 5.3.5 of 'DOE Fire Safety in Flats, Bedsits and Apartments'
 - a. The main level of the flats are planned in accordance with the principles outlined in 5.3.3,
 - b. The cooking facilities are located remote from the stairs to the gallery and positioned so as not to endanger escape from the gallery,
 - c. The distance between the foot of the access stairs to the gallery and the flat entrance door or a door leading to a protected entrance do not exceed 3m,
 - d. The travel distance from the head of the access stairs to any point in the gallery does not exceed 7.5m.

- In addition, these flats comply with the BS 5588 Part 1 Section 9.8 which states: -
 - a. The main level of the flat should be planned in accordance with the principles illustrated in Figure 4, Figure 5(a) or Figure 5(b)
 - b. Unless the cooking facilities are enclosed with fire resisting construction, any cooking facilities within a room containing a gallery should be remote from the stair to the gallery and positioned such that they do no prejudice the escape route from the gallery.
 - c. The distance between the foot of the access stair to the gallery and either the flat entrance door or a door leading to a protected entrance hall should not exceed 3m.
 - d. An alternative exit should be provided from a gallery if the travel distance from the head of the access stair to the gallery to any point in the gallery exceeds 7.5m.

The main level of flat 3, 4 and 5 comply with Figure 5(a) and the cooking facilities are located in the most remote location from the stair in all three flats.

- EOBA requested a definition of 'remoteness' from the Building Control Authority. No correspondence was received.

- EOBA requested a definition of 'remoteness' from the Building Control Authority and also which standard specifies a minimum area for a flat. No correspondence was received.

- EOBA offered the following alternative layouts: -

Flat 3

Reconfigures the stairs to the gallery so that it discharges 1.15m from the protected internal lobby and 2.64m from the cooking facilities.

Flat 4

Reconfigures the stairs to the gallery so that it discharges 1.15m from the protected internal lobby and 3.04m from the cooking facilities.

Flat 5

Reconfigures the stairs to the gallery so that it discharges 0.99m from the protected internal lobby and 3.35m from the cooking facilities.

- EOBA requested which standard specifies a minimum area for a flat. No correspondence was received. The flat size, with the compliant gallery provides sufficient space for a bed at the gallery level.

5.0 Consideration

There are two key issues with regard to this appeal: -

- Is there a minimum apartment size?
- What is a compliant layout for an apartment with a gallery?

There is no minimum apartment size specified in the DOE Guide 'Fire in Flats, Bedsits and Apartments', Technical Guidance Document B 2006, BS 5588 Part 1, or BS 9991 2015. Without further guidance or explanation this in my opinion can not be considered a valid reason for refusing the application.

Section 5.3.5 of DOE Fire Safety in Flats, Bedsits and Apartments states the following: -

5.3.5 FLATS WITH GALLERIES

All of the following provisions are applicable to flats with galleries:

- (a) the main level of the flat should be planned in accordance with the principles outlined in 5.3.3 above (see diagrams 1, 2 or 3);
- (b) unless the cooking area is enclosed with fire-resisting construction, any cooking facilities in a room containing a gallery should be remote from the stairs to the gallery and positioned so as not to endanger escape from the gallery;
- (c) the distance between the foot of the access stairs to the gallery and the flat entrance door or a door leading to a protected entrance hall should not exceed 3 m;
- (d) an alternative exit should be provided from a gallery if the travel distance from the head of the access stairs to the gallery to any point in the gallery exceeds 7.5 m (see diagram 6).

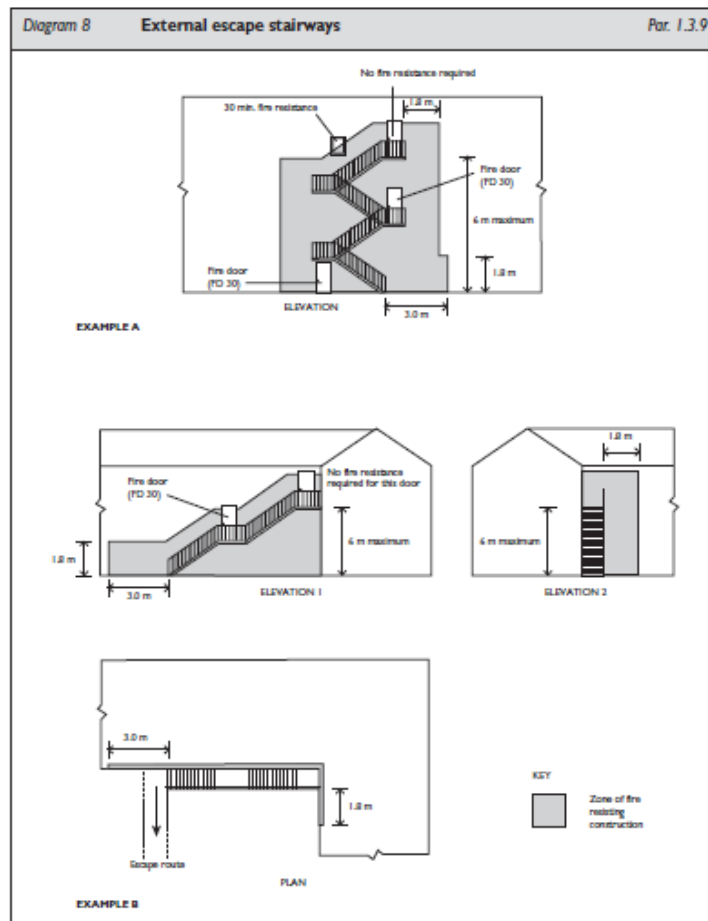
The clause at issue in Section 5.3.5 is part (b). Dublin Fire Brigade state that the cooking facilities in Flat 3, 4 and 5 are not remote enough from the stairs and are not positioned so as not to endanger escape from the gallery. EOBA state that in their layouts the cooking facilities are remote from the stairs and are positioned so as to not endanger escape from the gallery.

