

Report for An Bord Pleanala

on

**Appeal against Condition 1 and 3 on Revised Fire Safety Certificate
FRV2200532MH**

for

**Conversion of Existing Attic Area to Habitable Living Space with 4
No. Rooflights to Front and Side Elevations with Ancillary Internal
Works to Previously Approved Apartment Building**

at

No. 24 Gandon Court, Athboy, Co. Meath

Client: An Bord Pleanala
An Bord Pleanala Ref: 315221-22
Our Ref: ABP_R024_Issue 1
Date: 23rd June 2023

1.0 Introduction

This report sets out my findings and recommendations on the appeal submitted by FiSCA, acting on behalf of Mr. Ollie Callan, against Condition 1 and 3 on Fire Safety Certificate FRV2200532MH by Meath County Council in respect of an application for works related to Conversion of Existing Attic Area to Habitable Living Space with 4 No. Rooflights to Front and Side Elevations with Ancillary Internal Works to Previously Approved Apartment on FS4115 at No. 24 Gandon Court, Athboy, Co. Meath.

It is noted that having regard to the nature of the Conditions under appeal, it is considered that the appeal can be adjudicated upon without consideration of the entire of the application.

1.1 Subject of Appeal

Condition 1 and 3 of the granted Fire Safety Certificate (FRV2200532MH) by Meath County Council are as follows: -

Condition 1:

The following documentation submitted for this fire safety certificate shall be complied with in full;

All reports, specifications, drawings and information submitted in the Fire Safety Certificate Application submitted on the 2nd of February 2022, together with further information received on the 3rd of February 2022, the 11th of April 2022, the 11th August 2022, and the 7th October 2022.

Reason

To ensure compliance with Parts B1-B5 of the Second Schedule to the Building Regulations 1997 to 2021.

Condition 3:

A Fire Detection and Alarm System shall be installed in the common protected stair and interconnected to all flats / maisonettes in compliance with Section 1.4.14 of Technical Guidance Document B 2006 (Reprinted 2020).

Reason

To ensure compliance with Parts B1 of the Second Schedule to the Building Regulations 1997 to 2021.

2.0 Documentation Reviewed

- 2.1 Fire Safety Certificate Application (application form, compliance report and fire safety drawings) submitted by FiSCA on behalf of Mr. Ollie Callan on 2nd February 2022.
- 2.2 Additional Information request from Meath County Council on BCMS dated 3rd February 2022.
- 2.3 Additional Information request from Meath County Council on BCMS dated 25th March 2022.
- 2.4 Additional Information from FiSCA to Meath County Council dated 11th April 2022.
- 2.5 Additional Information request from Meath County Council on BCMS dated 16th May 2022.
- 2.6 Additional Information from FiSCA to Meath County Council dated 11th August 2022.
- 2.7 Additional Information request from Meath County Council on BCMS dated 30th September 2022.
- 2.8 Additional Information from FiSCA to Meath County Council dated 7th October 2022.
- 2.9 Approved Officers Order dated 3rd November 2022.
- 2.10 Granted Fire Safety Certificate No. FRV2200532MH from Meath County Council dated 3rd November 2022.
- 2.11 Letter of Appeal from FiSCA, acting on behalf of Mr. Ollie Callan, received by An Bord Pleanála on 29th November 2022 including: -
 - 2.11.1 Application fee cheque of €500.00.
 - 2.11.2 Original RFSC application drawing and 7th October RFSC drawing & report upon which the latest Certificate was issued.
 - 2.11.3 Correspondence between the Fire Officer and FiSCA.
 - 2.11.4 Copy of FS07/058 along with the drawings and report on which it was issued.
 - 2.11.5 Copy of FSCA/4491/15 along with the drawings and report on which it was issued.
 - 2.11.6 Copy of FSC2339/20 along with the drawings and report on which it was issued.
- 2.12 Meath County Council comments on Fire Safety Certificate Appeal dated 20th January 2023 to An Bord Pleanála.
- 2.13 FiSCA response to Meath County Council dated 10th February 2023.
- 2.14 Email from FiSCA to An Bord Pleanála dated 15th February 2023.

