



An  
Bord  
Pleanála

## FSC Report

**ABP 316175 - 23**

**Appeal v Refusal or**

**Appeal v Condition(s)**

**Development Description**

Appeal to Conditions attached to a  
Granted Fire Safety Certificate

The Application refers to a proposed  
extension at the rear of a bar at 21  
Bridge Street, Tralee Co Kerry.

**An Bord Pleanála appeal ref number:** 316175 - 23

**Building Control Authority Fire Safety  
Certificate application number:** FSC2301092KY

**Appellant & Agent:** Mr Liam Lyons (Appellant) Michael  
Slattery and Associates (Agent)

**Building Control Authority:** Kerry County Council

**Date of Site Inspection** Not Applicable

**Inspector/ Board Consultant:** Eamon O Boyle, Eamon O Boyle and  
Associates

**Appendices** Not Applicable.

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## **1.0 Introduction**

- 1.1. A Fire Safety Certificate application was received by the Building Control Authority (Kerry County Council) on the 8<sup>th</sup> January 2023. The application sought to demonstrate compliance with Part B of the Second Schedule of the Building Regulations (S.I. 497: 1997 and amendments). The application is concerned with an extension at the rear of a bar at 21 Bridge Street, Tralee, Co Kerry. A Fire Safety Certificate was granted with seventeen conditions on the 2<sup>nd</sup> March 2023.
- 1.2. The Fire Safety Certificate Application concerns the construction of an extension to the rear which discharges to Marketplace of the original bar at 21 Bridge Street.
- 1.3. The appeal relates to three conditions (Conditions 3,8 and 10) attached to the grant of the Fire Safety Certificate. The reason stated for conditions 3,8 and 10 by the Building Control Authority was in the “interest of Fire Safety”.

## **2.0 Information Considered**

- 2.1. In considering the application I have referred to the following information.
  - Fire Safety Certificate Application and Drawings
  - Submission of appeal by Michael Slattery and Associates dated the 31<sup>st</sup> March 2023 together with addendum and drawings and supplementary information received by An Bord Pleanala on the 21<sup>st</sup> June 2023
  - Submission by the Building Control Authority in response of the appeal submitted by the appellant dated 27<sup>th</sup> April 2023 and subsequent submission on the 18<sup>th</sup> April 2023 to An Bord Pleanala.

### 3.0 Relevant History/Cases

- 3.1. I am not aware of any previous appeals that have been submitted in respect of similar issues have arisen.

### 4.0 Appellant's Case

The appellant states that guidance is provided in Technical Guidance Document B (TGDB) is the appropriate guidance to achieve compliance with the functional requirements of Part B of the Second Schedule of the Building Regulations. The appellant further notes that the approach within TGDB provides one method for achieving compliance. The appellant is of the view that sections 1.2 to 1.4 of TGDB in respect of means of escape in public houses and similar premises is considered to be the appropriate guidance.

The appellant sets out their grounds for appeal of Condition 10 as follows:

- Wording of condition 10
- Reason for appeal
- Consideration of TGDB recommendations
- Arguments and conclusions

The Wording of condition 10 is as follows

*All protected stairway enclosures serving the first-floor corridor walkway and the entire floor corridor/walkway shall be protected by a smoke pressurization system complying with I.S. EN 12101 – 6. This system shall be adequately maintained.*

*Reason: in the interests of fire safety*

The appellant submits that the condition exceeds the minimum requirements of Part B of the Second Schedule of the Building Regulations by reference to the particular recommendations of TGDB. They note in particular that the provision of a pressurization system to a stairway and corridor is unjustified and exceeds the requirements of TGDB, and could potentially impact on the financial viability of the project. The condition wording is also unclear in that it does not specify the class of

pressurization system to EN 121016. The provision of such a system will also require the provision of a backup power supply at great expense.

