



An
Bord
Pleanála

FSC Report ABP-318627-23

Appeal v Refusal or Appeal v Condition(s)

Appeal v Condition (No. 1)

Development Description

Two storey residential development comprising 3 apartments and 1 private dwelling known as Wild Atlantic Lodge, Churchtown, Kilcar, County Donegal.

Building Control Authority Fire Safety Certificate application number:

FCS/22/130R

Appellant

Charlie McGroarty

Agent

Maurice Johnson and Partners

Building Control Authority:

Donegal County Council

Inspector

Jamie Wallace

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1.0 Introduction

- 1.1. The application relates to a Regularisation Fire Safety Certificate for a two storey residential development comprising 3 apartments and 1 private dwelling known as Wild Atlantic Lodge, Churchtown, Kilcar, Co. Donegal.
- 1.2. The application relates to regularisation of **extensions, material alterations and change of use**.
- 1.3. The Appeal is against Condition No.1 attached to the granted Regularisation FSC.

Condition 1: The floor separating Ground Floor dwelling unit from First Floor apartment shall be designed and constructed as a compartment floor, complying with Section 3.2.5 of Technical Guidance Document B (reprint 2020), achieving minimum 30 minute fire resistance when tested to the relevant test standard and method of exposure set out in Table A1 of Technical Guidance Document B 2006 (reprint 2020).

Reason: To demonstrate compliance with Part B of the Second Schedule of the Building Regulations 1997-2022 Section B3: Internal Fire Spread (Structure).

2.0 Information Considered

The information considered in this appeal comprised the following:

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

3.0 Relevant History/Cases

- 3.1. I have not been made aware of any **relevant** building control history relating to the appeal site, including any previous FSC, Revised FSC, Regularisation FSC or/and any dispensation or relaxation of the Building Regulations.
- 3.2. I have not been made aware of any other relevant Board decisions at other locations that may be of assistance to the Board in determining the case.

4.0 Appellant's Case

The appellant is appealing the attachment of condition 1 to the grant of the regularisation fire safety certificate, largely on the basis that it sets out requirements that would necessitate significant and disruptive works to the appellant's private dwelling accommodation within the overall building. Furthermore, they argue that some of the requirements imposed by the conditions only first appeared in the Technical Guidance Document (TGD) Part B in 2006 when the floors were already in place in the building. The following points are set out in support of the appeal:

- It is claimed that the building was developed over the period of 1993 to 2019 through a series of extensions and alterations to an existing private dwelling house.
- It is claimed that the internal floor between the ground floor dwelling and the first-floor apartment (the building element specifically impacted by the attachment of Condition 1) was constructed early in this relevant period (circa 1993).
- It is claimed that the internal fitout of the first-floor apartment was then completed in 1999 and that it commenced use as guest accommodation at that stage.
- It is claimed in the appeal submission that the relevant guidance used when assessing the Regularisation FSC application should be the versions of TGD Part B in place at those times that the relevant works were undertaken.

- It is claimed that to impose the specific provisions that appear in Section 3.2.5.7 of TGD Part B 2006 (2020 Reprint) is unfair in this situation given that this text did not appear until the 2006 edition of the TGD.

5.0 Building Control Authority Case

The BCA case is that the attachment of Condition No.1 is appropriate and should remain without modification. Furthermore, they claim that they have not been given sufficient evidence that the building was operated primarily for commercial type guest accommodation prior to 2006. The following points are set out in support of this position.

- The BCA claims that it has not been provided with adequate documentary evidence to support the claim that the development had been utilised for guest accommodation as its primary use, prior to the publication of the 2006 edition of TGD Part B.
- The BCA claims that in the absence of the requested evidence it is appropriate to assess the application as a “change of use” from the original private dwelling to that of commercial type guest accommodation comprising a number of units. Furthermore, the BCA deemed it appropriate to use the current version of TGB Part B (at the time of the application) for assessment of the application.

6.0 Assessment

6.1. 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

On analysis of the relevant regulations and all the information on the case file including the arguments put forward by the appellant and the BCA, I have arrived at my recommendation based on the following rationale.

- On assessment of The Building Regulations, it is evident that the Relevant Regulation is Regulation B3: Internal Fire Spread (Structure)
 - (1) A building shall be so designed and constructed that, in the event of fire, its stability will be maintained for a reasonable period.
 - (2) (a) A wall common to two or more buildings shall be so designed and constructed that it offers adequate resistance to the spread of fire between those buildings.
 - (b) A building shall be sub-divided with fire resisting construction where this is necessary to inhibit the spread of fire within the building.
 - (3) A building shall be so designed and constructed that the unseen spread of fire and smoke within concealed spaces in its structure or fabric is inhibited where necessary.
 - (4) For the purposes of sub-paragraph 2(a), a house in a terrace and a semi-detached house are each to be treated as being a separate building.

