

Inspectors Report

Appeal against 1 No. condition of a granted DAC application for proposed construction of a maintenance building located at Ringaskiddy, Co. Cork.

The appeal relates to Condition No. 2 of the granted DAC application. Condition No. 2 stated the following:

"Condition No. 2 - The provision of passenger lifts shall be in accordance with Paragraph I .3.4.1 of Technical Guidance Document M 2010. A passenger lift in accordance with Paragraph I .3.4.2 of Technical Guidance Document M 2010 shall be provided to serve the area identified in the application as the 243m² first floor storage/workshop area.

Reason: To ensure compliance with Part M1 of the Second Schedule to the Building Regulations 2010."

Board appeal ref no:	ABP-308539-20
Building Control Authority DAC application, no:	DAC2000091CC
Appellant/Agent:	Port of Cork Company Ltd.
Building Control Authority:	Cork County Council
Date of site inspection:	N/A
Inspector:	Eoin O'Herlihy
Appendices Attached:	No

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1. Introduction

1.1. Site description

The proposed works relates the construction of a maintenance building located at Ringaskiddy, Co. Cork.

1.2. Subject matter of application

The proposed works relates the construction of a maintenance building located at Ringaskiddy, Co. Cork. The proposed use of the building is 'industrial use' and it is intended that the main purpose of the building is for carrying out routine maintenance to of Container Straddle Carriers¹.

1.3. Documents lodged as part of Disability Access Certificate (DAC) application

The application made by Daire Byrne & Associates (on behalf of the appellant) was received by the Building Control Authority (BCA) on the 4th September 2020 and included:

1. An application form.
2. 2 No copies of DAC drawings including:
 - Drawing reference no. 1018-19-04-DBA-DAC-SL-100
 - Drawing reference no. 1018-19-04-OBA-DAC-SP-IOI Rev. 02
 - Drawing reference no. 1018-19-04-DBA-DAC-OO-200 Rev. 02
 - Drawing reference no. 1018-19-04-DBA-DAC-OI -201
 - Drawing reference no. 1018-19-04-DBA-DAC-02-202
 - Drawing reference no. 1018-19-04-DBA-DAC-EL-300
 - Drawing reference no. 1018-19-04-DBA-DAC-EL-301
 - Drawing reference no. 1018-19-04-DBA-DAC-SE-400
 - Drawing reference no. 1018-19-04-DBA-DAC-SE-401
3. 2 No. copies of the DAC compliance report (Rev 01 – 04-09-2020).
4. The required fee of €800.

1.4. Building Control Authority decision

The BCA granted the DAC for the above works on the 2nd October 2020. The DAC was granted with 2 No. conditions:

- **Condition 1:** Guarding to the underside of the stairs shall be in accordance with Paragraph 1.3.4.3(p) of Technical Guidance Document M 2010. Where the area beneath a stairs has a soffit height of less than 2,100mm above floor level, it should be enclosed or guard to prevent access such that people are not at risk of colliding with the edge of the stairs soffit. **Reason:** To ensure compliance with Part M1 of the Second Schedule to the Building Regulations 2010.

¹ A straddle carrier or straddle truck is a freight-carrying vehicle that carries its load underneath by "straddling" it, rather than carrying it on top like a conventional truck. The advantage of the straddle carrier is its ability to load and unload without the assistance of cranes or forklifts.

- **Condition No. 2:** The provision of passenger lifts shall be in accordance with Paragraph I .3.4.1 of Technical Guidance Document M 2010. A passenger lift in accordance with Paragraph I .3.4.2 of Technical Guidance Document M 2010 shall be provided to serve the area identified in the application as the 243m² first floor storage/workshop area. **Reason:** To ensure compliance with Part M1 of the Second Schedule to the Building Regulations 2010."

2. Relevant history/cases

There are no previous DAC applications relevant to the case.

3. Information considered

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

3.1. Application for a DAC which was granted on 2nd October 2020

DAC2000091CC – relating to the construction of a maintenance building located at Ringaskiddy, Co. Cork.

3.2. Additional information request from CCC in relation to the DAC application (September 2020).

CCC wrote to Daire Byrne & Associates (on behalf of the appellant) in September 2020, seeking additional information in relation to the DAC application made on 4th September 2020.

3.3. Additional information submitted to CCC following additional information request.

Daire Byrne & Associates (on behalf of the appellant) issued a letter of response dated 24th September 2020 which included:

- A cover letter outlining key changes.
- Technical Submission Report Rev 02
- Drawing reference no. 1018-19-04-OBA-DAC-SP-IOI Rev. 02
- Drawing reference no. 1018-19-04-DBA-DAC-OO-200 Rev. 02

This response also included a correspondence from the Port of Cork in relation to the use of the first floor dated 16th September 2020 issued to Building Control. The letter from the Port of Cork advised Cork County Council that the first floor of the proposed building will never be used as office space and the building is designed for maintenance and storage purposes only.

