

Inspector's Report

Appeal against conditions attached to a Disability Access Certificate for a proposed hotel complex consisting of 52 no. bedrooms, bar, restaurant and dining facilities; ancillary service areas; leisure centre, all with associated ancillary site works at Kilmacoe, Curracloe, Co. Wexford.

Board DAC Appeal Ref. No.:	ABP-314174-22
Building Control Authority Ref. No.: BCMS Submission No.:	DAC2201942WX 4004548
Appellant:	Mr. William Neville (William Neville and Sons Construction) Rockfield House Spawell Road Wexford
Agent:	Staples Owley Limited (SOL) Unit M1, Wexford Enterprise Centre Kerlogue Wexford
Building Control Authority:	Wexford County 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	3
2.0	Information Considered	4
3.0	Relevant History / Cases	5
4.0	DAC Application	6
5.0	Appellant's Case	6
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	12

1.0 Introduction

1.1. Site description

The development is for a new building set within a rural setting. It comprises a hotel complex, part 2-storey, part 3-storey, consisting of 52 no. bedrooms, bar, restaurant and dining facilities; ancillary service areas; leisure centre, all with associated ancillary site works. The proposed building will include 4 no. lifts.

1.2 Subject Matter of Application

The application is for a proposed hotel complex consisting of 52 no. bedrooms, bar, restaurant and dining facilities; ancillary service areas; leisure centre, all with associated ancillary site works.

The Disability Access Certificate application, BCMS Reference No. DAC2201942WX, BCMS Submission No.4004548, was submitted by Staples Owley Limited (SOL), on behalf of Mr. William Neville (William Neville and Sons Construction) and was received by the Building Control Authority (BCA) on the 19th April 2022 and included:

- Completed DAC application form.
- Copies of the following drawings:

Drawing Number	Title	Scale
DAC 339-21:01-08	Site Location Maps	1:10,560 & 1:2,500
DAC 339-21:02-08	Site Layout Plan	1:1,000& 1:1,250
DAC 339-21:03-08	Lower Ground – Floor Level	1:100
DAC 339-21:04-08	Ground – Floor Level	1:100
DAC 339-21:05-08	First – Floor Level	1:100
DAC 339-21:06-08	DAC Details	Scale varies
DAC 339-21:07-08	Elevations	1:100
DAC 339-21:08-08	Sections	1:100

The list of drawings shown in the table above were received as part of the appeal by An Bord Pleanála on 25th July 2022.

- Copy of Disability Access Certificate Application Compliance Report.

1.3 Building Control Authority Decision

- The BCA issued a Disability Access Certificate File Ref. No. DAC2201942WX, BCMS Submission No.4004548, dated 27th June 2022. Four 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. DAC2201942WX, BCMS Submission No.4004548.

The application including Disability Access Certificate Application Compliance Report and drawings, listed at 1.2 above, lodged by Staples Owley Limited (SOL), which was received by the BCA via the BCMS system on 19th April 2022.

2. Appeal Documentation submitted by Agent:

The appeal documentation, received by An Bord Pleanála on 25th July 2022, included:

- Letter of appeal from Staples Owley Limited (SOL) to An Bord Pleanála, dated 25th July 2022 with Appendices 1 to 6 inclusive.
- Drawings as listed in Table in section 1.2 above.
- Disability Access Certificate Application Compliance Report.
- Fee of €500.00 with respect to the appeal.

3. Application Documentation from BCA

Wexford County Council, submitted a letter to the An Bord Pleanála, dated 5th August 2022 (in response to a request from the An Bord Pleanála, dated 28th July 2022), which was received by the An Bord Pleanála on 8th August 2022 and included copies of the following:

- Copy of the application documents including submitted drawings (listed in the table in Section 1.2 above) and Disability Access Certificate Application Compliance Report.
- Copy of Administration Validation Checklist of DAC application dated 20/04/2022.
- Copy of Technical Validation Checklist of DAC application dated 21/04/2022.
- Copy of acknowledgement correspondence dated 21/04/2022.
- Copy of correspondence dated 22nd April 2022 requesting further information.
- Copy of email and letter dated 12/05/2022 from Staples Owley Ltd. Requesting a two-month extension of time and a copy email for extension of time agreement dated 12/05/2022.
- Copy of further correspondence received 23rd June 2022 consisting of:

