



An  
Bord  
Pleanála

## FSC Report

**ABP-316907-23**

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<b>Appeal v Refusal or Appeal v Condition(s)</b>	Appeal v Condition No.3
<b>Development Description</b>	Nursing home at Church Road and the Broadmeadow River, Rowlestown River, Rowlestown Drive, Rowlestown, Co. Dublin
<b>Building Control Authority Fire Safety Certificate application number:</b>	FSC 087/23
<b>Appellant</b>	Mr. Kevin Beary
<b>Agent</b>	Eamon O'Boyle / Des Fortune
<b>Building Control Authority:</b>	Fingal County Council
<b>Inspector</b>	Luke Fegan

## **Contents**

1.0 Introduction .....	3
2.0 Information Considered.....	4
3.0 Relevant History/Cases.....	4
4.0 Appellant's Case .....	5
5.0 Building Control Authority Case.....	5
6.0 Assessment.....	5
7.0 Recommendation.....	9
8.0 Reasons and Considerations.....	9
9.0 Conditions .....	9
10.0 Sign off .....	10

## 1.0 Introduction

The application relates to a Fire Safety Certificate for the Construction of a 3 storey nursing home divided into approximately 5 no. fire compartments on an upper floor served by 4 No. escape stair designed in accordance with Table 3 HTM 05-02. The nursing home is described as being capable of accommodating 356 residents and staff.

1.1 The application relates to a Fire Safety Certificate (FSC) for the construction of a new building.

1.2 The Appeal is against Condition No.3 attached to the granted FSC 087/23.

### **Condition 3:**

1(a) Provide a sprinkler system in accordance with I.S. 12845:2015 Fixed firefighting systems- Automatic sprinkler systems- Designs, installation and maintenance including Annex F Additional Measures to improve system reliability and availability, incorporating at least one single superior water supply.

**OR**

b) Provide a Category 3 sprinkler system in accordance with BS 9251: 2021 Fire sprinkler system for domestic and residential occupancies – Code of practice, including the design philosophy of Annex F of IS EN 12845, incorporating at least one single superior water supply. The minimum duration of supply for the stored water capacity for the system shall be 60-minutes.

2. Provide self-closing devices for bedroom fire doorsets or equal equivalent (free swing closers or care free plus closers or similar)

3. Provide smoke activated fire resisting dampers for ventilation ductwork in addition to being thermally activated where the ductwork penetrates compartment construction or fire resisting construction.

**Reason:** To comply with the provisions of Part B1 of the Second Schedule of the Building Regulations, 1997-2022.

## **2.0 Information Considered**

2.1. Set out the information considered. An example is provided below:

The information considered in this appeal comprised the following:

- Drawings, Report and application form submitted with the Fire Safety Certificate (FSC) application.
- Correspondence between the Building Control Authority (BCA) and the applicant agent during the FSC application process.
- Copy of BCA decision.
- Appeal received by An Bord Pleanála (ABP) on behalf of the appellant.
- DCC Fire Prevention's Submission by BCA to ABP.
- Agent's observation of DCC Fire Prevention's Submission by BCA to ABP

## **3.0 Relevant History/Cases**

Fingal County Council provided details of FSC decision FSC 051/22 for the same site for what appears to be a very similar design where the application was granted subject to the same condition that is the subject of this appeal.

The following list of non-exhaustive Board decisions at other locations may be of assistance to the Board in determining the case.

- FS29B.FS0503 Nazareth House, Malahide Road, Dublin 3
- FS29S.305934 Garville Place, Rathgar, Dublin 6
- 29B.FS.0572 Navan Road, Cabra, Dublin
- 29B.FS.0525 Smurfit Kappa Site, Coolock

## 4.0 Appellant's Case

- 4.1. EOBA is appealing the attachment of condition 3 to the grant of the fire safety certificate, largely on the basis that TGD Part B 2006 + A1 2020 provides design guidance in respect of compliance with Part B of the Building Regulations and sprinkler coverage is not a recommendation of.
- 4.2. EOBA refers to previous adjudications by the Board on the same subject matter.
- 4.3. EOBA makes reference to due process and inconsistencies in practices by Local Authorities.
- 4.4. EOBA disputes the findings of the UK BRE report presented by the Local Authority. It is stated that *"the present value cost in lives saved is actually less than the present value of total sprinkler costs"*
- 4.5. EOBA submit that the challenges associated with the evacuation of residents is fully addressed in the building design.
- 4.6. EOBA describe the fire door failure data presented by DFB as totally misleading.
- 4.7. EOBA contend that sprinkler system have a higher failure rate in terms of effectiveness than fire doors. The assertion is unsubstantiated.

