

## Inspector's Report

Appeal against conditions attached to a Disability Access Certificate for the Quinlan Bar expansion development, 21 Bridge Street, Tralee, Co. Kerry.

**Board DAC Appeal Ref. No.:** ABP-316174-23

**Building Control Authority Ref. No.:** DAC2301097KY  
Submission No.4006916

**Appellant:** Liam Lyons,  
Playmore Ltd.,  
Gortagullane,  
Tralee  
Co. Kerry (V92 H261)

**Agents:** John Hegarty,  
Frank Curran Consulting  
Engineers,  
Ballygamboon Upper,  
Killarney,  
Co. Kerry (V93 CY54).  
  
and  
  
Brendan Finlay  
Michael Slattery & Associates  
19 Windsor Place  
Lower Pembroke Street  
Dublin 2

**Building Control Authority:** Kerry County Council

**Inspector:** Michael Mohan, FRIAI

**Appendix Attached:** None

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## 1.0 Introduction

### 1.1. Site description

The L. Quinlan Bar is located on the ground floor of a three-storey, mid-terrace building at 21 Bridge Street, which is a narrow street in the centre of Tralee town. There are retail premises on each side of the building. The site also includes a yard with a toilet block and outbuildings to the rear which have rear access from Market Place. There is a one-way traffic system on both Bridge Street and Market Place. The proposed development is for demolition of the outbuildings / toilet block and the construction of an extension and alterations. The proposed extension will be mostly located at ground floor level comprising two function rooms, a kitchen, keg store, ESB room and toilets. The extension at first floor level will comprise a plant room, protected corridor, stairs and roof terrace.

### 1.2 Subject Matter of Application

The Disability Access Certificate (DAC) application, BCMS, Ref. No.:4006916, was received on 12<sup>th</sup> January 2023 for an extension to the bar at ground floor level and provision of access stairways and a walkway at first floor level to serve the upper floors of the building. The drawings submitted showed a two-bedroom single family living unit on first and second floor levels over the ground floor bar whereas revised drawings, which were received by the BCMS on 20<sup>th</sup> January 2023, showed the two upper floors as “vacant”. The Building Control Authority (BCA) assessed the application based on the revised drawings.

The application included:

- Completed application form for a Disability Access Certificate
- Drawings submitted to BCMS 12<sup>th</sup> January 2023:

Drawing Number	Title	Scale
04_LL_FSC/DAC_01_0	Site Layout Plan & Site Location Map	As shown
04_LL_FSC/DAC_02_0	Existing Photographic Images	N/A
04_LL_FSC/DAC_03_0	Site Plan Survey incl Sewers	As shown
04_LL_FSC/DAC_03A_0	Site location Map & Traffic Flow Map	As shown
04_LL_FSC/DAC_04_0	Site Elevations Survey Sections A-A and B-B	As shown
04_LL_FSC/DAC_05_0	Site Elevations Survey Sections C-C, D-D & E-E	As shown
04_LL_FSC/DAC_06_0	Site Survey Ground & Sewer Sections	As shown

04_LL_FSC/DAC_07_0	Existing Site & Floor Layout Plans, Cross Section of Existing Family Residence and Ancillary Bar at Ground Floor Level	As shown
04_LL_FSC/DAC_08_0	Proposed Floor & Roof Layout Plans	As shown
04_LL_FSC/DAC_08A_0	Compartment Areas	As shown
04_LL_FSC/DAC_08B_0	Proposed Floor & Layout Plans	As shown
04_LL_FSC/DAC_09_0	Proposed Sections A-A, B-B,C-C & D-D, External Wall Details (Eastern Side of Property)	As shown
04_LL_FSC/DAC-10-0	Proposed Sections A-A / South Elevation B-B / East Elevation, Rear Elevations of Access Gate & Building	As shown
04_LL_FSC/DAC-11-0	Proposed Section C-C / West Elevation & Section E-E / North Elevation	As shown

- Drawings submitted to BCMS 20<sup>th</sup> January 2023:

Drawing Number	Title	Scale
04_LL_FSC/DAC_07_2	Existing Site & Floor Layout Plans, Cross Section of Vacant Upper Floors & Bar at Ground Floor Level	As shown
04_LL_FSC/DAC_08_2	Proposed Floor & Roof Layout Plans	As shown
04_LL_FSC/DAC_08A_2	Compartment Areas	As shown

- Disability Access Certificate Compliance Report.
- Cheque for €500.00 with respect to the application fee.

