

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: 307351-20
Our Ref: ABP_R009_Issue 1
Date: 4th 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 (FSR2357/20/7D) 7 Day Notice Fire Safety Certificate (FA/19/1537/7D) by Dublin City Council in respect of an application for works related to the Material Alteration at 37 Harcourt Street, Saint Kevin's, Dublin 2.

1.1 Subject of Appeal

Decision to Refuse (FSR2357/20/7D) 7 Day Notice Fire Safety Certificate (FA/19/1537/7D) 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 12th September 2019.
- 2.2 Email dated 16th September 2019 from 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 17th September 2019.
- 2.4 Email dated 3rd October 2019 from Dublin Fire Brigade to OCFPM 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 27th February 2020.
- 2.9 Report on Assessment of 7 Day Notice Fire Safety Certificate Application recommending that a Fire Safety Certificate is Refused dated 15th April 2020.
- 2.10 Notice of Refusal of 7 Day Notice Fire Safety Certificate to OCFPM Ltd. Dated 24th April 2020.
- 2.11 Letter of Appeal from OCFPM, acting on behalf of Colm Wu, received by An Bord Pleanála on 17th June 2020.
- 2.12 Response to Appeal / Fire Officer's Report on Fire Safety Certificate Appeal dated 14th July 2020 from Dublin City Council to An Bord Pleanála.
- 2.13 Response of Appellant to Fire Officer's Report to An Bord Pleanála received on 20th August 2020.

3.0 Building Control Authority's Case

The FSC application was submitted for the reconstruction of previously fire damaged flats located at the second and third floor levels.

A separate FSC application (19/1524/7D) was also submitted for a change of use of the lowest two levels of 27 Harcourt Street from residential use to a restaurant.

DFB consider it necessary to provide details on this FSC, as both applications relate to different parts of the same building and they are linked via a common escape stair which extends from ground to the topmost floor. This stair forms part of the means of escape from both areas and in the case of the application under consideration is the only means of escape (from the residential accommodation on the upper 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 this approach would allow for the consideration of the effects that the proposed works had on the building holistically.

On 13th February 2020 AI submitted by OCFPM amended description of the application to include 'Apartments 7, 8, 9 located on first floor level, apartment 10 located on second floor level and apartment 12 & 13 on third floor level shall be provided with protected entrance halls'.

In the covering letter to this AI it was stated 'I refer to a recent meeting with DFB on 13th January 2020 located at the address above. A number of items had been discussed and needed to be amended in order to move forward with the application. The property had previously been granted fire cert Ref. F914/94. It had been defined as a small single stair property. The height of the property was just above 11m. This arrangement was justified on the basis that no more than 2 flats per floor level opening into stairs. The amended application shall be assessed as single stair mixed use property'.

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 and is referenced by them in their AI submission dated 13th February 2020, however at no point during the assessment did they offer their current view that this FSC 'was not acted upon'.

DFB make the point that in their AI for the FSC application the Appellant mentions 'mixed use property' but does not have sufficient information to support the developments assessment as a mixed use building.

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.

In Section 1.4.14 of the compliance report it states that ‘Apartments and common areas will be fitted with a Type LD2 system interconnected with upper and lower ground floor restaurant area Type L3X system’. This statement is at odds with the stated view of the Appellant that the reports ‘fundamentally could be assessed independently’, it does highlight the interlinked nature of the two FSC applications and supports the view of DFB that the two applications cannot be assessed independently as the fire risk posed by one Purpose Group on the other needs to be considered in detail.

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 (with the interior of the flats aligning with Clause 9.4 and the common stair arrangement with Clause 9.4) 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: -

- As another FSC application was submitted on the week prior that related to changing the basement and ground floor from residential use to restaurant use and given that both applications were submitted within a very close time frame to each other and that they were 7 Day Notices (which would allow the construction works to be carried out almost concurrently) there would be no logic to the approach stated above of assessing the existing layout which incorporates apartments only at the ground and floor basement levels.
- They are not clear what is meant when the Appellant states that ‘there were efforts therefore to apply for a fire safety certificate to the complete property’. This is at odds with the statements that other parts of the property were outside the scope of the application.
- They do not agree with the statement that ‘we need to be able to complete the refurbishment of the 3 fire damaged units as standalone and certify same’, and reiterate their view that assessing the works in isolation is not appropriate.

