

Report for An Bord Pleanála

on

Appeal against Decision to Refuse Fire Safety Certificate

For

37 Harcourt Street, Saint Kevin's, Dublin 2

Client:	An Bord Pleanála
An Bord Pleanála Ref:	307319-20
Our Ref:	ABP_R009_Issue 1
Date:	4 th March 2021

1.0 Introduction

This report sets out my findings and recommendations on the appeal submitted by OCFPM, acting on behalf of Colm Wu, against Decision to Refuse (FSR2344/20/7D) 7 Day Notice Fire Safety Certificate (FA/19/1524/7D) by Dublin City Council in respect of an application for works related to the Material Alteration and Material Change of Use at 37 Harcourt Street, Saint Kevin's, Dublin 2.

1.1 Subject of Appeal

Decision to Refuse (FSR2344/20/7D) 7 Day Notice Fire Safety Certificate (FA/19/1524/7D) by Dublin City Council.

Reason 1:

The design of the building or works does not satisfy the requirements of Section 9 (1)(a) of the Building Regulations 1997 to 2019 in that the submission fails to demonstrate compliance with Part B of the Second Schedule thereto in particular Section B1 – Means of Escape in Case of Fire and Section B3 – Internal Fire Spread (Structure).

2.0 Documentation Reviewed

- 2.1 7 Day Notice Fire Safety Certificate Application (application form, compliance report and fire safety drawings) submitted by OCFPM, acting on behalf of Colm Wu, on 5th September 2019.
- 2.2 Email Dublin City Council to Dublin Fire Brigade confirming that 7 Day Notice Fire Safety Certificate Application is a valid application.
- 2.3 Letter from Dublin City Council to OCFPM confirming receipt of application dated 11th September 2019.
- 2.4 Email from Dublin Fire Brigade dated 3rd October 2019 requesting addition information.
- 2.5 Further Information from OCFPM received by Dublin City Council on 24th October 2019.
- 2.6 Fire Safety Certificate Compliance report received by Dublin City Council on 13th January 2020 and 13th February 2020. One seems to be a copy of the other with date received amended from 13th January 2020 to 13th February 2020.
- 2.7 Further Information from OCFPM received by Dublin City Council on 13th February 2020 further to a 13th January 2020 meeting between OCFPM and Dublin Fire Brigade.
- 2.8 Dublin Fire Brigade notes dated 26th February 2020.
- 2.9 Report on Assessment of 7 Day Notice Fire Safety Certificate Application recommending that a Fire Safety Certificate is Refused dated 14th April 2020.
- 2.10 Notice of Refusal of 7 Day Notice Fire Safety Certificate to OCFPM Ltd. Dated 23rd April 2020.
- 2.11 Letter of Appeal from OCFPM, acting on behalf of Colm Wu, received by An Bord Pleanála on 8th June 2020.
- 2.12 Response to Appeal / Fire Officer's Report on Fire Safety Certificate Appeal dated 16th July 2020 from Dublin City Council to An Bord Pleanála.
- 2.13 Letter from OCFPM, acting on behalf of Colm Wu, received by An Bord Pleanála on 11th August 2020.
- 2.14 Response to OCFPM letter dated 1st September 2020 from Dublin City Council to An Bord Pleanála.

3.0 Building Control Authority's Case

The FSC application was for a Fire Safety Certificate for a change of use of the lowest two levels of 27 Harcourt Street from residential use to a restaurant.

A separate FSC application (19/1537/7D) was also submitted for the reconstruction of previously fire damaged flats located at the second and third floor levels.

Dublin Fire Brigade informed OCFPM of existing granted FSC for the building (F914/94) and suggested a meeting to discuss current FSC application and the concerns DFB had with it. At this meeting DFB reiterated presence of existing FSC and asked OCFPM to consider submitting a single FSC application which captured all the proposed works that were to take place within the building. It is the view of DFB that his approach would allow for the consideration of the effects that the proposed works had on the building holistically.