### 1.3 Building Control Authority Decision

- The BCA issued a Disability Access Certificate on 2<sup>nd</sup> March 2023, Ref. No. DAC2301097KY, BCMS Ref. No.:4006916, subject to fourteen conditions.

## 2.0 Information Considered

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

### 2.1. Disability Access Certificate application and decision:

DAC application, including Compliance Report and drawings, submitted by John Hegarty, Frank Curran Consulting Engineers,

Granted Disability Access Certificate (Reg. Ref. No.: DAC2301097KY BCMS Ref. No.:4006916).

### 2.2. Appeal Documentation submitted by Agent:

The appeal documentation submitted by Michael Slattery & Associates and was received by An Bord Pleanála on 31<sup>st</sup> March 2023. It included:

- Letter from Michael Slattery & Associates, dated 31<sup>st</sup> March 2023.
- Copy of granted Disability Access Certificate (Reg. Ref. No.: DAC2301097KY BCMS Ref. No.:4006916).
- €500 with respect to the fee for the appeal.
- Letter from Liam Lyons, dated 22 March 202, authorizing Michael Slattery & Associates to lodge the appeal on his behalf.
- Addendum to Previously Submitted Report – Appendix B.
- Revised drawings submitted to ABP:

Drawing Number	Title	Scale
04_LL_FSC/DAC_08_3	Proposed Floor Layout Plans	As shown (1:100)
04_LL_FSC/DAC_08A_3	Compartment Areas	As shown
04_LL_FSC/DAC_08B_3	Proposed Floor Layout Plans	As shown (1:50)
04_LL_FSC/DAC_12_0	Front Entrance Lobby	As shown

The appeal was against the following conditions attached to the Disability Access Certificate:

#### Condition No.1:

*This Disability Access Certificate is applicable only to the proposed works to the ground and first floor levels of Quinlan Bar, The Mall/21 Bridge Street, Tralee. It does not apply to the existing accommodation areas of the buildings on the first and second floor of Quinlan Bar, The Mall/21 Bridge Street, Tralee. The existing accommodation areas of the buildings on the first and second floor of Quinlan Bar, The Mall/21 Bridge Street, Tralee are indicated within the compliance report submitted, as not being in use and access shall only be for routine inspection, repair, or maintenance of any installed systems at these levels. The*

*existing accommodation areas of the buildings on the first and second floor of Quinlan Bar, The Mall/21 Bridge Street, Tralee shall not be used without the prior approval of the Building Control Authority i.e. the obtaining of a granted Disability Access Certificate for these levels.*

**Reason:**

*In the interest of Part M of the Building Regulations.*

**Condition No.5:**

*The outer final door leading onto Bridge Street from the premises shall be re-hinged to maximise the clear opening width of the door.*

- (a) This outer final exit door shall be held in the open position when the premises is in use. It shall not be possible for this door to be released and closed when the premises is in use.*
- (b) The inner door leading to the final exit on to Bridge Street from the premises shall be a single leaf door with a minimum clear width of 1050mm and shall be openable in the direction of escape.*

**Reason:**

*In the interest of Part M of the Building Regulations.*

**2.4. Application Documentation from BCA**

Kerry County Council submitted a letter to An Bord Pleanála, dated 27<sup>th</sup> April 2023 (in response to a request from An Bord Pleanála, dated 5<sup>th</sup> April 2023), which was received by An Bord Pleanála on 2<sup>nd</sup> May 2023 and included copies of the following:

- Certified copy of Manager's Order No.: SFS/2023/039.
- Certified copy of Disability Access Certificate Decision notice, BCMS Ref. No. DAC2301097KY, dated 2<sup>nd</sup> March 2023.
- Compliance Report
- Copies of drawings listed at 1.2 above.