- Cover letter dated 22nd June 2022
 - DAC Technical Report 9Referenced DAC 2339-21 REV A)
 - Proposed Site Layout Plan (Response to FI) – (Drawing No.02-08).
 - Proposed Lower Ground Floor Level (Response to FI) – (Drawing No.03-08).
 - Proposed Ground Floor Level (Response to FI) – (Drawing No.04-08).
 - Proposed First Floor Level (Response to FI) – (Drawing No.05-08).
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- Copy of File Notes Time Line Log.
 - Copy of Recommendation dated 27th June 2022.
 - Copy of Memo re Explanation for Conditions assigned to DAC application 27th June 2022
 - Certified copy of Executive Order, No.39/2022, dated 27th June 2022.
 - Certified copy of Disability Access Certificate No. DAC2201942WX dated 27th June 2022

4. Notification of a Disability Access Certificate:

- The BCA issued a Disability Access Certificate No. DAC2201942WX dated 27th June 2022. Four 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 5th August 2022, which was received by the Board on 8th August 2022.

6. Invitation to Agent to make a submission

An Bord Pleanála wrote to the Agent, dated 1st September 2022, inviting him to make submissions or observations in relation to the submission, dated 5th August 2022, received from the BCA.

The Agent submitted a letter in response, dated 20th September 2022 which An Bord Pleanála received on 21st September 2022.

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. DAC2201942WX, BCMS Submission No.4004548

The application including Disability Access Certificate Application Compliance Report and drawings, listed at 1.2 above, lodged by Staples Owley Limited (SOL), which was received by the BCA via the BCMS system on 19th April 2022.

5.0 Appellant's case

Staples Owley Limited (SOL), lodged an appeal on behalf of the applicant/appellant, dated 25th July 2022, against Conditions Nos. 2 and No.3 which were attached to the Disability Access Certificate, Ref. No. DAC2201942WX, BCMS Submission No.4004548. The appeal was received by An Bord Pleanála on 25th July 2022:

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

The Agent's Compliance Report submitted with the appeal on 25/07/2022 states: "The minimum internal dimensions of all lifting devices will be 2000mm wide x 1400mm deep with the exception of Lift 4 which shall provide minimum internal dimension of 1100mm wide x 1400mm deep".

The Agent submitted different information in the grounds of appeal (also on 25/07/2022) proposing the following:

- (1) only Lift 1 wall will have internal car dimensions of 2000mm x 1400mm
- (2) Lifts 2&4 will have internal car dimensions of 1100mm wide x 1400mm deep.
- (3) Lift 3 will be used exclusively by staff and will be a Goods and Services lift only to which compliance with section 1.3.4.2 TGD Part M (2010) is not applicable.

The Agent argued that "the provision of a single accessible passenger lift is accepted as the minimum level of provision and TGD Part M (2010) does not differentiate on the provision of multiple larger lifts on the basis of the provision of lifts within the building".

Subsequently, the Agent submitted a revised proposal on 21/09/2022 to An Bord Pleanála in response to an invitation to make a submission or observation with respect to the BCA's submission dated 08/08/2022. It stated that the intended primary entry point to the building was always

Exit/Entry1 hence the location of the Set Down adjacent to this entrance. Exit/Entry8 was intended only for access to the leisure centre. He mentioned that there was confusion on this point in the DAC application documents and now proposed to provide additional accessible parking bays directly to Exit/Entry1 and retain the accessible parking bays at Exit/Entry 8. This will provide direct primary access to the primary entrance point of the hotel without the need to use internal lifts or the external circulation routes detailed in the DAC application documents.