## 5.0 Building Control Authorities Case:

- 5.1. The BCA case is that the attachment of Condition No.3 is appropriate and should remain without modification. The following points are set out in support of this position. The BCA set out their position that *“the fire safety requirements for residential care homes in TGD B are not sufficient”*.

The BCA refer to BRE research as commercial justification for sprinkler protection.

The BCA make reference to evolving international practices on the subject.

The BCA raise attention to the challenges associated with the successful evacuation of a nursing home having regard to the risk profile of the residents, probable timing of an incident and available staff ratios. The BCA refer to tests that have shown sprinklers to offer suitable mitigation of the challenge.

The BCA states that current guidance is predicated upon reliance of compartmentation and fire doors and refer to PD 7974 2003 reliability data which suggest a 40% failure rate.

## 6.0 **Assessment**

### 6.1. *De Novo* assessment/appeal v conditions

Having considered the drawings, details and submissions on the file and having regard to the provisions of Article 40 of the Building Control Regulations 1997, as amended, I am satisfied that the determination by the Board of this application as if it had been made to it in the first instance would not be warranted. Accordingly, I consider that it would be appropriate to use the provisions of Article 40(2) of the Building Control Regulations, 1997, as amended.

## 6.2. Content of Assessment

An assessment of the relevant regulations, the relevant technical guidance document and all the information on the case file including the arguments put forward by the appellant and the BCA have been undertaken.

The Fire Safety Certificate application for the construction of a new building was lodged by Daire Byrne & Associates with the BCA on 21/10/2022. The relevant technical guidance document at the time of lodgement of the application was TGD Part B 2006 (2020 Reprint).

Notwithstanding the Minister responsible for publishing technical guidance has since published a new technical guidance document (TGD Part B 2024 – Fire Safety Volume 1), transitional arrangements apply as follows:

### Transitional Arrangements

This document applies to the design of works, or buildings in which a material change of use takes place, where the works or the change of use commence or take place, as the case may be, on or after 01 May 2025. Technical Guidance Document B – Fire Safety, dated 2006 (as amended), also ceases to have effect from that date. However, **the latter document may continue to be used in the case of** works or to a building in which a material change of use takes place, **where the works commence** or the change of use takes place, as the case may be, **on or after 1 May 2025**, and other than in a case where the structure of the **external walls of the building has been erected not later than 30 April 2028**—

- (a) **a planning application** for planning permission or approval under the Planning and Development Act 2000 (No. 30 of 2000) **has been made**,
- (b) a notice of a proposed development under Part 8 of the Planning and Development Regulations 2001 (S.I. No. 600 of 2001) has been given by a local authority under article 81 of those Regulations,
- (c) **a fire safety certificate** under the Building Control Regulations (S.I. No. 496 of 1997), in respect of the works or buildings, **has been granted**, or
- (d) a decision of An Bord Pleanála, under section 9(4) of the Act of 2016, in relation to grant of an application for permission for a strategic housing development, under section 4 of the Act of 2016, has been issued,

**on or before 30 April 2025.**

The BCA cite the following reason for the basis of the Condition No.3 attached to the FSC 087/23 *“To comply with the provisions of Part B1 of the Second Schedule of the Building Regulations, 1997-2022.”*

The aforementioned Regulation B1 states as follows: *“A building shall be so designed and constructed that there are adequate means of escape in case of fire from the building to a place of safety outside the building, capable of being safely and effectively used”*

Notwithstanding that the BCA question the reliability of compartmentation in their submission, it is noted that the reason cited for applying the Condition is B1 – Means of Escape rather than B3 which deals with compartmentation.

