

Inspector's Report

Appeal against a condition attached to a Disability Access Certificate for material alterations and a change of use from offices to use as a community / hub for creatives to have a place to work and exhibit at Hilton House, Ardee Road, Rathmines, Dublin 6.

Board DAC Appeal Ref. No.:	ABP-311440-21
Building Control Authority Ref. No.: BCMS Submission No.:	DAC2104107DC 4002158
Appellant:	Karen McGinley 6 Bushfield Terrace Donnybrook, Dublin 4,
Agent:	Goldsmith Engineering Ltd. Mount Pleasant Business Centre Mount Pleasant Ave. Upper Ranelagh Dublin D06 K762
Building Control Authority:	Dublin City Council
Inspector:	Michael Mohan, FRIAI
Appendix Attached:	None

Table of Contents

Ref.	Section	Page
1.0	Introduction	3
1.1	Site Description	3
1.2	Subject Matter of Application	3
1.3	Building Control Authority Decision	4
2.0	Information Considered	4
3.0	Relevant History / Cases	6
4.0	DAC Application	6
5.0	Appellant's Case	7
6.0	Building Control Authority's Case	7
7.0	Considerations	8
7.1	Level of detail provided in the application to meet the requirements of the Building Control (Amendment) Regulations 2009	8
7.2	Meeting the requirements of Part M of the Building Regulations	9
8.0	Assessment	9
9.0	Conclusions / Recommendations	11
9.1	Reasons and Considerations	11

1.0 Introduction

1.1. Site description

The building is an existing semi-detached, two-storey office building located in an office complex. The building will consist of a Yoga Studio, Exhibition spaces and an office on the ground floor and offices / meeting room on the first floor. There is a split-level floor level on the first floor. Sanitary facilities and tea stations will be provided on both floors. 5 car parking spaces are proposed, one of which will be for parking by people with disabilities.

1.2 Subject Matter of Application

The application is for material alterations and a change of use from offices to use as a community / hub for creatives to have a place to work and exhibit.

The Disability Access Certificate application was submitted by Goldsmith Engineering, on behalf of Karen McGinley, through the BCMS system (Submission No. 4002158) and was received by the Building Control Authority (BCA) on the 2nd August 2021 and included:

- Completed DAC application form and cheque for €500.
- Copies of drawings submitted:

Drawing Number	Title	Scale
BB7-DUB-20C1484-FSC-001	Site Location Map	1:500
DAC-20C1484-98	Proposed Site Plan x 2	1:200
DAC-20C1484-100	Proposed Ground Floor Plan	1:100
DAC-20C1484-101	Proposed First Floor Plan	1:100
DAC-20C1484-102	Proposed Roof Plan	1:100
DAC-20C1484-200	Existing & Proposed West Elevation & Section Y-Y	1:100
DAC-20C1484-201	Existing & Proposed Section WW	1:100
DAC-20C1484-300	Proposed & Existing South Elevation	Incorrectly shown as 1:200. It should be 1:100
DAC-20C1484-301	Proposed & Existing East Elevation	Incorrectly shown as 1:200. It should be 1:100
DAC-20C1484-302	Proposed & Existing North Elevation	1:100

The list of drawings shown in the table above were received by An Bord Pleanála from the BCA on 1st October 2021.

- Copy of Compliance Report.

1.3 Building Control Authority Decision

- The BCA issued a Disability Access Certificate, File Ref No.: DAC2104107DC, BCMS Submission No.:4002158, dated 26th August 2021. Six Conditions were attached to the Disability Access Certificate.

2.0 Information Considered

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

1. Disability Access Certificate application:

File Ref No.: DAC2104107DC, BCMS Submission No.: 4002158

Application including Compliance Report and drawings, listed at 1.2 above, was lodged by Goldsmith Engineering Ltd. It was received by the BCA via the BCMS system on 2nd July 2021 and received by the Board from the BCA 1st October 2021.

