

## Inspector's Report

Appeal against conditions attached to a Disability Access Certificate with respect to an Extension and Material Alterations to an existing Office Building at 30 Parnell Square West, Dublin 1.

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| <b>Board DAC Appeal Ref. No.:</b>           | ABP 307949-20  |
| <b>Building Control Authority Ref. No.:</b> | DAC/2020/0084  |
| <b>Appellant:</b>                           | Mr Noel Ward<br>Deputy General Secretary<br>Irish National Teachers Org.<br>Vere Foster House,<br>35 Parnell Square<br>Dublin 1. |
| <b>Agent:</b>                               | John A. McCarthy<br>Fire Safety Consultant<br>Bank House Centre,<br>6 Terenure Rd. East<br>Rathgar<br>Dublin 6                   |
| <b>Building Control Authority:</b>          | Dublin City Council  |
| <b>Inspector:</b>                           | Michael Mohan, FRIAI   |
| <b>Appendix Attached:</b>                   | None   |

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## 1.0 Introduction

### 1.1. Site description

The subject building is a Protected Structure, located on the west side of Parnell Square. It was built as a terraced Georgian townhouse circa 1765. It comprises four floors above a basement. There is a stepped approach to the main entrance from Parnell Square. Vehicular and pedestrian access is provided to the rear of the site from Granby Lane.

The proposed development includes significant material alterations and a three-storey extension in a return at the rear as well as works to the interior of the existing building. The floors in the return are at different levels to those in the main part of the building.

There is an existing entrance from the rear car park at ground level which will be replaced by a new entrance in the proposed extension. Level access will be provided through this entrance to the ground floor level in the return. This will allow level access toilets and a meeting room at that level only. There will be no level/wheelchair access to the rest of the building. A basement level courtyard is proposed which will allow access to/from the building at basement level.

### 1.2 Subject Matter of Application

The application is for a three-storey extension to the rear and material alterations to an existing office building.

The Disability Access Certificate application was submitted by the Agent, John A. McCarthy, on behalf of the Irish National Teachers Organisation (INTO) and was received by the Building Control Authority (BCA) on the 28<sup>th</sup> February 2020 and included:

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

| Drawing Number | Title                                      | Scale        |
|----------------|--|--------------|
| 1314-DAC-001   | Site Location Map & Site Layout/Block Plan | As shown @A1 |
| 1314-DAC-002   | Existing Plans                             | 1:100 @ A1   |
| 1314-DAC-100   | Proposed Plans                             | 1:100 @ A1   |
| 1314-DAC-200   | Proposed Sections & Elevations             | 1:100 @ A1   |

- 2 No. copies of the Disability Access Certificate Compliance Report.
- Letter from the Agent dated 24<sup>th</sup> February 2020.
- €800.00 application fee.

Additional information was requested by the Building Control Authority (BCA) by email on the 7<sup>th</sup> April 2020.

The Agent submitted a response to the request for additional information which was received by the BCA on 14<sup>th</sup> May 2020 and included the following:

- Letter from the Agent dated 30<sup>th</sup> April 2020
- Revised application form Rev A.
- Revised compliance report 17054FD-DACA\_Report-01-RevA.
- Revised drawings prepared by DMVF Architects:

| Drawing Number | Title                                      | Scale        |
|----------------|--|--------------|
| 1314-DAC-001A  | Site Location Map & Site Layout/Block Plan | As shown @A1 |
| 1314-DAC-100A  | Proposed Plans                             | 1:100 @ A1   |

### 1.3 Building Control Authority Decision

- The BCA issued a Disability Access Certificate, DAC No. DAC/2020/0084, Decision Date: 16<sup>th</sup> July 2020. Ten conditions were attached to the Disability Access Certificate.

## 2.0 Information Considered

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

### 2.1 Disability Access Certificate application:

Ref. No. DAC/2020/0084

The application including DAC Compliance Report and drawings, listed at 1.2 above, was lodged by the Agent. It was received by the BCA on 28<sup>th</sup> February 2020 with Additional Information was received by the BCA on 14<sup>th</sup> May 2020 and all of these were received by the Board from the BCA 31<sup>st</sup> August 2020.

The BCA issued a Disability Access Certificate, DAC No. DAC/2020/0084 which was received by the Board on 14<sup>th</sup> August 2020 attached to the appeal from the Agent and a further copy from the BCA on 31<sup>st</sup> August 2020.

### 2.2 Appeal Documentation submitted by Agent:

The appeal documentation, received by An Bord Pleanála on 14<sup>th</sup> August 2020, included:

- Building Control Acts: Appeal Form

- Letter from the Agent, dated 14<sup>th</sup> August 2020, stating that they wished to appeal Conditions Nos.4 and 10 which were attached to the Disability Access Certificate DAC/2020/0084.
- Copy of Disability Access Certificate DAC/2020/0084.
- Cheque for €500 with respect to the fee for the appeal.