The Appellant EOBA attests the resilience of the Daire Byrne & Associates design to deal with challenges associated with an evacuation. The features of the design on a typical upper floor are as follows:

1. The design provides 4 no. escape stair diversely distributed in separate compartments capable of affording mattress evacuation.
2. The floor plan is set out in what is often described as a race track arrangement meaning continued progressive horizontal evacuation without the need to enter a stair is possible. There are no dead end conditions.
3. The floor is divided into 5 no. fire compartments.
4. Walls between bedrooms are approved as 30-minute fire resistant construction.
5. Bedroom corridors are approved as 30-minute fire resistant construction.
6. All accommodation aside from the nurse's station is fire separated.
7. An L1 grade fire detection and alarm system is available.
8. Part 2&3 of Condition 3 are not subject of the appeal whereby automatic fire and smoke dampers and self-closing devices on fire doors are available throughout the design.

The successful execution of the protection of means of escape described above is crucial. Based on the above, I would concur with the Appellants assessment that the provision for and protection of means of escape can be considered robust whereby Regulation B1 is considered to be met.

In respect of the BCA's bona fide concerns surrounding reliability of compartmentation and fire doors. It is submitted that the works are subject to completion under the Building Control Amendment Regulations which are fashioned to enhance the quality and integrity of works undertaken on site.

Thereafter once the works are completed under the BCAR process, the Owner / Operator will have statutory obligations under Section 18(2) of the Fire Services Act as follows:

*It shall be the duty of every person having control over premises to which this section applies to -*

- (a) take all reasonable measures to guard against the outbreak of fire on such premises.*
- (b) provide reasonable fire safety measures for such premises and prepare and provide appropriate fire safety procedures for ensuring the safety of persons on such premises.*
- (c) ensure that the fire safety measures and procedures referred to in paragraph (b) are applied at all times.*
- (d) ensure, as far as is reasonably practicable, the safety of persons on the premises in the event of an outbreak of fire whether such outbreak has occurred or not.*

In terms of the BCA concerns raised surrounding available staff ratios and the risk this poses to a successful outcome, it is noted that the prima facie guidance of TGD B clearly states "the guidance contained in this document has been based **on the assumption that there will be an adequate level of fire safety management** when the building is in use"

A successful evacuation relies on appropriate staff / resident ratios and suitably trained staff amongst many other management factors.



For the avoidance of doubt, an Owner / Operator has statutory obligations under Section 18(2)(b&c) of the Fire Services Act as noted above in respect of these considerations.

Where it is found that Fire Services Act responsibilities are not being met, the Authority has the powers of inspection to allow them ascertain compliance and powers of enforcement to serve a fire safety notice or a closure notice on a premises. Section 5 outlines the penalties for those found guilty of an offence under the act. Those who have not fulfilled the duties set out above may be liable for fines of up to €130,000 and/or imprisonment for up to 2 years.

## 7.0 Recommendation

I recommend the Board to direct the BCA to amend condition number 3 by removing Part 1 of the condition. Part 2&3 of the Condition shall remain.

## 8.0 Reasons and Considerations

Having regard to the presented design of the development and the compliance report, drawings and application form, to the submissions made in connection with the Fire Safety Certificate application and the appeal and to other relevant decisions made by the Board, it is considered that it has been demonstrated by the Appellant that the proposed building meets the relevant requirements of Part B1 of the Building Regulations.

It is accepted that evidence of compliance with the relevant technical guidance document will, prima facie, indicate compliance with Part B of the Second Schedule of the Building Regulations and there is no justification to attach Part 1 of Condition 3 to the granted Fire Safety Certificate

## 9.0 Conditions

I recommend the Board to direct the BCA to amend condition number 3 by removing Part 1 of the condition. Part 2&3 of the Condition shall remain.

### **The amended Condition 03 shall read as follows:**

Provide self-closing devices for bedroom fire doorsets or equal equivalent (free swing closers or care free plus closers or similar)

Provide smoke activated fire resisting dampers for ventilation ductwork in addition to being thermally activated where the ductwork penetrates compartment construction or fire resisting construction.

**Reason:** To comply with the provisions of Part B1 of the Second Schedule of the Building Regulations, 1997-2022.

## 10.0 Sign off

I confirm that this report represents my professional assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Luke Fegan Chartered Engineer BA, BAI, PDip FSP, MSc Fire Eng, MA, CEng FIEI

19<sup>th</sup> December 2024