

## Inspector's Report

Appeal against conditions attached to a Revised Disability Access Certificate for changes to a granted Disability Access Certificate at the proposed Lidl Store, Clonshaugh Road, Coolock, Dublin 17.

<b>Board DAC Appeal Ref. No.:</b>	ABP-316230-23
<b>Building Control Authority Ref. No.:</b>	DRV2300609DC Submission No.4007209
<b>Appellant:</b>	Lidl Ireland GmbH, Main Road, Tallaght, Dublin 24
<b>Agent:</b>	David O'Connor, Knapton Consulting Engineers, 76 Upper George's Street, Dun Laoghaire, Co. Dublin.
<b>Building Control Authority:</b>	Dublin City Council
<b>Inspector:</b>	Michael Mohan, FRIAI
<b>Appendix Attached:</b>	None

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## 1.0 Introduction

### 1.1. Site description

The Lidl Discount Retail Store is a detached single-storey building with associated car parking. The site is within the Clonshaugh Business and Technology Park. Access to the building is through the car park, from Clonshaugh Road.

### 1.2 Subject Matter of Application

A Disability Access Certificate was previously granted (BCMS Ref. No. DAC2200837DC) for the proposed building.

During construction design alterations were carried out. As a result, this application was submitted by Knapton Consulting Engineers, on behalf of Lidl Ireland, for a Revised Disability Access Certificate for the following alterations:

1. Relocation of IT Room
2. Additional Store Area
3. Minor alterations to area of office, meeting room, customer WC & Lobby.
4. Relocation of designated car parking.

The Revised Disability Access Certificate application (BCMS Ref. No. DRV2300609DC) was received by the Building Control Authority (BCA) through the BCMS on the 31<sup>st</sup> January 2023 and included:

- Completed application form for a Revised Disability Access Certificate
- Drawings:

Drawing Number	Title	Scale
101	Proposed Site Layout Plan	1:250
102	Proposed Ground Floor Plan	1:00
103	Proposed First Floor Plan- Ancillary Raised Plant Area	1:100
104	Proposed East and South Elevations	1:100
105	Proposed North and West Elevations	1:100
106	Proposed Sections S1-S1 & S2-S2	1:50
1000	Site Location Map	1:1000

- 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 Revised Disability Access Certificate, Ref. No. DRV2300609DC, on 28<sup>th</sup> March 2023. Four conditions were attached and these are shown in Section 2.5 below.

## 2.0 Information Considered

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

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

Application including DAC Compliance Report and drawings, was lodged by Knapton Consulting Engineers.

The BCA issued a Disability Access Certificate on 30<sup>th</sup> March 2022, BCMS Ref. No. DRV2200837DC.

### 2.2. Revised Disability Access Certificate applications and decisions:

Two Revised DAC applications were submitted, BCMS Ref. Nos. DRV2205772DC and DRV2300609DC respectively. A DAC Compliance Report and drawings were included from Knapton Consulting Engineers. An appeal was submitted with respect to the decision on the first application but it was invalidated by An Bord Pleanála due to time requirements.

The decision on the second application is the subject of this appeal. This appeal relates to Conditions Nos. 3 & 4 which are shown in Section 2.5 below.

### 2.3 Appeal Documentation submitted by Agent:

The appeal documentation, received by An Bord Pleanála on 6<sup>th</sup> April 2023, included:

- Original Disability Access Certificate granted on 30<sup>th</sup> March 2022, BCMS Ref. No. DRV2200837DC.
- Original DAC Compliance Report & Floor Plan.
- Revised Disability Access Certificate granted 15<sup>th</sup> December 2022, Ref. No. DRV2205772DC (for info only).
- Revised Disability Access Certificate granted 28<sup>th</sup> March 2023, Ref. No. DRV2300609DC (subject application).
- Revised Disability Access Certificate Application Compliance Report & Drawings.
- Copy of the Inspector's Report and board direction related to a previous appeal Ref. No. ABP-304924-19.
- €500 with respect to the fee for the appeal.

## 2.4. Application Documentation from BCA

Dublin City Council submitted a letter to An Bord Pleanála, dated 2<sup>nd</sup> May 2023 (in response to a request from An Bord Pleanála, dated 13<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.077/23.
- Certified copy of Revised Disability Access Certificate Decision notice, BCMS Ref. No. DRV2300609DC, dated 28<sup>th</sup> March 2023.
- Copy of drawings, documentation and report.
- Copy of decision documents for the original Disability Access Certificate Decision, BCMS Ref. No. DRV2200837DC.

