



An
Bord
Pleanála

FSC Report

ABP-315117-22

Appeal v Refusal or Appeal v Condition(s)

Appeal v Condition 7&9

Development Description

Primary care centre – 4 storey primary care centre facilities over a basement car park at Bloomfield Avenue, Dublin 4

An Bord Pleanála appeal ref number:

ABP-315117-22

Building Control Authority Managers Order No:

FSC1485/22

Appellant & Agent:

Applicant : Mr. James Buckley
Agent : BB7

Building Control Authority:

Dublin City Council

Date of Site Inspection

NA

Inspector/ Board Consultant:

Luke Fegan

Appendices

NA

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2.0 Introduction

2.1 Subject Matter and Background to the Appeal

This report sets out my findings and recommendations on the appeal submitted by BB7 on behalf of their Client, Mr. James Buckley., against Conditions No. 7&9 attached to the Fire Safety Certificate (Building Control Authority Fire Safety Certificate CE/Managers Order No: FSC1485/22) granted by Dublin City Council [hereafter referenced as DCC] in respect of Construction of 4 storey primary care centre facilities over a basement car park at Bloomfield Avenue, Dublin 4.

The Fire Safety Certificate was granted on 24th October 2022 with 15 conditions attached. The appeal to the Board relates to Condition 7 & 9 – the other conditions are not being appealed.

Condition 7&9, which is the subject of the appeal, reads as follows:

Condition 7:

At basement level, hose reels are to be provided in accordance with Section 1.4.16 of Technical Guidance Document B – Fire Safety (2006) (Reprint 2020).

With the stated reason for the condition being:

Reason: *To comply with Part B of the Second Schedule to the Building Regulations, 1997-2021.*

Condition 9:

The AHU plant areas at third floor level shall be separated from the adjacent accommodation by not less than 90 minute fire resisting construction.

With the stated reason for the condition being:

Reason: *To comply with Part B of the Second Schedule to the Building Regulations, 1997-2021*

De novo consideration is not warranted and the Board can rely on the provisions of Article 40(2) of the Building Control Regulations and deal with the appeal on the basis of Conditions 2 and 6 only.

2.2 Documents Reviewed

Drawings from 14.02.2022

BB7-00228-GE-Donnybrook PCC-FSC-001 – Site Location Plan
BB7-00228-GE-Donnybrook PCC-FSC-002 – Site Plan
BB7-00228-GE-Donnybrook PCC-FSC-003 – Basement Floor Plan
BB7-00228-GE-Donnybrook PCC-FSC-004 – Ground Floor Plan
BB7-00228-GE-Donnybrook PCC-FSC-005 – Podium Plan
BB7-00228-GE-Donnybrook PCC-FSC-006 – First Floor Plan
BB7-00228-GE-Donnybrook PCC-FSC-007 – Second Floor Plan
BB7-00228-GE-Donnybrook PCC-FSC-008 - Third Floor Plan
BB7-00228-GE-Donnybrook PCC-FSC-009 – Roof Plan
BB7-00228-GE-Donnybrook PCC-FSC-010 – Section A & B
BB7-00228-GE-Donnybrook PCC-FSC-011 – Section C & D
BB7-00228-GE-Donnybrook PCC-FSC-012 – Section E & F
BB7-00228-GE-Donnybrook PCC-FSC-013 - North East & South West Elevations
BB7-00228-GE-Donnybrook PCC-FSC-014 - North West & South East Elevations

Drawings from 06.05.2022

BB7-00228-GE-Donnybrook PCC-FSC-002 – Site Plan
BB7-00228-GE-Donnybrook PCC-FSC-003 – Basement Floor Plan
BB7-00228-GE-Donnybrook PCC-FSC-004 – Ground Floor Plan
BB7-00228-GE-Donnybrook PCC-FSC-006 – First Floor Plan
BB7-00228-GE-Donnybrook PCC-FSC-007 - Second Floor Plan
BB7-00228-GE-Donnybrook PCC-FSC-008 – Third Floor Plan
BB7-00228-GE-Donnybrook PCC-FSC-009 – Roof Plan x 2
BB7-00228-GE-Donnybrook PCC-FSC-010 – Sections A & B
BB7-00228-GE-Donnybrook PCC-FSC-011 - Sections C & D