### **2.3 Application Documentation from BCA**

Dublin City Council submitted a letter to the Board, dated 28<sup>th</sup> August 2020 (in response to a request from the Board, dated 18<sup>th</sup> August 2020), which was received by the Board on 31<sup>st</sup> August 2020 and included copies of the following:

- Copy of the application documents including submitted drawings and report.
- Certified copy of Manager's Order No. 234/20, dated 15<sup>th</sup> July 2020.
- Certified copy of Disability Access Certificate DAC/2020/0084, Decision date 16<sup>th</sup> July 2020, addressed to the Agent.
- Copy of BCA's Building Surveyor's Recommendation, dated 14<sup>th</sup> July 2020.

### **2.4 Notification of a Disability Access Certificate:**

Disability Access Certificate, Ref. No. DAC/2020/0084, issued by the BCA on 16<sup>th</sup> July 2020, was received with the appeal by An Bord Pleanála, on 14<sup>th</sup> August 2020 and a further copy was received by Pleanála, from the BCA on 31<sup>st</sup> August 2020.

Ten conditions were attached to the Disability Access Certificate. Conditions Nos. 4 and 10 are the subject matter of this appeal.

### **2.5 Observations from the BCA in relation to the appeal:**

The BCA submitted a letter to An Bord Pleanála, dated 15<sup>th</sup> September 2020, which was received by the Board on 15<sup>th</sup> September 2020.

## **3.0 Relevant history/cases**

The BCA's Building Surveyor's Recommendation stated that there are no previous Disability Access Certificates for this building.

## 4.0 DAC application

### **Disability Access Certificate application:**

Ref. No. DAC/2020/0084 application including DAC Compliance Report and drawings, listed at 1.2 above, was lodged by John A. McCarthy. It was received by the BCA on 20<sup>th</sup> February 2020 with additional information received by the BCA on 14<sup>th</sup> May 2020 and all of these were received by the Board from the BCA 31<sup>st</sup> August 2020.

## 5.0 Appellant's case

John A. McCarthy lodged an appeal on behalf of the applicant/appellant, dated 14<sup>th</sup> August 2020, against Condition Nos. 4 and 10 attached to the Disability Access Certificate DAC/2020/0084. The appeal was received by the Board on 14<sup>th</sup> August 2020.

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

### **With respect to Condition No.4:**

- The existing building is already provided with an outdated passenger lift, of restricted internal car dimensions 1100mm(W) x 900 (D), which is not accessible to wheelchair users and which can only be approached by stairs/steps.
- The largest replacement lift which can be accommodated within the confines of the existing lift shaft is 1230(W) x 1150(D).
- It is not practicable to install a fully conformant TGD M passenger lift unless significant structural alterations are carried out in the building. A supporting letter from David Slattery Conservation Architects confirms that the impact arising from Condition 4 would cause serious damage to the historic fabric and would have a significant detrimental impact on the architectural character which would be unacceptable from an architectural heritage perspective.
- The installation of a new fully compliant TGD M passenger lift would create greater contravention with respect to Part K in this case by encroaching on the stairs/escape route widths, unless significant structural alterations were carried out, which are not practicable.
- The replacement of the existing lift is repair or renewal works and the application of Part M to the works as per Condition 4 is not appropriate in this case.
- The replacement lift will improve the accessibility of the building for ambulant people.
- TGD M acknowledges the adoption without modification of the guidance may not, in all circumstances, be appropriate for historic buildings. Section 0.7 of TGD M refers.

**With respect to Condition No.10:**

- The reason given by Dublin City Council for the new external platform lift is to facilitate access to the passenger lift via the canteen at the basement level. It is submitted that it is not necessary in this case, for compliance with Part M Building Regulations, to upgrade access/entrance provisions into the existing building. Accordingly, the attachment of Condition 10 is unwarranted and imposed requirements in excess of those necessary to comply with Part M Building Regulations in this case.
- No alterations to pre-existing legacy access arrangements at the rear of the building are proposed. It is submitted that it is beyond the remit of Dublin City council to impose Condition 10 in this case. 0.6 (c) TGD M is quoted where it states: "However, this does not mean it is necessary to upgrade the existing access to the building entrance unless the entrance itself is subject to material alteration".

**6.0 Building Control Authority's case**

The BCA submitted a letter (dated 15<sup>th</sup> September 2020) which was received by the Board on the 15<sup>th</sup> September 2020. The following is a brief summary of the BCA's case:

**In relation to Condition No.4:**

- The BCA refer to Condition 2 but it is assumed that this is a typing error as the matter referred to, i.e.the lift, is addressed in Condition 4.
- The submitted information offered little information in relation to the existing lift. It was unclear if the new lift would accord with the guidance given in TGD M 2010 and in an effort to provide clarity the condition was required and included.
- The BCA assessed the DAC application based on the information provided at the time of application. The appeal documentation contains new information regarding the building which was not made available to the BCA at the time the application was determined.

