



JENSEN HUGHES

Appeal Against Condition attached to Fire Safety Certificate (FSC2204719/KE)

Project	Construction of a new community nursing unit, St. Vincent's Hospital, Woodstock Street, Athy, Co. Kildare
Local Authority	Kildare County Council
Date	2nd June 2023

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1.0 INTRODUCTION

This case concerns the appeal of one condition attached to the Fire Safety Certificate for the construction of a new community nursing home unit at St. Vincent's Hospital, Woodstock Street, Athy, Co.Kildare. A fire safety certificate was granted by Kildare County Council (Ref: FSC2204719KE) on the 23/11/2022. Two conditions were attached.

Condition 1

The building is to be constructed in accordance with all the particulars submitted with the Fire Safety Certificate application and the revised information received on the 26th of October 2022, the 22nd of November 2022 and the 23rd of November 2022.

Reason: To ensure compliance with the Building Regulations.

Condition 2. A category 3 sprinkler system is to be provided in accordance with the requirements of BS 9251:2021 (Fire Sprinkler systems for domestic and residential occupancies – Code of Practice), together with the special requirements for life safety systems in accordance with the LPC Rules for Automatic Sprinkler Systems incorporating IS EN 12845: 2015 (+AC:2016) (+A1:2019). The minimum duration of supply for the combined stored water capacity for the system is to be 60 minutes.

Reason: In the interest of life safety.

An appeal was submitted by FCC Fire Safety Engineers on the 16th December 2022. The subject of this appeal is condition 2.

2.0 INFORMATION REVIEWED

In assessing this appeal, the following information was considered: -

- Fire safety certificate application compliance report and drawings submitted 31 August 2022
- Further information submission by FCC dated 25 October 2022
- Further information request by Kildare County Council dated 16 November 2022
- Further information submission by FCC dated 21 November 2022
- Further information request by Kildare County Council dated 23 November 2022
- Further information submission by FCC dated 23 November 2022
- Fire Safety Certificate grant dated 23 November 2022.
- Appeal submission by FCC dated 16 December 2022
- Kildare County Fire Service response to appeal dated 13 January 2023.

3.0 DISCUSSION

The appellant has submitted an appeal and made a number of points to support their case. The BCA have addressed these one by one in their response. Rather than deal with the appellants and BCA's points separately, I have addressed them jointly.

3.1 Point 1

The appellant has stated:

"The building has been designed in compliance with Part B of the Building Regulations and with the guidance contained within TGD Part B 2006 which is the relevant guidance document for this building purpose group"

The BCA's response to this is that TGD B is not the only method of compliance with Part B of the Building Regulations. They quote *"The BCA consider that the Building Regulations "shall not be construed as prohibiting compliance with a requirement of these regulations by the use of any other suitable material, method of construction or specification" and are therefore within their scope to require compliance with another standard to demonstrate compliance with the Building Regulations in respect of fire and life safety.*

The appellant is correct in stating that the current relevant guidance document (at the time of submission of the Fire Safety Certificate and now) for this type of building, is the Building Regulations Technical Guidance Document B 2006. Compliance with the TGD B is not mandatory however, and alternative design approaches are permitted. This is set out in the introductory guidance of the document. The purpose of this guidance, however, is intended to provide flexibility to designers. It is recognized that the guidance in TGD B cannot cover all building designs. However, the BCA seem to be suggesting that this permits them as the approving body to insist of whatever alternative designs they deem appropriate. This is incorrect. Compliance with TGD B is deemed prima facie to demonstrate compliance with Building Regulations. However, adopting alternative approaches to those contained in TGD is the prerogative of the designer not the approving body. Of course, the approving authority may or may not choose to accept any alternative fire engineering approach.

3.2 Point 2

The appellant has stated:

"Under the requirements of Part B of the Second Schedule to the Building Regulations, 1997 to 2019 and within the Guidance contained within TGD B 2006, a sprinkler system is not a statutory or a regulatory requirement for this type of building and therefore, it is submitted that the said condition is unwarranted and indeed economically onerous on the applicant."