3.4. Granted DAC application from CCC (2nd October 2020)

Following a review by the BCA, the DAC (DAC2000091CC) was granted on the 2nd October 2020 subject to 2 No. conditions.

3.5. Appeal to An Bord Pleanála (27th October 2020)

The following is a summary of the appeal against Condition No. 2:

- The subject matter of the appeal is Condition No. 2 of the granted DAC Reference No. DAC2000091CC.

- An outline was provided describing the building and use of same (i.e., Industrial Building for maintenance of container straddle carriers).
- Some of the main items described included:
 - Access to the container straddle carriers when in place is via an industrial type stairs and platform at a height of 12.3m above ground level.
 - The container straddle carriers are brought into the building via roller shutter doors 16m in height.
 - The purpose of outlining the above is to provide an understanding of the type and use of the building.
 - The ground floor also contains various workshop areas, a storeroom and limited changing facilities.
 - The building has two heights, one relates to the area which will house the container straddle carriers 22.35m and a lower height of 8.85m over the workshops and general store,
 - A concrete "capping" was required over the electrical and mechanical workshop areas. This concrete slab was designed to continue across the full space which included the area over the changing room as from a structural design perspective this was a simpler solution than having no "capping" over the changing room area.
 - As part of design development, it was decided that this space would be utilised and an access stair was designed. The designated use was workshop/storage.
 - The first floor section was not designed for office use and no allowance has been made during design development for provision of sanitary facilities, IT facilities or insulation of the building to office standards.
 - As part of separate works the Port of Cork Company will be developing separate offices and it is not intended to have offices within this building. If offices are installed in the future the appellant would have no issue installing a lift.
 - The first floor will be only accessed externally by a limited number of operatives only, these operatives will be the same Port of Cork personnel working in the main part of the maintenance building.
 - The appellant acknowledges that the first floor area does not fall under the exceptions outlined in Section 1.3.4.1.1 of Technical Guidance Document M however the use of this building is specific to one operation — container straddle carrier maintenance and ancillary activities.
 - The appellant is also of the opinion that the requirements of Part M1 of the Second Schedule of the Building Regulations 2010 has been complied with as access is provided to the building and its environs and people with a wide range of abilities have access to ground floor areas.

3.6. Observations from the BCA in relation to the appeal (26th November 2020)

Observations from the BCA were received by the Board on the 26th November 2020. The following is a brief summary of their response:

- The application was assessed under Part M 2010 of the Building Regulation and the appellants basis of compliance was Technical Guidance Document M 2010.
- It is the opinion of CCC that in accordance with paragraph 1.3.4.1.1 of TGD M 2010 a passenger lift should be provided to ensure adequate provision for people to access and use the first floor storage/workshop area. Consideration should be given to people carrying boxes upstairs; older staff members working in the building and staff with a temporary injury.
- Three main sections of the technical guidance were considered:

Requirement of M1 of the Building Regulations – The requirement of the Building Regulation:

- Reference is made to TGD M 2010 being more than just access for people with disabilities. In granted a DAC CCC must now certify that the building provides access for all people as outlined in M1 of the Building Regulations.
- Part M 2010 applies to all classes of building including industrial ones. The only parts of a building that are exempt are those used solely for the purposes to enable inspection, maintenance or repair.
- It is the opinion of the Building Control Authority that paragraph 1.3.4.1.1 of TGD M 2010 does apply for this works and a passenger lift should be provided to allow adequate provision for all staff working in the building.

Paragraph 0.6 of TGD M 2010 – Exemptions for maintenance areas:

- This paragraph states: The Requirements of Part M do not apply to the part(s) of a building used solely to enable inspection, repair or maintenance.
- Buildings to which goods, vehicles or other machinery are brought in for maintenance or repair are not exempt from the requirements of Part M 2010. An example is given of staff repairing computers.
- The BCA note that the intention of section 0.6 of TGD M 2010 relating to exempting maintenance areas is mainly for areas such as plant rooms and for occasional work and that the clause was not interested into the guidance for general workers who carry out maintenance for the majority of the day in a workplace.
- The BCA argue that the storage and workshop area on the first floor of the building will not be just used strictly for inspection, maintenance and repair in line with how the guidance in TGD M 2010 applies.

Paragraph 1.3.4.1.1 of TGD M 2010 – Guidance on the provision of passenger lifts: The following are the main observations:

- The BCA outline the key guidance provided in section 1.3.4.1 of TGD M 2010 and the requirement for installing lifts within a new building. They note that the requirements for the provision of lifts are not exclusive to office buildings and note that there is no exemption for access to storage and workshop areas where the nett floor area is more than 200m².

