

## Inspector's Report

Appeal against Refusal of a Revised Disability Access Certificate (RDAC) with respect to modifications to a previously permitted apartment development at Bluebell Mills. Old Nass Road, Dublin 12.

<b>Board DAC Appeal Ref. No.:</b>	ABP-318646-23
<b>Building Control Authority Ref. No.:</b>	DRV2305948DC Submission No.4009568
<b>Appellant:</b>	Clapton (Ireland) Ltd., Sheldon Park Leisure Club, Dublin 12 D12 VOY2
<b>Agent:</b>	David Moran, David Moran Architects, 28-32 Pembroke Street Upper, Dublin 2, D02 NT28.
<b>Building Control Authority (BCA):</b>	Dublin City Council South
<b>Inspector:</b>	Michael Mohan, FRIAI
<b>Appendix Attached:</b>	None

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## 1.0 Introduction

### 1.1. Description of Site

The site is located on the corner of Old Naas Road and Kylemore Road, Dublin 12. Prior to the construction of the apartment development the site was occupied by Nos. 8 to 14 Old Naas Road Cottages.

### 1.2 Subject Matter of Application

Modifications are proposed to the previous development which was granted permission under Ref. No.: 2158/17. The proposed development comprises 2 no. additional floors of residential development in Block A and Block B to provide an additional 16 units in Block A (12 no. 2 bed units and 4 no 1 bed units) and an additional 10 units in Block G (4 no. 3 bed units, 4 no. 2 bed units, 2 no. 1 bed units) resulting in the overall scheme extending to 8 storeys over permitted basement level and comprising 103 residential units, each with associated balcony/terraced areas. Modifications at basement level include a reduction in car parking spaces from 90 to 83 and an increase in cycle parking spaces from 85 to 90. All other aspects of development remain as permitted under Reg. Ref. 2158/17.

A Disability Access Certificate was previously granted (BCMS Ref. No. DAC2105616DC) for the original 6-storey high apartment development. Construction work commenced before the Disability Access Certificate was issued.

The Revised Disability Access Certificate application (BCMS Ref. No. DRV2305948DC) was received by the Building Control Authority (BCA) through the BCMS on the 18<sup>th</sup> December 2023 and included:

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

Drawing Number	Title	Scale
DAC-01	Location Plan	1:1000
DAC-02 Rev. A	Site Layout Plan	1:500
DAC-03 Rev. A	Basement Plan	1:200
DAC-04 Rev. A	Ground Floor Plan (Note: the scale was shown incorrectly on the drawing as 1:500)	1:200
DAC-05 Rev. A	First to Sixth Floors Plans	1:200
DAC-06 Rev. A	Seventh Floor Plan	1:200
DAC-07	Kylemore Road Elevation (SW)	1:200
DAC-08	Old Naas Road Elevation (SE)	1:200
DAC-09	Typical Cross Sections	1:200

- Access Analysis Report.
- Cheque for €500.00 with respect to the application fee.

### 1.3 Building Control Authority Decision

The BCA issued a Decision to Refuse a Revised Disability Access Certificate, Ref. No. DRV2305948DC, on 14<sup>th</sup> November 2023.

## 2.0 Information Considered

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

### 2.1. Original Disability Access Certificate:

Disability Access Certificate, issued on 21<sup>st</sup> October 2021, BCMS Ref. No. DAC2105616DC was granted with nine conditions. Condition No.9 stated: *“Wheelchair access shall be provided to each balcony/terrace area”*.

### 2.2. Revised Disability Access Certificate application and Decision to Refuse:

- Revised Disability Access Application, BCMS Ref. No. DRV2305948DC, Submission No.4009568.
- Decision to Refuse a Revised Disability Access Certificate, dated 14<sup>th</sup> November 2023.

### 2.3 Appeal Documentation submitted by Agent:

The appeal documentation, received by An Bord Pleanála on 1<sup>st</sup> December 2023, included:

- Letter from the Agent outlining the grounds of appeal, dated 30<sup>th</sup> October 2023.
- Form of Application for a Revised Disability Access Certificate.
- €500 with respect to the fee for the appeal.
- Drawings:

Drawing Number	Title	Scale
DAC-01	Location Plan	1:1000
DAC-02 Rev. A	Site Layout Plan	1:500
DAC-03 Rev. A	Basement Plan	1:200
DAC-04 Rev. A	Ground Floor Plan (Note: the scale was shown incorrectly on the drawing as 1:500)	1:200
DAC-05 Rev. A	First to Sixth Floors Plans	1:200

### 2.4. Documentation submitted to An Bord Pleanála by the BCA

An Bord Pleanála, wrote to the BCA, dated 11<sup>th</sup> December 2023, requesting copies of the application documents and any observation

which the BCA thinks fit. The BCA's response, dated 11<sup>th</sup> December 2023, was received by An Bord Pleanála on 14<sup>th</sup> December 2023. Attached were copies of the following:

- Certified copy of certified Manager's Order No. BC/0337/2023, dated 14<sup>th</sup> November 2023, with respect to the Revised DAC application Ref. No. DRV2305948DC.
- Certified copy of certified Manager's Order No. 294/21, dated 29<sup>th</sup> November 2021, with respect to the original DAC application Ref. No. DAC2105616DC.
- Certified copy of Decision notice, dated 14<sup>th</sup> November 2023, with respect to the Revised DAC application Ref. No. DRV2305948DC.
- Copy of the Revised DAC application drawings, documentation and report.