It is further noted that Dublin Fire Brigade refer to Section 1.2.3.2 of Technical Guidance Document B 2006 which states that where means of escape is in one direction only, it should not be within 5m of a void, unless it is leading away from the void. It is noted that this is not a valid limiting dimension for galleries because if this clause was applicable it would preclude all galleries that did not have an alternative escape. It is not a relevant argument with respect to this issue.

Therefore, the key issue is what is considered remote and is there any relevant or similar guidance to support this.

It is noted that there are a number of guidance recommendations that may be of use: -

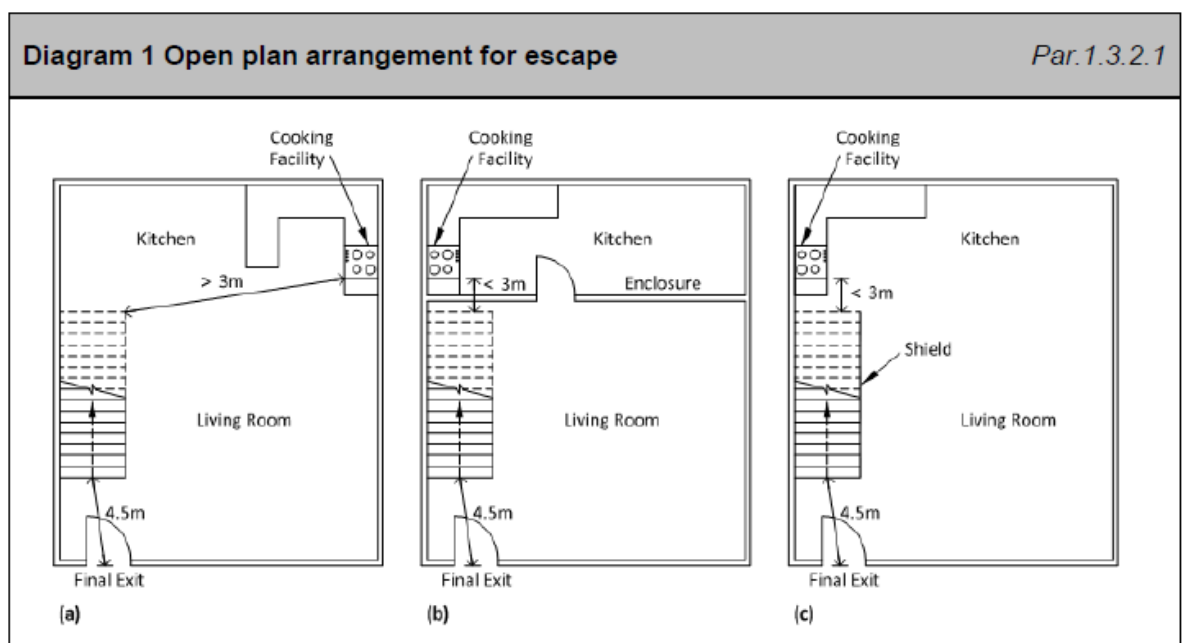
- Diagram 8 of TGD-B 2006 recommends a 1.8m distance from unprotected windows /elevation to an external escape stair. It also looks for a 3.0m distance at the foot of the stair.



