



An
Bord
Pleanála

Inspector's Report

ABP-318744-23

Appeal v Refusal

Appeal v Refusal of a Disability
Access Certificate

Development Description

Change of use of first floor function
room to guest bedroom
accommodation and associated
works. Wicked Wolf Pub, 2 Main
Street, Blackrock, Co. Dublin, A94
XD95

Building Control Authority Disability Access Certificate application number:

DAC2303650DR

Appellant

Eugene Kenny

Agent

Magahy Broderick Associates

Building Control Authority:

Dun Laoghaire Rathdown County
Council

Inspector

David Whelan

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1.0 Introduction

- 1.1. The subject building is an existing 2-storey terraced building located at 2 Main Street, Blackrock, Co. Dublin. This is in the centre of Blackrock with various other commercial developments in the vicinity. The subject building is used as bar and venue at ground floor with a function room at the first floor level. The area of the ground floor and first floor is 143sq.m. each. Access to the building is from Main Street where there is level access from the public footpath.
- 1.2. The proposed development is for the **Change of use** of the first floor function room to 7 No. guest bedroom accommodation and associated works. A new designated entrance is proposed to the first floor accommodation from the main street with alterations to internal staircases for access and means of escape on the upper ground floor level.
- 1.3. The application relates to the appeal of a refusal by the Building Control Authority (BCA) to grant a Disability Access Certificate (DAC).

2.0 Information Considered

- 2.1. The information considered in this appeal comprised the following:
 - Disability Access Certificate Application, DAC2303650DR, submitted on 21/06/2023 with the following documents and drawings:
 - DAC Compliance Report
 - Planning Pack Map
 - DAC01 – Site plan & Elevations
 - DAC02 – Floor plans and Sections
 - Further information requested by the BCA on 11/08/2023, 22/09/2023, 07/11/2023
 - Further information received by the BCA on 11/09/2023, 02/11/2023, 07/11/2023
 - Copy of BCA decision and supporting internal report dated 07/12/2023
 - Appeal received by the BCA on behalf of the appellant 20/12/2023

- Submissions received by An Bord Pleanála (ABP) from the BCA on the appeal 19/01/2024
- Submissions received by ABP from the appellant on 08/02/2024

3.0 Relevant History/Cases

- 3.1. The BCA and Appellant did not include an history of a previous DAC associated with the building nor is the Inspector aware of a previous DAC application relevant to this building.
- 3.2. ABP have made decisions at other locations which are similar in nature to the subject of this appeal. Examples of appeals to ABP on other buildings are as follows: ABP Case Reference DS10.308260 & DS29N.310343

4.0 Appellant's Case

- 4.1. Magahy Broderick Associates lodged an appeal on behalf of the appellant, dated 20/12/2023. The appellant is appealing the refusal to the grant of the Disability Access Certificate. The appeal was received by the ABP on 19/01/2024.

The following is a brief outline of the Appellant's case:

- The corridor accessing the bedrooms vary in width from 1000 – 1200mm due to the constraints of the existing building. The appellant considers this is adequate as it is not accessible to a wheelchair user and passing places are provided at each bedroom door.
- A rational approach should be taken given this is a small building.
- The appellant cites English building regulations, Access to and use of buildings: Approved Document M, and notes how it separates *“those provisions that apply to all disabilities from those only with the needs of people in a wheelchair”*
- Irish building regulations have provisions that only relate to wheelchair users but are applied universally, whether wheelchair users are present or not.
- The first floor is not accessible to a wheelchair user as there is no lift. A lift is not required under TGD:M2022 given the floor area of the first floor. Hence the

appellant considers is adequate for the nature of the development not to provide accessible accommodation.

- The Appellant notes there are appealing mostly to establish *“whether the guidance should be used as an unbending legal document, or whether it is in fact guidance, and a rational approach should be adopted, the intent of to the guidance and other similar guidance in other jurisdictions.”*

5.0 Building Control Authority Case

5.1. Below is a summary of BCA case based on information provided at the appeal stage:

- The applicant failed to show compliance with Building Regulation M1.
- The applicant was unwilling to design the building in line with TGD:M2022 and did not provide evidence as necessary to establish that the requirements of the Building Regulations are complied with.
- The particular areas they failed to show compliance with where as follows:
 - Demonstrate how section 1.3.3 “Horizontal circulation” complies with TGD M 2010.
 - Demonstrate how section 1.3.3.3 “Corridors and passageways” complies with TGD M 2010.
 - Demonstrate how section 1.5 “Other facilities in buildings other than dwellings” complies with TGD M 2010.
 - Demonstrate how section 1.5.6 “Accessible sleeping accommodation” complies with TGD M 2010.
- The building is capable of being designed in compliance with TGD M or another method showing compliance.
- BCA have a requirement to ensure buildings are designed and constructed to allow access to buildings for people of all abilities.

6.0 Assessment

6.1. De Novo Appeal

I consider that it is necessary that the determination of the Board on the application should be as it if had been made to it in the first instance and therefore a De Novo approach is warranted.

6.2. Content of Assessment

This appeal is against a Refusal of a Disability Access Certificate. I have reviewed the reasons for the refusal and the grounds of the appeal, and I have considered the drawings, details and submissions on the file. I am of the opinion that there is sufficient information provided to assess whether or not the said works (change of use) 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 1997.

