



An  
Bord  
Pleanála

## FSC Report

**ABP 312386-22**

**Appeal v Refusal or Appeal v  
Condition(s)**

Appeal v Refusal

**Development Description**

Material Change of Use, Material  
Alteration and Extension to a roof  
terrace in second floor at Main  
Street, Crossmolina, Co. Mayo

**An Bord Pleanála appeal ref  
number:**

ABP-312386-22

**Building Control Authority Fire  
Safety Certificate application  
number:**

FSC2106694MO

**Appellant & Agent:**

Appellant : Anthony Gill

**Building Control Authority:**

Mayo County Council

**Date of Site Inspection**

NA

**Inspector/ Board Consultant:**

Stefan Hyde

**Appendices**

NA

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## 2.0 Introduction

### 2.1 Subject Matter of Appeal

This report sets out my findings and recommendations on the appeal submitted by Mr. Anthony Gill (The Old Post Office, Main Steet, Crossmolina, Co. Mayo), against the Refused Fire Safety Certificate (Reg Ref No. FSC21066694MO) issued by Mayo County Council [hereafter referenced as MCC] in respect of the “*Material Change of Use, Material Alteration and Extension to a roof terrace in second floor at Main Street, Crossmolina, Co. Mayo*”.

The Schedule of Reasons for Refusal notes the following:

- 1. The proposed means of escape from the coffee shop and roof terrace on the 2<sup>nd</sup> floor is unprotected and inadequate for the proposed development***

***Reason: COMPLIANCE WITH REQUIREMENT OF PART B1 OF THE SECOND SCHEDULE TO THE BUILDING REGULATIONS. 1997 – 2019***

It is noted the building is a three storey structure which was previously the subject of a Regularisation Fire Safety Certificate application in 2020 (Reg Ref No. FS20/080) in respect of the “*Material Alteration & Material Change of Use of Existing Building for use as a Bakery & Café at Main Street, Crossmolina*”.

Condition 2 of this Certificate (FS20/080) stated the following :

***“The second floor shall not be used or occupied at any time and the proposed fire door to separate that second floor area shall only be used or accessed for maintenance purposes. The second floor cannot be used for storage or assembly until a revised proposal for means of escape is designed to comply with the Building Regulations and approved in a further fire safety certificate application process”***

### 2.2 Documents Reviewed

- 2.2.1 Fire Safety Certificate Application and Supporting Documentation submitted by the applicants agent (Design Energy Homes Ltd) on behalf of their Client
- 2.2.2 Decision and Refusal by MCC on 13.12.2021
- 2.2.3 Appeal submission to An Bord Pleanala by Mr. Anthony Gill dated 17.12.2021
- 2.2.4 Appeal submission to An Bord Pleanala by MCC dated 14.02.2022
- 2.2.5 Appeal submission to An Bord Pleanala by Mr. Anthony Gill, in response to MCC submission referenced in 2.2.4 above, dated 10.03.2022

## 3.0 Refusal – Consideration of Arguments by Appellant and BCA

### 3.1 Refusal

*The proposed means of escape from the coffee shop and roof terrace on the 2<sup>nd</sup> floor is unprotected and inadequate for the proposed development*

Reason:

**COMPLIANCE WITH REQUIREMENT OF PART B1 OF THE SECOND SCHEDULE TO THE BUILDING REGULATIONS. 1997 – 2019**

#### Case made by Anthony Gill in Respect of the refusal

The key points made by Mr. Anthony Gill in his appeal submission dated 17<sup>th</sup> December 2021 are either non-technical in nature or refer to items that were requirements of the previously approved Regularisation Certificate for the Ground and First floor levels.

The items noted in summary were as follows:

- 1) The building is one of the original terraced town buildings
- 2) The building due to its location has no private area to the front or yard to the rear
- 3) The building original had commercial use on the ground with living accommodation on the upper floors
- 4) The Fire Safety Certificate Refusal being appealed is in relation to second floor only
- 5) As the second floor does not have independent access then it cannot be separated into a separate use
- 6) Covid-19 measures impacting businesses. The benefits of outdoor dining in relation to patron safety vis a vis Covid-19, social distancing impacts on the ground and first floor level occupancies and choice of seating location.
- 7) It is noted twice that the application was refused based on travel distance from the top storey and that given the geometry of the building there is no alternative design option.
- 8) A number of measures have been taken to slow the spread of fire which are listed.

