



An
Bord
Pleanála

FSC Report ABP-318664-23

**Appeal v Refusal or Appeal v
Condition(s)**

Appeal v Condition (No. 4)

Development Description

Proposed construction of a new warehouse unit with ancillary office accommodation.

**Building Control Authority Fire Safety
Certificate application number:**

FSC/257/23

Appellant

Rockface Developments Limited

Agent

FCC Fire Cert Limited

Building Control Authority:

South Dublin County Council

Inspector

Jamie Wallace

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1.0 Introduction

- 1.1. The fire safety certificate (FSC) application subject to this appeal was made to South Dublin County Council for the construction of a new warehouse unit with ancillary office accommodation at Kingswood Road, Citywest Business Park, Dublin 24 for Rockface Developments Limited.
- 1.2. The application relates to the construction of a new building.
- 1.3. The case relates to an appeal v condition No. 4 attached to the granted FSC.

2.0 Information Considered

The information considered in this appeal comprised the following:

- Drawings and associated particulars submitted with the FSC application on 16/06/2023.
- Further information and particulars received by the BCA on 18/10/2023.
- Copy of BCA 'Decision To Grant' With Conditions on 21/11/2023.
- Appeal received by ABP on 08/12/2023, lodged by FCC Fire Cert Ltd. on behalf of the appellant.
- Submissions received from the BCA on the appeal on 10/01/2024.
- Further submissions received by FCC Fire Cert Ltd. on behalf of the appellant on 07/02/2024.

3.0 Relevant History/Cases

- 3.1. I am not 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. Case Number ABP-307387-20 is relevant in this case. It is for a similar warehouse building where a condition requiring a sprinkler system was attached to the granted FSC and subsequently appealed to ABP. The Bord decided to uphold the appeal and the condition requiring a sprinkler system was removed.

4.0 Appellant's Case

4.1. The appellant is appealing the attachment of condition 4 to the grant of the fire safety certificate largely on the basis that it sets out requirements that are not necessary to demonstrate compliance with Part B of the Building Regulations. The following points are set out in support of the appeal:

- It is claimed that the building design as presented is compliant with the requirements of TGD Part B 2006 (2020 Reprint).
- It is claimed that a sprinkler system is not a statutory or regulatory requirement for a building of this type.
- It is claimed that the condition is unwarranted and creates a financial and contractual burden on the applicant.
- It is claimed that the smoke venting system proposed in the building is superior to that required under the building regulations and therefore will serve to reduce the risk of fire spread within the building.
- It is claimed that the area and volume of the proposed building is within the allowable limits for a building of this type without the need for a sprinkler system.

5.0 Building Control Authority Case

5.1. It is the BCA case that a sprinkler system is considered necessary for the building to meet the requirements of Parts B1, B3 and B5 of the Second Schedule to the Building Regulations. The following points are set out in this regard:

- It is claimed that the assessment of the use of the building as 'normal risk' storage is speculative and unconservative as the end user is not in place.
- It is claimed that the height of the warehouse is such that the use of high bay racking is likely and that this would be enough to deem the storage area to be 'high hazard' as outlined in the DRAFT version of the proposed new TGD Part B.

- It is claimed that the CFD simulations presented in the application are flawed as they do not demonstrate the likely conditions that will occur in the warehouse in the event of a fire.

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, the relevant technical guidance document is (TGD Part B 2006 (2020 Reprint)) 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.

- 6.2.1. In the context of the appeal and the argument put forward by the BCA for attaching the sprinkler system condition, the relevant regulations are:
 - B1: Means of warning and escape in case of fire
 - B3: Internal Fire Spread (Structure)
 - B5: Access and facilities for the fire service
- 6.2.2. The appellant claims that it has been adequately demonstrated that the design of the building is compliant with Building Regulations without provision of a sprinkler system as it meets the relevant requirements of TGD Part B 2006 (2020 Reprint).
- 6.2.3. The classification of the storage area of the building into either 'normal risk' or 'high risk' is fundamental to the arguments put forward by both sides. Recommended maximum travel distances and recommended maximum compartment sizes are different for 'Normal Risk' storage versus 'High Risk' storage. Annex E of TGD Part B 2006 (2020 Reprint) provides some guidance but is not unambiguous in this regard.

Included in the text of Annex E it is stated that *'It does not necessarily follow that the presence (or indeed the absence) of one of the factors mentioned in the description of the 'high risk' category inevitably means that the premises or part of the premises have to be placed in that category'*. Furthermore, it is stated that *'Attention is drawn to obligations under the Fire Service Acts, 1981 and 2003 and Safety, Health and Welfare at Work Act, 2005. The measures to be provided under the Building Regulations are intended to cater for fire safety in buildings generally and may not be adequate for the range of process and industrial hazards that could arise when the building is in use. The measures provided may therefore need to be supplemented accordingly'*. The inclusion of this statement at Annex E is deemed a recognition that the Building Regulations are not intended to force all buildings that could be used for 'high risk' activities to be solely designed for 'high risk' activities but rather allows for buildings to be designed and constructed in such a way that will allow them to be supplemented by other measures to allow them to be used safely for such activities if required. I would agree with the classification of the storage area as 'normal risk' as defined in TGD Part B (2020 Reprint).

- 6.2.4. The BCA claim that the new DRAFT version of the proposed new TGD Part B would consider any building with high bay storage to be automatically classed as 'high risk'. However, the relevant guidance document in this case remains TGD Part B (2020 Reprint) and there is not such guidance therein. It is considered therefore that the BCA is attempting to impose a requirement above what is stated the relevant TGD.
- 6.2.5. The appellant justifies the increases in travel distances within the ground floor storage area by arguing that the provision of a smoke ventilation system that is superior to that required by TGD Part B 2006 (2020 Reprint) is an adequate compensatory measure in this regard. I would agree that this, when considered with the likely low occupancy and large number of escape doors provided from the storage area satisfies the requirements for means of escape.

7.0 Recommendation

Direct the BCA to remove condition No. 4 for the reasons and considerations set out below.

8.0 Reasons and Considerations

Having regard to the presented design of the development and the accompanying technical compliance report, to the further submissions made to the BCA in connection with the FSC application, to the initial appeal and the BCA submission to ABP and the appellant's further submission to ABP, it is considered appropriate that the Building Control Authority be directed to remove condition number 4 and the reason therefor. It has been demonstrated that the building, if constructed in accordance with the design presented with the application and appeal, would comply with the requirements of Part B of the Second Schedule to the Building Regulations 1997, as amended without a sprinkler system.

9.0 Conditions

The BCA should be directed to remove condition No. 4 from the granted FSC.

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 BEng CEng MIEI

22/11/2024