

## Inspector's Report

Appeal against Refusal of a Disability Access Certificate with respect to material alterations and a material change of use of first, second and third floors from office to residential suites and a portion of the ground floor from retail to office use while the remaining ground floor and basement will remain in use as retail at No.1 Capel Street, Dublin 1 (A Protected Structure, Ref. No. 1169).

**Board DAC Appeal Ref. No.:** ABP 310343-21

**Building Control Authority Ref. No.:** DAC2102139DC

**Appellant:** Mr Danielle McAuliffe

Two addresses were quoted for the  
Applicant/ Appellant:

Killala House  
Killala  
Co. Mayo  
and  
Danoj Developments Ltd.  
6 Ormond Quay Lower  
Dublin D01 W8W8

**Agent:** Luke Goldsmith  
Goldsmith Engineering  
Mount Pleasant Business  
Centre  
Ranelagh  
Dublin D06 K762

**Building Control Authority:** Dublin City Council

**Inspector:** Michael Mohan, FRIAI

**Appendix Attached:** None

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## 1.0 Introduction

### 1.1. Site description

The subject building is a 4-storey over basement building located on the corner of Capel Street and Ormond Quay Lower, Dublin 1, formerly comprising a mixed commercial use at ground floor/basement and offices on the first, second and third floors. Both frontages are directly onto the public footpath.

The building is included in the Dublin City Record of Protected Structures (Ref. No. 1169). It is also recorded in the National Inventory of Architectural Heritage (NIAH) as 1-1A Ormond Quay, Capel Street, Dublin 1 (Reg. No. 50010359) where it is rated as of Regional importance.

Access to the residential suites is proposed from Capel Street. Access to the ground floor office/retail is proposed from two doors which are set at 45 degrees within a recessed external porch on Ormond Quay Lower. The existing historic shopfront entrance doors cannot be altered for historical reasons.

A 7 Day Notice was submitted on 19<sup>th</sup> January 2019. The works are substantially completed in accordance with planning permission granted.

### 1.2 Subject Matter of Application

The proposed development includes material alterations and a material change of use of first, second and third floors from office to residential suites and a portion of the ground floor from retail to office use while the remaining ground floor and basement will remain in use as retail.

The Disability Access Certificate application was submitted by the Agent, Goldsmith Engineering, on behalf of Daniel McAuliffe and was received by the Building Control Authority (BCA) on the 18<sup>th</sup> February 2021 and included:

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

Drawing Number	Title	Scale
DAC-17D640-098	OS Map	1:1250@A1
DAC-17D640-099	Site Layout Map	1:250@A1
DAC-17D640-100	Existing Floor Plans	1:100@A1
DAC-17D640-101	Basement & Ground Floor Plan	1:50@A1
DAC-17D640-102	First and Second Floor Plans	1:50@A1
DAC-17D640-103	Third Floor and Roof Plan	1:50@A1
DAC-17D640-200	Sections & elevations	1:100@A1

- 2 No. copies of the Disability Access Certificate Compliance Report.
- €800.00 application fee.

Additional information was requested by the Building Control Authority (BCA) on the 22<sup>nd</sup> March 2021.

The Agent submitted additional information which was received by the BCA on 9<sup>th</sup> April 2021.

The Agent agreed to a request for Extension of Time from the BCA until 30<sup>th</sup> April 2021.

### **1.3 Building Control Authority Decision**

The BCA issued a Notification to Refuse to Grant a Disability Access Certificate, DAC No. DAC2102139DC, dated: 30<sup>th</sup> April 2021. Two reasons were attached to the Notification.

## **2.0 Information Considered**

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

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

Ref. No. DAC2102139DC

The application including DAC Compliance Report and drawings, listed at 1.2 above, lodged by the Agent. It was received by the BCA on 18<sup>th</sup> February 2021. Additional Information was received by the BCA on 9<sup>th</sup> April 2021. All of these documents were received by the Board from the BCA 14<sup>th</sup> June 2021.

The Notification to Refuse to Grant a Disability Access Certificate, DAC No. DAC2102139DC, was issued, dated: 30<sup>th</sup> April 2021.

