

Inspector's Report

Appeal against Refusal of a Disability Access Certificate with respect to the construction of a single storey, split level structure to accommodate a swimming pool and gym area, including some limited modification work to the adjacent Spa and Cookery School buildings. (Floor area of proposed extension 244 sq.m.)

Board DAC Appeal Ref. No.:	ABP-315136-22
Building Control Authority Ref. No.:	DAC2203328WX
Appellant:	Kevin & Catherine Dundon Dunbrody House New Ross Co. Wexford
Agent:	John Kennedy Elliot Designs Sea Breeze House Duncannon Co. Wexford Y34 XC56
Building Control Authority:	Wexford County Council
Inspector:	Michael Mohan, FRIAI
Appendix Attached:	None

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1.0 Introduction

1.1. Site description

Dunbrody House is a Protected Structure set in extensive grounds. In addition to the hotel, a pub, brewery, cookery school, spa building and other ancillary buildings are located on site.

Access to the complex is from the R733 via a long driveway to the hotel. There is a secondary driveway access from the L4052.

1.2 Subject Matter of Application

The application is for a new-build infill structure, located in the courtyards of existing buildings on the north side of and detached from the main hotel building. The proposed development comprises a swimming pool and gym which will be connected to and utilize the existing ground floor reception and changing room areas of the existing Spa building. The gym will be located at a lower floor level relative to the swimming pool and changing areas.

The Disability Access Certificate application was submitted by the Agent, John Kennedy, Elliot Design, on behalf of Kevin and Catherine Dundon and was received by the Building Control Authority (BCA) via the BCMS on the 24th June 2022 and included:

- Completed DAC application form
- Copies of drawings:

Drawing Number	Title	Scale
OSI -101	Site Location Map	1:2500@A3
DAC-101	Site Layout Plan	1:250@A3
DAC-102	Ground Floor Plan	1:100@A3
DAC-103	First Floor Plan	1:100@A3
DAC-104	Landscape Plan & Elevation	1:125@A3
DAC-105	North & South Elevation	1:100@A3
DAC-106	East Elevation & 3-D View	1:100@A3
DAC-107	West Elevation & Cross Section	1:100@A3

- Copy of the Disability Access Certificate Application Compliance Report.
- €500.00 application fee.

Revised information was requested by the Building Control Authority (BCA) on the 7th July 2022.

An extension of time request was agreed on 27th July 2022.

The BCA issued reminders to the Agent on 2nd August 2022, 27th September 2022, 29th September 2022 and 6th October 2022 regarding the request for revised information.

The Agent submitted a revised information letter & Compliance Report, dated 8th October 2022 and drawings DAC-101, DAC-102 and DAC-104, in response to the request. These were received by the BCA on 8th October 2022.

1.3 Building Control Authority Decision

The BCA issued a Notification to Refuse to Grant a Disability Access Certificate, DAC No. DAC2203328WX, Decision Date: 18th October 2022. The reasons stated by the BCA were:

Failure to demonstrate the minimum requirements of the Building Regulations 2010 Part M Access and Use as required for this proposed development, and as informed in the Revised Information Request of the 7th July 2022, in support of this application.

- I. The failure to provide independently accessible means of approach to the accessible entrance(s) of an existing building and means of circulation around an existing building.
- II. The failure to meet the necessary horizontal and vertical means of access for convenient and ease of movement to allow level access to the full range of services proposed as part of this development with specific reference to the proposed gym.
- III. The failure to provide for accessible WC and Showering facilities as per Section 1.4.3.5, TGD M 2010 Access and Use.

2.0 Information Considered

The following information considered as part of the appeal process:

2.1 Disability Access Certificate application:

Ref. No. DAC2203328WX

The application including DAC Compliance Report and drawings, listed at 1.2 above, lodged by the Agent, was received by the BCA on 24th June 2022. Revised information was received by the BCA on 8th October 2022. All of these documents were received by An Bord Pleanála from the BCA 28th November 2022.

The BCA issued a Notification to Refuse to Grant A Disability Access Certificate, DAC No.: DAC2203328WX, Decision Date: 18th October 2022. An Bord Pleanála received a copy from the BCA on 28th November 2022.