DFB note that the view presented by OCFPM that the existing fire safety certificate for the building (F914/94) was not acted upon was first expressed to DFB in an email sent on 8th May 2020 after the decision to refuse the FSC had been made. This view had not been presented by OCFPM to DFB at any point during the assessment of the FSC application. The presence of the existing FSC (F914/94) had been communicated to OCFPM by DFB on various occasions throughout the assessment.

DFB stated that no explanation was provided at the time of submission as to why the approach was taken to submit two separate applications for parts of the same building. DFB note that they expressed concern about this approach to OCFPM about this approach during the assessment of both applications. Of particular concern was the fact the approach adopted did not lend itself to considering the fire risk which one purpose group posed upon the other.

DFB are of the view that the implications of the fire risks posed by the introduction of an additional Purpose Group within the existing building would have been more adequately addressed within a single FSC application which took account of the fact that the building type had changed from residential to mixed use (with both uses sharing an escape route – the single stair serving the residential accommodation on the upper levels). As opposed to two separate applications that attempt to consider parts of the building in isolation from each other.

The means of escape from the lowest level of the restaurant does not comply with the guidance documents which are being used for the basis for compliance. At ground level it was proposed that the occupants of the restaurant could evacuate into the existing residential stair core (which served the residential units at upper levels) and on to outside via a final exit which did not open in the direction of escape. This creates non compliance which did not exist previously within the existing building. The lobby separating the restaurant at ground level from the stair serving the residential accommodation is shown on the floor plans as 30 minutes fire resistance (integrity only) however no justification is provided for this within the compliance report.

The existing fire safety certificate for 37 Harcourt Street which covered the entire building was granted on 15th February 1995. Within this FSC application the entire building is

classified as Purpose Group 1(c). The building is designed in accordance with BS 5588 Part 1 for B1 and TGD-B for B2 to B5. The layout of 37 Harcourt Street described in F914/94 does not align with the existing floor plans provided by OCFPM.

Dublin Fire Brigade comment as follow on the OCFPM appeal submission: -

- DFB note that not all contents of this report were available to DFB during the assessment of the application
- Some of the proposed compensatory measures listed are simply minimum requirements (i.e. achieving 60 minute compartment floor between basement and ground)
- In relation to the direction of door swings on escape routes there is no proposal to address the non-compliance issues introduced by the proposed change of use or to provide any compensatory measures other than stating 'as the property is specified as a protected structure this is not reasonably practicable'.
- DFB note that the new accommodation stairs at the rear of the property is not acceptable and despite the Appellants view that DFB did not have concerns that this stairwell should be an escape stair in either discussions or RFI requests. DFB maintain that by referring to the stair as an accommodation stair its unsuitability in terms of means of escape should have been clear.
- The comments by DFB in relation to the accommodation stair creating a penetration in the compartment floor were specifically in relation to the requirement for this stair to be constructed as a protected shaft.
- In the initial AI request DFB queried whether the proposals contained within the FSC application complied with Section 1.2.2.5 of TGD-B 2006. This should have highlighted the need for an additional protected stair if means for alternative horizontal evacuation could not be achieved from this level.
- TGD-B 2006 was the guidance document used as the basis for demonstrating compliance and it is therefore reasonable to expect that all parts of this document would be taken into account.
- DFB note that the reliance on the accommodation stair for means of escape was one of a number of issues with respect to Part B1 of the Building Regulations which lead to the decision to refuse this application.
- A potential proposed arrangement to upgrade the rear stair to a fully enclosed escape stair with required lobbies at both level would still not comply with Part B1 of the Building Regulations.
- DFB strongly disagree that the decision to submit two separate FSC applications which do not consider the risk that one Purpose Group poses on the other is justified based on commercial reasons

- DFB state that 60 minutes fire rated floors could not be relied upon as demonstrating full compliance with Part 3 of the Building Regulations within the building.
- Whereas the appellant stated that whilst the FSC application had requirements / potential for enhancements these could have been easily dealt and thus conditioned in a granted FSC as the application had substantially complied with TGD-B. DFB responded that the proposed application should have demonstrated that the proposed design met the functional requirements of Part B of the Building Regulations.