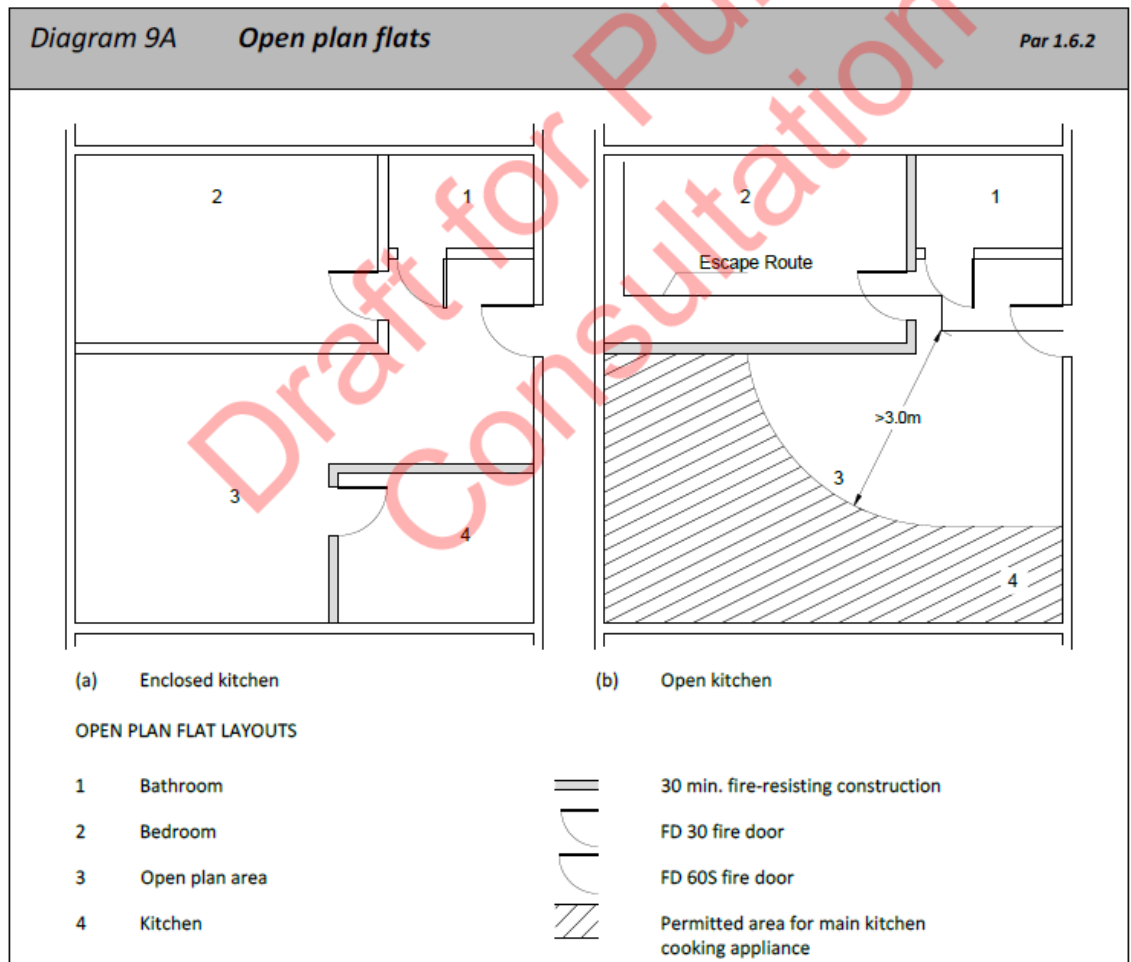
- Clause 1.5.2 (iv) of TGD-B 2006 recommends that in an open-plan arrangement in a house the stairway can be open if it is 3m or more from the kitchen: -

An open-plan arrangement, where the stairway rises directly from the ground storey accommodation is less preferable than the arrangement at (ii) above and is only acceptable where:

- the stairway discharges to within 4.5 m of a door at the ground storey leading directly to the open air;
 - the stairway does not discharge into a kitchen and either:
 - any ground storey kitchen is enclosed in storey height construction which need not be fire resisting or;
 - where the stairway passes within 3 m of the kitchen, the stairway should be enclosed in storey-height construction which need not be fire-resisting;
 - a fire detection and alarm system is provided, in accordance with 1.5.5;
 - all habitable rooms at the upper storey are provided with windows for escape or rescue in accordance with 1.5.6; and
 - the design meets the general provisions for dwelling houses, outlined in 1.5.8.
- Diagram 1 of TGD-B 2017 Volume 2 recommends a 3m distance from the cooking facility and the open stair in an open plan arrangement: -



- Diagram 9a of draft for public consultation TGD-B 2006 recommends a 3m distance from the escape route and the cooking facilities in an open plan apartment / flat: -



In all the above a 3m distance is a common dimension and would seem to give a reasonable distance that can be considered remote.

With a 3m distance from the foot of the stair to the cooking facilities, the Appellant's alternative layout for Flat 4 and 5 would now comply and in Flat 3 the distance would only have to be increased 400mm.

6.0 Recommendation

On the basis of my findings and conclusions I recommend that An Bord Pleanala should direct the Building Control Authority to grant the Regularisation Application with the following condition attached: -

Condition 1:

In all flats with galleries the main kitchen cooking appliances should be located at least 3m away from the escape route from the gallery level. A main kitchen cooking appliance is a cooking appliance with a fixed connection to the flat's gas or electric energy infrastructure (e.g. an oven and / or hob).

Reason:

To comply with Part B1 of the Second Schedule of the Building Regulations, 1997 to 2017.

Signed by:

Des Fortune.
MSc(Fire Eng), BSc(Eng), CEng MIEI, MIFireE

Date: 15th July 2019