### **2.2 Appeal Documentation submitted by Agent:**

The appeal documentation, received by the Board on 27<sup>th</sup> May 2021, included:

- Letter from the Agent, dated 20<sup>th</sup> May 2021.
- Letter from James Kelly, Conservation Architect, dated 23<sup>rd</sup> March 2021, to Danjo Developments.
- Undated letter from James Kelly, Conservation Architect, to Goldsmith Engineering.

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

Building Control Division, Dublin City Council submitted a letter to the Board, dated 14<sup>th</sup> June 2021 (in response to a request from the Board, dated 2<sup>nd</sup> June 2021), which was received by the Board on 14<sup>th</sup> June 2021 and included copies of the following:

- Certified copy of the decision notice.
- Certified copy of manager's order.
- Copies of the drawings, documentation and report.
- Copy of history file DAC/2019/0054.

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

The notification to refuse Disability Access Certificate, Ref. No. DAC210239DC was issued by the BCA on 30<sup>th</sup> April 2021 and was received by the Board on 14<sup>th</sup> June 2021, from the BCA.

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

The BCA submitted a letter to the Board, dated 14<sup>th</sup> June 2021, which was received by the Board on 14<sup>th</sup> June 2021. It included the information referred to in 2.3 above which related to the DAC application.

The Board requested comments from the BCA in relation the appeal in a letter dated 2<sup>nd</sup> June 2021. The BCA submitted a response dated 30<sup>th</sup> June 2021 with comments on the appeal to the Board.

## **3.0 Relevant history/cases**

The BCA in its response, dated 14<sup>th</sup> June 2021, included a copy of the case history file of a previous DAC refusal, Ref. No. DAC/2019/0054, relating to the same building.

## **4.0 DAC application**

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

Ref. No. DAC2112139DC application including DAC Compliance Report and drawings, listed at 1.2 above, were lodged by the Agent. It was received by the BCA on 18<sup>th</sup> February 2021. Additional Information was received by the BCA on 9<sup>th</sup> April 2021. All of these documents were received by the Board from the BCA 14<sup>th</sup> June 2021.

## 5.0 Appellant's case

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

- The building has been identified as having cultural significance and heritage value.
- The step at the entrance to the residential suites and the shopfront joinery are protected and cannot be altered.
- There is no wheelchair access available to the building.
- It is not practicable to provide a wheelchair accessible toilet due to the conservation significance of the building and the fact that the building entrances are not wheelchair accessible.
- The BCA has discretion to make reasonable allowances where modification of the existing structure is prohibited.
- The applicant provided for ambulant disabled access, ambulant circulation and ambulant sanitary facilities.
- The alterations did not create a new or greater contravention over the existing situation.
- Reasonable efforts have been made to improve the existing situation.
- The decision to refuse the DAC application is inappropriate with respect to the scale and subject matter of the proposed works and to the conservation status of the this highly important Protected Structure.

## 6.0 Building Control Authority's case

The following is a brief summary of the BCA's case:

- The previous DAC application (ref. DAC/2019/0054) was refused. No appeal was lodged against that decision. The reasons for refusal were similar to the ones relating to the subject appeal.
- The applicant did not submit any application for a relaxation or dispensation.
- No wheelchair accessible toilet has been proposed on the ground floor.
- The original scheme submitted for planning permission involved a single restaurant at ground floor level but this was split into two units during the planning process to an office and café.
- Sanitary facilities serving the original commercial unit on the ground floor have been removed. A standard WC has been provided for the office unit under the stairs leading to the residential suites. Occupants of the office unit will now have to go outside onto the street and re-enter via the Capel Street entrance to use this WC. Formerly there

were toilets within the ground floor which did not require someone to leave the building to access them. The proposed arrangement would not be considered suitable from an access point of view.

- The proposals make the provisions less compliant than those that previously existed.
- There is level access to the office and café. The entrance to the office could have been made more accessible for a wheelchair user with an adjustment to the internal wall/partition.
- The WHB in the WC for ambulant disabled is located within in the activity space.

## 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 subparagraph (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, Goldsmith Engineering stated that full compliance with guidance given in TGD M for a new building is not possible and that reasonable measures have been taken to improve accessibility in the building.