DFB conclude that the FSC application does not adequately demonstrate that the proposed restaurant at ground and basement levels of 37 Harcourt Street meets the functional requirements of Part B of the Building Regulations nor does it adequately address the impact that this change of use will have on the remainder of the building.

In their letter dated 1st September 2020 DFB reiterate points made before but also add: -

- The conservation of historic building fabric is not itself a sufficient reason for proposing levels of safety which are lower than those that would be otherwise apply
- While it is the option available to DFB to add conditions to grants of Fire Safety Certificates it is not their role to conceive conditions to resolve deviations from the guidance.
- In four instances DFB informed the appellant of the presence of the existing FSC and in their various AI's the appellant did not express that this has not been acted upon.
- FSC application 19/1537/7D relates to the re-construction of two fire damaged apartments. Considering the definition of a 'material alteration' and 'repair and renewal works as described in the Building Control Regulations it is not clear why a FSC was sought to cover these works only nor is it clear how such a limited scope relating to a small portion of the building could have been shown to comply with Part B1 to B5.
- Neither FSC application contained sufficient information to demonstrate compliance with the requirements of Part B of the Building Regulations nor did they adequately address the risk created by the proposals to change the building from residential to mixed use.

4.0 Appellant's Case

The appellant notes that the upper levels (1st to 3rd floor) were not part of this application and are existing apartments in place since at least 1960's. There is fire damage from a previous incident in three of these and a separate fire cert / 7 day notice application for the specific reconstruction of these specific units only. The rest of the property predates the introduction of the Building Control Act.

The appellant states that they need to keep these aspects of works separate so as they can proceed and be certified as standalone elements of works.

The property is a protected structure. A 1994 FSC application was granted but was never implemented. The building was left as it was.

The appellant accepts that other parts of the property, outside the scope of the submitted FSC, do need to be reviewed in the context of the 1994 guidance document 'Guide to Fire Safety in Flats 1994'.

The appellant state they had discussions with the fire officer in which 1994 FSC was raised and that there were efforts to have the FSC apply for the whole property. The appellant did not feel that this was reasonable.

The appellants summaries the RFI listed items from 3/10/2019 and meeting of 14/01/2020 and how they have addressed these issues, in particular it is noted: -

- *Section 1.3.6.1 (page 7) of the compliance report proposes providing fire rated shutters to windows and openings adjacent to escape routes. Typically, this type of arrangement would incorporate in situ passive fire protection which did not rely on activation by heat / smoke detection. Shutters would not typically achieve the requisite insulation criteria in a standard fire test.*

Fire shutters were proposed, in lieu of fire rated glazing, based on the need for openable window (ventilation) for the proposed Lower Ground and Ground Floor Restaurant.

In the Event of fire in upper or lower Ground Floor occupants would use main exit A or from Lower Ground Floor would use Exit B but with upper ground floor level windows being located 3.7m above lower ground FFL they would have no affects for thermal radiation on the escapees based on typical evacuation time from either floor.

- *Section 1.4.3 (page 9) of the compliance report states that all doors on escape routes shall be in accordance with Section 1.4.3 of TGD-B 2006. However, the final exit door at upper ground level does not open in the direction of escape. Please review and amend.*

It was argued that the main entrance located on the ground floor level shall be shared escape route for residential and commercial only in the event of emergency.

That the main entrance to commercial / restaurant is through the lower ground external door.

The final Exit A does not open in the direction of travel, however due to the limited number of occupants that will use this in the event of emergency (for exit only) and the length and width of the existing hallway, occupants shall have adequate time to negotiate the door.

Being a protected structure limits the alterations to building features such as the door and that having the door on a hold open device would compromise the building for both security and lead patrons to use it as a main entrance door to restaurant.