### **3 Relevant history/cases**

- There are no previous DAC cases related to this premises.

## 4 Appellant's case

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

### Condition No.1:

- Requirement M4 of the Building Regulations excludes alterations and extensions to existing dwellings from Part M.
- Condition No.1 should be removed as the existing dwelling over the bar within a protected structure is not subject to Part M.

### Condition No.5:

- The approach via the existing bar entrance is in a protected structure and is not subject to Part M.
- Adequate independent approach is provided directly to the extension with two entrances from Market Place.
- The proposed access arrangements satisfy the functional requirements M1 to M4 of the Building Regulations.

## 5 Building Control Authority's case

### Condition No.1:

- The BCA assessed the DAC application on the latest documents which were submitted via the BCMS on 20<sup>th</sup> January 2023.
- The Agent's submitted compliance report states:
  - (a) *'The existing development consists of a listed building comprising of a public house with a vacant area over the first and second floors.'*
  - (b) *'This is a new facility / extension to enhance this existing licensed premises with existing vacant area over on the first and second floors.'*
  - (c) *'The vacant upper floors have been excluded from this application save for servicing/services to which it will be accessed from the first-floor open terrace for this purpose.'*
  - (d) *'The three external steps in the rear extension are on the first-floor external route from the 1200mm wide protected walkway/street to the first-floor roof terrace which will be a service access route to the existing vacant upper floors over the existing bar.'*
- The BCA state that the reason they attached Condition No.1 is that any potential access routes to the vacant upper floor levels would require assessment as they may pass through newly extended areas.

- The existing upper stories are indicated as “vacant” throughout the technical submission. The granted DAC does not include those areas.
- The BCA argue that appeal documents submitted to ABP are additional revised documents which have not been reviewed or assessed by the BCA. They should be submitted as part of a Disability Access Certificate application to the BCA.

**Condition No.5:**

- The applicant did not submit any conservation report. The BCA consulted the Conservation Officer in Kerry County Council who advised that suitable re-hanging to maximize the outer final exit door’s clear opening width is acceptable.
- With respect to the inner doors in the front entrance lobby, the BCA state that a single leaf door opening outwards in the direction of escape will make this door more accessible.

## 6 Considerations

### 6.1 Level of detail provided in the application to meet the requirements of the Building Control Regulations 1997 to 2018

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 subparagraph (c), they shall return to the applicant all the documents and the fee which accompanied the application.*

## **6.2 Meeting the requirements of Part M of the Building Regulations**

### **Legislative Considerations**

SI No. 306/1991 – Building Regulations 1991 includes the following definitions:

*"dwelling" means a house or flat forming a separate unit of residential accommodation;*

*"flat" means a self-contained premises constructed or adapted for residential use forming part of a building;*

SI 526 of 2018, Article 4.(2) Building Control (Amendment) Regulations 2018 states inter alia:

*For the purposes of this Part, the following buildings are exempted (i.e. do not require a disability access certificate) —*

*....(b) a building used as a dwelling other than a flat,....*

### **Technical Guidance:**

In their Compliance Report/Addendum the Agents indicated that achievement of compliance with Part M of the Building Regulations is demonstrated by reference to Technical Guidance Document Part M.

Part M of the Second Schedule to the Building Regulations, (as amended), provides as follows:

*M1: Adequate provision shall be made for people to access and use a building, its facilities and environs.*

*M4: Part M does not apply to works in connection with extensions to and material alterations of existing dwellings, provided that such works do not create a new dwelling.*

TGD 2010 Part M Section 3 refers:

*The guidance in Section 3 applies to dwellings and their environs. This includes individual dwelling houses and individual apartments. It does not apply to the common areas of apartment blocks.*

Consequently, the common areas of apartment blocks require assessment and certification.