**Reference to TGD Part M 2010 provides the following guidance:**

#### **Page 7, TGD Part M 2010:**

*In the case of material alterations or change of use of existing buildings, the adoption without modification of the guidance in this document may not, in all circumstances, be appropriate. In particular, the adherence to guidance, including codes, standards or technical specifications, intended for application to new work may be unduly restrictive or impracticable. Buildings of architectural or historical interest are especially likely to give rise to such circumstances. In these situations, alternative approaches based on the principles contained in the document may be more relevant and should be considered.*

#### **0.7 TGD Part M 2010:**

*In the determination of 'practicability' with respect to works to an existing building, its facilities or its environs the following non-exhaustive list of circumstances should be considered. (i) Where the works would have a significant adverse effect on the historical significance of the existing building, facility or environs e.g. works to a Protected Structure<sup>2</sup>; (ii) Where the existing structural conditions would require moving or altering a load bearing member which is an essential part of the overall structural stability of the building; (iii) Where other existing physical or site constraints would prohibit modification of an existing feature;*

#### **0.8 TGD Part M 2010 referring to Existing Buildings:**

*Works to existing buildings, such as extensions, material alterations and certain material changes of use, can present many design challenges because of the individual character, appearance and environs of existing buildings. The adoption without modification of the guidance in this document*



*may not in all circumstances be appropriate. 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.*

*Historic buildings include Protected Structures, which are included by each Planning Authority on a Record of Protected Structures. These buildings have been identified as having particular cultural significance and heritage value. As previously stated, the adoption without modification of the guidance in this document may not, in all circumstances, be appropriate for historic buildings. Liaison with the local Building Control Authority on alternative approaches based on the principles contained in this document may be more relevant and should be considered. In specific cases, a dispensation or relaxation (or partial dispensation or relaxation) of the Requirements may be granted by the local Building Control Authority.*

## **8.0 Assessment**

This appeal is made against a Refusal to Grant a Disability Access Certificate. Having considered the drawings, reports, details and submissions on file it is considered that sufficient information has been provided to assess whether or not the said works (material alterations and material change of use) 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 1997 to 2019.

I consider that it is necessary that the determination of the Board on the application should be as it if had been made to it in the first instance and therefore a De Novo approach is warranted.

Restoring and making use of a Protected Structure like this one is a challenge. The conservation issues must be assessed against accessibility / Universal Design aspirations and a decision has then to be made to determine if a Disability Access Certificate can be issued.

The BCA assessed whether adequate provision has been made for people to access and use the building, its facilities and environs and they concluded that the proposals did not comply with the requirements of Part M of the Building Regulations.

However, having regard to the existing building being a Protected Structure (rated of Regional importance in the NIAH) and to the nature and scale of the building works and change of use proposed and the spirit of TGD M (2010) which notes that the adoption without modification of the guidance contained in TGDM (2010) may not, in all circumstances, be appropriate for existing buildings and historic buildings in particular, I consider that it is unnecessary and would be unduly restrictive or impracticable to require that the ground floor be

returned to a single commercial/retail unit so that a wheelchair accessible WC could be provided on the ground floor.

I am of the opinion that the applicant made a reasonable effort to comply with the requirements of Part M of the Second Schedule to the Building Regulations 1997 to 2019 while also addressing the significant conservation issues.

## 9.0 Conclusions / Recommendations

In conclusion, I recommend that the Board directs the BCA to grant a Disability Access Certificate with the following conditions and reasons:

### Condition 1:

The proposed material alterations and change of use shall be carried out in accordance with the plans, specifications and other relevant information submitted with the application to the Building Control Authority and further information received by the Building Control Authority on 9<sup>th</sup> April 2021

**Reason:** In the interest of clarity

### Condition 2:

The door to the ambulant disabled WC in the basement should be repositioned to provide clear access to the activity space and to avoid the WHB.

**Reason:** To provide appropriate access for ambulant disabled persons.

## 9.1 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 DAC application and appeal and to the report and recommendation of the reporting inspector, it is considered that the works (material alterations and material change of use) 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 FRIAI  
Inspector

9<sup>th</sup> September 2021