The appellant states that pressurization is not called up in TGDB except in cases where one seeks to discount stairways as set out in 1.3 .5 .2 of TGDB where either the provision of lobby protection or pressurization is considered acceptable. In the case of the premises to which this appeal relates the stairs enclosure which has been conditioned to be pressurized has been provided to accommodate escape from a pre-existing residential unit in a protected structure and to provide a protected route from the rear of the original bar to the dwelling. As a protected lobby is provided to this protected route at ground four level between grid lines 9 and 10 with no connection between the rear stairs and the new ground floor function room it is considered that this lobby will achieve the recommended level of protection in 1.3 .5 .2 of TGDB.

**The appellant adds further information which was not included in the original Fire Safety Certificates application. The information concerns enhancements to the fire strategy included in the original Fire Safety Certificate Application.**

The information seeks to demonstrate that to further reduce risk of smoke logging in the escape route it is proposed to provide (automatically openable vents) AOV'S to the route activated by smoke detection in the enclosure and the provision of 0.05 m<sup>2</sup> permanent vent to the ground floor lobby described above, normally this is only required at a basement level lobby. The appellant further submits that this additional measure meets the requirements of 1.3 .8 .4 of TGDB for protected lobbies. The lobby ventilation required in Condition 9 is to meet the same recommendations and they are also proposing to provide access to this plant room directly from the open roof to reduce the potential threat to the protected escape route from a fire in the plant room. *(It should be noted that condition 9 is not the subject of this appeal however it is mentioned by the appellant in their submission).*

The appellant sets out their grounds for appeal of Condition 8 <sup>(1)</sup> as follows:  
Condition 8 states

(1) In Paragraph of 2.4 of the appeal the appellant makes no mention of Condition 8 save for a bullet point in the Arguments and Conclusions – the Inspector is assuming that Paragraph 2.4 is in reference to Condition 8.

*The protected stairway enclosure leading to the first-floor escape route (i.e. Compartment “D” as shown on Drawing 04\_LL\_FSC/DAC\_08A\_2) and the protected stairway enclosure leading to the ground floor exit (i.e., compartment “F” as shown on Drawing 04\_LL\_FSC/DAC\_08A\_2) shall be provided with either:*

- (i) an openable window at the upper storey or landing; or*
- (ii) an openable vent having a clear openable area of not less than 1m<sup>2</sup> situated at the top of the enclosure.*

*Reason: In the interest of Fire Safety.*

It is submitted by the appellant that the means of escape for the extended bar has been designed in accordance with TGDB. The story exit widths, stair widths, travel distances comply with recommended limits set out in Sections 1.2 to 1.4 of TGDB. It is further submitted that the functional requirement of regulation B-1 of the Second Schedule of the Building Regulations has been satisfied regarding the design of escape routes. It is the view of the appellant that the fire strategy set out is in full compliance with the recommendations of sections 1.2 to 1.4 of TGD B as set out in sections 3.1 to section 3.4 <sup>(2)</sup> of their appeal.

In the section titled Arguments/Conclusion the appellant states that the means of escape are designed in accordance with section 1.2 to 1.4 of TGDB including the recommendations on protection of escape routes. The appellant further states It is proposed to provide the following (these were not included in the original fire safe to certificate application):

- Rather than openable vents proposed in condition eight, automatically open up events are proposed
- All escapes stairs will be sized for simultaneous evacuation
- And L1 fire detection and alarm system will be provided to provide adequate early warning to all occupants allowing evacuation to take place before conditions become untenable

It is further stated that a reduction in potential for smoke ingress into the protected escape route will be achieved by the provision of a ventilated lobby at the rear of the existing bar and the removal of the direct link between the plant room and the protected escape route. It is submitted that these measures will provide for

(2) There is no section 3.1 to section 3.4 included within the appeal.

enhanced protection to the route in the event that it is brought into youth as an escape from the residential accommodation. The use of the residential accommodation is contingent on making an application for a further fire safety certificate and is not considered in this appeal or fire safety certificate application.