## **2.5 Planning Application Files Related to the Development**

- Original planning application Ref. No.: 2158/17.
- Planning application for two additional floors and other modifications Ref. No.: 4637/18
- Planning application for retention permission and planning permission Ref. No.: 3404/20 for alterations and completion of previously approved development (Reg. Ref. 2158/17).

## **3.0 Relevant history/cases**

- There was a previous similar case which was decided by An Bord Pleanála, Ref. No. ABP-308863-20. In that case, An Bord Pleanála ordered that a condition, similar to Condition No.9 of the original Disability Access Certificate Ref. No. DAC2105616DC, be omitted.

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

The BCA offered no further observations to An Bord Pleanála other than the reasons stated in the Decision to Refuse a Revised Disability Access Certificate BCMS Ref. No. DRV2305948DC.

Five reasons were attached to the Decision to Refuse a Revised Disability Access Certificate:

**Reason No.1:**

*The application attempts to overturn Condition No.9 of the previous Disability Access Certificate DAC2105616DC without adequate reason or justification.*

**Reason No.2:**

*The applicant has failed to demonstrate adequate reason why Condition 9, as stated in the previously granted DAC2105616DC cannot be complied with.*

**Reason No.3:**

*Accurate drawings have not been provided for Blocks A & B and contradict the information provided in the technical report.*

**Reason No.4:**

*Adequate information and drawings have not been provided for the building, particularly regarding the building of the stairs within the communal courtyard*

**Reason No.5:**

*The applicant has failed to demonstrate compliance with Part M1 of the Second Schedule to the Building Regulations 1997 (as amended) and the proposal discriminates against persons on the basis of their ability.*

## **5.0 Appellant's case**

David Moran Architects lodged an appeal against the Decision to Refuse the Revised Disability Access Certificate, BCMS Ref. No. DRV2305948DC, on behalf of the applicant/appellant, which was received by An Bord Pleanála on 1<sup>st</sup> December 2023.

The following is a brief outline of the Appellant's case with reference to the reasons for refusal:

**Reason 1:**

At the time that the previous DAC (DAC2105616DC) was issued the building works had commenced and balcony structures had been established. The main living room and WC in all apartments are fully accessible. There is no requirement to provide level access to balconies within private apartments.

**Reason 2:**

The condition (No.9 the previous DAC (DAC2105616DC) cannot be complied with as the structural condition had been constructed prior to the issue of DAC2105616DC and there is no requirement to comply with this condition under the regulations.

**Reason 3:**

There is no material variation between the report and the drawings provided.

**Reason 4:**

The report states that all stairs will be in full compliance with 1.3.4 (TGD M). After examining the previously issued section drawings the Agent is confident that the regulations in this regard can be complied with.

**Reason 5:**

It appears that this relates to the all the other conditions addressed above. Compliance has been demonstrated with level access to main front entrances, ramped access to other entrances and Stairs 4 egress and access to the car park. The drawings are to scale and are clearly legible.

The Agent submits that this building is fully compliant with the requirements of the Building Regulations and TGD Part M.

## **6.0 Considerations**

### **6.1 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.*

## **6.2 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.*

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 No.497/1997 – Building Regulations 1997 includes the same definition for a "dwelling" and expands the definition of a "flat" as follows:

*"flat" means separate and self-contained premises constructed or adapted for residential use and forming part of a building from some other part of which it is divided horizontally;*



**Technical Guidance:**

Part M of the Building Regulations deals with 'Access and Use'. The associated Technical Guidance Document M provides guidance indicating how the requirements of Part M can be achieved in practice. Where works are carried out in accordance with TGD M, this will, *prima facie*, indicate compliance with Part M of the Second Schedule attached to the Building Regulations.

TGD 2010 Part M Section 3 Access and Use of Dwellings 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.*

The Agent submitted that all the apartment units in the proposed development are accessible by stairs and a lift. The requirements for private dwellings (which can readily be interpreted as extending to include private apartments), is set out in Clause 0.1(e) of TGD M:2010 requiring that 'new dwellings are visitable'. This is further expanded in Clause 0.4:

*Dwellings should be designed and constructed so that:*

*0.4 (ii) people can have access to the main habitable rooms at entry level. Where there is no habitable room at this level, it is considered adequate to provide for access to habitable rooms on the storey containing the main living room. Access to this storey from the entry storey may be by means of a stairway suitable for use by ambulant disabled people;*

*0.4 (iii) a WC is provided at each entry level, or, where there are no habitable rooms at this level, on the storey containing the main living room.*

Balconies are mentioned in TGD M 2010, Section 1.5: *Other facilities in buildings other than dwellings* and specifically in Section 1.5.6(l) *Accessible sleeping accommodation where it states:*

*a balcony, where provided, should have a door in compliance with Table 2 and have a level threshold*

Section 1.5.6(l) applies to buildings other than dwellings. Balconies are not referred in Section 3: *Access and Use of Dwellings*.