2.2 Appeal Documentation submitted by Agent:

The appeal documentation, received by An Bord Pleanála on 16th November 2022, included:

- Letter from the Agent, dated 14th November 2022, outlining the grounds of appeal.
- Copy of the BCA decision of refusal to grant a DAC.
- Cheque for €500 with respect to the fee for the appeal.

2.3 Application Documentation from BCA

Wexford County Council submitted a letter to An Bord Pleanála, dated 25th November 2022 (in response to a request from An Bord Pleanála, dated 22nd November 2022), which was received by An Bord Pleanála on 28th November 2022 and included copies of the following:

- Copy of the application submitted via BCMS.
- Copies of any plans, documents particulars, evidence of additional information obtained from the applicant.
- Copy of Validation of Application documents.
- Copies of BCA Access Officer's assessment.
- Copy of revised information request dated 7th July 2022 and reminders to the Agent dated 2nd August 2022, 27th September 2022, 29th September 2022 and 6th October 2022
- Copy of revised information received dated 8th October 2022.
- Copy of BCA Access Officer's Recommendation, dated 14th October 2022,
- Copy of Memo re Explanation for Conditions assigned to DAC application date 14th October 2022.
- Certified copy of BCA's Executive Order, dated 18th October 2022.
- Certified copy Refusal Letter for DAC2203328WX, dated 21st October 2022, addressed to the Applicant, c/o the Agent.

2.4 Notification of a Disability Access Certificate:

A Refusal Letter regarding DAC2203328WX, was issued by the BCA to the Agent, dated 18th October 2022. A copy was received by An Bord Pleanála on 28th November 2022, from the BCA. The reasons for the refusal are listed in 1.3 above.

2.5 Planning Application Reg. Ref. No. 20220207

There was no existing floor plan of the Spa building submitted with the DAC application and one could not determine the layout of the existing building from the submitted drawings. However, reference to the Planning Department's file revealed that a drawing of the existing building had been submitted with the planning application.

2.6 Observations from the BCA in relation to the appeal:

Bord Pleanála requested the BCA to provide copies of the application documentation and comments on the appeal in a letter dated 22nd November 2022. The BCA submitted two letters, both dated 25th November 2022, containing the requested documents and the BCA comments on the appeal.

3.0 Relevant history/cases

BCA's letter to An Bord Pleanála, dated 25th November 2022, mentioned enclosing copies of previous Disability Access Certificates Nos. DAC2201303WX and DAC048/14 however, these were not included in An Bord Pleanála's file.

4.0 DAC application

Disability Access Certificate application:

Ref. No. DAC2203328WX application including Disability Access Report and drawings, listed at 1.2 above, was lodged by John Kennedy, Elliot Design. It was received by the BCA on 24th June 2022. Revised information was received by the BCA on 8th October 2022. Copies of all of these documents were received by An Bord Pleanála from the BCA on 28th November 2022.

5.0 Appellant's case

John Kennedy, Elliot Design lodged an appeal on behalf of the applicant/appellant, dated 14th November 2022, against the Refusal to Grant a Disability Access Certificate DAC2203328WX. The appeal was received by An Bord Pleanála on 16th November 2022.

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

- The proposed building is located within the curtilage of a Protected Structure.
- A significant proportion of the proposed works are works to the existing buildings.

- The Agent referred to TGD Part M 2010, where he quoted :
“*the adoption without modification of the guidance in this document may not, in all circumstances, be appropriate*”.
- The proposed development will be for hotel patrons and will not be open to the public.
- It is anticipated that patrons will access the facilities only through the principal entrance door facing the hotel.
- Other accessible entrances are designated fire exits.
- The gym area will have an accessible entrance to a patio and sunken garden.
- It is not intended to have circulation around the proposed development other than to access the principal entrance to the Spa building and the patio/sunken garden leading to the gym.

