



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

Report 3615

**An Bord Pleanála Appeal regarding the attachment of
Conditions No.'s 1, 2, 4, 5 and 8 by Donegal County Council to grant of
Fire Safety Certificate
for the material alterations to existing ground and first floor of
Colm's Amusements, Main Street, Bundoran, Co. Donegal**

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BUILDING CONTROL ACT, 1990 to 2014 – APPEAL

**FIRE SAFETY CERTIFICATE APPLICATION FOR
MATERIAL ALTERATIONS TO EXISTING GROUND AND FIRST FLOOR OF COLM'S
AMUSEMENTS, MAIN STREET, BUNDORAN, CO. DONEGAL**

**APPEAL AGAINST THE ATTACHMENT OF CONDITION'S NO.'S 1, 2, 4, 5 & 8
TO FIRE SAFETY CERTIFICATE (REG. REF. FS/19/07) ON 18th APRIL 2019**

AN BORD PLEANÁLA APPEAL REFERENCE 304491-19

Local Authority: Donegal County Council

Appellant: Colm's Amusement c/o Clarke Engineering & Consultancy Services

RECOMMENDATION

In my opinion, the Board may rely on Article 40(2) of the Building Control Regulations to consider the subject appeal on the basis of Conditions only.

It is recommended that the appeal be substantially upheld and Conditions No.'s 2, 4, 5 and 8 be removed in their entirety. However, the appeal against attachment of Condition No. 1 should be set aside and the Condition remain.

The remaining 4 no. Conditions (Conditions No.'s 3, 6, 7 and 9) attached to the granted Fire Safety Certificate are not subject of this appeal and should remain. The granted Fire Safety Certificate should therefore be subject of 5 no. Conditions, i.e. Conditions No.'s 1, 3, 6, 7 and 9.

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CONTENTS

Page No.

1. Relevant information	4
2. Background	5
3. Reprise of appeal as presented	7
4. Consideration	11
5. Conclusion	18

1. RELEVANT INFORMATION

- i. Application for a Fire Safety Certificate by Colm's Amusements c/o Colm O'Donnell to Donegal County Council dated 14th January 2019.
- ii. Written Submission (CECS032-FSTCR Rev. 1) to Donegal County Council by Clarke Engineering & Consultancy Services and associated drawings dated 14th January 2019.
- iii. Written Submission (CECS032-FSTCR Rev. 2) to Donegal County Council by Clarke Engineering & Consultancy Services and associated drawings dated 14th March 2019.
- iv. Letter of additional information from Clarke Engineering & Consultancy Services to Donegal County Council dated 14th March 2019.
- v. Letter of additional information from Clarke Engineering & Consultancy Services to Donegal County Council dated 8th April 2019.
- vi. Written Submission (CECS032-FSTCR Rev. 3) to Donegal County Council by Clarke Engineering & Consultancy Services and associated drawings dated 8th April 2019.
- vii. Fire Safety Certificate (FS/19/07) granted by Donegal County Council dated 18th April 2019 (subject of 9 no. Conditions).
- viii. Letter of appeal from Clarke Engineering & Consultancy Services on behalf of Colm's Amusements to An Bord Pleanála dated 16th May 2019.
- ix. Letter of response to appeal by Donegal County Council to An Bord Pleanála dated 4th June 2019.
- x. Further commentary regarding appeal from Clarke Engineering & Consultancy Services on behalf of Colm's Amusements to An Bord Pleanála dated 12th July 2019.
- xi. Donegal County Council Case History Files FS/234 and FS 17/42R

2. BACKGROUND

Clarke Engineering & Consultancy Services acting as agent for Colm's Amusements made an application to Donegal County Council for a Fire Safety Certificate in respect of proposed material alterations to ground and first floor areas at Colm's Amusements, Main Street, Bundoran, Co. Donegal. The Fire Safety Certificate was granted by Donegal County Council (under Reference FS/19/07) on 18th April 2019 subject to 9 no. Conditions including *inter-alia*:-

Condition No. 1

The areas subject to this application are restricted to the lift enclosure, stair 2 enclosure, cash box/office, GF exit 1, WC at ground floor level and associated horizontal and vertical escape routes.

