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Report 3606

**An Bord Pleanála Appeal regarding the attachment of
Conditions No.'s 1, 2, 3 and 6 by Donegal County Council to grant of
Regularisation Certificate
for the material change of use from Boutique to Public Bar at McCafferty's
Bar, The Diamond, Donegal Town, Co. Donegal**

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BUILDING CONTROL ACT, 1990 to 2014 – APPEAL

**REGULARISATION CERTIFICATE APPLICATION FOR
MATERIAL CHANGE OF USE FROM BOUTIQUE TO PUBLIC BAR AT MCCAFFERTY'S
BAR, THE DIAMOND, DONEGAL TOWN, CO. DONEGAL
APPEAL AGAINST THE ATTACHMENT OF CONDITION'S NO. 1, 2, 3 & 6
TO REGULARISATION CERTIFICATE (REG. REF. FS/19/32R) ON 24th MAY 2019**

AN BORD PLEANÁLA APPEAL REFERENCE 304728-19

Local Authority: Donegal County Council

Appellant: Fanad Head Limited c/o Maurice Johnson & Partners

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 upheld and Conditions No.'s 1, 2, 3 and 6 be removed in their entirety.

The remaining 4 no. Conditions (Conditions No.'s 4, 5, 7 and 8) attached to the granted Regularisation Certificate are not subject of this appeal and should remain. The granted Regularisation Certificate should therefore be subject of 4 no. Conditions.

Dr. Raymond J Connolly

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1. RELEVANT INFORMATION

- i. Application for a Regularisation Certificate by Fanad Head Limited to Donegal County Council dated 28th February 2019.
- ii. Written Submission (19057-RFSC-R001 Issue 01) by Maurice Johnson & Partners and associated drawings dated 28th February 2019.
- iii. Written Submission (19057-RFSC-R001 Issue 02) by Maurice Johnson & Partners and associated drawings dated 13th May 2019.
- iv. Letter of additional information from Maurice Johnson & Partners to Donegal County Council dated 13th May 2019.
- v. Regularisation Certificate (FS/19/32R) granted by Donegal County Council dated 24th May 2019 (subject of 8 no. Conditions).
- vi. Letter of appeal from Maurice Johnson & Partners on behalf of Fanad Head Limited to An Bord Pleanála dated 20th June 2019.
- vii. Donegal County Council Case History File FS 17/170R

2. BACKGROUND

Maurice Johnson & Partners acting as agent for Fanad Head Limited made an application to Donegal County Council for the material change of use from Boutique to Public Bar at McCafferty's Bar, The Diamond, Donegal Town, Co. Donegal. The Regularisation Certificate was granted by Donegal County Council (under Reference FS/19/32R) on 24th May 2019 subject to 8 no. Conditions including *inter-alia*:-

Condition No. 1

The stairway from the first-floor toilets shall be constructed as a protected stairway 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. 2

The discharge from the protected stairway from the first-floor toilets shall be in accordance with Clause 1.3.6.3 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. 3

The construction of the protected stairway from the first-floor toilets shall be in accordance with Clause 1.4.4.1 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. 6

The protected stairway from the first-floor toilets shall be ventilated in accordance with 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 B5: Access and facilities for the Fire Service.

On 20th June 2019, Maurice Johnson & Partners acting as agent for Fanad Head Limited appealed to An Bord Pleanála against the attachment of these Conditions (Conditions No.'s 1, 2, 3 and 6) to the Regularisation Certificate. The residual Conditions (Conditions No.'s 4, 5, 7 and 8) are not subject of the current appeal.

3. REPRISE OF APPEAL (AS PRESENTED)

The subject works comprise the regularisation of conversion of a retail unit into a public house and specifically the design of the access and egress to the first-floor toilet facilities.

The appellant proposes that the proposed open stairway access to the first-floor toilets is permissible and that the recommendations of Section 1.3.6 of Technical Guidance Document B, i.e. the need to enclose protected stairways, need not be applied in this instance. The appellant explains the difference between open accommodation stairways and protected stairway enclosures and their differing consideration within Clauses 1.0.5 and 1.3.6.1 of Technical Guidance Document B. The appellant accepts that “the requirements for passive fire protection enclosures to stairs are of necessity where the stair is to be considered a place of relative safety” but contends that same does not require all stairs to be so protected.