The Agent now proposes:

- Three accessible lifts nos. 1,2 and 4.
- Lift 1 will be provided with a larger lift car with internal dimensions of 2000mm wide x 1400mm deep. Lifts 2&4 will have internal car dimensions of 1100mm wide x 1400mm deep.
- Lift 3 will be a goods and services lift only intended for staff ambulant and able bodied due to the physical nature of the work required and, as such, compliance with section 1.3.4.2 TGD Part M (2010) is proposed not to be applicable.
- 4 no. additional accessible carparking bays will be provided in front of Exit/Entry1 with direct access to the main reception area.

6.0 Building Control Authority's case

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

Conditions 2&3 are readily achievable as it's a new building.

Lift 3 is within a new development and is required to meet the minimum requirements of the building regulations.

Lift 4 is required to provide for a larger car given that this is the only lift from the lower ground floor level for use by all. It is the first point of connectivity and access from the proposed designated parking located at the nearest point to the proposed development and therefore requires the larger lift car to ensure visitors (blue badge holders/mobility aid users with high possibility of having luggage/equipment and additional party members) are provided with adequate means of access to the proposed development in one lift supporting EXIT/ENTRY 8.

To expect a person to travel from the lower carpark or indeed from the leisure facilities externally to gain access to the ground floor reception, bar, lounge, function and restaurant facilities is deemed inappropriate.

It should be noted that the BCA were not aware of the Agent's submission to An Bord Pleanála, dated 21/09/2022, when they commented on the appeal.

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 provided sufficient detail to enable assessment of the application and appeal.

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.

Further information was requested by the BCA and the Agent furnished it on 23rd June 2022. Subsequently the Agent submitted amended proposals to An Bord Pleanála on 21/09/2022.

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 Disability Access Certificate Application Compliance Report, Staples Owley Limited stated that “the works, if built in accordance with the drawings and documentation submitted will comply with the requirements of Part M of the Second Schedule to the Building Regulations, as revised in 2010”. They also state that “compliance with Part M of the Building regulations is demonstrated by reference to Technical Guidance Document Part M 2010”. In addition, they state that reference may also be made to the following documents:

- Buildings for Everyone, Access and Use (National Disability Authority).
- Irish Wheelchair Association (IWA) Best Practice Guidelines 2014.
- Good Practice Guidelines on Access to Streetscapes 2009.
- Technical Guidance Document Part K (Stairways, Ladders, Ramps and Guards); 2014

8.0 Assessment

Having considered the drawings, Disability Access Certificate Application Report, details and submissions on file it is considered that a *de novo* approach is not warranted. This appeal is against two Conditions attached to a Disability Access Certificate:

Condition No.2:

Each of the proposed lift(s) of which there are 4 shall comply with the Lift Directive 95/16/EC and shall be provided in accordance with no less than the minimum requirements of Part M TGD, Section 13.4.2 and all subsections thereof with specific but not exclusive reference to the minimum internal dimension of each lift having no less than a 2000mm wide compartment.

Condition No.3

The proposed lift 3 shall comply with the Lift Directive 95/16/EC and shall be provided in accordance with the requirements of Part M TGD, Section 1.3.4.2 and all subsections thereof with specific

but not exclusive reference to the minimum unobstructed space of 1800mm x 1800mm deep in front of every entrance (first floor plan).

The requirement of Part M of the Second Schedule to the Building Regulation is to ensure that adequate provision shall be made for people to access and use a building, its facilities and its environs. Part M aims to foster an inclusive approach to the design and construction of the built environment.

Where works are carried out in accordance with the guidance in Technical Guidance Document M (TGD M), this will, prima facie, indicate compliance with Part M of the Second Schedule to the Building Regulations (as amended).

Technical Guidance Document M (TGD M) sets out guidance on the minimum level of provision to meet requirements M1-M4. However, it also recommends that those involved in the design and construction of buildings should also have regard to the design philosophy of Universal Design and consider making additional provisions where practicable and appropriate.

TGD Part M (2010) states:

1.3.4.2 (j): a larger lift car should be provided in the public areas of public facilities such as hotels, cinemas, theatres shopping centres and public libraries, where the public area has a nett floor area per floor of greater than 200 m². The larger lift car dimensions should be 2000 mm wide x 1400 mm deep.