Reason:

To demonstrate compliance with Part B of the Second Schedule to the Building Regulations, 1997 to 2006, Sections B1-B5.

Condition No. 2

Inner rooms should be in accordance with Clause 1.2.3.1 of Technical Guidance Document Part B, 2006.

Reason:

To demonstrate compliance with Part B of the Second Schedule to the Building Regulations, 1997 to 2006, Section B1: Means of escape in case of fire.

Condition No. 4

Stair 1 serving the first floor level should be constructed as a protected stairway.

Reason:

To demonstrate compliance with Part B of the Second Schedule to the Building Regulations, 1997 to 2006, Section B1: Means of escape in case of fire.

Condition No. 5

The enclosure of Stair 1 should be in accordance with Clause 1.3.6.2 of Technical Guidance Document Part B, 2006.

Reason:

To demonstrate compliance with Part B of the Second Schedule to the Building Regulations, 1997 to 2006, Section B1: Means of escape in case of fire.

Condition No. 8

The protected stairwell(s) should be provided with:-

(1) An openable window at each upper storey or landing;

or

(2) An openable vent having a clear openable area of not less than 1 m² situated at the top of the enclosure. The vent shall be automatically openable by activation of the fire detection and alarm system in the stairwell enclosure and also be manually openable for fire brigade use.

Reason:

To demonstrate compliance with Part B of the Second Schedule to the Building Regulations, 1997 to 2006, Section B5: Access and facilities for the Fire Service.

On 16th May 2019, Clarke Engineering & Consultancy Services acting as agent for Colm's Amusements appealed to An Bord Pleanála against the attachment of Conditions No.'s 1, 2, 4, 5 and 8) to the Fire Safety Certificate. The residual Conditions (Conditions No.'s 3, 6, 7 and 9) are not subject of the current appeal.

3. REPRISE OF APPEAL (AS PRESENTED)

Condition No. 1

The areas subject to this application are restricted to the lift enclosure, stair 2 enclosure, cash box/office, GF exit 1, WC at ground floor level and associated horizontal and vertical escape routes.

Reason:

To demonstrate compliance with Part B of the Second Schedule to the Building Regulations, 1997 to 2006, Sections B1-B5.

The appellant considers it onerous to limit the extent of the material alterations to those items noted in the Condition. The appellant suggests that, during the course of consideration of the application, additional works were proposed to be undertaken, including specifically the inclusion of a disabled WC at first floor level. The full extent of works proposed to be subject of the application are those contained in the general arrangement drawings submitted by the appellant on 8th April 2019. The appellant contends that all such works are in compliance with Part B to the Building Regulations (including the first floor disabled WC).

The Approving Authority is of the view that the subject works are those described in the application drawings dated 16th January 2019 and that additional works introduced during the course of the approvals process should be subject of separate Fire Safety Certificate approval. Specifically, the Authority confirms its view that the introduction of the accessible WC at first floor level gives rise to a non-compliance with Part B1 to the Building Regulations, due to the associated excessive dead end travel distance.

Condition No. 2

Inner rooms should be in accordance with Clause 1.2.3.1 of Technical Guidance Document Part B, 2006.

Reason:

To demonstrate compliance with Part B of the Second Schedule to the Building Regulations, 1997 to 2006, Section B1: Means of escape in case of fire.

The appellant acknowledges that the office comprises an inner inner room to the cash box and the first floor amusement arcade. However, the appellant highlights that the single direction travel distance is only 10.7 metres and is significantly less than the typical 18 metres limit appropriate to such circumstances. The subject office and cash box rooms are small in size and will be occupied by persons awake and familiar with their surroundings.

Further the appellant highlights that his proposed inclusion of automatic fire detection (Type L3) is superior to the potential code compliant arrangement of a manual fire alarm system and a vision panel within the inner room door.