Drawings from 23.06.2022

BB7-00228-GE-Donnybrook PCC-FSC-012 - Sections E & F
BB7-00228-GE-Donnybrook PCC-FSC-003 – Basement Floor Plan
BB7-00228-GE-Donnybrook PCC-FSC-005 – Podium Plan
BB7-00228-GE-Donnybrook PCC-FSC-008 - Third Floor Plan
BB7-00228-GE-Donnybrook PCC-FSC-014 - North West & South East Elevations

Drawings from 04.10.2022

BB7-00228-GE-Donnybrook PCC-FSC-003 – Basement Floor Plan

Appeal of Conditions 7 & 9 from 14.11.2022

BB7-00228-GE-FSC-ABP-L-001

Applications

Application BB7 – 00228- GE -FSCA – Issue 02 - 11.02.2022
Application BB7 – 00228- GE -FSCA – Issue 03 - 16.05.2022
Application BB7 – 00228- GE -FSCA – Issue 04 - 10.06.2022
Application BB7 – 00228- GE -FSCA – Issue 05 – 05-04.10.2022

3.0 Consideration of Arguments by Appellant and BCA

Condition 7:

“At basement level, hose reels are to be provided in accordance with Section 1.4.16 of Technical Guidance Document B – Fire Safety (2006) (Reprint 2020)”

With the stated DCC reason for the condition being:

Reason: *To comply with Part B of the Second Schedule to the Building Regulations, 1997-2021.*

Case made by DCC in respect of imposition of Condition 7

DCC have made no submission on the appeal.

The reason for the condition set out in the grant of FSC1485/22 states as follows: *“To comply with Part B of the Second Schedule to the Building Regulations, 1997-2021”*

DCC made 3 additional information requests during their consideration of the FSC dated 08.04.2022, 02.06.2022 and 04.10.2022. The BCMS revised information request states the details are set out below but unfortunately there are no details. The subsequent BB7 submissions refer to conversations.

Item 10 of the BB7 additional information submission of 10th June 2022 addressed the omission of hose reels having not been addressed in the original submission.

Item 10 read as follows: *“As the basement car park floor area exceeds 500m², hose reels should be provided in accordance with Clause 1.4.16 of TGD B. However, in the interest of life safety within the building it is not proposed to provide hose reels for the use of occupants. If a fire were to occur at basement level, it can be fought from the external due to the sloping nature of the site”*

Case made by BB7 in respect of Condition 7

Subsequent to the imposition of Condition 7, BB7 make the following case in their appeal to the Board:

- I. Hose reels should be omitted in the interests of life safety
- II. Hose reels pose a trip hazard
- III. Hose reels encourage civilians to remain at the scene of a fire and attempt to fight a fire
- IV. Hose reels cause fire doors to be wedged open
- V. The BB7 design is based on a simultaneous evacuation whereby the appellant suggests occupants should not remain to fight a fire

Condition 9:

“The AHU plant areas at third floor level shall be separated from the adjacent accommodation by not less than 90 minutes fire resisting construction”

With the stated reason for the condition being:

Reason: *To comply with Part B of the Second Schedule to the Building Regulations, 1997-2021.*

Case made by DCC in respect of imposition of Condition 9

DCC have made no submission on the appeal.

The reason for the condition set out in the grant of FSC1485/22 states as follows: *“To comply with Part B of the Second Schedule to the Building Regulations, 1997-2021”*

DCC made 3 additional requests during their consideration of the FSC dated 08.04.2022, 02.06.2022 and 04.10.2022.