3.0 Building Control Authority's Case

Meath County Council comment as following: -

- With respect to Condition 1 Meath County Council attached this type of condition as a standard condition attached to all Fire Safety Certificates and have done so without issue.

During the assessment process for any application further information may be requested to:

- Clarify information contained within the original application.
- Clarify information submitted in previous further information responses.
- Demonstrate compliance with sections of Part B not addressed in the original submission or not addressed in previous further information responses.

The intent of the condition is for the applicant to be cognisant of all the information they have provided during the assessment process with the latest information submitted superseding previously submitted information associated with the granted Fire Safety Certificate.

Notwithstanding this, Meath County Council accept that the wording of the condition is potentially ambiguous and open to interpretation. To that end, the wording of the condition has been revised such that the condition now reads: -

The following documentation submitted for this fire safety certificate shall be complied with in full:

Except in so far as amended by any condition(s) attached hereto, the works shall comply with the information submitted to the Building Control Authority and where the original design submission is superseded by revised information the most recent details provided shall be complied with and incorporated into the building works. The original submission was received on the xx/xx/xxxx, and revised information submitted on the following dates the xx/xx/xxxx'.

- The appropriate guidance is BS5588-1: 1990 Section 10.4 'recommendations for maisonettes with one or more storeys situated more than 4.5m above the ground or access level and entered from above or below'.

Section 2.1 of BS5588-1: 1990 defines the following: -

- Access Level as 'a level used for normal access to the building that either incorporates, or leads directly to a place of safety'.
- Place of Safety as 'a place, normally in the open air at ground level, in which persons are in no danger from fire.'

From the above definitions, the access level referred to in Section 10.4 is the final exit from a building.

In this first floor apartment attic extension application, the access level is the ground floor exit from the common protected stair to a place of safety outside the building.

The existing first floor apartment finished floor level is 2.89m above ground level. The proposed new second floor extension to the first floor apartment is 5.58m above ground level. At 5.58m above ground level the proposed second floor attic extension is more than 4.5m above ground or access level and entered from below.

Therefore Section 10.4 of BS5588-1: 1990 is applicable to this application.

The applicant proposed the provision of an external stair from the second floor to the first floor external balcony to demonstrate compliance with the alternative exit recommendations of Section 10.4 and in particular Section 10.4(b)(2) and Figure 10 of BS5588-1: 1990. This proposal was detailed in drawing No. 21711/1B which was part of the Further Information received on 7th November 2022 and was considered to be reasonable.

It is noteworthy that this external stair was proposed by the applicant and was not a condition of the granted Fire Safety Certificate.

- With respect to Condition 3 Meath County Council consider it appropriate to install a Fire Detection and Alarm System in the common protected stair and interconnected to all flats / maisonettes in compliance with Section 1.4.14 of Technical Guidance Document B 2006 (Reprinted 2020).

The applicant has included the common protected stair as part of the means of escape from the apartment in this application. No common fire detection and alarm system has been proposed for the common protected stair.

Section 1.4.14 of TGD-B 2006 (Reprinted 2020) states that in buildings where flats are accessed by a common protected stair, a common fire detection and alarm system should be provided. It should consist of: -

- A heat detector in each flat, located adjacent to the entrance door to the flat.
- A sounder in each flat, meeting the requirements of EN54-3, located in the circulation area, not more than 5m from any bedroom door,
- Smoke detectors and sounders in all common escape routes, and
- Smoke or heat detectors (as appropriate) in ancillary accommodation.

The application proposes to extend the single storey first floor apartment into a two-storey maisonette by way of an attic conversion with the second storey 5.58m above ground level. The occupancy for the proposed second floor extension is sleeping. Fire itself, in the common areas or in other apartments within the building, will not provide adequate warning to sleeping occupants in the second-floor extension to enable them to escape safely.