**In relation to Condition No.10:**

- The works facilitate a new basement level entry point into the building. Under current legislation the new works are obliged to comply with the Relevant Technical Requirements of the Building Regulations.
- An application for a DAC is required to demonstrate that the proposed works will be adequate for people with disabilities.

- The submitted information failed to demonstrate how a person with a disability could access the new courtyard or altered building at this location.
- The basement courtyard is capable of accommodating a platform lift which would greatly enhance the access provision within this building.
- The installation of a platform lift would improve access and use arrangements for people with disabilities.

In summary, the BCA states that Conditions 4 and 10 should stand.

## 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 the Compliance Report, John A. McCarthy stated that the report demonstrated that the works, if constructed in accordance with the drawings and design details submitted with the application together with performance standards set out in the Report, will comply with the requirements of Part M of the Second Schedule of the Building Regulations (1997), and the Building Regulations (Amendment) Regulations (2010).

## 8.0 Assessment

This appeal is made against Conditions 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 facilities have been provided for all users to meet the needs of people with a wide range of abilities.

### Condition No.4:

The BCA assessed the application on the information submitted and were not informed of the conservation issues until information was submitted with this appeal. Nonetheless, they were of the opinion that Condition 4 should stand.

There is not enough space on the landings to install an accessible passenger lift which would comply with Part M. To do so would require demolition of original historic walls and taking space from the rooms on each level.

The supporting letter from David Slattery Conservation Architects confirms that the impact arising from Condition 4 would cause serious damage to the historic fabric and would have a significant detrimental impact on the architectural character which would be unacceptable from an architectural heritage perspective.

The replacement of the existing lift could be considered repair or renewal works and that the application of Part M is not appropriate in this case.

Section 0.7 TGD D Part M 2010 guides that in the determination of 'practicability' that consideration be given *where the works would have a significant adverse affect on the historical significance of the existing building.*

Section 0.8 TGD Part M 2010 acknowledges that *the adoption without modification of the guidance in the document may not, in all circumstances, be appropriate for historic buildings.*

Considering the adverse impact of carrying out significant structural alterations on this historic building, it is not practicable to install a fully conformant TGD M passenger lift. Accordingly, in my opinion, Condition No.4 should be omitted.

#### **Condition 10:**

The proposed development includes significant material alterations and a three-storey extension in a return at the rear as well as works to the interior of the existing building. The proposed entrance to the ground floor level at the rear will only provide level access to toilets and a meeting room at that level. There will be no level access to other facilities or the rest of the building.

The reason given by Dublin City Council for requiring the new external platform lift is to facilitate access to the passenger lift via the canteen at the basement level. As the provision of a Part M compliant lift (in the main part of the building) is impractical, this reason is no longer relevant. However, the installation of a platform lift in the basement courtyard would improve access and use arrangements for people with disabilities.

The Agent submitted that no alterations to pre-existing legacy access arrangements at the rear of the building are proposed and it is not necessary in this case, for compliance with Part M Building Regulations, to upgrade access/entrance provisions into the existing building. The BCA noted that the works facilitate a new basement level entry point into the building. The BCA also noted that new works are obliged to comply with the relevant Technical Requirements of the Building Regulations and that the proposed works will be adequate for people with disabilities.

Section 0.8 TGD Part M 2010 states: *While each existing building and site will present its own unique access opportunities and constraints, which may result in different ways of addressing accessibility, the fundamental priorities of accessibility should be as set out in M1, i.e. accessing and using a building, its facilities and environs.* It could be argued that the proposed works will not address these fundamental

priorities. Building a new extension and a new basement level courtyard afford the opportunity to improve the existing arrangements for a wide range of users.

Provision of a platform lift to the basement level would make the building more accessible to wheelchair users and people with other disabilities. Some ambulant people can be relatively unsteady on their feet. At present they would have to negotiate 6 steps at the front and 5 steps at the rear of the building to access the lift at ground floor level. Providing a platform lift to the basement courtyard at the rear would remove the need to negotiate any steps in the building for ambulant users and for people with other disabilities. It would also allow access to the canteen for wheelchair users.

In my opinion, Condition No.10 should be retained but that the reason for it should be altered.

## 9.0 Conclusions / Recommendations

I recommend that the Board directs the BCA to omit Condition No.4. and to retain Condition No.10 with an alternative reason to read as follows:

### **Condition No.10:**

*An external platform lift shall be provided at the rear of the building to facilitate independent access from ground level to the basement level courtyard and the canteen.*

### **Reason:**

*To facilitate safe and independent use of the building.*

## 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

5<sup>th</sup> May 2021