

Inspector's Report

Appeal against conditions attached to a Disability Access Certificate for a Gym Facility, Astro-Turf Pitch, external services and all associated site works, at Bay 161 Shannon Free Zone, Shannon, Co. Clare, V14 AW26

Board DAC Appeal Ref. No.:	ABP-316171-23
Building Control Authority Ref. No.: BCMS Submission No.:	DAC2300032CE 4006565
Appellant:	Mr. David Keating Ei Electronics 40-49 Shannon Free Zone Shannon Co. Clare
Agent:	O'Neill O'Malley Architects 2 nd Floor, Technology House Galway Technology Park Parkmore Galway Co. Galway
Building Control Authority:	Clare County Council
Inspector:	Michael Mohan, FRIAI
Appendix Attached:	None

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1.0 Introduction

1.1. Site description

The proposal is for a 2-storey extension to the Centre of Excellence Building located at Ei Campus, Bay 161 Shannon Free Zone, Shannon, Co. Clare.

1.2 Subject Matter of DAC Application

The existing building is a detached 2-storey industrial building. The proposal will include a Gym and yoga space on the first floor, new showering/changing/WC facilities in the new extension on ground floor, new Astro-Turf Pitch facility at the rear and associated site works

The Disability Access Certificate application: File Ref. No: DAC2300032CE, BCMS Submission Reference No.: 4006565, was submitted by O'Neill O'Malley Architects, on behalf of David Keating, Ei Electronics and was received by the Building Control Authority (BCA) via the BCMS system on the 18th November 2022 and included:

- Completed DAC application form and fee.
- Copies of the following drawings submitted with the DAC application on 18th November 2022:

Drawing Number	Title	Scale
21124-4000	Site Location Plan	1:2500
21124-4001	DAC Site Plan	1:200
21124-4002	DAC Ground Floor Plan	1:100
21124-4003	DAC – First Floor Plan	1:100
21124-4004	DAC – Elevations	1:100
21124-4005	DAC – Sections	1:50

- Copies of the following revised drawings submitted on 18th January 2023:

Drawing Number	Title	Scale
21124-4001	DAC Site Plan	1:200
21124-4002	DAC Ground Floor Plan	1:50, 1:100
21124-4003	DAC – First Floor Plan	1:100

- Copies of the following revised drawings submitted on 7th February 2023:

Drawing Number	Title	Scale
21124-4001	DAC Site Plan	1:200
21124-4002	DAC Ground Floor Plan	1:50, 1:100
21124-4003	DAC – First Floor Plan	1:100

- Copies of the following revised drawings submitted on 6th March 2023:

Drawing Number	Title	Scale
21124-4001	DAC Site Plan	1:200
21124-8046	Proposed Ambulant Accessible Stairs-Plans	1:20
21124-8047	Proposed Ambulant Accessible Stairs-Sections	1:2, 1:20
	Proposed Ambulant Accessible Stairs-Details	1:10

- Copy of Disability Access Certification Report.

1.3 Building Control Authority Decision

- The BCA issued a Disability Access Certificate File Ref. No.: DAC2300032CE, BCMS Submission No. 4006565, dated 14th March 2023. Four Conditions were attached to the Disability Access Certificate.

2.0 Subject Matter of the Appeal to An Bord Pleanála

O'Neill O'Malley Architects lodged an appeal on behalf of the applicant/appellant, dated 30th March 2023, against Conditions Nos. 3 and No.4 which were attached to the Disability Access Certificate, Ref. No. DAC2300032CE. The appeal was received by An Bord Pleanála on 31st March 2023.

Condition No.3:

- At least one wheelchair accessible WC should be provided at the new WC location within the extension in accordance with section 1.4.3.1(c) of TGD M 2010 which states “where more than one WC facility is provided in a building at different locations, at least one accessible unisex WC should be provided at each location”

Reason: In order to comply with Regulation M3 to Building Regulations 1997 to 2022.

Condition No.4

- Accessible changing/showering facilities should be provided within the extension in accordance with section 1.4.3.5 of Technical Guidance Document M, 2010.

The following footnote is attached to this condition:

(Please note that in accordance with section 1.4.3.5(a) of Technical Guidance Document M 2010, where communal separate-sex changing or showering facilities are provided, accessible changing or showering should be provided in the communal areas by subdividing the area and providing accessible space and fittings as for self-contained facilities as per section 1.4.9 of Technical Guidance Document M 2010. In accordance with section 1.4.3.5(b) of TGD M 2010 accessible individual unisex self-contained showering and/or changing facilities should be provided in addition to communal separate-sex facilities. Where it is not practicable to provide both communal and individual facilities, an individual unisex and accessible showering and/or changing facility should be provided as per section 1.4.9 of Technical Guidance Document M 2010.)

Reason: In order to comply with Regulation M3 to Building Regulations 1997 to 2022.

3.0 Information Considered

The following information was considered as part of the appeal process:

1. Disability Access Certificate application:

File Ref. No. DAC2300032CE, Submission No.4006565.