It is considered reasonable to install a common fire detection and alarm system in the single common protected stair in this building in accordance with section 1.4.14 of TGD-B 2006 (Reprinted 2020) reflecting the sleeping occupancy of the building and the increased risk presented by the proposed second floor sleeping accommodation attic extension to the existing first floor apartment.

4.0 Appellant's Case

The appellant submits the following argument: -

- **Condition 1**

The information submitted on the 7th October 2022 is contradictory to the information submitted on all the previous dates. Secondly, the bigger issue of the mandatory enforcement of an alternative means of escape, where none is required by the Technical Guidance. Ignoring for the moment the inept contradictions between the different submissions, the author will address the issue of the necessity or lack thereof, of an alternative means of escape.

The maisonette, subject of the application, is accessed via a communal protected stairway, at first floor level. Upon entering the maisonette, there is a protected hall and stairway giving access to the upper level of the maisonette. The rise between the two floors within the maisonette is 2.69m.

Section 10.3 of BS5588-1: 1990 states: -

10.2 Recommendations for maisonettes with no storey situated more than 4.5m above ground or access level

No maisonette should be so planned that any habitable room is an inner room unless that room is provided with a door or window complying with 11.5 for escape or rescue purposes.

The access into this maisonette is at first floor level, the upper floor is 2.69m above access level, therefore Section 10.3 of the BS applies and Section 10.4.

At no time through the dialogue between FiSCA and Meath County Council did the Fire Officer offer any reason for this onerous requirement other than to keep demanding it. A number of examples of similar case scenarios were offered, three of which were listed.

Three submissions illustrate no alternative means of escape, only the final one does. The Condition attached dictates that all the submissions be complied with in full, this is simply not possible and leaves a legal minefield if it were to go unchallenged.

- **Condition 3**

The application is for a revision to the original fire safety certificate for one of the dwellings in the development. None of the other dwellings in the building belong to Mr. Callan. This condition is therefore completely inappropriate. Mr. Callan has no authority whatsoever to enter or have an employee enter the other dwellings in the building to make the necessary installation. The other owners could quite rightly refuse Mr. Callan's employees access to their dwellings. Therefore, it may be impossible for Mr. Callan to comply with this condition.

Meath County Council's Fire Brigade have appropriate powers under the Fire Services Act of 1981 to serve the appropriate Notice upon the Management Company of the development.

The appellant responds to Meath County Council's comments as follows: -

- Notwithstanding Mr Eaton's response, the fact remains, that Mr. Callan's Fire Safety Certificate has an ambiguous and arguably inappropriate text for the Condition, and it needs to be altered to have any hope of being legally binding.
- There is no dispute with regard to the definitions found in BS5588-1: 1990. The dispute arises from the interpretation of the meaning of 'internal planning of maisonettes'. Substantiating evidence was offered from other Fire Officers by way of other similar type of developments, which didn't require an alternative means of escape. It is noteworthy, that the appellant has many more examples besides the three offered.
- The first floor of the maisonette is not more than 4.5m above its access level and therefore should have to comply with Clause 10.3 of BS5588-1: 1990 and not Clause 10.4. The maisonette did not have inner rooms and therefore does not require an alternative means of escape.
- It is dishonest and disingenuous of Mr Eaton to say it was noteworthy to imply that the external stairway was proposed by the applicant. Such a statement couldn't be further from the truth. It was provided under duress, as seemingly being the only way of getting a grant or refusal for the application. It was only provided after the third request for additional information has been received with the same demand as the first and second requests. It must be emphasised that the applicant did not provide the external stairway willingly.
- There is no dispute with the requirement for the provision of a Landlords fire detection and alarm system in the common stairway. The dispute arises from the manner in which it is imposed upon Mr. Callan. It was very remiss of the Fire Officer not to have imposed the same requirement on the original Fire Safety Certificate.

