

Inspector's Report

Appeal against a condition attached to a Disability Access Certificate for material alterations/refurbishment works to a café including extending the café into an adjacent café unit at the Lemon Jelly Café, Millenium Walkway, Dublin 1.

Board DAC Appeal Ref. No.: ABP-304924-19

Building Control Authority Ref. No.: DAC 2019/0215

Appellant/Agent: Brian Keogh
Lemon Jelly Cafe
Millenium Walkway,
Dublin 1.

Goldsmith Engineering
Mount Pleasant Business
Centre,
Mount Pleasant Ave. Upper
Ranelagh
Dublin D06 K762

Building Control Authority: Dublin City Council

Inspector: Michael Mohan, FRIAI

Appendix Attached: None

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1.0 Introduction

1.1. Site description

Lemon Jelly Café is an existing ground floor unit, located in an existing multi-storey building of mixed uses at Millennium Walkway, Dublin 1. It is expanding into an adjacent unit, called Bread and Bones, which is located on the corner of Millenium Walkway and Strand Street Great.

1.2 Subject Matter of Application

The application is for material alterations/refurbishment works to an existing café including extending the café into an adjacent café unit so that the two units become one café.

The Disability Access Certificate application was submitted by Goldsmith Engineering, on behalf of Brian Keogh, Lemon Jelly Cafe and was received by the Building Control Authority (BCA) on the 2nd May 2019 and included:

- Completed DAC application form
- 2 No. copies of drawings:

Drawing Number	Title	Scale
DAC-19A1015-98	Site Location Map	1:500
DAC-19A1015-99	Site Plan	1:250
DAC-19A1015-100	Floor Plan	1:50
DAC-19A1015-101	Existing Floor Plan	1:50
DAC-19A1015-200	Sections 1,2 &3	1:50
DAC-19A1015-201	Sections 4, 5, 6 &7	1:50
DAC-19A1015-300	Elevations North, South & East	1:50

- 2 No. copies of the Disability Access Certificate Compliance Report.
- Letter from the Agent dated 2nd May 2019.
- Cheque for €500.00 with respect to the application fee.

Unsolicited additional information was submitted to and received by the Building Control Authority (BCA) on the 7th June 2019 and included:

- Letter from the Agent dated 5th June 2019
- 2 No. copies of drawings:

Drawing Number	Title	Scale
DAC-19A1015-100	Floor Plan	1:50
DAC-19A1015-200	Sections 1,2 &3	1:50

1.3 Building Control Authority Decision

- The BCA issued a Disability Access Certificate, DAC No. DAC/2019/0215, Decision Date: 17th June 2019. Three conditions were attached to the Disability Access Certificate and these are shown in the next section.

2.0 Information Considered

The following information was considered as part of the appeal process:

1. Disability Access Certificate application:

Ref. No. DAC/2019/0215

Application including DAC Compliance Report and drawings, listed at 1.2 above, was lodged by Goldsmith Engineering. It was received by the BCA on 2nd May 2019 with additional unsolicited additional received by the BCA on 7th June 2019 and all of these were received by the Board from the BCA 22nd July 2019.

The BCA issued a Disability Access Certificate, DAC No. DAC/2019/0215 which was received by the Board on 16th July 2019 attached to the appeal from the Agent and a further copy from the BCA on 22nd July 2019.

2. Appeal Documentation submitted by Agent:

The appeal documentation, received by An Bord Pleanála on 16th July 2019, included:

- Letter from Mr. Robert Butler, Goldsmith Engineering, dated 15th July 2019, stating that they wished to appeal Condition No.3 which was attached to the Disability Access Certificate DAC/2019/0215.
- Copy of Disability Access Certificate DAC/2019/0215.
- Cheque for €500 with respect to the fee for the appeal.

3. Application Documentation from BCA

Dublin City Council submitted a letter to the Board, dated 22nd July 2019 (in response to a request from the Board, dated 18th July 2019), which was received by the Board on 22nd July 2019 and included copies of the following:

- Copy of the application documents including submitted drawings and report.
- Certified copy of Executive Order No.209/19, dated 14th June 2019.

- Certified copy of Disability Access Certificate DAC/2019/0215, Decision date 17th June 2019, addressed to the Agent.
- Copy of BCA's Building Surveyor's Recommendation, dated 12th June 2019.