The Approving Authority is of the view that the double inner room does not comply with Clause 1.2.3.1 of Technical Guidance Document B and that the inclusion of automatic fire detection (Type L3) is not a compensatory feature and IS 3218 requires same in any event for a public assembly building.

The appellant suggests that it is unreasonable for the Approving Authority to prohibit an inner inner room if the arrangement poses no greater risk than any code compliant inner room layout. The appellant does not consider IS 3218 guidance as being a basis for determining that anything other than Type M (manual) fire alarm represents an acceptable minimum standard for the subject building and contends that the upgrading of same to automatic (Type L3) detection and alarm is sufficient to justify the inner inner room design (based on the reduced time to alarm and significant reduction in pre-movement time arising).

Condition No. 4

Stair 1 serving the first floor level should be constructed as a protected stairway.

Reason:

To demonstrate compliance with Part B of the Second Schedule to the Building Regulations, 1997 to 2006, Section B1: Means of escape in case of fire.

AND

Condition No. 5

The enclosure of Stair 1 should be in accordance with Clause 1.3.6.2 of Technical Guidance Document Part B, 2006.

Reason:

To demonstrate compliance with Part B of the Second Schedule to the Building Regulations, 1997 to 2006, Section B1: Means of escape in case of fire.

The appellant suggests that Stair 1 was approved under FS/234 as being open at first floor level and separated from ground floor accommodation by 60 minutes fire-resisting constructions including a self-closing FD60S fire-resisting doorset. In this context, the retention of an open Stair 1 at first floor level does not give rise to any new or greater contravention with Part B1.

The Approving Authority suggests that the design occupancy of 140 persons at first floor level together with the travel distances arising requires a superior arrangement to an open stairway. The Authority suggest that the prior approval of the open stair arrangement was predicated on an 18 metres maximum dead end to the enclosed stairway. The Approving Authority confirm that its attachment of Condition No. 4 takes into consideration the presence of the accessible WC on first floor level (with an associated single direction travel of 23 metres) and the necessity to pass adjacent to the open stairway (no. 1) *en route* to the protected stairway (No. 2). Accordingly, the means of escape from first floor is considered to be inadequate by the Approving Authority.

The appellant considers the Approving Authority's use of the term "open stairway" to describe the proposed design as being mis-leading given that the stair is separated from ground floor accommodation by 60 minutes fire-resisting construction. The appellant also clarifies various travel distances at first floor level and states that same are within the normal 18 metres (single direction) and 45 metres (two directions) limits. The appellant concludes that the proposed design for escape of 140 persons is no less safe than the previously approved FS/234 design for 420 persons.

Condition No. 8

The protected stairwell(s) should be provided with:-

(3) An openable window at each upper storey or landing;

or

(4) An openable vent having a clear openable area of not less than 1 m² situated at the top of the enclosure. The vent shall be automatically openable by activation of the fire detection and alarm system in the stairwell enclosure and also be manually openable for fire brigade use.

Reason:

To demonstrate compliance with Part B of the Second Schedule to the Building Regulations, 1997 to 2006, Section B5: Access and facilities for the Fire Service.

The appellant contends that the attachment of Condition No. 8 is unduly onerous and contradicts the guidance contained in Clause 5.0.3 of Technical Guidance Document B which specifically identifies Part B5 as being complied with in the case of existing building unless there are proposed material alterations that alter the Fire Service access or extend a building. Neither is the case here, so there should be a *de facto* acceptance that Part B5 to the Building Regulations should not give rise to any new or additional fire safety requirements.

The appellant highlights that the absence of smoke ventilation facilities to the stairways would have been acceptable under the 1991 version of Technical Guidance Document B, which would have been in force when the original Fire Safety Certificate FS/234 was granted in 1995.

It would appear from the grouping of the responses of the Approving Authority to the subject appeal that the concern relates to the provision of ventilation to Stairway No. 1 on the basis of it becoming enclosed as required under Conditions No.'s 4 and 5. There is no argument from the Approving Authority regarding the alteration of the existing arrangements and the validity of Clause 5.0.3.