Note: In consideration of Condition No.1, then requirements B3(2)(b) and B3(3) above are most relevant.

- As the case deals with material alterations or changes of use of existing Buildings, the provision outlined under 'Existing Buildings' in TGD: B (which outlines that the adoption of the guidance in this document without modification may not, in all circumstances, be appropriate) were also given due consideration.
- On assessment of the original Regularisation FSC application documents submitted to the BCA in October 2022 the following is evident-
 - The application form states construction commenced in 1993 and the building was completed in 2020.

- The technical report accompanying the application states at **1.1 Scope** that the “proposed development” “will comply with the requirements of Part B (Fire Safety) 2006”.
- The technical report accompanying the application states at **B3.2 Compartmentation** that “All compartment walls and floors are constructed in full accordance with the requirements of Section 3.2.5-3.2.7 of TGD-B.”
- The technical report accompanying the application states that “the existing electrical and hot & cold mechanical plumbing services are accommodated within the floor voids” which is a deviation from the requirements of Part B (Fire Safety) 2006. In my experience, it would be usual to provide some justification for this deviation from the requirements or offer some other compensating measures in the design but neither is evident in the application documents or on the case file.
- On assessment of email communications between the client’s consultant and the BCA during the consideration period of the Regularisation FSC application, it is evident that clarification was sought to establish the date on which the “change of use” occurred. The BCA provided a list of types of documentation, any one of which would be accepted as evidence. Namely:
 - Granted planning permission indicating use as guest / self-catering accommodation.
 - Evidence of commercial rates paid to the Local Authority for the development.
 - Evidence of water rates paid for the development.
 - Evidence of Bord Failte registration.
 - Evidence of guest logbooks/invoicing/receipts.
 - Detail of commercial entity/company registration.
 - Evidence of revenue payments.

- Evidence of advertising the premises for guest/self-catering accommodation.
- The appellant has provided documentation to the BCA in the following format.
 - Letter from chairman of Kilcar GAA Club stating that the club “availed of Charlie Mc Groarty’s self-catering accommodation for the 2004 Comortas Peile na Gaeltachta”.
 - Letter from registered electrician stating that “electrical installation works” were carried out at the premises “between October 1998 and July 1999”.
 - Letter from former chairman of Kiltane GAA Club stating that “most of its senior football panel and most of its senior management had their accommodation base in Charlie McGroarty’s very efficiently operated self-catering accommodation at and during the 2004 All Ireland comortas finals”.
 - Email from Maurice Hegarty stating that he worked as a painter and decorator “for Charlie McGroarty at his B&B at Churchtown, Kilcar, Co Donegal during 2000/1”.
 - Email from Aileen Hegarty stating that she worked as a cleaner “for Charlie McGroarty at his B&B at Churchtown, Kilcar, Co Donegal during 2000/1”.
- On assessment of the submission to ABP by the client’s consultant it is evident that they contend that they have provided sufficient evidence to the BCA to prove that the works that constitute a “change of use” were undertaken in 1999.
- On assessment of the submission to ABP by the BCA it is evident that they contend that the evidence provided is not deemed adequate to prove the date on which the “change of use” occurred.

7.0 Recommendation

I recommend the Board to direct the BCA to retain condition number 1 (unaltered) for the reasons and considerations set out below:

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 Regularisation Fire Safety Certificate application and the appeal, it is considered that it has not been demonstrated irrefutably by the appellant that the “change of use” took place before the publication of TGD Part B 2006. It was evident that the BCA had been reasonable in looking for evidence that confirmed the date that the “change of use” took place at the premises, but the evidence was not forthcoming in a format that was deemed acceptable. It is therefore considered appropriate that the current relevant guidance with regards to the construction of compartment floors is adhered to in full, to ensure that the requirement of Regulation B3: Internal Fire Spread (Structure) is achieved.

9.0 Conditions

Condition 1: The floor separating Ground Floor dwelling unit from First Floor apartment shall be designed and constructed as a compartment floor, complying with Section 3.2.5 of Technical Guidance Document B (reprint 2020), achieving minimum 30 minute fire resistance when tested to the relevant test standard and method of exposure set out in Table A1 of Technical Guidance Document B 2006 (reprint 2020).

Reason: To demonstrate compliance with Part B of the Second Schedule of the Building Regulations 1997-2022 Section B3: Internal Fire Spread (Structure).

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.

Jamie Wallace

12/07/2024