- The floor between the basement and ground floor shall be constructed as 60 minute compartment floor
- The new accommodation stairs S2 to have FD30S door to be fitted between lower ground floor level and the bottom of the stairs, thus limiting the spread of fire and smoke to upper floor level. The door to be magnetic hold open and connected to the fire alarm system. The roof above the accommodation stairs shall be fitted with a minimum 1.5m² AOV.
- The windows on the main access / egress on the lower and upper ground floor levels shall be fitted with fire rated glazing, this shall be fitted on the inside of the existing windows on both floor levels.
- The main front door located on the ground floor level is part of the existing structure. As property is specified as a protected structure it is not reasonably practicable to open in direction of escape.
- Mechanical ventilation is not required to Lower Ground lobby as lower ground floor area is less than 200m².

In their letter dated 10th August 2020 DFB reiterate points made before but also add: -

- They accept that the upstairs residential layout use and configuration should be reviewed and detailed in the context of a decision and demonstrating compliance for the full proposed restaurant in the context of the shared escape route
- Full information on the layout and details of the existing upstairs apartments including localised proposed re-instatement of fire damaged units was provided as part of the application.
- This is completely different to the assertion that either the upstairs existing apartments, being un-altered, or, any remediation works to some of the fire damaged units being within the application for the restaurant.

- The second means of escape from the restaurant was the circulation stairwell. As an added precaution the ground floor and basement area were separated via 60 minutes construction through the FI submission
- As this is a protected structure, there are limitations. With dual means of escape provided as detailed and the separation of the ground floor from the basement compliance with Part B can be achieved.
- None the less the following is a typical solution that could be conditioned or provided as part of a solution to satisfy DCC concerns: -
 - The door will be fitted with a powered access control system which will automatically open the door in the event of a fire and be interconnected with the overall building fire detection and alarm system
 - This system is required during business hours of proposed restaurant when the occupant numbers exceed that of an inward opening door on escape route >20 persons. When the restaurant is closed then the building resident occupant numbers can escape via an inward opening final exit door as occupants are less than 50 persons
 - As evident in RFI layout submissions and documentation the lower ground floor due to occupancy numbers requires an alternative means of escape. The rear stair S2 provides this alternative means of escape into the ground floor separate compartment (and visa versa)
 - The stairs is an alternative means of escape and only serves as access between floors therefore lobby protected is not required at top level
 - The kitchen adjoining the stairwell S2 has fire suppression and is separated with a fire rated lobby as indicated on floor plan
 - Stair S2 will have an AOV fitted to ensure smoke control.
 - Stair S2 will be constructed out of materials of limited combustibility.
 - In the event of fire in the lower ground floor then occupants escape via final Exit B and as an alternative via stairs S2 and via Exit A
 - In the event of fire in the ground floor or elsewhere than occupants of lower ground floor can escape via final Exit A

5.0 Consideration

It is noted that there is no requirement to have a single Fire Safety Certificate for a building. There is countless precedent where multiply applications have been submitted for a single building. For example, where there are multiply tenants within a building and they individually propose changes to their own units, it would not be expected that they team up and submit a single application. Whilst I see the merits of DFB desire to have single application as it would provide a more holistic view and would make for an easier assessment it is not a requirement and therefore is not a valid reason for refusing an application.

Indeed, the fact that both applications were refused demonstrates why a multiple application approach can be warranted. The proposed works, refurbishing fire damaged apartments and converting the Lower Ground and Ground floor to a restaurant can be clearly seen as separate projects.

The option was always open to DFB to refuse one application and then grant the other.

It is appreciated that the 7 Day Notice adds a time dimension to the decisions and when they have to be made however I think DFB fairly addressed this by notifying the applicant of the risk by email and indeed the Statuary Declaration that the applicant signs as part of the 7 Day Notice process makes clear that they are preceding under the 7 Day Notice at risk.

Given the above it is a reasonable approach to assess this refusal independent of the other application (i.e. ignoring the other proposal to material alter the apartments). Any adverse implications cause by this proposed Material Alterations can be considered as part of that process and should be kept separate to this review.

Both Appellant and DFB discuss the existing granted FSC for the building. The Appellant maintains that this was not acted upon and is therefore irreverent. DFB maintain that they were only made aware that this was not acted upon after the application was refused and therefore this fact was not taken into consideration during their assessment.