## 2.5 Notification of a Revised Disability Access Certificate:

A copy of the Revised Disability Access Certificate, BCMS Ref. No. DRV2300609DC, dated 28<sup>th</sup> March 2023, was received with the appeal by An Bord Pleanála on 6<sup>th</sup> April 2023 and a further copy was received by An Board Pleanála from the BCA on 2<sup>nd</sup> May 2023.

Four conditions were attached to the Revised Disability Access Certificate:

### Condition No.1:

*The proposed works shall be carried out in accordance with the plans, specifications and other relevant information submitted with the application (as well as any information submitted subsequently by way of additional information), save insofar as may be required by any other condition attached hereto.*

**Reason:**

*In the interest of clarity.*

### Condition No.2:

*This decision does not obviate any condition attached to previous and relevant Disability Access Certificate or Revised Disability Access Certificates granted in respect of this building, save insofar as this decision relates to consideration of a specific or significant revision of the design or works (ref. nos. DAC2200837DC & DRV2205772DC).*

**Reason:**

*In the interest of clarity.*

**Condition No.3:**

*A standing user height wash basin shall be provided in addition to the finger rinse basin within the wheelchair accessible WC, in accordance with Section 1.4.5(b) of TGD M 2010, as this is the only WC available to customers. The size of the WC compartment shall be adjusted accordingly.*

**Reason:**

*To provide independently accessible sanitary facilities that meet the needs of people with a wide range of abilities.*

**Condition No.4:**

*The failure to comply with Section 1.4.3.1(c) of TGD M 2010 shall be addressed by providing a wheelchair accessible unisex WC, in accordance with Section 1.4.5 of TGD Part M 2010, within the staff locker room.*

**Reason:**

*To provide independently accessible sanitary facilities that meets the needs of people with a wider range of abilities and to avoid segregation based on a person's level of ability.*

**2.6 Observations from the BCA in relation to the appeal:**

The BCA submitted decision documents to An Bord Pleanála, dated 2<sup>nd</sup> May 2023, which were received by An Bord Pleanála the same day.

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

- There was a previous case which was decided on by An Bord Pleanála, Ref. No. ABP-304924-19. An Bord Pleanála ordered that a condition similar to Condition No. 4 be omitted in that case.

### **4 Revised DAC applications**

Two Revised DAC applications were submitted and decisions to grant these were issued by the BCA. Both were appealed but, according to the Agent, the first appeal (Ref. No. DRV2205772DC) was invalidated by An Bord Pleanála due to time requirements. The second application (BCMS Ref. No. DRV2300609DC) including DAC Compliance Report and drawings, was lodged by Knapton Consulting Engineers and the BCA issued a Revised Disability Access Certificate on 28<sup>th</sup> March 2023, with identical conditions to the first Revised DAC.

## 5 Appellant's case

Knapton Consulting Engineers lodged an appeal on behalf of the applicant/appellant, dated 4<sup>th</sup> April 2023, relating to Conditions Nos.3 and 4 attached to the Revised Disability Access Certificate BCMS Ref. No. DRV2300609DC. The appeal was received by An Bord Pleanála on 6<sup>th</sup> April 2023.

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

### Condition No.3:

A recessed standing height wash basin was installed to comply with 1.4.5(b) of TGD Part M 2010. As this is recessed it is not necessary to adjust the size of the WC compartment by 500mm. A photograph and drawing of the installed wash basin were included with the appeal documents.

### Condition No.4:

- There was no requirement from the BCA in the originally granted Disability Access Certificate, BCMS Ref. No. DRV2200837DC, to install an additional wheelchair accessible WC in the staff locker room. There was a condition to provide an ambulant disabled cubicle.
- The Revised Disability Access Certificate was granted with a new condition, after all the works had been completed, to install an accessible WC in the staff area. The design of the overall customer and staff facilities had not changed since the original DAC was granted to the extent that an additional accessible WC for staff would be required.
- The location of the existing customer accessible WC is in close proximity to the staff facilities. Staff members will be able to use the customer wheelchair accessible WC, if required.
- An Bord Pleanála adjudicated on a previous case, Ref. No. ABP-304924-19 in which they ordered a similar condition to be omitted.

## 6 Building Control Authority's case

The BCA submitted decision documents to An Bord Pleanála on 2<sup>nd</sup> May 2023. These only quoted the four conditions and related reasons referred to in Section 2.5 without any assessment or observations.