The appellant email to An Bord Pleanála further comments: -

- The board should overturn Meath Council's Condition to impose an alternative means of escape from the maisonette given that the recommendations in BS5588-1: 1990 are now supported by the new draft Technical Guidance Document B (section enclosed, p81). Section 1.6.3.2 of which would simply require the maisonette to have a protected stairway, no alternative mean of escape is required.

5.0 Consideration

Condition 1: -

The appellants statement in their email ‘..Meath Council’s Condition to impose an alternative means of escape from the maisonette..’ is not correct. It is important to note that Meath County Council did not Condition an alternative means of escape. They requested the appellant to provide one in their Additional Information requests and then FiSCA in their Additional Information dated 7th October 2022 changed the design and provided the requested alternative means of escape. They were not required to offer this change in design and could have insisted that Meath County Council either grant with condition or refuse the application. Whilst this might not have been the appellant’s preferred approach that option was available.

It is quite remarkable that the appellant refers to their own submissions as having inept contradictions between the different submissions as part of the argument in their appeal.

That there are multiple submissions does not give the appellant a choice in design to follow. The latest submission overrides previous submissions. For example, if the appellant had made a further submission where he changed back to the original design, then the Building Control Authority would have had to assess the application on this basis and not on the basis of an alternative means of escape having been provided.

The appellant has the right to change their mind on issues during the submission process, but the most recent submission must override previous submissions.

It is noted that if the Condition 1 had not been added by the Fire Officer / Building Control Authority then the alternative means of escape would still have been required as part of the granted Fire Safety Certificate.

It is noted that is irrelevant whether or not an alternative means of escape would have been recommended by TGD-B 2006 or BS5588-1: 1990. The point is moot as the appellant made the decision to offer an alternative means as part of their final submission of Additional Information. Once the Fire Safety Certificate was granted on this basis the only means of changing the design would be to lodge a new Fire Safety Certificate application to do so.

The purpose of the Condition was to ensure that the applicant was aware of the basis on which the Fire Safety Certificate was granted and that it included not just the original application but also subsequent submissions in support of the application. This type of condition is common practice with Local Authorities and is to be recommended. As acknowledged by the Building Control Authority the wording of the Condition could be clearer and they have now reworded it so that it is clearer.

Condition 2: -

The purpose of the application is for internal alterations to an individual dwelling within the building. There is no change proposed to the common areas of the building. Indeed, the proposed change to the apartment would not alter the recommended fire detection and alarm system required to the common areas of the building.

It seems that the Building Control Authority is using this application as a means of rectifying an issue with the common areas of the building. That is not fair on the applicant / appellant who is an owner of an individual unit and not the building as a whole. The appellant is correct

in stating that if Meath County Council's Fire Brigade have concerns over the fire detection and alarm system to the common areas to the building, they have appropriate powers under the Fire Services Act 1981 to serve the appropriate Notice upon the Management Company of the development.

6.0 Reasons and Considerations

Condition 1: -

Given the above and the clear fact that the appellant submitted Additional Information offering an alternative means of escape there is no basis for this to be removed as part of an appeal. As acknowledged by the Building Control Authority the wording of Condition 1 could be clearer and it would be appropriate for this to be changed to the wording as recommended by the Building Control Authority.

Condition 2: -

The fire detection and alarm system to the common areas is beyond the scope of this application. The appellant is correct that this not an appropriate Condition given the scope of the application.

If Meath County Council's Fire Brigade have concerns over the fire detection and alarm system to the common areas to the building, they have appropriate powers under the Fire Services Act 1981 to serve the appropriate Notice upon the Management Company of the development.

7.0 Conclusions and Recommendation

On the basis of my findings and conclusions I recommend that An Bord Pleanála instruct that Condition 1 is reworded as recommended by Meath County Council and that Condition 3 is removed.

Signed by:

Des Fortune

MSc(Fire Eng), BSc(Eng), CEng MIEI, MIFireE

Date: **23rd June 2023**