

Report to An Bord Pleanála

on

**Appeal against Refusal of Relaxation of Part M of the
Building Regulations (Reg Ref No. RELAX 001/2019)**

by

Dun Laoghaire Rathdown County Council

for

extension to Nail Salon

at

52 Georges Street Upper, Dun Laoghaire, Co Dublin

CLIENT	:	AN BORD PLEANALA
AN BORD PLEANALA REF NO	:	ABP-304165-19
BCA REG REF No.	:	RELAX 001/2019
OUR REF.	:	19200_ABP.304165.19_R01
DATE	:	08 July 2019

1.0 Introduction

1.1 Subject Matter of Appeal

This report sets out my findings and recommendations on the appeal submitted by Pro-Fire & Design Limited [hereafter referenced as PFD] on behalf of their Client, Simon Cullen, against the decision by Dun Laoghaire Rathdown County Council [hereafter referenced as DLRCC] to refuse an application for a Relaxation of Part M of the Building Regulations in respect of an extension to a Nail Salon at 52 Georges Street Upper, Dun Laoghaire, Co Dublin

The application for a Relaxation from Part M concerns the design of and access to the proposed extension to the Nail Salon which contains a proposed new WC and access corridor to the yard at the rear of the Nail Salon.

The proposed overall development comprises a change of use of the first floor and part of the existing ground floor to residential use, together with an extension at the rear of the ground and first floor to accommodate residential use at first floor and part residential and part Nail Salon use at ground floor level. The area of ground floor extension which is the subject matter of this Relaxation is the extension to the Nail Salon containing a new WC, in replacement for an existing WC which is located in the area of the ground floor being converted to residential use, and corridor linking the Nail Salon to the yard at the rear of the premises.

It is noted that a Disability Access Certificate application was previously made for the overall development (Ref No DAC 077/2108) and was granted by DLRCC with four conditions, three of which are associated with this Relaxation application as follows:

Condition 2: That the works to the retail unit incorporate provision of a wheelchair accessible unisex WC in accordance with Diagram 15b & TGD – M Section 1.4.3.1

Condition 3: That the new corridors to accessible areas in the retail unit extension are designed and constructed in accordance with TGD M section 1.3.3.3

Condition 4: That the new internal lobbies to accessible areas in the retail unit extension are designed and constructed in accordance with TGD M section 1.2.5

It is noted that the conditions were not appealed.

In effect therefore the application for Relaxation of Part M was submitted to seek to set aside the requirements of the conditions on DAC 077/2108.

The application for Relaxation was refused by DLRCC with the stated grounds for Refusal being: *“The application seeks to nullify the conditions attached to DAC 077/2018. The new extension does not meet the minimum prima facie standards set out in TGD M (Sanitary Facilities, Horizontal Circulation) for compliance with M1, M2 and M3 of the Building Regulations nor is it an alternate proposal which demonstrates a betterment of standards proposed”*

It is noted that DAC 077/2018 was granted without an internal access route to the extension suitable for wheelchair users i.e. the DAC was granted without any requirement for a ramp or lift between the front and rear sections of the existing Nail Salon where there is an existing change of level of circa 500mm (scaling from the drawings). This was presumably because of the fact that the provision of a ramp would have been impractical - i.e. 10m long ramp to achieve rise of 500mm – given the limited footprint of the Nail Salon premises

1.2 Documents Reviewed

- 1.2.1 History file in respect of DAC application DAC 077/2018
- 1.2.2 Documents submitted by PFD to DLRCC in respect of the application for Relaxation of Part M
- 1.2.3 Appeal submission to An Bord Pleanala by PFD dated 08.05.2019.
- 1.2.4 DLRCC Officer Report dated 25.03.2019 setting out in greater detail the reasoning of DLRCC in reaching the decision to Refuse the application

2.0 Relaxation application – Arguments by Appellant and BCA

2.1 Appellants Case

It is noted that the Applicant is proposing an ambulant accessible WC in the proposed extension at the rear of the existing ground floor Nail Salon.

This section of the salon is at a higher level than the front section and is accessed by way of 3 internal steps.

- I. In the Relaxation application PFD argue that there is not the physical space in the subject area to accommodate a wheelchair accessible WC/lobby and therefore PFD assert that the provision of wheelchair accessible WC/lobby is not “*practicable*” in line with the guidance in section 0.7 of TGD M 2010 which cites “*physical or site constraints*” as a basis for the determination of practicability. PFD state that the area in question, which is in the demise of the Nail Salon, is only 1900mm wide and they argue that this width cannot be increased and that an exit corridor is also required thereby only leaving space for an ambulant accessible WC. Whilst noting that the Applicant does not include the FSC drawing for the ground floor unit, the plan area and depth of the unit is such that a rear fire escape ought not to be necessary having regard to the travel distance to the front exit door on Upper George’s Street i.e. circa 16m from the rear of the unit to the exit onto Upper George’s Street.
- II. PFD also assert in their Relaxation application that the area in question, being less than 25sqm, does not require a DAC application notwithstanding that a DAC Application 077/2018 had previously been made by PFD on behalf of the same client i.e. encompassing the entire plan area of the ground and first floor extension - including the subject area in the Relaxation application - which is identified in the DAC application form as 25.22sqm, together with the stairs at ground floor level and the entire of the first floor level which were subject to material change of use to residential from retail. It is not clear as to what if any relevance the floor area has to the determination of a Relaxation application.
- III. PFD also argue that the area in which the proposed new WC is located is accessed by internal steps from the front section of the Salon and therefore is not accessible to wheelchair users in any event. They also argue that the existing WC which served the Nail Salon and was located in the stairs which is now forming part of the first floor apartment was not wheelchair accessible and therefore the proposal to provide an

ambulant accessible WC in the extension does not give rise to any new or greater contravention compared to the existing.