- The introduction of a restaurant to the lowest two levels of this building which connected to a single common escape stair serving the residential units above necessitated the consideration of the risk posed by one Purpose Group on the other. The approach taken of submitting two separate reports which did not address the risk posed by one Purpose Group on another did not allow for this.
- During the assessment of the application it was understood that the comment ‘while it is noted that the topmost floor is slightly greater than 11m in height it was agreed with Dublin City Council that, as the building was previously accessed as a small building it was acceptable to do so again’ related to the building description provided within the existing FSC (F914/94), however, given that the stated view of OCFPM is now that this FSC was not acted upon, it is not clear what this relates to in respect to compliance with Part B of the Building Regulations. The statement ‘it was acceptable to do so again’ would appear to suggest reliance on a past precedent in respect to this building.

DFB conclude that the FSC application does not demonstrates compliance with Part B of the Building Regulations

4.0 Appellant's Case

The ground and lower ground floor are currently existing apartments in place at least since the 1960's. The rest of the property pre-dates the introduction of the Building Control Act.

It is noted that there is a separate project with associated fire cert application lodged concurrently with this application for the provision of the restaurant on the ground floor and lower ground floor. Due to both being submitted concurrently the issue of some overlap in reports occurred in error. The appeal is undertaken with the strategy taken to comply with the relevant fire standards for the apartment / flats only and with the existing layout which incorporates apartments only at ground and lower ground level.

Although all apartments in the building pre date the introduction of Building Regulations, we are satisfied that they comply with the provisions of the fire service act and the 1994 guidance document 'fire safety in flats'.

The building located at No 37 Harcourt Street is a protected structure RPS No. 3539 and recorded as a business premises.

In 1994 a Fire Safety Certificate application was granted (2102/94) to convert from the existing building No. 37 and 48 from multi flats with office use (GF & Basement) into 7 flats. This was never implemented, and the building was left as it was. A subsequent planning application was lodged to add an additional floor to rear which was subsequently withdrawn.

As part of the planning application to re-instate the Fire Damaged apartments on top two floors the re-instatement of fire damaged roof, we had to demonstrate that the upper floors of the development were pre 63 in nature.

Appellant accepts that other parts of the property (outside scope of the submitted FC application) do need to be reviewed in the context of the 1994 guidance document, guide to fire safety in flats.

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: -

- Floor level 3 and 3 are situated at a height greater than 4.5m above ground entrance level and complies with recommendations of Clause 9.5 of BS 5588-1: 1990: -
 - No habitable room is an inner room
 - All habitable rooms are entered directly from a protected entrance hall nullifying need for second means of escape. The travel distance of 9m in not exceeded

- The property is served by means of a single protected escape stairway. A single stairs is acceptable as the building is not more than 4 storeys above ground level and does not serve ancillary accommodation.
- All apartments including those on Lower Ground level and Ground level access the stairs through protected lobbys contained within the apartments themselves in compliance with Figure 13(c) and 14 of BS 5588 Part 1.
- The Stair continues down to basement level it is separated from the stairs that serves the upper levels at ground floor by 60 minutes fire rated construction and a FD30S fire door as per the requirement of point (j) of 5.4.1 of the 1994 fire safety in flats technical guidance document.
- Reference to restaurant is an error and subject to a separate FSC application.
- While it is noted that the topmost floor is slighter greater than 11m in height it was agreed with Dublin City Council that as the building was previously accessed as a small building it was acceptable to do so again. There are protected lobby's off all apartments to comply with Figure 14(a) of BS 5588-1: 1990. Figure 12 of BS 5588-1: 1990 is not applicable. The protected stairwell shall be fitted with an AOV having a clear openable area of not less than 1.5m² situated at the top of the enclosure, ensuring the stairway will be free from smoke in the event of a fire.
- The building is existing and protected, therefore in accordance with the allowable exception to the requirement for escape stairways to be constructed of materials of limited combustibility may be made in the case of an existing internal stairway when: -
 - The width of the stairway and dimension of steps are adequate for the purposes of means of escape
 - The stairway is of sound construction and is capable of affording safe passage for the users of the building
- The existing floors along with the building are a protected structure. In this instance timber joist floors are allowable under TGD-B as the building in an existing protected structure which is not purpose group 2(a). All existing floors in the building will be upgraded to achieve 60 minutes rated compartmentation.