4. Notification of a Disability Access Certificate:

Disability Access Certificate, Ref. No. DAC/2019/0215, issued by the BCA on 17th June 2019, was received with the appeal by An Bord Pleanála on 16th July 2019 and a further copy was received by the An Board Pleanála from the BCA on 22nd July 2019.

Three conditions were attached to the Disability Access Certificate:

Condition No.1:

The proposed works shall be carried out in accordance with the plans, specifications and other relevant information submitted with the application (as well as any information submitted subsequently by way of additional information), save insofar as may be required by any other condition attached hereto.

Reason:

In the interest of clarity.

Condition No.2:

The section of the working surface of the bar or serving counter 1500mm long (min) shall be permanently accessible to wheelchair users and at a level of not more than 850mm above the floor in accordance with Section 1.5.5 of TGD Part M2010.

Reason:

To ensure that all facilities within a building are accessible to and useable and that they are designed and constructed to facilitate active participation where appropriate.

Condition No.3:

A wheelchair accessible unisex WC in compliance with Diagram 15b of TGD Part M 2010 shall be provided within the staff only area in accordance with Section 1.4.3.1 of TGD Part M 2010.

Reason:

To provide independently accessible sanitary facilities that need the needs of people with a wider range of abilities.

5. Observations from the BCA in relation to the appeal:

The BCA submitted a letter to An Bord Pleanála, dated 16th August 2019, which was received by the Board on 16th August 2019.

3.0 Relevant history/cases

This Inspector is not aware of any previous DAC application relevant to this café.

4.0 DAC application

Disability Access Certificate application:

Ref. No. DAC/2019/0215 application including DAC Compliance Report and drawings, listed at 1.2 above, was lodged by Goldsmith Engineering. It was received by the BCA on 2nd May 2019 with additional unsolicited additional received by the BCA on 7th June 2019 and all of these were received by the Board from the BCA 22nd July 2019.

5.0 Appellant's case

Goldsmith Engineering lodged an appeal on behalf of the applicant/appellant, dated 15th July 2019, against Condition No. 3 attached to the Disability Access Certificate DAC/2019/0215. The appeal was received by the Board on 16th July 2019.

An invitation from An Bord Pleanála, dated 22nd August 2019, was issued to the Agent inviting him to make a submission or observations in relation to the Dublin City Council submission, dated 16th August 2019, which the Board had received on 16th August 2019. The expiry date for submission of the response was 11th September 2019. The Board did not receive a response to that invitation therefore the Board will now proceed to determine the appeal without further notice to the Agent.

The following is a brief outline of the Appellant's case:

- As there was formerly no wheelchair accessible WC located in the staff only area of the Lemon Jelly Café it is deemed appropriate to have a single wheelchair accessible WC located within the café unit as this would accommodate both staff and customer wheelchair users. Staff members are able to enter directly into the corridor, from the staff only area, serving the WC area for customers and will be able to use the wheelchair accessible WC.
- It is not feasible to introduce an additional wheelchair accessible WC.

- The floor area of the unit will be 290 sq.m. It would be appropriate to have a single wheelchair WC for both staff and customers.
- Lemon Jelly café will occupy a single unit within a larger multi-unit building, the unit does not communicate with other units within the building. The proposed WC facilities for both staff and customers will be located within the same unit of the larger multi-storey building and therefore there are no requirements to provide two wheelchair accessible WCs in the same unit.
- There is no provision in TGD Part M 2010 for provision of a wheelchair accessible WC in staff only areas of a single unit.
- The previous layout had only a single staff WC in the staff area. There will be an additional WC for staff which will be an ambulant disabled WC for staff use only. This shows that consideration was taken to improve access for people with a wide range of requirements.

6.0 Building Control Authority's case

The BCA submitted a letter (dated 16th August 2019) which was received by the Board on the 16th August 2019. The following is a brief summary of the BCA's case:

- The additional sanitary facilities are for a distinct user group, staff only.
- The BCA quoted the following from TGD Part M 2010:

Section 1.4.3: The following guidance represents the minimum provisions to ensure that sanitary facilities where provided for a particular user group, are accessible to all in that group e.g. customers and/or staff.

Section 1.4.3.1: Where there is more than one WC facility provided in a building at different locations, at least one wheelchair accessible unisex WC should be provided at each location.

- The proposal was considered to unnecessarily segregate a particular user group on the basis of their ability and therefore considered unacceptable.