- IV. PFD also argue in DAC 077/2018 that the nature of the activity being conducted - i.e. Nail Salon – is such that staff must be able bodied and ambulant and therefore an ambulant accessible WC is appropriate. It is not clear from the PSD submission if the WC is intended solely for staff or is also a facility for customers.

2.2 BCA's Case

For their part DLRC argue in the Officer Report dated 14.02.2019 that the application for Relaxation of Part M should be refused for the following reasons:

- I. The description of the works in the Relaxation application is, they say, misleading and must be considered in the context of the DAC 077/2018 application which they say comprised:
“Change of Use at ground floor and first floor from retail to residential with associated material alterations and a ground and first floor residential extension at the rear of the building”
DLRC therefore dispute the scope of the Applicants Relaxation application which is confined to the WC and associated lobby/corridor and implies that the adjacent space, which is denoted as Utility space for the apartment, is somehow not in the control of the Applicant notwithstanding that the same Applicant applied for a DAC for both areas previously
- II. DLRC contend that the Relaxation application is effectively intended to set aside the Conditions on DAC077/2018 and therefore insofar as DLRC attached those conditions they presumably are of the view that they could not now provide a Relaxation which had the effect of nullifying the conditions.
- III. DLRC contend that the Applicants assertion that the area of the extension is 6sqm is incorrect in that it is part of an overall extension which was identified in DSAC 077/2018 to be in excess of 25sqm
- IV. DLRC contend that the proposals are not in accordance with the minimum prima facie guidance in TGD M
- V. DLRC argue that the corridor leading to the WC does not comply with Part M even for non-wheelchair users. They assert that the corridor should be min 1200mm wide to cater for person with mobility impairment using for instance crutches and or walking frames

- VI. DLRCC dispute the “*impracticability*” arguments made by the Applicant as they say that the design of the WC and corridor should be considered in the context of the overall ground floor extension and not in the context of the 6sqm zone identified in yellow/purple shading on the Relaxation application.
- VII. DLRCC also contend that the WC should be designed for wheelchair users on the basis that a customer could be physically assisted in moving from the entrance area of the Salon to the rear area notwithstanding the steps.

3.0 Consideration and Recommendation.

It is noted that Part M of the Regulations provides that in the case of an “*extension*” to a building that adequate provision shall be made for “*people*” – which is intended to include persons of any age or size or having any physical, sensory, mental or health or intellectual ability or disability - can approach and access the extension and that adequate sanitary facilities be provided to serve persons using the extension. By corollary therefore the sanitary facilities should also be capable of catering for all types of person include wheelchair users as noted above.

In this Relaxation application the Applicant is effectively seeking to relax the requirement for Universal Access to the extension and its sanitary facilities in favour of the extension being designed for persons other than wheelchairbound persons i.e. less inclusive access.

They argue that this Relaxation is justified in this instance having regard to the limited size of the extension and the fact that it is not practicable due to site constraints to provide wheelchair access to the extension i.e. a ramp would take up excessive space within the existing Nail Salon premises.

They also point out that the proposed new WC is a replacement for an existing WC which is of a lesser standard than an ambulant accessible WC conforming to TGD M as is being proposed. They also argue that staff in a Nail Salon will not be wheelchairbound as the requirements of the activity are such that it is not suitable for persons who are wheelchairbound.

It is considered, having regard to the arguments made by the Applicant in this instance, including in particular the limited size of the extension, the lack of wheelchair access to the rear section of the Salon and the existing site constraints, that a relaxation is warranted in the

specific circumstances subject to the extension and the sanitary facilities and access thereto being designed to fully conform with TGD M for ambulant accessible use. In this regard some modification of the existing steps and the lobby leading into the accessible WC may be necessary.

Accordingly I recommend that the Relaxation application be granted subject to the following conditions:

- I. The Relaxation shall apply to the area denoted in yellow and purple shading on the drawing 17264-DR-03 Rev 2
- II. The design of the extension to the Nail Salon and the route leading from the entrance door of the Nail Salon to the extension shall conform to relevant recommendations of TGD M for ambulant accessible access and use including, as necessary, any required modification to the existing steps within the Salon. Detailed drawings shall be submitted to and agreed in writing in writing with the Building Control Authority in relation to compliance with the foregoing

MAURICE JOHNSON

Chartered Engineer | BE(Hons), CEng., MStructE, MIEI, MSFPE

Date : _____