## 7 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.*

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.*



**Technical Guidance:**

In their Compliance Report, Knapton Consulting Engineers indicated that achievement of compliance with Part M of the Building Regulations is demonstrated by reference to TGD Part M: 2010.

**8 Assessment**

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

The Revised Disability Access Certificate application was submitted during the construction stage of the project for additional works after a Disability Access Certificate had been previously granted. The additional works were not related to the sanitary facilities, except for minor alterations to the customer WC and lobby. The BCA included an additional condition for the provision of an additional accessible WC in the staff locker room in the Revised Disability Access Certificate.

The main issue is whether adequate provision has been made to ensure that accessible sanitary facilities have been provided for all users to meet the needs of people with a wide range of abilities.

**Condition No. 3**

The BCA requested that a standing user height wash basin be provided in addition to the finger rinse basin within the wheelchair accessible WC and that the size of the accessible WC compartment be adjusted accordingly with reference to Section 1.4.5(b) of TGD Part M 2010.

Section 1.4.5(b) TGD Part M 2010 states:

*where there is only one WC provided in a building, a standing user height wash basin should be provided in addition to the finger rinse basin. The overall width of the room should be increased from 1800 mm to 2300 mm (or from 1500 mm to 2000 mm for a 1500 mm x 1500 mm turning space). The washbasin should not impinge on the wheelchair turning space and the rim of the washbasin should be between 780 mm*

The applicant has provided a recessed standing height wash basin which does not impinge on the wheelchair turning space so it will not be necessary to adjust the size of the WC compartment. As a result, there is no longer a need for this condition.

In my opinion, Condition No.3 should be omitted.

#### Condition No.4

Having previously issued a DAC where no separate accessible WC was required for staff, the BCA added a condition to the Revised DAC requiring the installation of an additional wheelchair accessible unisex WC within the staff locker room. Imposing an additional condition which the BCA did not consider necessary in the first instance could be considered unfair.

If the BCA opinion was generally applied, one could argue that all buildings would be required to provide two separate wheelchair accessible unisex WCs for customers and staff. This is not the intention in TGD Part M 2010 where it states:

*“Section 1.4.3 requires the provision of accessible sanitary facilities where sanitary facilities are provided in a building, whether this is for customers, visitors, or staff working in the building. It does not create a requirement for the provision of sanitary facilities in a building or for different user groups e.g. for visitors where provision has only been made for staff.”*

The above statement from TGD Part M 2010 indicates that it is acceptable to provide a wheelchair accessible unisex WC for use by both staff and customers.

As the proposed customer wheelchair accessible unisex WC will be available to staff and customers it will not segregate any particular user group but will afford the same facility to all.

The BCA refer to TGD Part M Section 1.4.3.1(c):

*“Where there is more than one WC facility provided in a building at different locations, at least one wheelchair accessible unisex WC should be provided at each location”*

The proposed development is not comparable to a building where distances between toilet facilities might be great. The staff locker room/toilets and customer toilets are located in close proximity to each other. The proposed wheelchair accessible unisex WC will be in a convenient location for use by both staff and customers. There is no specific guidance on the travel distance required for staff to use a wheelchair accessible unisex WC in the TGD Part M 2010. However, this guidance document was broadly based on the British Standard 8300 in which it advises in Section 18.5.2 BS 8300: Part 2 2018:

*“A disabled employee should not have to travel more than 40 m on the same floor from their workstation to an accessible toilet”.*

Accordingly, the travel distance(s) in this case is well within acceptable limits.

In addition to the wheelchair accessible unisex WC, the development will include for two dedicated staff toilets, one of which will be an ambulant WC. Overall the proposal sanitary facilities provide access for people with a wide range of requirements.

Furthermore, An Bord Pleanála directed, in a previous case, Ref. No. ABP-304924-19, that a similar condition be omitted.

I am of the opinion, that there is no requirement to provide an additional wheelchair accessible unisex WC in the staff locker room.

Accordingly, in my opinion, Condition No. 4 should be omitted.

## 9 Conclusions / Recommendations

In conclusion, I recommend that An Bord Pleanála directs the BCA to omit Conditions Nos.3. and 4 and to grant the Revised Disability Access Certificate.

### 9.1 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 2022.



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Michael Mohan, FRIAI  
Inspector

30<sup>th</sup> January 2024