It is noted that the DOE Guide to Apartment Fire Safety states the following: -

Section 5.4.2 states: -

5.4.2 MIXED-USER BUILDINGS WITH A SINGLE ESCAPE STAIRWAY

In some small buildings served by a single protected stairway, one or more storeys may be used for purposes other than residential. This can present additional hazards for persons in flats. For these buildings, in addition to the requirements of 5.4.1 above, the following apply:

- (a) the building should not have more than five storeys above the ground floor level (ground storey and four storeys above the ground storey);
- (b) unless the conditions outlined at (d) below are satisfied, the residential accommodation should be provided with independent means of escape out of the building by either
 - separating the stairway serving the residential accommodation from the non-residential areas by imperforate 60 minutes fire-resisting construction (see diagram 8); or
 - separating the stairway serving the residential accommodation from the non-residential area by a fire-resisting lobbies formed within the stairway enclosure, and providing an

alternative escape route from the residential accommodation or directly from the stairway enclosure (see diagram 10);

- (c) the non-residential accommodation should comply with the means of escape requirements appropriate to that use. The entire building should be provided with an appropriate fire detection and alarm system (5.6);
- (d) a single protected stairway may serve the non-residential as well as the residential part of the accommodation, provided (see diagram 9):
 - the protected stairway is separated from each non-residential part by a protected lobby;
 - any stairway between the ground storey and a basement or lower-ground storey is independent of the protected stairway from the upper floors and does not lead to the same final exit; and
 - the non-residential parts are separated from the residential parts with 60 minutes fire-resisting construction (6.4).

As per (d) above a single protected stairway may serve the non-residential as well as the residential part of the accommodation if any stairway between the ground storey and a basement or lower ground storey is independent of the protected stairway from the upper floors and does not lead to the same final exit. In the revised proposal the Appellant states 'In the event of fire in the lower ground floor then occupants escape via final Exit B and as an alternative via stairs S2 and via Exit A'. This is not in compliance with the recommendations above.

In the proposed Material Change of Use the basement is dependent on the rear escape stair connecting to the existing single stair serving the apartment levels above. Therefore, this stair is not independent of the stair serving the upper levels and does lead to the same final exit.

Further it is noted that the appellant has stated that this final exit does not open in the direction of travel, however due to the limited number of occupants that will use this in the event of emergency (for exit only) and the length and width of the existing hallway, occupants shall have adequate time to negotiate the door. However, as the only alternative

means of escape from the restaurant from Lower Ground Level, the seating layout alone shows that there could be at least 50 occupants (with more when waiting staff and kitchen staff are included). Given that the peak occupancy of this area could exceed 50 persons it is not acceptable to just assume that escaping occupants will have sufficient time to open the door that swings against the direction of escape. It is noted that the proposal to provide a powered door opening system may have some merit but does not address issues relating to fail safe opening and as set out seems to have an option when the restaurant is trading and when it is closed, I would have concerns that this added complexity would risk failure in the system operating.

Given these fundamental issues have not been resolved / addressed by the appellant insufficient information has been provided as part of the FSC application. The Appellant was given the opportunity to do so by DFB but failed to do so.

6.0 Reasons and Considerations

Having regard to the proposed layout of the building, the nature of the proposed works, the submissions lodged in connection with the Fire Safety Certificate application and the appeal the proposed design with means of escape from the basement / lower ground level shared with the upper levels of the single stair building do not satisfy the recommendations of the Guide to Fire Safety in Flats, Bedsitters and Apartments 'Department of the Housing, Local Government and Heritage 1994' and therefore does not adequately demonstrate compliance with section 1.0.11 or 1.1.2 of TGD-B 2006 and therefore Part B of the Second Schedule to the Building Regulations 1997 – 2020, in particular Section B1 – Means of Escape in Case of Fire.

7.0 Conclusions and Recommendation

On the basis of my findings and conclusions I recommend that An Bord Pleanala reject the Appeal.

Signed by:

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

Date: **23rd April 2020**