- The BCA also make reference to the appellants letter where the appellant outlines (in item 7) that the storage/workshop area of the building does not fall under the exemptions outlined in section/paragraph 1.3.4.1.1 of TGD M 2010.

In addition, the BCA set out the following:

- The appellants arguments for not providing a passenger lift to the first-floor storage area/workshop are not supported by either the requirements of Part M 2010 or the guidance provided in TGD M 2010. For example: Part M 2010 applies to all building classes, the floor area of the first floor is greater than 200m²,
- It is irrelevant if the area is being used as offices or not.
- In Item 5 of the appeal the appellant suggests that such a condition should be applied requiring that a lift is provided if at any time in the future the first floor is used as offices. CCC note that it is their opinion that the use of such a condition would not be sufficient to ensure compliance with Part M 2010.
- The BCA conclude that the appeal of Condition No. 2 should be refused.

3.7. Observations from the appellant on the BCA submission in relation to the appeal (submitted by the appellant on the 21st December 2020)

Daire Byrne & Associates (on behalf of the appellant) made a submission to ABP (21st December 2020) on the main issues raised by Cork County Council in their letter dated 26th November 2020.

The following is a summary of their response:

- The majority of the key facilities within the building are located on the ground floor of the proposed works (e.g. reception, offices, electrical workshop, mechanical workshop, general store) and that the first floor only contains storage and workshop area.
- The appellant acknowledges that the use of the first floor does not fall under the exemption of Paragraph 0.6 of TGD M 2010 however they argue that all facilities are provided at ground floor level.
- They also acknowledge that in a building of less than 200 sqm where there is storage and workshop area that the end user would still need to carry boxes up a flight of stairs and use the stairs if they were older or had a temporary disability and these reasons given by the BCA to install a lift are not applicable to this building in isolation.
- Cork County Council have commented that in the absence of a lift installation the first floor storage/workshop might not be adequate for staff in a number of different cases such as:
 - i. Staff having to carry goods up to the stairs
 - ii. Older staff
 - iii. Staff with a mild sports injury

This would also be the situation for buildings with a first floor having an area of up to 200m², the staff reasons identified are not applicable to this building in isolation.

- They conclude that all facilities are provided at ground floor level which is the accessible level and are of the opinion that taking the type and use of the building (maintenance building for container straddle carriers) into account and the fact that all facilities are provided at the accessible level, a passenger lift is not required to serve the first floor level in order for the building to comply with the provisions of Technical Guidance Document M 2010.

4. Considerations

The following is an overview of my observations in relation to the appeal:

4.1. Main use of the proposed works

The main use of the proposed works is 'industrial use' and it is intended that the main purpose of the building is for carrying out routine maintenance to of Container Straddle Carriers².

Access to the building is restricted to Port of Cork staff who will mainly be carrying out routine maintenance to of Container Straddle Carriers.

The main facilities provided on the ground floor of the building include: Reception; 1 No. office; Sanitary facilities; General store; Electrical Workshop; Mechanical Workshop; Straddle Carrier Workshop; Switch Room and Compressor Room.

The main facilities provided on the first floor include: Storage/Workshop area which is mainly shown with shelving throughout.

The ground floor area is approximately 1,232m² and the proposed first floor is approximately 243m².

Number of staff using the building at any one time is unknown.

4.2. Meeting the requirements of M1 of the Second Schedule of the Building Regulations for new buildings

The requirements of M1 of the Second Schedule of the Building Regulations apply when constructed a new building:

- M1 states 'Adequate provision shall be made for people to access and use a building, its facilities and its environs'.

In order to meet the requirements of M1 for the new building Technical Guidance Document (TGD) M 2010 recommends that the guidance in section 1 should be followed. Refer to Sections 0.5 and 0.6 (a) of TGD M 2010.

4.3. Application of TGD M 2010 for new buildings

As noted in above sections 0.5 and 0.6 (a) of TGD M 2010 indicate how to apply the guidance:

In relation to new buildings, section 0.5 states the following: "Technical Guidance Document M 2010 is divided into 3 sections. Each section deals with different types of works.

Section 1: The guidance in Section 1 sets out the minimum level of provision for the following buildings to meet the requirements of M1:

² A straddle carrier or straddle truck is a freight-carrying vehicle that carries its load underneath by "straddling" it, rather than carrying it on top like a conventional truck. The advantage of the straddle carrier is its ability to load and unload without the assistance of cranes or forklifts.

- (a) buildings other than dwellings and their environs, and
- (b) the common areas of apartment blocks and their environs.

Section 1 applies to both **new** and existing buildings”.

In relation to new buildings, section 0.6 states “the Requirements of Part M apply to: (a) works in connection with new buildings and new dwellings”.

There is no distinction provided in the section 0.5 or 0.6 on how to apply the guidance in relation to different types of new buildings (e.g. offices versus residential versus industrial).