7.0 Considerations

7.1 Level of detail provided in the application to meet the requirements of the Building Control (Amendment) Regulations 2009

Section 20 (D) 3(b) of the Building Control (Amendment) Regulation 2009 states that a DAC application should:

- *Identify and describe the works or building to which the application relates;*
- *Enable the building control authority to assess, whether the said works or building would, if constructed in accordance with the said plans and other particulars, comply with the requirements of Part M of the Second Schedule to the Building Regulations;*
- *Identify the nature and extent of the proposed use and, where appropriate, of the existing use of the building concerned.*

Section 20(D) 4 of the Building Control (Amendment) Regulation 2009 states:

(c) *Where a building control authority consider that an application for a disability access certificate does not comply with paragraph (3), they may, as they consider appropriate, having regard to the extent of the failure to comply with the said paragraph, by notice in writing—*

(i) inform the applicant that the application is invalid and cannot be considered by the authority, or

(ii) require the applicant to furnish such further plans, calculations, specifications or particulars, or such additional fee, as may be necessary to comply with the said article

(d) *Where a building control authority serve a notice in accordance with sub-paragraph (c), they shall return to the applicant all the documents and the fee which accompanied the application.*

7.2 Meeting the requirements of Part M of the Building Regulations

Legislative Considerations

Part M of the Second Schedule to the Building Regulations, (as amended), provides as follows:

To meet the requirements of M1: Adequate provision shall be made for people to access and use a building, its facilities and environs.

Technical Guidance:

In their Compliance Report, Goldsmith Engineering indicated that achievement of compliance with Part M of the Building Regulations is demonstrated by reference to TGD Part M: 2010.

8.0 Assessment

This appeal is made against a Condition attached to a Disability Access Certificate. Having considered the drawings, reports, details and submissions on file it is considered that a *de novo* approach is not warranted.

The main issue is whether adequate provision has been made to ensure that accessible sanitary facilities have been provided for all users to meet the needs of people with a wide range of abilities.

The BCA are of the opinion that separate unisex WCs should be provided for customers and staff. If that was the case, one could argue that all buildings would be required to provide two separate wheelchair accessible unisex WCs for customers and staff. This is not the intention in TGD Part M 2010 where it 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.”

The above statement from TGD Part M 2010 indicates that it is acceptable to provide a wheelchair accessible unisex WC for use by both staff and customers.

The BCA stated that *“The proposal was considered to unnecessarily segregate a particular user group on the basis of their ability and therefore considered unacceptable”*. As the proposed wheelchair accessible unisex WC will be available to staff and customers it will not segregate any particular user group but will afford the same facility to all.

The BCA refer to TGD Part M Section 1.4.31(c):

“Where there is more than one WC facility provided in a building at different locations, at least one wheelchair accessible unisex WC should be provided at each location”

The proposed development is not comparable to a large building where distances between toilet facilities might be great. The staff area/staff toilets and customer toilets will be located in close proximity to each

other and will be served by the same corridor. The proposed wheelchair accessible unisex WC will be in a convenient location for use by staff and customers. The furthest that any staff member would have to travel from the furthest part of any room within the staff area (which happens to be only a store room) to the wheelchair accessible unisex WC will be less than 20m. There is no specific guidance on the travel distance required for staff to use a wheelchair accessible unisex WC in the TGD Part M 2010. However, this guidance document was broadly based on the British Standard 8300 in which it advises in Section 18.5.2 BS 8300: Part 2 2018:

“A disabled employee should not have to travel more than 40 m on the same floor from their workstation to an accessible toilet”.

The travel distance in this case is less than 20m. which is well within acceptable limits.

In addition to the wheelchair accessible unisex WC, the development will include for two dedicated staff toilets, one of which will be an ambulant WC. The Agent has given consideration to improve access for people with a wide range of requirements.

I am of the opinion that there is no requirement to provide an additional wheelchair accessible unisex WC in the staff only area.

Accordingly, in my opinion, Condition No. 3 should be omitted.

9.0 Conclusions / Recommendations

In conclusion, I recommend that the Board directs the BCA to omit Condition No.3. and to grant the DAC.

9.1 Reasons and Considerations

Having regard to the provisions of the Building Regulations 1997 to 2019, Second Schedule, Part M, to the form and layout of the existing building and the nature of the proposed works and to the submissions made in connection with the DAC application and appeal, it is considered that the works or building to which the application relates, if constructed in accordance with the plans, calculations, specifications and particulars submitted, and subject to compliance with the conditions as set out above, will comply with the requirements of Part M of the Second Schedule to the Building Regulations 1997 to 2019.



Michael Mohan
Inspector

17th October 2019