The BCA's response to this is that the appellant has provided no evidence to support the claim that the provision of sprinklers would be economically onerous for the applicant. They also quote a number of other nursing homes where sprinklers have been provided. They also provide a web link to a sprinkler manufacturers website outlining projects where sprinklers have been installed.

The appellant is correct in that the current guidance in TGD B 2006 does not require sprinklers in this type of building. The BCA does not contest this. In my opinion the justification given by the BCA in relation to other buildings and a sprinkler manufacturers' portfolio of nursing homes is irrelevant to this appeal.

3.3 Point 3

The appellant has stated:

"The reason offered by the building control authority for this condition is to ensure life safety. The provision of sprinkler protection to a nursing home is not a recommendation under Technical Guidance Document B 2006, nor is it a recommendation included in the guidance on progressive horizontal evacuation for nursing homes contained within TGD B, which the fire safety design of the proposed CNU is based on. The current TGD B 2006 is the prima facie design guidance, issued by the Department of Housing, Planning and Local

Government in relation to compliance with Part B of the Second Schedule of the Building Regulations, as referenced in TGD B, which states “where works are carried out in accordance with the guidance in this document, this will, prima facie, indicate compliance with Part B of the Second Schedule of the Building Regulations”.

The main thrust of the BCA’s argument again centres around the guidance in TGD B permitting alternative approaches. They state that they consider this guidance relevant to both the design team and the BCA, meaning that they are not restricted to accept any solution in TGD B.

The issue of alternative approaches is dealt with in section 0.1.4 of TGD B. It states:

“The detailed provisions set out in this Document is intended to provide guidance for some of the more common building situations. In other situations, alternative ways of achieving compliance with the requirements of Part B of the Second Schedule to the Building Regulations may be appropriate. There is no obligation to adopt any particular solution contained herein. The use of alternative design solutions, standards, systems or methods of fire protection to those outlined in this document are acceptable, provided the level of safety achieved is adequate to satisfy the requirements of the Building Regulations.”

This guidance is intended to provide “designers” with flexibility and adopt alternative fire engineering approaches. Any solution provided by the TGD B is the benchmark and alternative solutions must at least meet this. It is the basis of the Irish Building Regulations system which is functional not prescriptive. The BCA are not correct in that this flexibility applies to both designers and approving authorities.

The BCA go on to state that in their opinion the guidance in TGD B was “lacking in its approach to life safety in nursing homes”. In their view the guidance contained in the Scottish “Building Standards Technical Handbook” is more appropriate for nursing homes and this recommends sprinklers. However, this document sets out the provisions for meeting the requirements of Building Regulations in Scotland not Ireland and is therefore, not appropriate in this instance.

3.4 Point 4

The appellant has stated:

“The only recommendation for sprinkler protection in TGD B 2006 is as follows (in 1.3.5.4 I): “If the building has a storey with a floor over 30m above ground level, the building should be protected throughout by an automatic sprinkler system meeting the relevant recommendations of BS 5306 Fire extinguishing installations and equipment on premises: Part 2 specification for sprinklers systems i.e. the relevant occupancy rating together with additional requirements for life safety.” It is noted that the proposed building is well under 30m (only two storey), so it is clear that to comply with Part B there is no requirement for the provision of sprinklers to the proposed CNU”.

The BCA state that when deciding to condition sprinklers to this building, it was on the basis of TGD B 0.1.7 which assumes an adequate level of fire safety management when the building was in use. They state that based on their experience of inspections in nursing homes this assumption is fundamentally flawed and for this reason they have relied on the Scottish Technical Standards requirement.

The appellant is correct that the TGD B does not require sprinklers. Sprinklers would be required in other instances e.g. permitting larger compartment sizes, extent of unprotected areas on elevations but that is not relevant to this case. The BCA have not provided any evidence for their assumption that the fire safety management in the building is likely to be lacking.