The appellant sets out their grounds for appeal of Condition 3 as follows:

Condition 3 states:

*(a) The outer final exit door leading on to Bridge Street from the premises shall be rehinged to maximise the clear opening width of the door. 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 lobby 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 1050 mm and shall be openable in the direction of escape*

*Reason: In the interest of Fire Safety.*

An addendum to the appeal was submitted by Frank Curran B.E. which addresses the conditions attached to the granted Fire Safety Certificate and the most practical means of implementing the intention of Condition 3 which is considered on reasonable giving the protected structure status of the existing building and the conditions attached to the planning formation for this development. It is noted that the external door is kept in a fixed open position and the analysis of the escape capacities in the addendum indicates acceptable accessible capacity without modification to the entrance. This is submitted by the appellant that the above mentioned points satisfy the functional requirements of Regulation B1 to Regulation B5 of the Building Regulations.

The appellant requests the board to remove conditions 10 and 3 and modify condition 8 in line with the above.

The addendum (prepared by Frank Curran B.E.) attached to the appeal prepared by Michael Slattery and Associates appears to be preparatory rough work which in the normal course of events would not be submitted as part of an appeal. In view of the

nature of the Addendum its content and presentation it is not considered appropriate to consider it as part of the appeal.

The appellant through its agent submitted a response to the Building Control Authority submission in respect of the appeal on the 26<sup>th</sup> of June 2023. The response included the following:

- Submission from Michael Slattery and Associates (MSA)
- Drawings prepared by Frank Curran B.E.
- Frank Corran's Consulting Engineer's response to the Building Control Authority's letter dated the 27<sup>th</sup> of April 2023
- Conservation Architect's report

### **Submission from MSA**

The supplementary information submitted by MSA was intended to give an indication of the potential solutions in compliance with Part B of the Building Regulations which could be conditioned without compromising the conservation objectives of the Planning Authority.

In respect of the commentary from the Building Control Authority the appellants agent noted that it was proposed to provide automatic opening vents to the escape route and they refute the need to pressurize the escape routes due to the cost implications of such a system and the added complications in respect of backup power.

In addressing the comments of the building controlling authority in respect of Condition 10 the appellant's agent notes that a protected 90mm exit is acceptable at a capacity of 100 on the following basis:

- While not meeting the capacity of 121 referenced by the building control authority it is submitted that the new entrance is now at the rear of the building which is more than adequate to handle 1/3 of the total occupancy
- The central escape route has been reassessed as not being necessary considering the total capacity of all exists at 700 without discounting and 600 discounting the protected entrance or 400 discounting either of the rear exits



- All exits discharge at ground level and it is unlikely that an exit would have to be completely discounted as noted in paragraph 1.2 .4 of TGDB. The provision of AOV to the lobby between the existing bar and the extension will also allow that, in the event of a fire cutting off access to one of the new exits to marketplace, there will be sufficient safe queuing to accommodate the potential over demand of 21.
- Occupants of the dwelling have independent to escape via the route to Marketplace
- The revised escape analysis for the ground floor indicates the route using the stairs is not required other than to access or escape from the dwelling.

Additionally the MSA submission comments the AOV's have been proposed which satisfy Condition 8. They further submit that the requirements of condition 3 is addressed by the conservation architect.

### **Consulting Engineer's Submission**

The Consulting Engineer's submission seeks to redraft Condition 10 of the Granted Fire Safety Certificate they propose that the accommodation door set on the ground floor between Function Room 1 and Function Room 2 be repositioned to the outer end of the same wall so as a double swing internal exit fire door set, beginning at the party wall at grid line A3 it is to have a minimum sixty minutes fire rating and its width increase to provide a minimum clear opening of 1500mm, while the bar counter is to be a minimum of 4m away along the party wall. They further submit that the condition requiring smoke pressurization fire exceeds the minimum requirements outlined in TGDB. Additionally they submit it would require the provision of a backup generator, which would cost up to €250,000. It is submitted that the extra costs would threaten the viability of the project.

The report further sets out the escape provision from Function Room 1 and Function Room 2 to Marketplace. The report further sets out the exit from the existing bar to Bridge Street provides a clear opening of 900 mm in the inner lobby and 1050mm to

the outer final exit to Bridge Street. The report further relies on the submission by the conservation specialist to justify these dimensions.