The Appellant concludes that whilst two separate fire certificate applications were made for the building, due to its two individual uses, they were not adjudicated on independently. The existing ground and lower ground floor apartments have been demonstrated to be in compliance with the guide to fire safety in flats 1994.

Furthermore, the old granted fire cert for the property F914/94 was not acted upon with no changes made to the building at the time and is therefore not an issue.

Finally, the application was substantially in compliance with TGD-B, BS 5588 and the Fire Safety in Flats Technical Guidance as required and should have been granted based on: -

- Protected lobbies will be provided to all apartments
- 60 minutes compartment floor will be provided
- Integrated building fire alarm system of L3X and Ld2 will be provided for all apartments
- Existing stairs to be fully enclosed in fire rated construction and have AOV fitted as required
- The separation of the basement stairs and the stairs serving the upper storeys at ground floor level
- Compliance with the 1994 Fire Safety in Flats Technical Guidance Document regarding flats outside the scope of this application

In their final submission to An Bord Pleanála the Appellant reiterated the arguments above but also the following: -

- They claim that the FSC F914/94 was ordered for viewing but was subsequently not made available for viewing and the Appellant did not see its contents. Regardless the Appellant feels that it has no relevance to the building as the works granted within were never carried out and it bears no resemblance to the existing building.
- Post Covid one can see where the logic in two separate application was. Linking the apartments to a restaurant project that is going to need to face a financial review is not logical.

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 convert the ground and lower ground to a restaurant). Any adverse implications cause by this proposed Material Change of Use 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.

Whilst this is a technical report and I prefer to avoid 'he said, they said' situations, the following does have to be considered: -

- DFB have provided a copy of the granted FSC (but no other information). In this it states that the 1994 FSC application (F914/94) was for Remedial works to 7 Flats in Georgian House.
- The Appellant in their letter of appeal dated 12th February 2020 state that in 1994 a Fire Safety Certificate application was granted (2102/94) to convert from the existing building No. 37 and 38 from multi flats with office use (GF & Basement) into 7 flats but that this was never implemented, and the building was left 'as it was'.
- The Appellant claim that the FSC F914/94 was ordered for viewing but was subsequently not made available for viewing and the Appellant did not see its contents.
- The Appellant has stated that while it is noted that the topmost floor is slighter greater than 11m in height it was agreed with Dublin City Council that as the building was previously accessed as a small building it was acceptable to do so again. There

are protected lobby's off all apartments to comply with Figure 14(a) of BS 5588-1: 1990.

The Appellants statement implies firstly that they did at some point view the file and that the secondly Ground and Basement were office use and not flats. Indeed, it is noted that the existing floor plans provided show apartments (written) at the upper level but only a layout on Lower Ground and Ground level. It is not clear at what point these floors changed from office to flats, or if this change occurred at all, or if these levels were ever offices at one point.

Furthermore, the Appellants statement that it was agreed with Dublin City Council that as the building was previously accessed as a small building it was acceptable to do so again, also implies at the very least DFB discussed in detail the strategy of the 1994 Fire Safety Certificate, otherwise how would they know about the FSC allowing for a height marginally in excess of 11m.

Without viewing these FSC files it is difficult to determine what the actual state of the building is. However, from the information provided by the Appellant it seems that the ground and lower ground were in office use after 1992 and have since become used as apartments without a Fire Safety Certificate being granted.