6.0 Building Control Authority's case

The BCA submitted comments on the appeal, dated 25th November 2022, when requested to do so by An Bord Pleanála on 22nd November 2022 and these were received by An Bord Pleanála on 28th November 2022. The following is a brief summary of the BCA's case:

- The compliance report did not offer any circumstances whereby it was not practicable to achieve the minimum standards as per TGD M 2010
- Where no lift or lifting device is provided, the same range of services/facilities that are available on the other levels should be made available on the entry or accessible level.
- Consideration should be given to lifting devices.
- The extension itself must comply with the Building Regulations.
- The applicant failed to demonstrate the necessary compliance in their response to the Revised Information Request submission dated 8th October 2022.
- The proposed main entrance door does not provide the necessary clearance.
- Access to the patio area and sunken garden do not meet the minimum requirements of the Building Regulations.
- The steps to the patio area do not meet the recommendations in TGD M 2010.
- Information presented on entrances is conflicting and dimensions of doors were not provided when requested a part of the Revised Information.
- TGD M 2010 Section 1.4.3.5 (a) states:
“Where communal separate-sex changing and/or showering facilities are provided, accessible changing and/or showering facilities should be provided in communal areas by subdividing

the area and providing accessible space and fittings as for self-contained facilities as per 1.4.9”

- The proposal would require persons using the accessible WC/Showering and Changing Room to enter the open foyer/reception. There is no practicable evidence whereby locating the new accessible WC/Showering and Changing Room could not be provided beside communal facilities and linked to the common corridor providing those facilities.
- The applicant was informed of the requirements in the Revised Information Request, dated 7th July 2022, and failed to submit proposals for such in their response, dated 8th October 2022.

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 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 the Compliance Report, John Kennedy, Elliot Design stated that the report demonstrated that the Relevant Development, if constructed in accordance with the drawings and design details contained herein will comply with the requirements of Part M 2010 of the Second Schedule to the Building Regulations as amended.

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.

Practicability:

The application makes no reference to practicability. 0.7 TGD Part M 2010 refers:

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 Structure²; (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:

0.6 sets out the application of Part M to buildings, new and existing.

The term 'practicability' is used in connection with works (e.g. material alterations and certain material changes of use) to existing buildings which identifies instances where achieving standards of accessibility associated with new buildings is not feasible because of particular circumstances. Refer to 0.7 for guidance on determining practicability.

Where works to existing buildings are carried out in accordance with the guidance in Section 1 of this document, this will, prima facie, indicate compliance with Part M. Where it is not practicable to apply the guidance in Section 1 and works are carried out to Section 2, this will also prima facie indicate compliance with Part M.

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.

1.3.4.1.1 TGD Part M 2010:

Where no lift or lifting device is provided, the same range of services/facilities that are available on the other levels should be made available on the entry or accessible level.

8.0 Assessment

Having considered the drawings, Disability Access Certificate Application Compliance Report, details and submissions on file it is considered that a *de novo* approach is warranted.

In summary, the specific issues identified by the BCA are:

1. Provision of independent accessible means of approach to the accessible entrance(s) and the circulation around an existing building.
2. Provision of horizontal and vertical means of access to the full range of services and facilities for all users.
3. The location of the accessible shower / changing facilities. The BCA quote from TGD M 2010: "Where communal separate-sex changing and/or showering facilities are provided, accessible changing and/or showering facilities should be provided in communal areas by subdividing the area and providing accessible space and fittings as for self-contained facilities".

The BCA assessed the application on the information submitted and offered the Applicant/ Agent the opportunity to submit revised information to address the specific issues. The Agent submitted revised information which did not demonstrate how the proposed development will comply with the requirements of Part M of the Second Schedule to the Building Regulations 1997 to 2022. The BCA subsequently issued a Refusal Letter to Grant a Disability Access Certificate. An appeal against that refusal was submitted to An Bord Pleanála.

In my opinion, the proposals require amendment. Insufficient information was submitted to allow a DAC to be granted. I am also of the opinion that the following should have been considered / addressed / demonstrated in the DAC application:

1. The accessible approach routes to the subject building from the grounds and the main hotel building should be presented in sufficient detail to demonstrate compliance with the Building Regulations.
2. The outward opening door to the main entrance DG01 opens in such a direction that it could present a hazard to people approaching from the designated disabled car parking bays. Reversing the direction of the door swing should be considered. In addition, if it is possible for people to also approach this door from the other side then some form of protective guarding or plant box should be considered to prevent people being struck by the door.

