

Inspector's Report

Appeal against a condition attached to a Disability Access Certificate for Apartment Block A (Unit 1A and 1B) at Fort Road, within the townlands of 'Ballowen or Ramsfortpark' and 'Gorey Corporation Lands', Gorey, Co. Wexford

Board DAC Appeal Ref. No.:	ABP-316262-23
Building Control Authority Ref. No.:	DAC 2300490WX Submission No.4006883
Appellant:	Pat Clancy Drangan Thurles Co. Tipperary
Agents:	Maurice Johnson & Partners The Anchorage Charlotte Quay Dublin 4
Building Control Authority (BCA):	Wexford County Council
Inspector:	Michael Mohan, FRIAI
Appendix Attached:	None

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1.0 Introduction

1.1. Site description

The site is within a proposed housing development at Fort Road, within the townlands of 'Ballown or Ramsfortpark' and 'Gorey Corporation Lands', Gorey, Co. Wexford. It comprises two residential units, one at ground floor level with a two-storey duplex unit above on the first and second floors. The overall housing development comprises 297 dwellings on circa 11.41 hectares.

1.2 Subject Matter of Application

The Disability Access Certificate (DAC) application, Building Control Management System (BCMS,) Ref. No.:4006883, was submitted on the BCMS on 11th January 2023 for construction of Apartment Block A (Unit 1A and 1B) at Fort Road, within the townlands of 'Ballown or Ramsfortpark' and 'Gorey Corporation Lands', Gorey, Co. Wexford

The application included:

- Completed application form for a Disability Access Certificate
- Drawings submitted to BCMS 11th January 2023:

Drawing Number	Title	Scale
22182-01	Site Location Map	1/110560 & 1/5280
22182-02x2	Site Plan-Apartment Block A	1/250
22182-03	Block A Unit 1A Ground Floor	1/50
22182-04	Block A Unit 1B 1 st & 2 nd Floor	1/50
22182-05	Block A Sections	1/50
22182-06	Block A Elevations Sheet 1	1/50
22182-07	Block A Elevations Sheet 2	1/50

- Drawings submitted to BCMS 25th January 2023:

Drawing Number	Title	Scale
22182-03 Revision A	Block A Unit 1A Ground Floor	1/50
22182-04 Revision A	Block A Unit 1B 1 st & 2 nd Floor	1/50

- Drawings submitted to BCMS 23rd February 2023:

Drawing Number	Title	Scale
22182-02 Revision B	Site Plan-Apartment Block A	1/250
22182-02 Revision C	Site Plan-Apartment Block A	1/250
22182-03 Revision B	Block A Unit 1A Ground Floor	1/50
22182-04 Revision B	Block A Unit 1B 1 st & 2 nd Floor	1/50
22182-05 Revision B	Block A Sections	1/50

- 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 14th March 2023, Ref. No. DAC 2300490WX, BCMS Ref. No.:4006883, subject to two 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, as well as responses to BCA requests for further information, all submitted by Maurice Johnson & Partners.

Granted Disability Access Certificate (Reg. Ref. No.: DAC 2300490WX BCMS Ref. No.:4006883).

2.2. Appeal Documentation submitted by Agent:

The appeal documentation submitted by Maurice Johnson & Partners and was received by An Bord Pleanála on 13th April 2023. It included:

- Letter (undated) from Maurice Johnson & Partners.
- Copy of granted Disability Access Certificate (Reg. Ref. No.: DAC 2300490WX, BCMS Ref. No.:4006883).
- Copy of Grant of DAC, Ref.: DAC 2300490WX.

- Conroy Architects Dwg. No. 22.002.W.2.1 Site Layout Plan
- €500 with respect to the fee for the appeal.

2.3 Subject Matter of Appeal:

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

Condition:2

The proposed pedestrian approach route from the site boundary of the development, for which the Planning Reference submitted as part of this application refers, shall be designed, and shall comply in full with no less than the requirements of the Building Regulations 2010, TGD M Section 1 for approach to the proposed apartment block.

Reason: 2

To ensure the proposed development accords with the requirements of the Building Regulations 2010 Technical Guidance Document M Access and Use. To provide independently accessible means of approach and circulation to and around the proposed apartment block.