3.5 Point 5

The appellant has stated:

“It should be noted that this sprinkler condition issue has ben previously adjudicated upon by An Bord Pleanala in at least 6 previous appeals (ABP 309670-21, ABP 308559-20, FS.29B.FS0525, FS.29B.FS0530, FS.29B.FS0572, ABP-301450-18). These appeals were reviewed by a number of different inspectors, and all concluded that the imposition of a condition requiring sprinklers was not justified. In adding this condition, KCC

is in effect, no longer accepting that the statutory guidance in TGD B is to be taken as prima facie indication of compliance with Part B, contrary to what is stated in TGD B. It should also be noted that there have been no changes to the Technical Guidance Document B since these appeals were adjudicated upon and therefore, the conclusion, which was correctly reached in those appeals, i.e. that the sprinkler condition should be removed – remains valid. It is also noted that the current TGD B:2006 has been subject of recent corrections and amendments which was subsequently reprinted as a 2020 edition. Even based upon the recent amendments provided to TGD B none of these pertain to the provision of sprinkler systems within a community nursing home.”

The BCA do not acknowledge the previous appeals listed by the appellant where a condition to include sprinklers in nursing homes was removed. They state that in their view the TGD B is in need of a comprehensive review and update to take account of advances in fire safety.

It is noted that in January 2023, a draft version of TGD B was published with proposed revisions. One of the proposed changes is that sprinklers would be recommended in multi-storey nursing homes. However, this is not considered relevant in this case due to:

1. The document is in draft and issued for public consultation only. This proposed change for nursing homes may or not be included in the final publication.
2. Even if a requirement for sprinklers was included in the final publication, any new guidance contains a transition period whereby compliance with previous guidance is appropriate for projects already advanced. That would be the case for this building.
3. The relevant guidance available to the appellant at the time of the fire safety certificate application and to the BCA when assessing this application was TGD B 2006.

3.6 Point 6

The appellant has stated:

“The proposed nursing home (CNU) at St. Vincent Hospital Site, Athy, comprises one of twelve important infrastructural National HSE CNU projects, across the country, of similar size, design and fire strategy. All other Building Control Authorities have granted similar applications without said sprinklers condition”.

The BCA simply replies to this that the appellant has not provided any evidence in support of this statement.

Whilst every project is different and should be considered on their own merits, the appellants statement (assuming it is correct) does demonstrate that unsprinklered nursing homes are normally granted fire safety certificates in Ireland without a condition requiring sprinklers.

3.7 Point 7

The appellant has stated:

“In any case, any recommendations issued in respect of compliance with Part B should be consistent across all building control authorities: this is in line with the Framework for Building Control Authorities (CCMA, June 2016, Section 3.4: Standard Approaches :”to ensure that consistent standards will apply across authorities). It is not reasonable to have different standards applied (as is the case here) to a new CNU project in Kildare (subject of this appeal) and a similar design and fire strategy, in different Local Authorities nationwide.”

The BCAs response to this is that the appeals quoted by the appellant demonstrate that BCA's are being consistent by conditioning sprinklers. I would note here that this is a small number of buildings (6) spread over a number of years. The BCA then goes on to reiterate the stance that the TGD B permits the approving authority to adopt alternative design solutions. I have already commented on this above.

3.8 Summary

The appellant submitted a fire safety certificate application for a two-storey nursing home and based the fire safety design on the guidance in Building Regulations 2006 Technical Guidance Document B. This was (and still is) the correct design guidance at the time of submission. The guidance in TGD B does not require

sprinklers for nursing homes such as this. Whilst the guidance in TGD B is not mandatory and alternative design solutions are appropriate, this flexibility is intended for the designer not the approving authority. Compliance with TGD B demonstrates prima facie compliance with the Building Regulations. There is no dispute between parties that the building does not comply with the guidance in TGD B. For these reasons the BCA should be instructed to remove the condition.

4.0 REASONS AND CONSIDERATIONS

In arriving at its decision, the Board had regard to the Fire Safety Certificate application and details that formed part of the application, the subsequent submissions made in connection with the appeal and the reporting inspector's report and recommendation.

The Building Control Authority should be directed to remove condition 2.

Signed.....
Martin Davidson
B.Eng MSc (Fire Eng) CEng MIEI

Date: 2nd June 2023