In response to the MCC letter of 14<sup>th</sup> February 2022 Mr. Gill responded on 10<sup>th</sup> March 2022 with a detailed submission containing letters, certification, drawings, etc which was mainly in relation to management items. Two distinct new items were noted:

- Mr. Gill also notes that he is willing to limit the occupancy on the second floor to a maximum of 16 people (previously noted as 35 people including 5 staff).
- Mr. Gill also noted that in his opinion patrons of the second floor would escape across neighbouring properties in a life or death situation.

## Case made by MCC in respect the Refusal

The MCC letter dated 14<sup>th</sup> February 2022 is split into three sections, (1) Background to Application, (2) General Observations and (3) Conclusions.

MCC clearly note the following main points:

- 1) The owner of the premises had to apply for a Regularisation Certificate for the use of the Ground and First floor levels in 2020 following a third party complaint.
- 2) The Regularisation Certificate clearly noted in Condition 2 that the second floor could not be used for any use other than maintenance access. Condition 2 further noted that if the second floor were to be used in the future that a Fire Safety Certificate would need to be applied for that addressed the requirements for means of escape.
- 3) The appellants agent submitted a Fire Safety Certificate in October 2021 without addressing the need for a protected stair.
- 4) After several consultations with the appellants agent Mr. Patrick Gallagher seeking a protected escape stair MCC had no alternative but to refuse the application.
- 5) MCC note that they do not seek to refuse Fire Safety Certificate applications and that they attempted on a number of occasions to assist the appellants agent however the final position did not comply with B1 of the Building Regulations.

MCC note one of the uses as Wine Bar however this does not appear to be set out in other documents reviewed.

## 4.0 Assessment

As part of this assessment I have reviewed the compliance report and drawings submitted as part of the Fire Safety Certificate application. The following items were noted as part of this review:

- The use is identified as “PG 5 (iv): Place of Assembly or recreation – a restaurant or similar premises used for the sale to members of the public of food or drink for consumption on the premises”.
- For Means of Escape B1 the report incorrectly notes the use of BS 5588 Part 11 as one of the guidance documents for assessing the design. For the purpose group identified the appropriate document is TGD-B and specifically sections 1.2 – 1.4.
- The report notes that the maximum travel distance limit of 18m set out in TGD-B is exceeded with a proposed distance of 23.4m. As the drawings provided are not scaled this cannot be validated however this is noted as 30% excess over the allowance in TGD-B. There are no proposals in relation to addressing this excess.
- The report notes the design is not compliant in relation to number of escape routes however does not offer any proposals in relation to addressing this.
- The report notes that the second floor areas could have a maximum occupancy of 61 persons however the number is proposed to be limited to 30. In the appellants letter of 10<sup>th</sup> March this number is further reduced to 16 persons with management to ensure this is enforced.
- The report makes some commentary in relation to Protected Stairways however effectively notes that the proposed stairs is an open accommodation stair. TGD-B would require not less than two Protected Stairways for an assembly building with a top storey height >5m (it is noted that this building has a top storey height of 5.16m noted on the drawings).
- The report does not note that the final exit door is inward opening whereas TGD-B would note a requirement for outward opening for this purpose group.
- The Fire Detection and Alarm system proposed is Category L2 whereas the requirement would be for an L1 in this circumstance.

Noting the above it is clear that the design submitted deviates fundamentally from the recommendations set out in TGD-B for achieving prima facie compliance with Part B of the Building Regulations. Whilst TGD-B is one route to achieve compliance the applicant did not set out any alternative design proposals other than to state changing the building was not possible.

In the appeal submissions dated 17<sup>th</sup> December 2021 and 10<sup>th</sup> March 2022 there are no further design proposals to justify this fundamental requirement.

MCC had already approved a Regularisation Certificate for the Ground and First floors which allowed for a deviation from strict compliance with TGD-B however when this was approved MCC were very clear as to the requirements for the second floor if it were to be used.

The appellant and his agent did not seek to address the requirements of MCC in the submission for the second floor.

## 5.0 Conclusion/Recommendation

In light of the foregoing, I consider that the BCA are justified in the refusal of the Fire Safety Certificate.

Accordingly, I recommend that the refusal be upheld.

## 6.0 Reasons and Considerations

The Applicant has not in my opinion provided any technical solutions that would allow the BCA to approve the design which deviates fundamentally from relevant recommendations for means of escape provisions.

## 7.0 Conditions

None

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**STEFAN HYDE**

Chartered Engineer I BA, BAI, PDip FSP, MA, CEng, MIEI  
Consultant/Inspector

Date : \_\_\_\_\_