4. CONSIDERATION

The appeal may be considered as presented and no new issues arise as might demands *de novo* consideration.

Condition No. 1

The areas subject to this application are restricted to the lift enclosure, stair 2 enclosure, cash box/office, GF exit 1, WC at ground floor level and associated horizontal and vertical escape routes.

Reason:

To demonstrate compliance with Part B of the Second Schedule to the Building Regulations, 1997 to 2006, Sections B1-B5.

Whilst the appellant may consider it to be onerous to limit the extent of the material alterations to those items noted in the Condition, the question is whether the extent of works prescribed in the Condition accurately reflect those works subject of the Fire Safety Certificate application on 14th January 2019. A statutory fee in the amount of €168.20 was lodged on the basis of 58 m² of area being subject of alteration. Furthermore, the applicant specifically confirms that the subject works are identified in “mark-ups” sent to Donegal County Council on 9th January 2019 and “agreed with H. Gallagher on 11.01.19” and extracts from same are included in the introductory section of the technical compliance report lodged in support of the application.

No additional fee was lodged as would be required to increase the floor area of the works subject of the application to reflect new works that might have been subsequently requested to be included with the agreement of the Approving Authority. In the absence of an additional fee payment, no additional floor areas can be included within the subject application.

The appellant might well be correct in highlighting the absence of practicability in requiring an additional Fire Safety Certificate application to be made to capture works that to his mind were integrated into the subject application and approvals process. However, the obligation rests solely with the applicant to define the correct scope of his application and to re-define same by agreement if he should prefer, but at all times within the proper statutory regime including payment of the appropriate statutory fee.

The initial application drawings lodged in January 2019 include hand annotations and unambiguous red line identification of the subject works comprising:-

Ground Floor

- 18 m² removal of toilets to form a new lift and single accessible WC.
- 6 m² modification of main exit/entrance porch.

First Floor

- 18 m² removal of cash box to form a new lift and fire-resisting enclosure of staircase 2 including a disabled refuge.
- 16 m² formation of new cash box and office.

It is clear that this unambiguous and explicit identification of works was not re-visited during the application process, with the applicant incorrectly relying upon the inference that his inclusion of new works as part of his formal submissions to the Approving Authority would *de facto* make such areas (new) parts of his application. There seems to be an inherent contradiction in the appellant's seeking to attach the disabled WC within the scope of the application but not regarding the previously installed WCs as requiring approval.

Given that the accessible WC at first floor level is not subject of the Fire Safety Certificate application, no comment is required to be offered in the context of this appeal as to its compliance with Part B1 of the Building Regulations. Similarly, the reconfigured toilets and smoking area (previously refused approval under Regularisation Certificate FS/17/42R) are not subject of the current application, nor the current appeal, and therefore no comment is offered.

After reviewing the original application drawings and being satisfied that no additional fees were subsequently discharged by the appellant, the definition of the scope of the application contained in Condition No. 1 is deemed to be reasonable and useful in the avoidance of ambiguity. The Approving Authority had advised the applicant (in writing on 11th February 2019) that current application included a number of unauthorised works, which were clearly known to be unauthorised with respect to FS/234 due to the 2017 refusal of Regularisation Certificate FS/17/42R. The applicant had in turn determined these works not to be material variations to the approved layouts and explained that the smoking area does not exceed 17 m² and therefore is exempt from the need for a Fire Safety Certificate. This does not change the situation that compliance with Part B1 is required for the subject areas and is notwithstanding matters raised in the context of other statutory regimes.

Condition No. 1 should remain unchanged.

Condition No. 2

Inner rooms should be in accordance with Clause 1.2.3.1 of Technical Guidance Document Part B, 2006.

Reason:

To demonstrate compliance with Part B of the Second Schedule to the Building Regulations, 1997 to 2006, Section B1: Means of escape in case of fire.