### **Conservation Architect's Report**

The Conservation Architects report addresses the granted Planning Permission the Fire Safety Certificate and Disability Access Certificate. It also provides a description of the existing building the report goes on to describe the general principles associated with conservation. The Conservation Architect understands that as a mitigating measure meeting the requirements of Condition 3, an alternative proposal is to carefully alter and widen the current internal double doors to provide a clear width of 1050mm when both doors are opened as this may be achieved within the existing lobby. The conservation architect is of the view that this will impact negatively on the overhead stained glass fan light. The Conservation Architect further submits that a holistic review of the overall proposal and a technical case should be presented which demonstrate the adequacy of the existing 900mm clear opening width provided by the inner lobby doors.

## **5.0 Building Control Authority Case**

### **Building Control Authority's Case**

The Building Control Authority communicated with An Bord Pleanála on the 18<sup>th</sup> of April 2023. The Building Control Authority have recorded their concern regarding the new and revised documents and drawings submitted with the appeal. They outlined the differences between the initial Fire Safety Certificate and the documents and drawings contained within the appeal. The Building Controlled Authority referenced Article 27 (3) Building Control Regulations which suggest that an appellant is not entitled to elaborate upon or make further submissions to the granted Fire Safety Certificate as part of the appeal process.

The Building Control Authority made a further submission to An Bord Pleanála in respect of the appeal on the 27<sup>th</sup> of April 20223. These observations are based on the reports and drawings that were submitted with the original fire safety certificate

application. The Building Control authority has **not** considered the revised drawings, new drawings, reports and addendum that were submitted as part of the appeal.

#### **Condition 10**

The Building Control Authority confirms that on examination of the submitted Fire Safety Certificate application, the means of escape from the extension particularly through the Bridge Street entrance which is defined as 900 mm limits the escape provision to 100 persons in accordance with Table 1.4 of TGDB. They further state that the central escape route is entered at ground floor level into stairs No 1, which must be ascended through a door into stairs No2 and then into an approximately 21 m long protected corridor at high level, this corridor then enters into a further stairs No3, which descends to a final exit at the rear yard (Marketplace). The rear yard also contains other exits from the premises.

The Building Control Authority confirmed that they have been concerned about the central exiting route traversing 3 stairways. The Building Control Authority, outlines the potential escape routes for people leaving the property and highlight areas that could become smoke logged from persons escaping the property. The Building Control Authority had considered refusing the application, however, they took the view that if smoke could be prevented from entering the stairwell by pressurisation it would satisfy the Building Regulation (Part B) requirements. The Building Control Authority highlighted that there was no natural or mechanical ventilation referenced for the protected stairs. The Building Control Authority also cited that most deaths occur from smoke inhalation. The Building Control Authority conclude that a pressurisation system offers the facility for maintaining tenable conditions in protected spaces, escape routes, facilitates firefighting access, lobbies, staircases and other places that require being kept free from smoke.

#### **Condition 8.**

The Building Control Authority refers to Clause 5.4 .3.2 of TGDB which states that smoke control in stairways is of assistance at the later stages in the development of fire and assists fire brigade operations, smoke control is usually provided by

openable windows or openable vents at the top of an enclosure. In the Fire Safety Certificate application submission under appeal the ventilation requirement was not addressed. The Fire Safety Certificate submission did not show any appropriately sized windows or openable vents on drawings.

### **Condition 3.**

The Building Control Authority has sought advice from the Conservation Officer of Kerry Co. Co. and has been advised that suitable rehinging to maximise the door clear opening is acceptable. It is the view of the Building Control Authority that rehinging may increase the clear width by 45 to 50 millimetres, thus making an opening of 945 to 950 millimetres clear width. This increase would potentially allow one third of the ground floor occupancy exit via the Bridge Street. The Building Control Authority have noted the requirements of Clause 1.4.3.3 of TGDB states that the direction of opening of doors on escape routes should be hung so that they open in the direction of escape. In the case of small rooms or buildings, this may not be practicable or indeed necessary, but in the following situations on escape routes must always be hung to open in the direction of escape.