The BCA assessed whether adequate provision has been made for people to access and use the building, its facilities and environs and they concluded that the proposals did not comply with the requirements of Part M of the Second Schedule to the Building Regulations 1997.

Changing the use of an existing building can be a challenge. TGD:M2022 states that *“In the case of material alterations or change of use of existing buildings, the adoption without modification of the guidance in this document may not, in all circumstances, be appropriate. In particular, the adherence to guidance, including codes, standards or technical specifications, intended for application to new work may be restrictive or impracticable. Buildings of architectural or historical interest are especially likely to give rise to such circumstances. In these situations, alternative approaches based on the principles contained in the document may be more relevant and should be considered.”*

It is clear that the BCA actively engaged with the appellant during the DAC application process as additional information was requested on numerous occasions. It is acknowledged that the appellant updated the DAC compliance report in response to such requests.

6.2.1. Horizontal Circulation / Corridors and passageways

Part M of the second schedule to the Building Regulations including guidance set out in TGD:M2022 clearly sets out the requirements for horizontal circulation and the

corridors. The BCA requested the appellant to demonstrate compliance with this matter. The proposed corridors vary in width from 1000 – 1200mm with passing places of 1200mm provided at bedroom doors. It is acknowledged that this is an existing building with constraints however this does not comply with Part M of the Building Regulations and it considered my opinion that the building could be designed to have a unobstructed clear width corridor of 1200mm in accordance with Section 1.3.3.3. of TGD:M2022. The appellant has stated it complies with Section 1.3.3.3. of TGD:M2022 but this is not the case and it would be practicable to achieve this standard.

6.2.2. Other facilities in buildings other than dwellings / Accessible sleeping accommodation

6.2.3. Part M of the second schedule to the Building Regulations including guidance set out in TGD:M2022 clearly sets out the requirements for horizontal circulation and the corridors. Section 2.5 of TGD:M2022 gives guidance on Other Facilities in Existing Buildings Other than Dwellings where the objective is noted as follows *“The objective is to ensure that facilities within an existing building are accessible to and useable and that they are designed and constructed to facilitate active participation where appropriate.”* It is acknowledged that accessible sleeping accommodation for a wheelchair user is not appropriate on first floor level when there is no lift access to this level, also given the area is less than 200m² there is no requirement under TGD:M2022 to provide a lift. Alternatively, the same range of services/facilities that are available on the first floor cannot be made available on ground floor level given the general arrangement and use of the space. TGD:M2022 ‘Existing Buildings’ on Page 2 outlines that the adoption of the guidance in this document without modification may not, in all circumstances, be appropriate.

I consider that it is unnecessary and would be impracticable to require a wheelchair accessible bedroom and ensuite on the first floor given there is no access. However it must be stated that such accessible sleeping accommodation is not limited to wheelchair users. People with different abilities can use these rooms independently by availing and benefiting from the support in these rooms, such as the ensuite fixtures and fittings, grabrails, signage etc.

The appellant provided a detailed review of accessible overnight accommodation in response to the third additional information request by the BCA. The appellant

proposed an 'enhanced' bedroom which included all the requirements set out in Section 1.5.6 Accessible Sleeping Accommodation of TGD:M2022 apart from the items related solely to Wheelchair users. The appellant also noted it would be designed to accommodate ambulant disabled people with handles provided. The 'enhanced' bedroom is considered to be a pragmatic appropriate approach which will give a level of accessibility to various individuals to use the rooms independently.

Recommendation

- 6.3. I recommend that the Board directs the BCA to **grant** a Disability Access Certificate with conditions and the reason therefor as follows and for the reasons and considerations set out below.

7.0 Reasons and Considerations

- 7.1. Having regard to the presented design of the development and the accompanying technical compliance report, to the submissions made in connection with the Disability Access Certificate application and the appeal, and to the report and recommendation of the reporting inspector, it is considered that the works to which the application relates, if constructed in accordance with the plans, calculations, specifications and particulars submitted, and subject to compliance with the conditions attached to the Disability Access Certificate, the attachment of a new condition as set out below, will comply with the requirements of Part M of the Second Schedule to the Building Regulations 1997, as amended.

8.0 Conditions

8.1. Condition 1

The change of use shall be carried out in accordance with the plans, specifications and other relevant information submitted with the application to the Building Control Authority and further information received by the Building Control Authority on 07/11/2023.

Reason

In the interest of clarity.

8.2. Condition 2

The corridor width on first floor should be a minimum of 1200mm unobstructed. A corridor or passageway should be wide enough to allow people to pass each other, taking into account common activities and mobility aids such as people pushing buggies or walking frame, carrying luggage or using crutches... (a) The unobstructed clear width should be at least 1200 mm. Elements such as columns, radiators and fire hoses should not project into this corridor width in accordance with Section 1.3.3.3 and Diagram 12 of the TGD:M2022.

Reason

To comply with Part M of the Second Schedule to the Building Regulations 1997, as amended.

9.0 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.

A handwritten signature in black ink, appearing to read 'David Whelan', is written over a horizontal line.

David Whelan

16.07.2024