Rationale: The larger lift car will facilitate most types of wheelchairs; scooters and buggies, along with several other passengers;

At first, the BCA understood that Lift 4 would be the first point of contact and access from the proposed designated parking (Exit/Entry8) from where visitors arriving at the hotel would bring their luggage and perhaps be accompanied by a party or group of people and this lift would connect directly with the main reception desk on the next floor above.

To make the building universally accessible the BCA decided that all four lifts shall have larger lift cars. However, TGD Part M does not specifically require this. It merely requires that a single larger lift car be provided, not all lifts. Neither does it define where this larger lift car should be located.

The Agent subsequently submitted that there may have been confusion about the primary entrance point and confirmed that Exit/Entry1 will be the primary entrance (where the Set Down point is located). Also proposed are four additional accessible car parking bays directly in front of Exit/Entry1. Direct wheelchair accessible access will thus be provided from the designated parking to the main front entrance and from there to the main reception desk from where visitors can be directed to Lift 1 (min. internal dimensions 2000mm wide x 1400mm deep), if a larger lift car is required. Lift1 will provide access to all floors in the building, including the leisure centre on the lower ground floor.

I agree with the Agent that:

- TGD Part M (2010) does not define the location of larger lifts
- the requirement is to provide a larger lift car (not several)
- there is no requirement to locate the larger lift car at the immediate entry to the building
- the larger lift car will be better served in Lift 1 rather than in Lift 4, which only serves two floors.

Lift 2 (1100mm wide x 1400mm deep) will provide access to all floors and it will comply with the requirements for wheelchair accessibility. Lift 4 (1100mm wide x 1400mm deep) will provide access from the ground floor to the leisure centre on the lower ground floor and it will also comply with the requirements for wheelchair accessibility. In summary, three lifts will provide wheelchair access in compliance with Part M of the Second Schedule to the Building Regulations, as revised in 2010.

Lift 3 will be for goods and services only intended for staff who are ambulant and able bodied due to the nature of the work involved. Compliance with section 1.3.4.2 TGD Part M (2010) will not apply. While there is no requirement to make it wheelchair accessible it will probably need be of sufficient size to fulfill its function. Consequently, as this lift will not be intended for use by people using wheelchairs, there is no requirement to provide a 1800mm x 1800mm turning space in the corridor immediately outside the lift doors.

I recommend that signage be provided on site to direct visitors from the car parks to the main entrance at Exit/Entry1 and to show that Exit/Entry8 is only for access to the Leisure Centre. Thus, there would be no need for Lift 4 to cater for luggage or groups of people at the lower ground floor level and therefore a larger lift car would not be required at that location. Lift 4 will still be provided with a compliant wheelchair accessible lift car measuring 1100mm wide x 1400mm deep, providing access to the ground floor above.

9.0 Conclusions / Recommendations

In conclusion, I recommend that An Bord Pleanála directs the BCA to omit Conditions No.2 and No.3 and replace them with the following conditions in the granted Disability Access Certificate:

Condition No.2:

All lifts to comply with the Lift Directive 95/15/EC.

Lift 1 shall have minimum internal car dimensions of not less than 2000mm wide x 1400mm deep.

Lifts 2 & 4 shall have minimum internal car dimensions of not less than 1100mm wide x 1400mm deep.

Lift 3 shall be used exclusively by staff for goods and services.

Reason 2:

The larger lift car will facilitate most types of wheelchairs; scooters and buggies, along with several other passengers while two other lifts will afford additional wheelchair accessibility, all in accordance with the recommendations contained in Technical Guidance Document Part M 2010 to the Building Regulations.

Condition 3:

Signage shall be provided in the two car parks to direct visitors to the main entrance at Exit/Entry 1 and to show that Exit/Entry 8 is only for access to the Leisure Centre.

Reason 3:

To assist wayfinding.

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 2022.



Michael Mohan, FRIAI
Inspector

13th December 2022