



An
Bord
Pleanála

FSC Report ABP-319339-24

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

Appeal v Condition (Condition No. 4)

Development Description

Fire Safety Certificate for a six-storey residential development at Brookfield Heights, Saint James', Kilmainham, Dublin 8

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

FSC1121/24/7D (BCMS Ref:
FSC2304470DC/7DN/SN3013812)

Appellant

Ciaran Kavanagh

Agent

GSP Fire Limited

Building Control Authority:

Dublin City Council South

Inspector

Jamie Wallace

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1.0 Introduction

- 1.1. The application relates to a Fire Safety Certificate with 7 day notice for a six-storey residential development at Brookfield Heights, Saint James', Kilmainham, Dublin 8.
- 1.2. The application relates to a Fire Safety Certificate (FSC) with 7 day notice for the construction of a new building.
- 1.3. The Appeal is against Condition No.4 attached to the granted FSC.

Condition 4: The proposed Basement/Car Park shall be provided with a Sprinkler System in accordance with BS EN 12845:2015 + A1 2019.

Reason: To comply with the provisions of Part B of the Second Schedule to the Building Regulations 1997-2022.

2.0 Information Considered

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 including relevant additional information submitted to the BCA via the BCMS.
- 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. The following Board decisions at other locations may be of assistance to the Board in determining the case.

ABP-312605-22 Fire Safety Certificate application for a Single storey basement and six storey residential block.

ABP-314945-22 Construction of four storey apartment building over a basement carpark.

ABP-315378-22 Fire safety certificate for the construction of a single storey basement and 2 no. blocks overhead.

ABP-315096-22 Fire Cert License for 4 residential blocks.

ABP-315985-23 Fire Safety Certificate: Block EF consisting of 120 apartments ranging in 6-7 storeys, communal facilities at ground floor, basement level containing water storage rooms, car parking and bicycle parking.

ABP-316079-23 Fire Safety Certificate for apartment building over a basement carpark.

Note: In all the cases listed here, it was recommended that ABP instruct the BCA to remove conditions relating to sprinklers that had been attached to the granted Fire Safety Certificates.

4.0 Appellant's Case

The appellant's case is that the attachment of condition No. 4 to the grant of the fire safety certificate is surplus to the requirements of TGD Part B 2006 (2020 Reprint).

The following points are set out in support of the appeal:

- It is claimed that the design of the proposed building meets the requirements of TGD Part B 2006 (2020 Reprint) so prima facie compliance has been demonstrated.
- It is claimed that the amount of natural ventilation provided to the car park exceeds the requirements of TGD Part B 2006 (2020 Reprint).
- It is claimed that TGD Part B 2006 (2020 Reprint) makes no reference to the inclusion of sprinkler systems in basement car parks in buildings of less than 30m in height to the top floor provided with natural smoke ventilation.

- It is claimed that the updated TGD Part B (2024 Fire Safety – Volume 1 Buildings other than Dwelling Houses) also makes no reference to providing sprinklers in basement car parks for this type of development.
- It is claimed that ABP has already adjudicated on similar recent cases in which the condition imposing sprinkler protection in basement car parks was removed.

5.0 **Building Control Authority Case**

The BCA case is that the attachment of Condition No.4 is appropriate and should remain without modification. The following points are set out in support of this position.

- The BCA claims that a building designed in accordance with TGD Part B 2006 (2020 Reprint) does not prove compliance with the functional requirements of the building regulations. It is their view that new hazards due to changes in technology and materials are not adequately considered and addressed in the relevant guidance.
- The BCA claims that there is evidence from international studies that demonstrates increased fire risks associated with modern vehicles and the effectiveness of sprinklers as a mitigation measure.
- The BCA considers it appropriate to seek provision of a sprinkler system to allow the suppression and control of fire development to allow for both safe means of escape for occupants and to allow fire crews to access the basement for firefighting.

6.0 **Assessment**

6.1. **Appeal v condition**

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 (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.

- As the FSC application with 7 day notice for the construction of a new building was lodged with the BCA on 21/07/2023 then the relevant technical guidance document is TGD Part B 2006 (2020 Reprint).
- On assessment of the submission to ABP by the appellant's consultant it is evident that they have provided sufficient evidence of compliance with the relevant requirements of Section B3 of TGD Part B 2006 (2020 Reprint).
- On assessment of the submission to ABP by the BCA it is evident that they consider the relevant guidance to be inappropriate and are seeking to impose a greater level of fire safety than is required under TGD Part B 2006 (2020 Reprint).
- On review of TGD Part B 2024 that has recently been published it is evident that the "Transitional Arrangements" are currently in force and that TGD Part B 2006 (Reprint 2020) remains the relevant document in this case.

7.0 Recommendation

I recommend the Board to direct the BCA to remove condition number 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 compliance report, drawings and application form, to the additional information submissions made in connection with the Fire Safety Certificate application, the BCA decision, the appeal to ABP, the response by the BCA to ABP and to other relevant decisions

made by ABP, it is considered that it has been demonstrated by the appellant that the proposed building design as presented meets the relevant requirements of TGD Part B 2006 (2020 Reprint). By attaching the condition subject to the appeal, it was considered that the BCA had in effect imposed measures that were in addition to those required by TGD Part B 2006 (2020 Reprint) and as 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 then there is no justification to attach Condition No. 4 to the granted Fire Safety Certificate.

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 BE CEng MIEI

25/10/2024