The appellant highlights a number of instances in various fire safety guidance documents that confirm his interpretation of good practice including Clauses 8.4 and 10 of BS 5588:Part 11 and Clause 14.2 of BS 9999.

The appellant identifies certain features specific to the proposed design that mitigate the risk including:-

- The first floor accommodation is limited to sanitary facilities, i.e. not a habitable room.
- The occupant loading is extremely low, c. 10 persons.
- The dead-end travel distance is 16.5 metres (allowing for travel on the stairway) and same is within the 18 metres permissible limit.
- The overall travel distances to the available storey exits are significantly less than the 45 metres permitted.
- Comprehensive fire detection and alarm (Type L2/L3 to IS 3218) has been provided throughout.

The appellant highlights that the location of the toilets in a similar configuration on ground floor discharging into the same alleyway bar would be fully compliant with Part B1 and that the fact that the toilets are at first floor does not significantly increase the risk. The stairs are underdrawn by 30 minutes fire-resisting construction and occupants moving on the open stairs would not be subject of direct flame impingement.

The appellant argues that the requirement under Condition No. 3 that the materials of construction of the stairway be of limited combustibility is unduly onerous in this instance because:-

- The accommodation is only a single level above ground level.
- The accommodation has limited occupant loading.
- The travel distances (single direction) are limited to less than 18 metres.
- A comprehensive automatic fire detection and alarm system is installed.

Furthermore, the timber staircase is stated by the appellant to be protected from the underside, including the under-drawing of the inclined stair flights above the bar, with 60 minutes fire-resisting construction.

The appellant argues that Condition No. 6 requiring the ventilation of the toilet staircase in accordance with Section 5.4.3.2 of Technical Guidance Document B only applies to protected stairway enclosures. Given that the current stairway need not, to the mind of the appellant, be a protected escape stair but is an “open or accommodation stair which forms part of an unprotected escape route”, then ventilation should not be required.

The Fire Authority does not offer any commentary regarding the appeal.

4. CONSIDERATION

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

The implication of these cumulative 4 no. conditions is arguably a *de-facto* refusal of the application. For example, Condition No. 2 requires a protected passageway to be extended to fresh air, i.e. taking space out of the existing alleyway. The width of this existing alleyway is c.2,500 mm and it traverses past a number of connections into the existing Bar 4 before terminating at a 1,500 mm wide side gate onto the existing footpath. The inclusion of a new say 1,200 mm wide passageway from the first-floor toilets would clearly undermine the overall means of escape design from Bar 3 as presented in that it could notionally eliminate the alleyway exit serving over 200 persons to provide protected exit from the first floor toilet containing 10 persons. Furthermore, the stairway to the first-floor toilet does not have an external wall and sits beneath a second storey level, making the ventilation required under Condition No. 6 impracticable to achieve with the current layout.

Whilst these matters may not be germane to the Approving Authority in their determination of measures required to deliver compliance with Part B to the Building Regulations, it does beg the question why the application was not simply refused. Instead, the notionally positive decision by the Authority to issue a grant of the Regularisation Certificate is subject to a list of required remediation measures that could not reasonably be expected to be resolved within 4 months post-approval by the applicant. Indeed, it is arguable whether the required reconfiguration works could in reality be achieved without returning again to the Approving Authority for a Revised Fire Safety (or Regularisation) Certificate to obtain approval with regard to issues such as confirmation of the width of the new passageway, the extent of fire-resisting separation required from Bar 4, the acceptability or not of including doors/windows into the passageway from the alleyway or Bar 4 and most importantly the effect of the passageway in reducing the means of escape width available from the overall premises.

The substantial issue subject of this appeal is whether unprotected vertical components of an escape route are permissible and if so, to what extent.