4.4. Lift requirements for new building

Section 1.3.4.1.1 of TGD M 2010 list a number of exemptions where lifts may not be required in new buildings.

As noted above the first floor area of the proposed work is 243m².

4.5. Building Control – Relaxations and Dispensations

The Building Control legislation in Ireland allows for the application of Dispensations and Relaxations of the Second Schedule of the Building Regulations.

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

The level of detail required by the applicant to submit -is set out in section 20 (D) 4(b) of the Building Control (Amendment) Regulation 1997-2018.

5. Assessment

This appeal is against Appeal against one condition of a granted DAC application for proposed construction of a maintenance building located at Ringaskiddy, Co. Cork. I have reviewed the reasons and the grounds of the appeal, and I have considered the drawings, details and submissions on the file. I am of the opinion that there was sufficient information submitted in connection with the appeal to make a decision on the application/appeal.

The following is an overview of my observations in relation to the appeal:

Meeting the requirements of M1 of the Second Schedule of the Building Regulations: Section 4.2 above M1 of the Second Schedule of the Building Regulations states ‘Adequate provision shall be made for people to access and use a building, its facilities and its environs’.

Application of the Guidance in TGD M 2010: Section 0.5 & 0.6 (b) of TGD M 2010 clearly sets out how to apply Part M of the Second Schedule of the Building Regulations when constructing a new building and TGD M 2010 outlines that the guidance in Section 1 of TGD M 2010 should be followed. I note that the guidance in TGD M is applicable for the construction of all new buildings no matter what the classification of use is (e.g. industrial, retail, offices). The only main distinctions are ‘Buildings other than dwellings’

and 'dwellings'. Therefore, it is my understanding that the guidance in section 1 applies to all types of 'buildings other than dwellings' and is applicable in relation to this case.

Areas used solely for to enable inspection, repair or maintenance:

It is noted in section 0.6 of TGD M 2010 that 'the Requirements of Part M do not apply to the part(s) of a building used solely to enable inspection, repair or maintenance'.

It is my opinion that this clause specifically relates to areas such as switch room, plant rooms, electrical rooms and mechanical rooms that will only be accessed to enable inspection, repair and maintenance.

The fact that the proposed building is for maintenance of large equipment is not a relevant factor in my view. Also the area in question that forms part of the appeal is classed as a workshop and storage area and therefore not an area used solely for to enable inspection, repair or maintenance.

Is a lift required to access the first floor and should a relaxation application been applied for?

Taking on board the information above and section 1.3.4.1.1. of TGD M 2010, and because the floor area at 234 sq.m is greater than 200 sq.m, it is contended by the BCA that a lift is required in order to achieve compliance.

The appellant has not put forward a fully detailed -rationale or justification as to the acceptability of the deviance from the guidance.

However, I note that the following applies:

- The proposed building is for the purpose of maintaining heavy machinery and given the nature of the work all employees need to be ambulant to meet the Safety, Health and Welfare at Work Act requirements within the building.
- Limited access will only be provided to the first floor for the purpose of storage and workshop tasks. Workshop spaces are also provided on the ground floor.
- All of the main facilities that staff will be using are located on the ground floor and in the event that a staff member couldn't use the stairs to access storage/workshop area, management could put reasonable accommodation procedures in place to facilitate staff member.

Therefore, notwithstanding, the deviation from Section 1.3.4.1.1. of TGD M 2010, having regard to the above, and to the modest exceedance above the 200 sq.m threshold, the building can function without a lift while meeting the requirements of M1 of Part M of the Second Schedule to the Building Regulations.

6. Recommendation

Having regard to the above, I recommend that the Board grant the appeal against the BCA's decision and Condition No. 2 is removed from the granted DAC for the following reasons:

- The building is mainly used for the purposes of carrying out routine maintenance to of Container Straddle Carriers and given the function of the building and nature of the work taking place within the building, it is my opinion that the requirements of M1 of the Second Schedule of the Building Regulations will still be met even if the Condition is removed.
- It would be disproportionate to require a lift be provided to access the storage/workshop area given that the floor area is only 243m² and limited access will only be required to this area by personnel who will mainly be working on maintaining heavy machinery.
- It will be a requirement for all users of the building to be able to carry out heavy duty maintenance tasks and therefore they still have access to a Part M compliant ambulant disabled stair to access the first floor.

6.1. Reasons and Considerations

Having regard to the provisions of the Building Regulations 1997 to 2019, Second Schedule, Part M, to the nature and layout of the proposed works and to the submission made in connection with the 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 notwithstanding the removal of Condition No.2 the works proposed would achieve an adequate level of 'access and use' that would in turn demonstrate compliance with the requirements of Part M1 of the Second Schedule to the Building Regulations, 1997 to 2019.



Eoin O'Herlihy

Inspector

29th April 2021