3. The drawings are confusing as some fire escape doors are labelled as 'accessible entrances'. The external side doors to the swimming pool are not accessible to wheelchair users from the hotel grounds. The approach to those 'entrances' is via stepped access. It appears that it was intended that door DG01 will be the main accessible entrance and that all other external doors are fire escape doors. I do not have access to the Fire Safety Certificate application or decision however the applicant should refer to them and to all conditions attached therein.
4. The ground floor plan shows that "all doors DG01 -DG10 are to provide a clear opening width of 800mm". However, TGD M 2010 Table 2 states that a hotel is a public building and as such the main entrance door should have a clear opening width of 1000mm. The width of the opening should be widened accordingly.
5. It should be noted that Condition No. 7 of the Grant of Planning Permission, Planning Reg. No.: 20220207 stated:

If the development, as authorized by this planning permission, is required to be amended as a consequence of a granted Disability Access Certificate, drawings detailing such amendments shall be submitted for the written agreement of the planning authority within 3 months of the grant of that Disability Access Certificate.

REASON:

To ensure access for all.

6. Door dimensions should be shown on the floor plan. Scaling the ground floor plan indicates that many doors will not provide a clear opening width of 800mm. The door openings should be amended accordingly and dimensioned.
7. A platform lift should be considered for access to the gym in accordance with EN 81-41.
8. It is undesirable to have the gym opening directly into the pool area without providing a door to separate them. The latest ground floor drawing, submitted on 8th October 2022, does not show a door between the swimming pool and gym area whereas a door was included in the DAC application submitted on 24th June 2022. If a door is to be provided, then the lower flight of steps leading down to the gym would need to be altered so that the top step of this lower flight be at least 1200mm clear of the door swing. It should be possible to achieve this and at the same time provide a platform lift.
9. It is not clear if existing rooms labelled 'Change I' and 'Change II' are intended for separate Male/Female use.

10. No details were provided of the fit out of the separate Shower/Change Room which is intended for accessible use.
11. The layout should be amended so that the accessible shower/ changing room is relocated adjacent to the existing changing rooms and that it will have access to a shared common corridor with the other changing rooms.
12. As the layout stands at present, access from the changing areas to the gym area will involve passing through the pool area. Most pool operators would not allow shoes, which are worn outdoors and/or in other areas in general, to be used in the pool area. The applicant should consider if it would be possible to access the gym area separately from the showers/changing areas without having to pass through the swimming pool.
13. The shower in the existing Shower Area, between doors DC09 and DG10, is not accessible to people in wheelchairs or to some other people with disabilities. The applicant should consider providing an alternative shower at the side of the pool, inside the swimming pool structure, near door DG10 which would allow all users to shower before entering the pool itself.
14. It appears that no consideration has been given to the provision of a hoist to allow people with disabilities to enter the pool.
15. The ground levels on the north side of the gym could be altered so that the height of risers on the external steps will comply with the dimensions recommended in TGD M 2010, i.e.: between 150 and 180mm.

In my opinion, the BCA were correct in refusing to grant a DAC.

9.0 Conclusions / Recommendations

I recommend that An Bord Pleanála rejects the appeal against the BCA's decision and **Refuse** to issue a Disability Access Certificate for the following reasons.

9.1 Reasons and Considerations

Having regard to the provisions of the Building Regulations 1997 to 2022, 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 (swimming pool/gym area extension and modifications to the adjacent Spa and Cookery School buildings) to which the application relates, if constructed in accordance with the plans, calculations, specifications and particulars submitted, would not demonstrate compliance with the requirements of Part M of the Second Schedule to the Building Regulations 1997 to 2022 for the following reasons:

Reason 1:

Adequate information has not been provided to demonstrate compliance with Part M of the Second Schedule of the Building Regulations 1997 to 2022.

Reason 2:

The proposals fail to provide horizontal and vertical means of access to the full range of services and facilities for all users.

Reason 3:

Inadequate details were submitted on accessible approach routes to the accessible entrance(s) and the circulation around the existing building.

Reason 4:

Accessible shower / changing facilities have not been provided in accordance with the recommendations contained in TGD M 2010 Section 1.4.3.5 (a) "Where communal separate-sex changing and/or showering facilities are provided, accessible changing and/or showering facilities should be provided in communal areas by subdividing the area and providing accessible space and fittings as for self-contained facilities".



Michael Mohan
Inspector

4th July 2023