The BCMS revised information requests states the details are set out below but unfortunately there are no details. The subsequent BB7 submissions refer to conversations.

Item 26 of the BB7 additional information submission of 06th May 2022 included a description of the wall construction between the AHU and internal accommodation.

Case made by BB7 in respect of Condition 9

In item 26 of the BB7 additional information submission of 06th May 2022, the Consultant clarifies the low risk equipment is located in open air and highlights the robust nature of the proposed construction between the AHU and adjacent stair / lift. The Consultant highlights the risk of the AHU is not considered to give rise to the requirement to enclose the AHUs.

Subsequent to the imposition of Condition 9, BB7 reiterate their position in the appeal to the Board:

- I. The air handling units are in the open air
- II. They are low risk
- III. They are not required to be enclosed in fire resisting construction
- IV. Walls between AHU and stair /lifts are made from concrete
- V. The remainder of the walls are constructed from a framed partition wall system
- VI. The basis of the condition is not a requirement of TGD B
- VII. Clause 31.4.7 BS 9999 states air handling units are not deemed high fire risk

4.0 Assessment

Condition 7:

At basement level, hose reels are to be provided in accordance with Section 1.4.16 of Technical Guidance Document B – Fire Safety (2006) (Reprint 2020).

The Authority has made a generic reference to Part B of the Building Regulations as the basis of their reason for Condition. A detailed reasoning would have allowed full consideration by all parties.

Comparable international guidance BS 9999 2017 Section 10.4.5 states *‘Hose reels should be installed where the fire risk assessment show it to be necessary’*.

The original FSC submission did not address hose reels.

Item 10 of the BB7 additional information submission of 10th June 2022 included a justification for the omission of hose reels. The justification did not include a risk type assessment. The risk assessment was presented for the first time in the appeal. The BB7 submission of the 10th June 2022 makes reference to fire fighting. *“If a fire were to occur at basement level, it can be fought from the external due to the sloping nature of the site”*.

The TGD B hose reel provision is a B1 recommendation *“Means of escape in case of fire”*. Hose reels are not a B5 recommendation. B5 of Part B of the Building Regulations relates to *“Access and facilities for the Fire Service”*. The appellant has addressed the matter under B5 and not B1. Hose Reels are not provided as a facility for the Fire Service as stated in the FSC application.

TGD-B 2006 states that the *‘First Aid fire fighting equipment is provided in buildings to be used by occupants, with appropriate training and where safe to do so, in the early stages in the development of a fire’*. The BB7 firefighting B5 point is misplaced.

Suitable risk-based assessments will often address:

- Risk of electrocution
- Observe the availability of other forms of first aid fire fighting equipment. Such equipment has a limited capacity hence the “first aid”. Eventually the extinguisher expends and the respondent retreats. Hose reels theoretically do not have a limited capacity and risk civilians remaining beyond what is safe for them to do so
- Introduction of trip and slip hazards

Where Authorities agree to the omission of hose reels, submissions will often include mitigating measures such as additional fire extinguishers.

The necessity for hose reels or otherwise could not have been considered by the Authority in the absence of a suitable risk-based assessments during the course of the application.

The logic of the TGD B 500m² threshold was not explored by the Appellant. The car park accommodates both staff and members of the public includes segregation measures that restrict access to parts of the car park. The complexities arising from segregation of the car park and the risk profile of members of the public parking was not appraised.

The matter of hose reels has been the subject of previous consideration of the Board notably in file reference ABP-305963-19 where the Board directed the Authority to remove the condition on foot of a robust risk based assessment by the Applicant.

The appellant did not initially address the matter and when it has arisen in the additional information request, no risk-based assessment has been offered whereby the Fire Authority could not have reasonably considered the matter. The application addressed the issue as a B5 requirement as opposed to correctly considering it under B1.

In accordance with Article 4(3) of the Building Control Act, the subsequent further submissions made by the Appellant regarding the risks posed by hose reels cannot be considered.