2. Appeal Documentation submitted by Agent:

The appeal documentation, received by An Bord Pleanála on 20th September 2021, included:

- Letter from Mr. Ian Dullaghan, Goldsmith Engineering, dated 16th September 2021, stating that they wished to appeal Condition No.5 which was attached to the Disability Access Certificate, File Ref No.: DAC2104107DC.
- Schedule of Drawings – this schedule did not correspond to the drawings submitted. The correct schedule is shown in the table below.
- Drawings submitted with the appeal to An Bord Pleanála:

Drawing Number	Title	Scale
DAC-20C1484-98	Proposed Site Plan x 2	1:200
DAC-20C1484-100	Proposed Ground Floor Plan	1:100
DAC-20C1484-101	Proposed First Floor Plan	1:100
DAC-20C1484-102	Proposed Roof Plan	1:100
DAC-20C1484-200	Existing & Proposed West Elevation & Section Y-Y	1:100
DAC-20C1484-201	Existing & Proposed Section WW	1:100
DAC-20C1484-300	Proposed & Existing South Elevation	Incorrectly shown as 1:200. It should be 1:100
DAC-20C1484-301	Proposed & Existing East Elevation	Incorrectly shown as 1:200. It should be 1:100

DAC-20C1484-302	Proposed & Existing North Elevation	1:100
DAC-20C1484-EXT1	Existing Ground Floor Plan	Incorrectly shown as 1:200. It should be 1:100
DAC-20C1484-EXT2	Existing First Floor Plan	Incorrectly shown as 1:200. It should be 1:100

The list of drawings shown in the table above included existing floor plans which were not included with the DAC application to the BCA. They were received by An Bord Pleanála as part of the appeal on 20th September 2021.

- Copy of Compliance Report.

3. Application Documentation from BCA

Dublin City Council submitted a letter to the An Bord Pleanála, dated 1st October 2021 (in response to a request from the Board, dated 22nd September 2021), which was received by the An Bord Pleanála on 1st October 2021 and included copies of the following:

- Copy of the application documents including submitted drawings (listed in the table in Section 1.2 above) and Compliance Report.
- Certified copy of Manager's Order, No.228/21, dated 26th August 2021.
- Certified copy of Decision Notice dated 17th August 2021 and the BCA's Building Surveyor's Report, dated 15th July 2021.

4. Notification of a Disability Access Certificate:

The BCA issued a Disability Access Certificate, File Ref No.: DAC2104107DC, BCMS Submission No.: 4002158, dated 26th August 2021. Six Conditions were attached to the Disability Access Certificate.

5. Observations from the BCA in relation to the appeal:

The BCA submitted a letter with the BCA comments on the appeal to An Board Pleanála, dated 20th October 2021, which was received by the Board on the same day.

6. Planning Application File Ref. No. 3041/21

The proposed development was described in the planning application:

The development will consist of: A) Internal modifications to the existing 611sqm office building, B) Alterations to the existing façade including the alterations to window and door positions, C) The change of use of 196.5sqm of existing ground floor office space to 30.5sqm gallery/exhibition space, 26sqm recording studio space and 140sqm yoga/meditation space with associated changing facilities, D) The provision of 5 car parking and 12 bicycle parking spaces, E) the replacement of the existing escape stair to the south facing elevation, F) The erection of signage at the site entrance on Ardee Road, and G) Associated landscaping and site works.

The Design Report submitted with the planning application by the Architects, Foley & Cowley, included a section titled 'Overview of the Proposed Development & Change of Use' in which it stated:

"The office provision on the first floor level will comprise small cellular offices which will be made available for small start-up businesses. A total of 12 office spaces will be provided at first floor level together with associated meeting rooms, tea stations, break out spaces and associated toilet and shower facilities"

3.0 Relevant history/cases

This Inspector is not aware of a previous DAC application relevant to this building.

4.0 DAC application

Disability Access Certificate application:

File Ref No.: DAC2104107DC, BCMS Submission No.: 4002158

Application including Compliance Report and drawings, listed at 1.2 above, was lodged by Goldsmith Engineering Ltd. It was received by the BCMS on 2nd July 2021 and received by the Board from the BCA 1st October 2021.

5.0 Appellant's case

Goldsmith Engineering Ltd. lodged an appeal on behalf of the applicant/appellant, dated 16th September 2021, against Condition No. 5 attached to the Disability Access Certificate DAC2104107DC. The appeal was received by the Board on 20th September 2021.

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

- Where no lift is provided, the same range of services/facilities that are available on the other levels are made available on the entry or accessible level.
- The proposed alterations do not create any new or greater contravention over the existing situation.
- Any improvement works must be realistic with respect to the existing situation and the scale of the project proposed.
- To condition a lift on the DAC grant goes far beyond what is considered reasonable for this project.

An Board Pleanála wrote to the Agent, dated 21st October 2021, inviting him to make submissions or observations in relation to the submission dated 20th October 2021 received from Dublin City Council. The agent did not provide An Board Pleanála with any submissions or observations in response.