2.4. Application Documentation from BCA

Wexford County Council submitted a letter to An Bord Pleanála, dated 24th April 2023 (in response to a request from An Bord Pleanála, dated 14th April 2023), which was received by An Bord Pleanála on 25th April 2023 and included copies of the following:

1. Copy of DAC application submitted via BCMS on 11/01/2023 consisting of:
 - Form of Application for a disability Access Certificate.
 - Disabled Access Technical Report (Compliance Report)
 - Site Location Map
 - Site layout Plan (Drawing No. 22183-02)
 - Ground Floor Plan (Drawing No. 22183-03)
 - First Floor Plan (Drawing No. 22183-04)
 - Long Section (Drawing No. 22183-05)
 - Front & Side Elevations (Drawing No. 22183-06)
 - Front & Side Elevations (Drawing No. 22183-07)
2. Copy of Further Information request letter issued (for Validation purposes) dated 16/01/2023.

3. Copy of FI response letter from Agent dated 26/01/2023.
4. Copy FI Revised Compliance Report (Technical)
5. FI - Site Layout Plan (Drawing No. 22183-02 dated 25/01/2023).
6. FI – Ground Floor Plan (Drawing No. 22183-03 dated 25/01/2023).
7. FI – First Floor Plan Unit 1 B (Drawing No. 22183-04 dated 25/01/2023).
8. Copy of Technical Validation Checklist of DAC application dated 12/01/2023.
9. Copy of Administration Validation Checklist of DAC application dated 16/01/2023.
10. Copy Revised Further Information (RFI) letter requesting clarification and further details dated 08/02/2023.
11. Copy of Revised Information response from Agent dated 23/02/2023.
12. Copy of Revised Technical Compliance Report – Revised Information.
13. RFI – Site Layout Plan (Drawing No. 22183-02 dated 23/02/2023).
14. RFI – Ground Floor Plan (Drawing No. 22183-03 dated 23/02/2023).
15. RFI – First Floor Plan (Drawing No. 22183-04 dated 23/02/2023).
16. RFI – Long Section (Drawing No. 22183-05 dated 23/02/2023).
17. Copy second Revised Further Information (RFI) letter issued requesting additional details dated 28/02/2023.
18. Copy Revised Information response from Agent dated 28/02/2023.
19. Copy Revised Technical Compliance Report submitted 03/03/2023.
20. RFI – Site Layout Plan (Drawing No. 22183-02 dated 03/03/2023).
21. Copy of File Notes Timeline Log.
22. Copy of Recommendation dated 13/03/2023.
23. Certified copy of Executive Order No. 15/2023 dated 14th March, 2023.
24. Certified copy of Disability Access Certificate No. DAC2300490WX dated 14th March, 2023 informing of the decision of the Building Control Authority, and attaching appeals procedure.

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:

4.1 The site boundary for any planning application (in this instance Ref. No. TA26.303813) is not the same defined boundary which applies to an individual statutory approval application under the building control regime (i.e. FSC and DAC applications). Each FSC and DAC application would have a defined plot of land with the individual building within the overall land holding.

4.2 Section 0.5 of TGD M 2010 notes that Section 1 of the document applies to buildings other than dwellings, and "the common areas of apartment blocks and their environs".

4.3 Section 05 further notes that "*The guidance Section 3 applies to dwellings and their environs. This includes individual houses and apartments. It does not apply to common areas of apartment blocks.*" and "*The guidance in Section 3 applies to the common areas of duplex buildings.*"

4.4 The building falling within the scope of DAC 2300490WX comprises own door entry residential units, i.e. a duplex building, where each own door unit has its own assigned parking space(s), associated access routes therefrom leading to individual apartment entrance doors, all in a similar manner to that which would apply to terraced, detached or semi-detached dwellings elsewhere in the development. As such, the building falling within the scope of the application is not considered an "apartment block" having common or shared facilities as would fall within the scope of Section 1 of TGD M 2010.

4.5 It is considered that the Block A1 development falls within the scope of duplex buildings to which Section 0.5 refers and as such falls within the guidance set out in Section 3 of TGD M 2010.

4.6 For duplex buildings, Section 3.1.2 of TGD M clearly defines the point of access (from which the provision of external routes should be provided), as being:

(a) *the entrance at the boundary of a dwelling plot, or*

(b) *the point at which a person visiting a dwelling would normally alight from a vehicle within the dwelling plot, prior to approaching the dwelling where:*

- (i) the distance between the point of access along the boundary and the main entrance, is greater than 30 m, or*
- (ii) the site gradient is such that the relative finished levels at the dwelling entrance and the point of access along the boundary do not allow for the provision of the appropriate level gently sloped or ramped approach.*

4.7 In defining the “dwelling plot”, the footnote to 3.1.2 notes that *“The dwelling plot can be taken to mean the private lands associated with the dwelling”*.