- From a place of special fire risk or.
- In the case of premises comprising an industrial storage, or assembly use if more than 20 people are expected to use them, or
- In the case of any other premises, if more than 50 people are expected to use them.

The clause goes on to say that all an alternative to outward opening doors, in certain limited circumstances it may be appropriate to consider the provision of doors which are held open. The Building Control Authority confirm that this case it could be considered a “certain limited situation”.

**The Building Control Authority confirmed that on receiving this appeal, an officer of the Building Control Authority measured the main entrance door**

on Bridge St. The measurement between the inside edges of the existing door frame is 1110 millimetres. The Building Control Authority is unclear as to why a 900 mm clear opening was referred to in the fire safety certificate application.

## **6.0 Assessment**

### **6.1. Details lodged with application**

- 6.1.1. We have examined the drawings, reports and submissions submitted and consider that the information is sufficient to enable ABP to decide in respect of this appeal. The inspector had difficulty in accessing the key arguments presented by the appellant and to a lesser extent by the Building Control Authority. It should also be noted that the Appellant introduced new strategies within the appeal which the Building Control Authority did not have access to in its assessment.

### **6.2. Content of Assessment**

- 6.2.1. In making the assessment it is necessary to examine the degree of compliance with the Building Regulations B1 to B5. The basis of our assessment is confined to the provisions of Technical Guidance Document B 2006.
- 6.2.2. Having reviewed the plans and particulars lodged with the appeal as well as the commentary of the Building Control Authority, we are of the view that the particulars provided are adequate to enable the ABP to establish compliance with Part B of the Building Regulations.
- 6.2.3. Having considered the case and further submissions made by the appellant and the commentary of the Building Control Authority I consider that the Building Control Authority was correct in attaching Conditions 10,8 and 3 to the original submission. Our consideration is based upon the following:
- The fact that the application did not adequately demonstrate compliance with TGD B.
  - The subsequent information contained elaborations which were contained in the original application which is not permitted in the Building Control Regulations (*Art 27(3) refers*).

To assist the An Bord Pleanála I have also considered the supplementary information provided by the Appellant and the Building Control Authority. Based on the supplementary information I would recommend as follows:

### **Condition 3**

This should remain as stated in the original granted Fire Safety Certificate as the dimensions are available in accordance with measurements taken by the Building Control Authority.

### **Condition 8**

The protected stairway enclosure leading to the first-floor escape route (i.e. Compartment “D” as shown on Drawing 04\_LL\_FSC/DAC\_08A\_2) and the protected stairway enclosure leading to the ground floor exit (i.e., compartment “F” as shown on Drawing 04\_LL\_FSC/DAC\_08A\_2) shall be provided with

- (i) Automatic openable vents in each compartment i.e. Compartments D,G and F linked to the Fire Detection and Alarm System
- (ii) An L1 Fire Detection and Alarm system in accordance with IS 3218

Reason: To comply with Part B of the Second Schedule of the Building Regulations.

### **Condition 10**

Subject to the provisions of Condition 8 (above) being attached to the Fire Safety Certificate and in view of the installation of the AOV's Condition 10 can be removed.

## **7.0 Conclusion / Recommendation**

7.1. My overall conclusion in this appeal is the are as follows:

7.2. **Original Application.** If the Board are satisfied that Article 27(3) of the Building Control Regulations applies, then Conditions 3,8 and 10 should stand.

7.3. **Supplementary Information.** If the Board is prepared to accept the supplementary information submitted in the appeal then the Conditions should be altered as stated above.

## 8.0 Reasons and Considerations

Having regard to the form and nature of the condition, the submission lodged with the Fire Safety Certificate Application and the Appeal, the reports from the Building Control Authority and the Appellant and to the report and recommendations of the reporting inspector and in particular the issues raised by the Building Control Authority , the Board is satisfied that it has been fully demonstrated that the conditions should remain, except if the Board is disposed to accept the supplementary information.



Eamon O Boyle

Chartered/Engineer  
Consultant/Inspector  
15<sup>th</sup> April 2024