TGD 2010 Part M 0.8 regarding Existing Buildings states that:

*The application of this Part may pose particular challenges for buildings which are of architectural or historical interest. When considering works to an historic building, it is important to establish what is important or significant about the building...*

and:

*Historic buildings include Protected Structures,*

and:

*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.*

Protected Structures are not exempt from the requirements of Part M. The conservation status should be assessed and the BCA should be consulted.

## 7 Assessment

This appeal is made against Conditions attached to a Disability Access Certificate. Having considered the drawings, reports, details and submissions on file it is considered that a *de novo* approach is not warranted.

### **Assessment with respect to Condition No.1:**

The DAC application drawings/documents were originally submitted on 12<sup>th</sup> January 2023. They were amended by the Applicant in the second submission to the BCA on 20<sup>th</sup> January 2023. The areas in the upper floors were redefined in this second submission as 'vacant' and it was stated that they were excluded from the application. The Building Control Authority (BCA) assessed the application based on the revised

drawings/documents. There is no evidence on file to explain why the areas on the upper floors were amended to “vacant”.

Further revised drawings and documents were submitted with the appeal to An Bord Pleanála on 31<sup>st</sup> March 2023. These no longer referred to the upper floor areas as being vacant but showed room titles consistent with an apartment/flat. These drawings and documents had not been assessed by the BCA. The BCA contend that any potential access routes to the upper floor levels (referred to in the original application as “vacant”) would require assessment as they may pass through newly extended areas. One of the access routes to the upper floors is via a staircase from within the bar which the applicant designated as an accommodation staircase and the other one is an escape staircase providing access to the yard at the rear.

SI No. 306/1991 – Building Regulations 1991 contains the definition: *“dwelling” means a house or flat forming a separate unit of residential accommodation.* However, SI 526 of 2018, Article 4.(2) Building Control (Amendment) Regulations 2018 make a distinction between a dwelling and a flat. Dwellings are exempted from the requirement to obtain a Disability Access Certificate according to SI 526 of 2018, Article 4.(2) Building Control (Amendment) Regulations 2018 whereas a building containing a flat is not exempted.

The Agent claims that the “existing dwelling over the bar” is not subject to Part M. In this case, the areas over the bar on the first and second floors would constitute a flat and are subject to Part M. As such they would not be exempted and would require a Disability Access Certificate.

Common areas of apartment buildings are subject to Part M of the Building Regulations and require assessment and certification for disability access.

The BCA are correct in requesting the applicant to submit a Disability Access Certificate application for the alternative proposals for the first and second upper floors and the access routes to them.

#### **Assessment with respect to Condition No.5:**

The Agent is incorrect in stating that the existing bar entrance, in a protected structure, is not subject to Part M. Reference to TGD Part M 2010 0.8 recognises the *challenges for buildings which are of architectural or historical interest* and advises that *it is important to establish what is important or significant about the building* and that *liaison with the local Building Control Authority on alternative approaches based on the principles contained in this document (TGD M) may be more relevant and should be considered.* No conservation report or architectural impact assessment was submitted with the application.

The Agent maintains that two proposed accessible entrances from Market Place (through the rear yard) will provide adequate independent approach to the extension. To treat people equally, access for all from the street through the main entrance is preferable to a secondary entrance through a rear yard. The conservation and architectural issues, with respect to the main front entrance, should have been assessed for their conservation/architectural impact in the first instance.

The BCA consulted their own Conservation Officer in Kerry County Council who advised that suitable re-hanging to maximize the outer final exit door's clear opening width is acceptable.

The BCA also considered that a single leaf door, opening outwards in the direction of escape, instead of two inner doors in the front entrance lobby would be more accessible for use by all persons.

The inclusion of Condition No.5 will make the building more accessible and will not adversely affect the protected status of the building.

## 8 Conclusions / Recommendations

In conclusion, I recommend that An Bord Pleanála rejects the appeal against Conditions Nos.1 and 5 in the granted the 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 as set out above, will comply with the requirements of Part M of the Second Schedule to the Building Regulations 1997 to 2023.



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Michael Mohan, FRIAI  
Inspector

5<sup>th</sup> April 2024