The application including Disability Access Certificate Application Compliance Report and drawings, listed at 1.2 above, lodged by O'Neill O'Malley Architects, which was received by the BCA via the BCMS system on 18th November 2022.

2. Appeal Documentation submitted by Agent:

The appeal documentation, received by An Bord Pleanála on 31st March 2023, included:

- Letter of appeal O'Neill O'Malley Architects to An Bord Pleanála, dated 30th March 2023.

- The list of drawings shown in the table below:

Drawing Number	Title	Scale
21124-4001 Rev.A	DAC Site Plan	1:200
21124-4002 Rev.A	DAC Ground Floor Plan	1:100
21124-4003 Rev.A	DAC – First Floor Plan	1:100

- Copy of DAC Grant DAC2300032CE.
 - Revised information request from BCMS dated 05/01/2023.
 - First Request for Information response dated 17/01/2023.
 - Revised information request from BCMS dated 23/01/2023.
 - Second Request for Information response dated 07/02/2023.
 - Revised information request from BCMS dated 01/02/2023.
 - Third Request for Information response dated 03/03/2023.
- Fee of €500.00 with respect to the appeal.

3. Application Documentation from BCA

Clare County Council, Fire and Emergency Services Department, submitted a letter to the An Bord Pleanála, dated 14th April 2023 (in response to a request from the Board, dated 3rd April 2023), which was received by the An Bord Pleanála on 18th April 2023 and included copies of the following:

- Copy of the application documents including submitted drawings (listed in the tables above) and Disability Access Certificate Application Compliance Report.
- Building Control DAC Assessments, dated 04/01/2023; 23/01/2023; 10/02/2023 and 07/03/2023.
- Revised information requests issued through the BCMS dated 05/01/2023; 23/01/2023 and 22/02/2023.
- Revised information submissions by Agent through BCMS dated 18/01/2023; 07/02/2023 and 06/03/2023.
- Telephone records of conversations between Building Control and the Agent dated 17/02/2023; 22/02/2023; 07/03/2023 and 10/03/2023.
- Record of meeting between Adrian Kelly, Chief Fire Officer and Angela Naughton, Senior Assistant Fire Officer, Clare County Council dated 21/02/2023.
- Certified copy of the Decision to Grant with Conditions dated 14th March 2023.
- Copy of previously granted DAC2015/044 for the building.

4. Notification of a Disability Access Certificate:

The BCA issued a Disability Access Certificate, File Ref. No.: DAC2300032CE, Submission No. 4006565, dated 14th March 2023. 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 25th April 2023, which was received by the Board on 27th April 2023.

6. Invitation to Agent to make a submission

An Bord Pleanála wrote to the Agent, dated 16th May 2023, inviting him to make submissions or observations in relation to the submission, dated 25th April 2023, received from the BCA.

The Agent submitted a letter in response, dated 24th May 2023 which An Bord Pleanála received on 29th May 2023.

4.0 Relevant history/cases

A previous DAC2015/044 was granted, dated 12th February 2016, for a first floor extension to the building.

5.0 Appellant's case

The following is a summary of the Appellant's case:

- The provision of one accessible WC with showering/changing facilities is sufficient to comply with the Building Regulations.
- There is no accessible internal circulation route connecting the sanitary facilities on the ground floor of the extension to the modified accessible WC/shower/changing facility on the first floor. The Agent did not think that creating a horizontal circulation route from the ground floor extension to the lift in the existing building would be feasible (as recorded in telephone record 22/02/2023).
- The Appellant conducted their own internal audit of their staff. They have one "accessible user" who has no issue with the proposal. The BCA discounted this as irrelevant.

6.0 Building Control Authority's case

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

- The proposal to modify a WC in the existing building is not sufficient to achieve compliance with the sanitary facilities provision of Part M 2010.
- If no sanitary facilities are being provided in the extension, then accessible sanitary facilities can be provided by modifying a WC in an existing building. However, where new sanitary facilities are being provided in the extension, then the new facilities must also be accessible.
- A wheelchair user would need to traverse around the building to access the Astro-Turf pitch at the rear of the building, while able-bodied people have sanitary facilities adjacent to the Astro-Turf pitch.
- As there is no internal horizontal circulation route between the ground floor of the extension and the lift in the existing building, the existing WC facilities should be modified and accessible facilities should be provided in the extension.

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.

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.*

To meet the requirements of M3: *If sanitary facilities are provided in a building that is to be extended, adequate sanitary facilities shall be provided for people within the extension.*

Technical Guidance:

TGD M 2010 0.6 (b)(i), Application of Part M, states:

“under M3, where sanitary facilities are provided in a building, adequate accessible sanitary facilities must be provided for the people within the extension i.e. people using the extension. These may be provided by accessible sanitary facilities in the extension or alternatively, those facilities in the existing building, modified where necessary, must be adequate and accessible from the extension”.

TGD M 2010 1.4.3.5 states:

- (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 as per 1.4.9;
- (b) In sport facilities, accessible individual unisex self-contained showering and/or changing facilities should be provided as per 1.4.9 in addition to communal separate-sex facilities. Where it is not practicable to provide both communal and individual facilities, an individual unisex and accessible showering and/ or changing facility as per 1.4.9 should be provided.