6.0 Building Control Authority's case

An Board Pleanála wrote to the BCA, dated 22nd September 2021, inviting them to submit comments in relation to the appeal.

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

- The applicant proposed a significant change to the use of the building.
- The first floor is where the substantial office space is located. Only a small office of 6.9 sq.m. is provided at ground floor level which opens into a recording studio so there is a high probability that this office would be unavailable and there is no alternative at ground floor level.
- The facilities at first floor level are substantially different to the ground floor facilities. A lift should be provided to the lower first floor level for all building users to access and make use of all relevant facilities.
- There appears to be room within the open void to accommodate a platform lift.
- An alternative would be to ensure that the same range of services on the upper levels should be provided on the entry or accessible level.
- These proposals greatly reduce the office facilities at ground level and do not provide adequate provisions for people to access and use the remaining facilities that are retained at first floor level.

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.*

The drawings submitted with the application and appeal were printed slightly off-scale. This may have been due to them being printed 'to fit' the paper size rather than being printed to 'actual scale'. However, this did not prevent a proper assessment of the proposals.

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 their Compliance Report, Goldsmith Engineering stated that the objective of the report is to demonstrate how the design of the Works comply with Part M (Access and Use) of the Second Schedule to the Building Regulations 2010. In addition, they stated that reference was made to Technical Guidance Document M 2010.

8.0 Assessment

This appeal is against a Condition attached to a Disability Access Certificate. Having considered the drawings, compliance report, details and submissions on file it is considered that a *de novo* approach is not warranted.

The Agent appealed only one condition:

Condition No.5:

Independent access, by means of a lift, to the lower 1st floor level serving the offices 1-5, the meeting room and Director's office shall be provided.

Reason: To provide independent access and use of the building for all building users including wheelchair users.

The main issue to resolve is whether people can access and use the facilities in the building.

The facilities on the first floor include eleven offices, a 'huddle' room (small meeting room), a meeting room, two directors' offices, an open plan multi-purpose room/ lounge, tea station and sanitary facilities. The first floor is split into two levels with the lower first floor level containing five offices, the 'huddle' room, the meeting room, one of the director's offices, the open plan multi-purpose room/ lounge, tea station and sanitary facilities.

The Design Statement, which the Architects included in the planning application, stated that “the office provision at first floor level will comprise of small cellular offices which will be made available for small start-up businesses”. This was not made clear in the DAC application. The only office proposed on the ground floor is one which opens directly into the recording studio and as such would most likely not be available or suitable for small start-up businesses. There are no other offices on the ground floor so the aim of providing small offices for small start-up businesses cannot be achieved at the accessible level.

No Director’s office is being provided on the ground floor.

The ground floor also contains a gallery/ exhibition/performance space which the Agent maintains is a large flexible space which can be used for many uses including a meeting room or meeting space. However, if this space is being used for exhibitions or performances it would not be available as a meeting room.

Clearly the same range of facilities which are available on the first floor are not being provided on the accessible ground floor.

TGD M 2010 1.3.4.1.1 guides that passenger lifts should be provided in all multi-storey buildings but it allows for an exception where it states: “*non-residential or mixed use buildings with a nett floor area per floor of less than 200 m².....*”. The total floor area of the building is stated as 611.20 m² of which 302.40 m² is on the ground floor. The area of the split level first floor exceeds 200 m².

TGD M 2.3.4.1. guides that where it is impracticable to provide a passenger lift that “*alternatively, the same range of services/ facilities that are available on the other levels should be made available on the entry or accessible level*”. There is room in the open void in the Foyer to provide a platform lift which would provide access to the lower first level.

The BCA are of the opinion that a passenger lift should be installed to provide access to the lower first floor level as adequate alternative facilities are not being provided on the ground floor. I concur with that assessment.

I am of the opinion that the proposed Material Alterations and Change of Use warrant the provision of a passenger lift to access the lower first floor level.

9.0 Conclusions / Recommendations

In conclusion, I recommend that An Bord Pleanála rejects the appeal and allows Condition No. 5 to be retained along with the other five conditions in the granted Disability Access Certificate.

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 attached to the Disability Access Certificate, will comply with the requirements of Part M of the Second Schedule to the Building Regulations 1997 to 2019.



Michael Mohan, FRIAI

Inspector, 7th January 2022