The appellant acknowledges that the office comprises an inner inner room to the cash box and the first floor amusement arcade. The Approving Authority is correct that this arrangement conflicts with guidance in Clause 1.2.3.1(c) of Technical Guidance Document B. The question is therefore whether the proposed inclusion of automatic fire detection (Type L3 with detection in the cash box and office rooms) is a sufficiently compensatory feature to permit the deviation from guidance.

The cash box would be permitted under Clause 1.2.3.1(f)(iii) of Technical Guidance Document B as an inner room to the amusement arcade subject to the amusement arcade being fitted with a suitable automatic fire detection and alarm system to warn the occupants of the cash box of a fire detection event in the amusement arcade, i.e. access room. An increase in size of the cash box to allow for dual function as an office/cash box (single room) would equally be permissible under the above guidance given that the modest combined rooms size would observe both travel distance and occupancy limits.

The particular risk associated with the proposed inner inner room design is therefore the new risk (over and above the risks inherently acceptable under Technical Guidance Document B guidance) that a fire in the cash box would trap occupants within the office. When viewed in isolation, the relationship between the office and the cash box accords in full with the guidance contained in Clause 1.2.3.1 of Technical Guidance Document B in that automatic fire detection in the cash box is to be provided together with an associated alarm to the inner room office.

It is recognised that the above logic could be used to routinely justify inner inner rooms despite same being explicitly prohibited by guidance in Clause 1.2.3.1(c) of Technical Guidance Document B. That is not the intention. However, in this specific instance the nature of the cash box and office work spaces, their limited size individually and in combination and the proposed provision of local automatic smoke detection (in both the amusement hall and the cash box) linked to an alarm (audible within the office to a min. 65 dBA or 10 dBA above ambient noise levels) would be sufficient to conclude that the proposed arrangement achieves compliance with the fundamental requirement of Part B1 to the Building Regulations.

It is recommended that Condition No. 2 be set aside.

Conditions No. 4

Stair 1 serving the first floor level should be constructed as a protected stairway.

Reason:

To demonstrate compliance with Part B of the Second Schedule to the Building Regulations, 1997 to 2006, Section B1: Means of escape in case of fire.

The appellant states that Stair 1 was previously approved by Donegal County Council under FS/234 as being open at first floor level and separated from the adjacent ground floor accommodation by 60 minutes fire-resisting constructions including a self-closing FD60S fire-resisting doorset. This assertion has been confirmed with reference to the case history file. In this context, the retention of an open Stair 1 at first floor level does not give rise to any obvious new or greater contravention with Part B1. In fact, the reduction in the design occupancy of first floor from 420 persons to 140 persons would typically suggest that the situation has materially improved.

The Approving Authority suggests that the prior approval of the open stair arrangement was predicated on an 18 metres maximum dead end to the enclosed stairway. However, the occupant numbers at first floor level would require access to not fewer than two escape routes, so Stair No. 1 must at all times have been taken into account in the consideration of the means of escape. The Approving Authority also confirm that its attachment of Condition No. 4 takes into consideration the presence of the accessible WC on first floor level (with an associated single direction travel of 23 metres) and the necessity to pass adjacent to the open stairway (no. 1) *en route* to the protected stairway (No. 2).

The maximum extent of dead end travel distance, both for the previously approved layout contained in Fire Safety Certificate FS/234 (with its inner inner room store room) and for the existing unauthorised layouts (as refused under Regularisation Certificate FS/17/42R) with various toilets and an external smoking area, are effectively unchanged whether or not Stairway No. 1 is enclosed in fire-resisting construction at first floor level. Whilst travel distances in a single direction could in theory terminate at a protected Stairway No. 1 enclosure, the fact that alternative routes are available from the head of this Stairway No. 1 (either 11 metres downwards via the open stairway to the ground floor final exit or by traversing a further 4 metres across the first floor to the protected enclosure of Stairway No. 2) means that the 45 metres travel limit in two directions is observed regardless. The concern regarding escape therefore relates solely to the single direction component of the travel, i.e. in the direction of the toilets. Whether this single direction is measured to the accessible toilet (not part of the application), the toilets (not considered major variations and not included in the application) or the exempted smoking area is irrelevant. The relevant measure is relative to the extent of previously approved 15