The first-floor ladies toilet satisfies the criteria for compliance with Part B1 in terms of it being an inner room to the ground floor bar and it being within sufficiently limited single direction travel from a point at ground floor level from where alternative escape is available. As pointed out by the appellant, the equivalent toilet configuration at ground floor level would not be controversial. The question is therefore whether the change in level occupants are required to make when escaping down from the

toilet is of itself a sufficient reason to embrace the regime of requiring the storey exit, i.e. the toilet's door into the stairway, to discharge into a protected escape route. The consequences of such a design approach are captured in the subject Conditions No. 1 (requiring the stairway to be enclosed in fire-resisting construction), No. 2 (requiring provision of a protected passageway from the foot of the stairway to a final exit in fresh air), No. 3 (requiring the staircase to be constructed of materials of limited combustibility, i.e. not timber) and Condition No. 6 (requiring provision of ventilation above the stairway).

The extent of travel distance within the first-floor toilet does not demand that it discharge directly into a storey exit, so as to meet the 18 metres single direction exit criterion. Equally the 14 metres of travel from the remote part of the toilet and down the stairway flight remains within the 18 metres single direction limit. It is noted that there is a choice of directions available from the foot of the stairway and that the final place of safety in fresh air is within an additional 28 metres. The overall travel distance is therefore presented as being 42 metres, which is within the 45 metres recommended limit.

The appellant is correct in asserting that Clause 1.0.5 of Technical Guidance Document B clearly permits unprotected parts of escape routes but recommends that same should be limited in extent so that persons do not have to travel excessive distances exposed to the immediate danger of fire and smoke. It is reasonable to consider that the travel distances contained in Table 1.2 of Technical Guidance Document B represent the default expression of over what distances occupants may be expected to remain exposed to smoke and heat. It is noted that in the subject design, the enclosure of the toilet stairway eliminates the risk of exposure to smoke and heat over the intermediate component of the escape route, i.e. travel on the stairway flight itself. By the measure of travel distance both in terms of distance and in terms of the risk of exposure, the subject arrangement is within appropriate standards.

The clarification in Clause 1.0.5 of Technical Guidance Document B that unprotected stairways are allowable is qualified by the vague assertion that same shall only play a very limited role in terms of means of escape. Clearly, using stairways to descend from open galleries or to change levels in a split-level single storey building is routine. In such circumstances, Clause 1.3.6.1 of Technical Guidance Document B requires that such open stairs be evaluated in the context of Section 1.2 "Design for Horizontal Escape", i.e. with travel distances evaluated to include travel on the open stairway as opposed to simply being measured to the enclosure of an "escape stairway". This interpretation of the design guidance is not to my mind controversial and is reflected across many guidance documents used within the fire safety engineering community.

It is appreciated that the overall travel distances involved in this circumstance are approaching the upper limit of what is permissible, i.e. 42 metres as opposed to 45 metres. Equally, the particular occupancy characteristics including live music and it being a licensed premises does give rise to a legitimate concern for occupant safety in the case of fire. The subject design includes some significantly adverse features giving rise to concerns about delayed occupant response to the fire alarm, allowing for an initial delay in commencing evacuation as might reasonably be associated with toilet usage, and the subsequent speed of occupant movement down the toilet stair (as opposed to over a horizontal surface). In this context, there is little doubt that the design sits at the very margins of what is likely to have been deemed permissible in the drafting of Technical Guidance Document B.

It is with some significant reservations that, on balance, I am constrained to conclude that the design does indeed meet the relevant guidance contained in Technical Guidance Document B and accordingly demonstrates *prima facie* compliance with Part B of the Second Schedule of the Building Regulations. The attached 4 no. inter-related Conditions that require the upgrading of the unprotected toilet stairway to become a protected escape stairway should therefore be set aside.

It is not appropriate to attach replacement conditions in this instance. However, given the very fine line being walked in this matter, I would recommend that the appellant's designers take due cognisance of the issues outlined in this appeal and reconsider their decision that the window to the first-floor toilet over-looking Quay Street be blocked-up.

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 upheld and Conditions No.'s 1, 2, 3 and 6 be removed in their entirety.

The remaining 4 no. Conditions (Conditions No.'s 4, 5, 7 and 8) 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 4 no. Conditions.

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