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.

The proposals provide for two entrances to the building: the existing entrance at the front and a proposed second one to the proposed extension at the rear. The entrance at the front provides access to a lift which can be used to access a modified accessible WC/shower/changing facility on the first floor. The second entrance provides access to separate-sex WC/shower/changing facilities on the ground floor of the extension with access to the adjacent Astro-Turf pitch. A staircase connects the ground floor sanitary facilities to the gym area and fitness/yoga studio on the first floor. There is no accessible WC/showering/changing facility proposed in the extension.

The Agent claims that the modified sanitary facilities in the existing building comply with TGD M 2010 Section 0.6. However, accessible sanitary facilities have not been provided for people within the extension. There is no accessible internal circulation route connecting the separate-sex sanitary facilities on the ground floor of the extension to the existing lift which provides access to the modified accessible WC/shower/changing facility on the first floor of the existing building. A wheelchair user would be required to change on the first floor, take the lift down to the ground floor and traverse from the front around the side to the rear of the building to access the Astro-Turf pitch. In contrast, able-bodied users will have sanitary facilities in the extension, adjacent to the Astro-Turf pitch.

The proposals are contrary to the guidance in TGD M 2010 Section 0.6, as accessible sanitary facilities have not been provided for the people within the extension, i.e., people using the extension. In addition, there is no accessible horizontal route connecting the the modified accessible sanitary facilities in the existing building to the sanitary facilities in the extension.

A spectator/player, who is a wheelchair user, attending/playing in an activity on the Astro-Turf pitch, will not have access to a WC/showering/changing facility on the ground floor whereas able-bodied spectators/players will have convenient sanitary facilities there.

TGD M 2010 1.4.3.5 (a) and (b) recommends providing both a separate accessible individual unisex self-contained showering/changing facility for independent use as well providing a similar facility within the separate-sex communal showering/changing areas.

One might ask if the recommendations contained in TGD M 1.4.3.5 (a) and (b) are proportionate and reasonable in this case. In the first instance the proposed sanitary facilities are in two different locations in the building/extension with no accessible horizontal circulation route connecting them. The accessible sanitary facilities on the first floor provide for people using the gym area and fitness/yoga studio on the first floor but they are remote from the Astro-Turf pitch at the rear. The communal separate-sex WCs/showering/changing facilities located in the extension at the rear of the building, provide direct access to the Astro-Turf pitch and for ambulant disabled to access the gym area and fitness/yoga studio on the first floor via a staircase. The sanitary facilities on the ground floor do not provide for wheelchair users. It is unreasonable to expect a wheelchair user to enter the front entrance to gain access to the lift and then the accessible WC/showering/changing area on the first floor, to return to the ground floor, exit the building at the front and traverse around the side of the building to the Astro-Turf pitch at the rear and to traverse the same route on their return. It is also not equitable with the facilities provided for able-bodied and ambulant disabled people on the ground floor. Bearing this in mind an accessible individual unisex self-contained WC/showering/changing facility for independent use should be included with the sanitary facilities on the ground floor of the extension.

According to TGD M 2010, Diagram 24, the minimum dimensions required for a self-contained accessible shower and/or changing room for independent use is 2200 x 2000mm. If a WC is to be incorporated with these as well the minimum dimensions required increase to 2700 x 2500mm (TGD M 2010, Diagram 21).

The width of each of the proposed separate-sex communal WC/showering/ changing facilities is approx. 3700mm on the submitted plans. To accommodate an accessible WC/shower/changing area within these separate-sex communal areas will result in the loss of six standard shower cubicles in both the female and male areas. If the Appellant does not want to reduce the number of standard cubicles and at the same time provide a subdivided accessible WC/shower/changing area in each, it suggests that the floor area of the extension would need to be increased in size.

The sanitary facilities on the first floor will cater for disabled users at that level. Consequently, accessible sanitary facilities in the extension will primarily be required in connection with the Astro-Turf pitch.

It appears that this building will be used by Ei Electronics staff. As such it may not have the pressure of large numbers of people which would be expected in a building open to the public. Providing accessible WC/showering/changing facilities within the communal WC/shower/changing areas will require substantial alterations to the design as mentioned above. These would require further applications for Planning Permission, a Revised Fire Safety Certificate and a Revised

Disability Access Certificate. Notwithstanding the recommendations in the TGD M 2010, it would be reasonable not to provide accessible sanitary facilities within the communal separate-sex facilities on the

ground floor but to provide for a separate individual accessible WC/showering/changing facility for independent use which will be located beside the communal separate-sex changing areas. The BCA suggested that the Store on the ground floor could be converted for this use.

8.0 Conclusions / Recommendations

In conclusion, I recommend that An Bord Pleanála directs the BCA to retain Condition No.3 and omit Conditions No.4 in the granted Disability Access Certificate.

8.1 Reasons and Considerations

Having regard to the provisions of the Building Regulations 1997 to 2022, 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

19th September 2023