metres (direct) dead end travel distance, i.e. from the inner inner store room described in FS/234 to the head of Stairway No. 2. A reasonable examination of the machine layouts arising on the existing first floor plan would confirm that the previously approved arrangement resulted *de facto* in a single direction travel distance of not more than 18 metres. With the exception of the smoke area (which is not within the scope of the application) no location on the proposed first floor plan exceeds the previously approved travel distance.

Disabled egress is a further aspect of this appeal that needs to be considered. The provision of a disabled lift to serve first floor level and the provision of a disabled refuge space within the protected enclosure of Stairway No. 2 results in a situation whereby disabled persons have a single means of escape from the first floor, unlike those occupants sufficiently self-ambulant to have access to two escape stairs. This disparity in treatment of occupants is unfortunate. However, the relevant design standard (BS 5588:Part 8:1999) relaxes the requirement to provide a disabled refuge from first floors not exceeding 280 m² in area. The subject floor area is stated in the FSC application form to be 257 m² and therefore exempted the need to provide disabled refuges. The proposed disabled refuge in protected Staircase No. 2 could be considered as an enhancement to minimum standards (as contained in Technical Guidance Document B) as opposed to offering a reason to require the enclosure of Stairway No. 1 solely as to provide a disabled refuge.

It is concluded that enclosing the first floor level of Stairway No. 1 in fire-resisting construction will not materially improve the means of escape provisions for the first floor nor will it materially address any deficiencies as might exist in certain areas.

It is recommended that Condition No. 4 be set aside.

Condition No. 5

The enclosure of Stair 1 should be in accordance with Clause 1.3.6.2 of Technical Guidance Document Part B, 2006.

Reason:

To demonstrate compliance with Part B of the Second Schedule to the Building Regulations, 1997 to 2006, Section B1: Means of escape in case of fire.

Given the above determination of the need to enclose Stairway No. 1, this Condition would also by default be set aside.

It is recommended that Condition No. 5 be set aside.

Condition No. 8

The protected stairwell(s) should be provided with:-

(5) An openable window at each upper storey or landing;

or

(6) An openable vent having a clear openable area of not less than 1 m² situated at the top of the enclosure. The vent shall be automatically openable by activation of the fire detection and alarm system in the stairwell enclosure and also be manually openable for fire brigade use.

Reason:

To demonstrate compliance with Part B of the Second Schedule to the Building Regulations, 1997 to 2006, Section B5: Access and facilities for the Fire Service.

In the absence of a modification of Stairway No. 1 (as a result of setting aside Conditions No.'s 4 and 5), the attachment of Condition No. 8 would clearly contradict the guidance contained in Clause 5.0.3 of Technical Guidance Document B for existing buildings. Clause 5.0.3 specifically determines that no new contravention arises with respect to Part B5 in the case of existing building unless there is a proposed material alteration that alters Fire Service access or increases the size of a building. Neither is the case here, so there is *de facto* compliance with Part B5 to the Building Regulations.

It is recommended that Condition No. 8 be set aside.

5. CONCLUSION

In my opinion, the Board may rely on Article 40(2) of the Building Control Regulations to consider the subject appeal on the basis of Conditions only.

It is recommended that the appeal be substantially upheld and Conditions No.'s 2, 4, 5 and 8 be removed in their entirety. However, the appeal against attachment of Condition No. 1 should be set aside and the Condition remain.

The remaining 4 no. Conditions (Conditions No.'s 3, 6, 7 and 9) attached to the granted Fire Safety Certificate are not subject of this appeal and should remain. The granted Fire Safety Certificate should therefore be subject of 5 no. Conditions, i.e. Conditions No.'s 1, 3, 6, 7 and 9.

Dr. Raymond J Connolly

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