4.8 In this regard, Section 3.1.2 is clearly differentiating from individual building plots within a landholding and what would otherwise be defined as public lands within the development which will fall within the control of the local authority as public roads and footpaths.

4.9

4.10 The requirements to provide an accessible route to own door entry duplex buildings of the type considered in this application would be from the point of access set out in section 3.1.2 of TGD M 2010 and not from the main entrance to the overall land holding as being imposed by Condition No.2 of DAC 2300490WX.

4.11 The intent of Part M is not to make public footpaths serving large scale residential developments Part M1 compliant accessible routes to individual own door entry residential units, even those defined as apartments.

5 Building Control Authority’s case/response

The following is the BCA’s case/response:

5.1 “The agent in submitting the DAC application fully accepted the need for TGD M 1010 Section 1 to be applied as applicable to the application apartment block with external approach and common areas” i.e. by referring to Section 1.1 *Approach to Buildings other than Dwellings* in his compliance report and indicating that the *Basis of Compliance: Minimum requirements set out in Section 1.1. of TGD M 2010.*

5.2 “Relevant Background Information as submitted in the Agents response. Paragraph Two, is not applicable to be considered at this time as this information did not form part of the DAC application process”.

5.3 “To suggest that the site boundary is as later indicated in green REV C site layout drawings, is deemed not appropriate, as the development of an apartment block, regardless of own door access has been defined as an apartment block in the application and

presents on the drawings with common/communal facilities such as green area and communal area for bins”.

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 the Agents indicated that achievement of compliance with Part M of the Building Regulations is demonstrated by reference to Technical Guidance Document Part M 2010.

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.

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. Guidance on these areas is provided in Section 1.

The guidance in Section 3 also applies to the common areas of duplex buildings.

7 Assessment

This appeal is made against a Condition 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.

The different terms used by the Agent in the application documentation i.e. 'apartments' and 'duplex units' led to confusion for the BCA in making their assessment.

The Agent in Section 1 of his report, titled *Demonstration of Compliance – Common Area & Environs*, states that the access routes to the respective dwellings are in accordance with Section 3 of TGD M 2010 and the points of access referred to in 3.1.2.

The Agent caused further confusion by providing contradictory information in Section 2, of his compliance report, titled *Common Areas, and in Section 2.1 Approach to Buildings other than Dwellings* and indicating the *Basis of Compliance: Minimum requirements set out in Section 1.1. of TGD M 2010*.

TGD M 2010, 0.5 Section 1 sets out the minimum level of provision to meet the requirements of M1:

- (a) *buildings other than dwellings and their environs, and*
- (b) *the common areas of apartment blocks and their environs.*

TGD M 2010, 0.5 Section 3 states:

“The guidance in Section 3 (of the TGD) also applies to the common areas of duplex buildings.”

There are no common areas within duplex buildings. Each residential unit has its own entry door. The common areas of duplex buildings comprise the environs within their site.

Each individual residential unit within the duplex building will be sold sharing a designated site between the two residential units. Their legal titles will not extend beyond their own site and will not include the larger residential development site. In a similar way individual houses in the estate will be sold with their own designated sites and legal titles. Many housing developments are built on sloping sites. Part M recognises that disabled access to individual buildings may be provided from within their own sites as it may be impractical to provide accessible routes from the

overall development boundary to each individual site. To do otherwise would make some housing developments untenable.

Despite the contradictory terms and references in the application documents it is clear from the drawings that the building is a duplex unit and that the guidance in TGD M 2010 Section 3 applies.

There is a difference between the overall large housing development site approved in the planning permission and the individual sites belonging to individual houses and duplex units. The duplex buildings require individual FSC and DAC applications related to their own individual sites rather than to the overall large housing development site.

TGD M 2010 clarifies “dwelling plot” in the footnote to 3.1.2 as follows:

“The dwelling plot can be taken to mean the private lands associated with the dwelling”.

The private lands associated with this duplex building comprise its designated site and not the overall large housing development site.

8 Conclusions / Recommendations

In conclusion, I recommend that An Bord Pleanála directs the Building Control Authority to omit Condition No.2 of 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 as set out above, will comply with the requirements of Part M of the Second Schedule to the Building Regulations 1997 to 2023.



Michael Mohan, FRIAI
Inspector

3rd May 2024