The Building Control Regulations require “Where a building control authority decide to grant a fire safety certificate with or without conditions, the form set out in the Fourth Schedule or a form substantially to the like effect, shall be the form of every such certificate and where the fire safety certificate is granted subject to conditions, **they shall inform the applicant in writing of the reasons therefor**”

The Building Control Regulation intention being transparency in order to ensure the condition may be implemented. Unfortunately, there are no practice notes similar to those of The Office of the Planning Regulator or Development Management Guidelines for Planning Authorities (2007) published in relation to the application of Fire Safety Certificate Conditions. In the absence of same, there is value in referring to the Development Management Guidelines for Planning Authorities (2007).

The Development Management Guidelines for Planning Authorities (2007) provide guidance for planning authorities on the drafting and imposition of conditions and, in particular, state that the purpose and meaning of conditions must be clear, precise and unambiguous to ensure enforceability.

The guidelines suggest that, for conditions to be legally valid, they should satisfy six basic criteria, as illustrated in Figure 1.1. Figure 1.1. Illustration of the Six Basic Criteria for Imposing Conditions as Identified in the Section 28 Development Management Guidelines for Planning Authorities, 2007

Figure 1.1. Illustration of the Six Basic Criteria for Imposing Conditions as Identified in the Section 28 Development Management Guidelines for Planning Authorities, 2007.



¹ Development Management Guidelines for Planning Authorities, DEHLG, June 2007.

The Office of the Planning Regulator states that any condition applying to a decision shall “be clear and precise to enable the planning authority, the developer and all interested parties to determine whether or not the terms of the condition have been satisfactorily complied with or if enforcement would be warranted. Broad statements should be avoided”. The reasoning for the Conditions proffered by the Authority does not in my Opinion meet the intention of the Building Control Regulations and guidelines are necessary in the absence of same.

Condition 9:

“The AHU plant areas at third floor level shall be separated from the adjacent accommodation by not less than 90 minutes fire resisting construction”

DCC have made no submission on the appeal. Unfortunately, no written additional information request was provided as would allow a consideration herein of the matter. The reason proffered for the condition “To comply with Part B of the Second Schedule to the Building Regulations, 1997-2021” is a broad statement and does not allow a meaningful consideration herein.

Item 26 of the BB7 additional information submission of 06th May 2022 included a description of the wall construction between the AHU and internal accommodation. The applicant in their submission of the 06th May 2022 described the open-air low risk nature of the installation and provides an understanding of the adjacencies including the available robust construction.

The appellant has reasonably justified the low risk nature of the installation and described how the available robust construction affords suitable protection of the adjacent stair/lift.

Condition 12 of the granted FSC which has not been appealed, ensures the proposed external wall construction satisfies Part B of the Building Regulations. The external walls where stair/lift are adjacent the low risk equipment have been shown as protected.

5.0 Conclusions/Recommendation

Condition 7:

On the basis of my assessment in 4.0 above, I consider Conditions 7 is necessary and I recommend that An Bord Pleanála should disallow the appeal of Condition 7.

Condition 9:

On the basis of my assessment in 4.0 above, I consider that the imposition of Conditions 9 is not necessary, and I consider that An Bord Pleanála should remove the Condition 9.

6.0 Reasons and Considerations

Condition 7:

The Consultant in the course of the Authorities consideration of the FSC did not make a suitable case to the Fire Authority as to allow the Authority to consider omitting the hose reel provision.

Condition 9:

The Consultant has suitably demonstrated the low-risk nature of the equipment and the protection available to the critical adjacencies. Condition 12 provides further comfort on the robust nature of all external wall construction.

7.0 Conditions

None

Mr. Luke Fegan

Chartered Engineer BA BAI HDip FSP MA MSc FIRE ENG CEng FIEI

Consultant / Inspector

Date : 14th August 2023