## 7.0 Assessment

This appeal is against a Refusal of a Revised Disability Access Certificate. Having considered the drawings, Access Analysis Report, details and submissions on file it is considered that a *de novo* approach is warranted.

TGD: Part M provides very specific guidance requiring dwellings to be 'visitable'. The spirit of the guidance is that persons with varying access needs, including persons in wheelchairs, can visit another person's private home (dwelling or apartment). Specifically, the guidance requires that a visitor can access a habitable room, for example the sitting room, and use a WC close to the habitable room.

Each apartment in this development has at least one habitable room and a visitable WC, both located at entry level. The requirements for being 'visitable' are set out in Section 0.1(e) and expanded in Section 0.4, specifically (0.4) (ii) and (iii) of TGD M 2010.

The BCA is promoting a greater standard of access which is desirable. In my opinion it would be an improvement in the next revision of TGD M if balconies and terraces in dwellings and apartments were required to provide level access. However, the current guidance does not require that persons visiting a private dwelling or apartment have access an external balcony/terrace. Furthermore, An Bord Pleanála directed, in a previous case, Ref. No. ABP-308863-20, that a similar condition (that level access to balconies be provided to all apartments) be omitted.

Examining the Reasons for Refusal of the Revised Disability Access Certificate:

**Reasons Nos. 1 and 2:** are related i.e. requesting level access to all balconies. Based on the assessment described above, I am of the opinion that the requirement to comply with Condition No.9 of the previous Disability Access Certificate, DAC2105616DC, should be omitted and therefore these two reasons for refusal are no longer relevant.

**Reason No.3:** *Accurate drawings have not been provided for Blocks A & B and contradict the information provided in the technical report.*

There are inaccuracies on the drawings:

- The scale was shown incorrectly as 1:500 on the Ground Floor Plan. It should have been 1:200.
- There is contradictory information between the report and drawings. For example, the report states that there are 83 car parking spaces at basement level whereas there are only 71 shown on the Basement Floor Plan.
- The applicant maintains that there is enough information on the drawings but they actually leave a lot for BCA assessors to

interpret or work out for themselves. As an example, if the drawings are correct, there are 18 steps shown on the drawings between the 6<sup>th</sup> and 7<sup>th</sup> floors in Block B. TGD M 2010 1.3.4.3 (i) states: *the rise of each step should be between 150 and 180mm*. The 7<sup>th</sup> floor level is shown as 65.425 and the 6<sup>th</sup> floor level is shown as 62.10. This will provide a rise between these two floors of 3325mm. Therefore, each riser will be 184.7mm which is outside the recommended range in TGD M 2010.

**Reason No.4:** *Adequate information and drawings have not been provided for the building, particularly regarding the building of the stairs within the communal courtyard.*

An applicant is required to demonstrate compliance with the Building Regulations. Statements are made throughout the Access Analysis Report that sections of TGD M will be complied with however, there is a lack of detailed information in this report and on the drawings to demonstrate compliance.

It is noted that the stairs within the communal courtyard is shown on the RDAC drawings but it was not shown on any of the planning application drawings, Ref. Nos.: 2158/17; 4637/17 or 3404/20. The information provided with respect to these stairs and the additional two floors is inadequate for a proper assessment. There is a lack of dimensions and details provided to demonstrate compliance.

**Reason No.5:** *The applicant has failed to demonstrate compliance with Part M1 of the Second Schedule to the Building Regulations 1997 (as amended) and the proposal discriminates against persons on the basis of their ability.*

The BCA have not elaborated on this reason. It is clear that they were of the opinion that the lack of level access to the balconies discriminates against persons on the basis of their ability. In addition, the BCA were not satisfied that the level of information submitted demonstrated compliance with Part M1 of the Second Schedule to the Building Regulations 1997.

## 8.0 Conclusions / Recommendations

### 8.1 Recommendation

In conclusion, I recommend that An Bord Pleanála rejects the appeal against the BCA's decision. In doing so, reference to Condition No.9 in the previously granted DAC2105616DC should be omitted.

I recommend that the Board **Refuse** to Issue a Revised Disability Access Certificate for the following reasons:

### 8.2 Reasons and Considerations

Having regard to the provisions of the Building Regulations 1997 to 2022, Second Schedule, Part M, to the nature and layout of the proposed works and to the submission made in connection with the 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, **fails** to comply with the requirements of Part M of the Second Schedule to the Building Regulations 1997 to 2022.

#### Reason No.1:

*Accurate drawings have not been provided for Blocks A & B and contradict the information provided in the technical report.*

#### Reason No.2:

*Adequate information and drawings have not been provided for the building, particularly regarding the building of the stairs within the communal courtyard.*

#### Reason No.3:

*The applicant has failed to demonstrate compliance with Part M1 of the Second Schedule to the Building Regulations 1997 (as amended).*



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Michael Mohan, FRIAI  
Inspector

19<sup>th</sup> June 2024