It is noted that the Guide to Fire Safety in Flats, Bedsitters and Apartments 'Department of the Housing, Local Government and Heritage' 1994 states the following: -

Section 5.4.1: -

5.4.1 SMALL BUILDINGS WITH A SINGLE ESCAPE STAIRWAY

Some buildings, because of their limited size and height, may not require more than one protected stairway for the purpose of means of escape. The following provisions are applicable to small buildings which may be served by a single protected escape stairway:

- (a) The building should not have more than five storeys above the ground level, i.e. the ground storey and not more than four storeys above the ground storey.
- (b) The travel distance from each flat entrance door to the protected stairway should not generally exceed 4.5 m.
- (c) The internal layout of all flats should comply with the provisions of section 5.3 of this guide.
- (d) All flat entrance doors should be self-closing fire doors (6.8 and table 6.3).

- (e) Every small building with a single stairway, should be provided with a fire detection and alarm system in accordance with the requirements of 5.6 of this guide.
- (f) In a building with not more than two storeys above the ground floor level (ground storey and not more than one storey above the ground storey), the stairway should be enclosed in fire-resisting construction (see diagram 7). The flat entrance doors may open directly into the enclosure of the protected stairway.
- (g) In a building with not more than three storeys above the ground floor level (ground storey and not more than two storeys above the ground storey), where the building does not contain a basement or lower-ground storey and there are not more than four flats in each storey, the stairway should be enclosed in fire-resisting construction. The flat entrance doors may open directly into the enclosure of the protected stairway.
- (n) In a building with four storeys above the ground floor level (ground storey and three storeys above the ground storey), the stairway should be enclosed in fire-resisting construction and be separated from each flat entrance door by way of a protected lobby at all levels, except at the top-most storey. In these situations, however, if each flat contains a protected entrance hall-way, in accordance with 5.3.3 (i), the protected lobby between the flat entrance door and the stairway enclosure may be omitted.
- (i) In a building with five storeys above the ground floor level, (ground storey and four storeys above the ground storey) the stairway should be enclosed in fire-resisting construction and be separated from each flat entrance door by way of a protected lobby onto all levels, except the top-most storey.
- (j) In a building containing a basement or lower-ground storey, the stairway serving these storeys and the ground storey should be separated from the stairway serving the upper storeys by 60 minutes fire-resisting construction, including self-closing fire doors (FD30S) at the ground, basement or lower-ground storeys.

Furthermore 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:

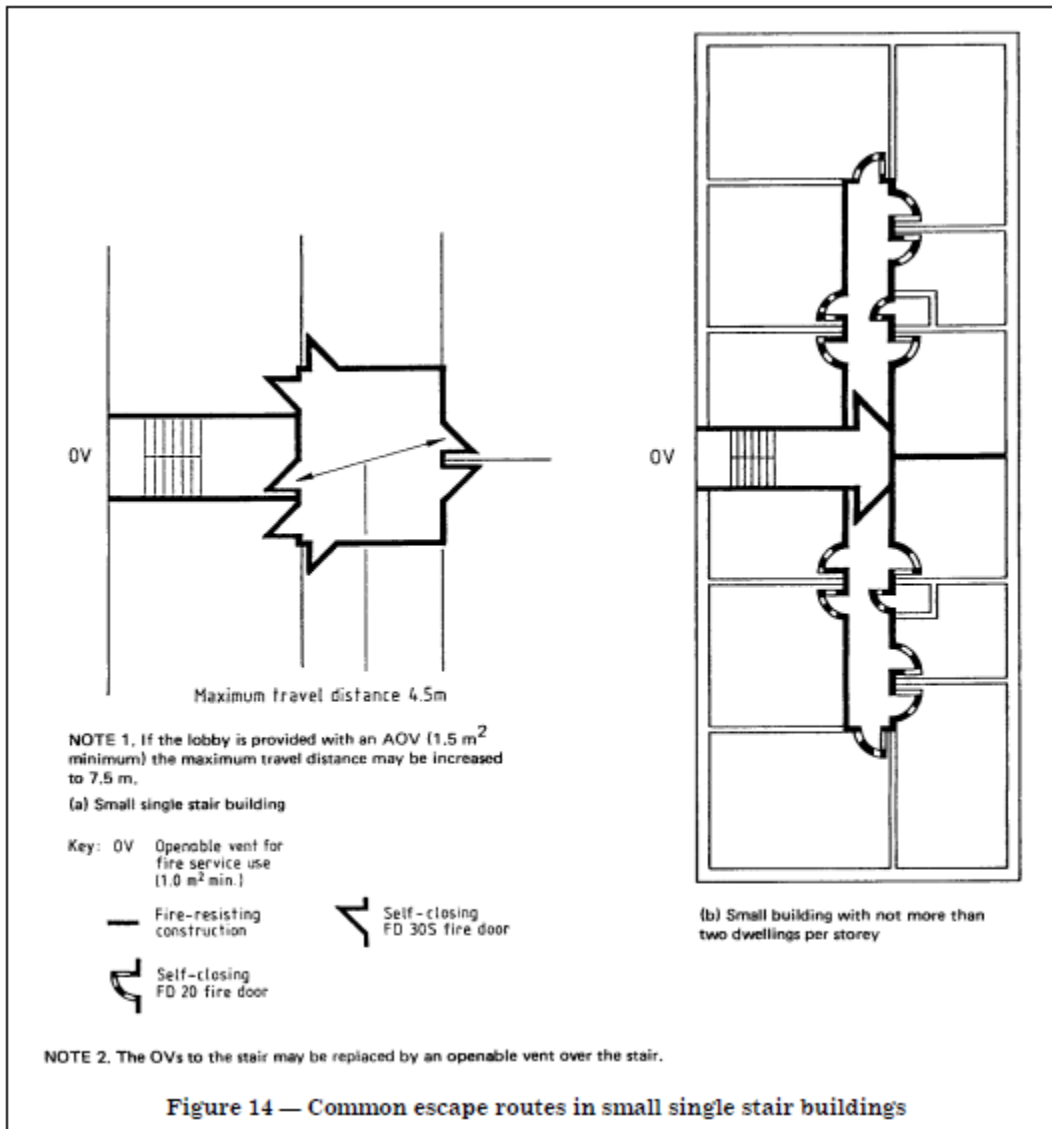
- (a) the building should not have more than five storeys above the ground floor level (ground storey and four storeys above the ground storey);
- (b) unless the conditions outlined at (d) below are satisfied, the residential accommodation should be provided with independent means of escape out of the 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).

Assuming that the building (including Lower Ground and Ground floor are existing apartment use as per section 5.41 (j) the stairway serving the Lower Ground level should be separated from the upper storeys by 60 minutes fire resisting construction and FD30S doorsets. It is noted that this arrangement is currently not achieved. There is no separation between the entrance to Apartment 6 and the Lower Ground stair.

BS 5588 Part 1: 1990 AMD 2004 gives recommendations for apartment buildings. Figure 14 shows the recommendations for the common escape routes in small single stair buildings (<11m).



It is noted that without a lobby to the stair, a maximum of two dwellings per storey with protected hallways are allowed. It is noted that in 37 Harcourt Street there is no lobby protection to the stair, the apartments are provided with protected entrance hallways but there are three apartments per floor and the topmost floor is over 11m (if marginally). Therefore, the current proposed layouts do not comply with the recommendations of BS 5588 Part 1: 1990 AMD 2004 on a number of issues. A sufficient argument to justify these deviations from the recommendations of the code of practice has not been presented.

Given all the above it is clear that insufficient information has been provided as part of the FSC application. The Appellant should have addressed any inconsistencies within the existing building and appear to have been given the opportunity to do so by DFB.

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 presented including the apartment layouts 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' nor BS 5588 Part 1: 1990 AMD 2004 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: **24th April 2021**