



An
Bord
Pleanála

DAC Report

ABP-319945-24

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

Appeal v Condition

Development Description

Construction of a 4-storey block with 9
apartments and all associated works
at No.61 Royal Canal Bank,
Phibsborough, Dublin 7, D07 FY58.

**Building Control Authority Disability
Access Certificate application
number:**

DAC2402061DC

Appellant

Maan Alyan

Appellant's Agent

Ryan and Associates

Building Control Authority:

Dublin County Council

Date of Site Visit

7th October 2024

Inspector

James Hickey MRIAI RIBA ARB

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1.0 Introduction

- 1.1. The Disability Access Certificate application submitted to the Building Control Authority (BCA) relates to the construction of a 4-storey apartment block at No.61 Royal Canal Bank, Phibsborough, Dublin 7.

The proposed building will consist of 9No. apartments in total;

- 2No. apartments at ground, second & third floor levels
- 3No. apartments at first floor level.

Pedestrian access to the proposed building will be via Royal Canal Bank and no on-site parking facilities are proposed.

- 1.2. The application relates to **a new 4-storey Residential Building.**
- 1.3. The appellant (Maan Alyan) is appealing Condition No.9 of the Disability Access Certificate (DAC) granted by Dublin City Council (DCC) on the 20th May 2024.

The condition being appealed is as follows;

Condition 9: Level access should be provided to each external terrace/balcony areas.

Reason: To ensure that all facilities within the building are accessible and useable and that they are constructed to facilitate active participation.

2.0 Information Considered

- 2.1. The information considered in this appeal comprised the following:
- Report and drawings submitted with the DAC application received by the BCA on 25/03/2024.
 - Recommendation to the DCC Senior Building Surveyor dated the 12/04/2024.
 - Order of the DCC Senior Executive Officer dated the 20/05/2024.
 - Disability Access Certificate granted by Dublin City Council on 20/05/2024.
 - Appeal received by An Bord Pleanála (ABP) from the appellant's agent on the 14/06/2024.

3.0 Relevant History/Cases

- 3.1. There are no previous DAC applications for this Building.
- 3.2. An Bord Pleanála (ABP) Case reference: DS29S.308863 may be of assistance to the Board in determining this case.

4.0 Appellant's Case

- 4.1. The appellant is appealing the attachment of Condition No.9 to the DAC granted by DCC on the 20th May 2024 on the basis that the requirement set out is not necessary to demonstrate compliance with Part M of the Building Regulations.

The following is a summary of the points set out in support of the appeal:

- The basis of compliance for individual apartments is Section 3 of the Technical Guidance Document M 2022 (TGD M 2022).
- Section 1 of TGD M 2022 relates to common areas of apartment buildings.
- As the balcony areas proposed are not accessible from the common areas of the building, compliance with Section 1 of TGD M 2022 is not required.
- Section 3 of TGD M 2022 permits a stepped change of level within a dwelling provided at least one habitable room and a room containing a WC can be accessed from the accessible entrance. The proposed development is in compliance with this requirement.
- A stepped change occurs on accessing the apartment balconies as insulation has been applied to the top of the balcony slab which is cast at the same level as the floor slab.
- It is not considered to be reasonable or practicable, give the requirements of Section 3 of TGD M 2022, to require level access onto each balcony.
- The access and use of the common areas servicing the proposed development will comply with the requirements of Section 1 of TGD M 2022.

5.0 Building Control Authority Case

- 5.1. The ABP Memorandum dated the 19/07/2024 notes that BCA has not responded to the appeal.

However, the BCA reason for applying condition No.9 was to ensure that all facilities within the building are accessible and useable and that they are constructed to facilitate active participation.

6.0 Assessment

6.1. *De Novo* assessment/appeal v conditions

Having regard to the nature of the appeal which is solely against a single condition, and 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 (as amended).

6.2. Content of Assessment

- 6.2.1. The appellant is appealing the attachment of Condition No.9 (Level access should be provided to each external terrace/balcony areas) on the basis that the requirement set out is not necessary to demonstrate compliance with Part M of the Building Regulations (as amended).
- 6.2.2. The key requirement of Part M of the Second Schedule to the Building Regulations (as amended), which applies to the condition in question is as follows;
- M1 – Adequate provision shall be made for people to access and use a building, its facilities and its environs.
- 6.2.3. TGD M 2022 notes that;
- The guidance in Section 1 (Access and Use of Buildings Other than Dwellings) applies to the common areas of apartment blocks and their environs.

- The guidance in Section 3 (Access and Use of Dwellings) 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. Guidance on these areas is provided in Section 1.
- Where works are carried out in accordance with the guidance in this document, this will, prima facie, indicate compliance with Part M of the Second Schedule to the Building Regulations (as amended).

6.2.4. The appellant's agent in its appeal has set out a number of items to be considered by ABP in making its determination & these are outlined above. However, the central issue in my opinion relates to the basis of compliance.

The appellant's agent is of the view that;

- The common areas of the apartment building should comply with Section 1 of the TGD M 2022
- The individual apartments should comply with Section 3 of the TGD M 2022.

I am in agreement with this view, as it is clearly set out in TGD M 2022, refer to item 6.2.3 above.

A stepped change of level within an apartment is permitted under Section 3 (Access and Use of Dwellings) of TGD M 2022 provided at least one habitable room and a room containing a WC can be accessed from the accessible entrance. The appellant's agent in its appeal has noted that the apartments are in compliance with this requirement.

Although it would obviously be preferable for all facilities within a building to be accessible and useable and constructed to facilitate active participation, TGD M 2022 notes that where works are carried out in accordance with the guidance in this document, this will, prima facie, indicate compliance with Part M of the Second Schedule to the Building Regulations (as amended). In my view, the appellant has demonstrated that the works are being carried out in accordance with the relevant guidance as set out in TGD M 2022, and that if constructed in line with the design presented with the application and the appeal, will comply with the requirements of Part M of the second schedule to the Building Regulations (as amended).

6.2.5. With regard to the reasoning for the stepped change as outlined in item 4.1 above, this is unfortunate as there are obviously a number of different ways to detail this junction in order to provide level access while avoiding a cold bridge. However, from my site visit on the 7th October 2024, the construction of the proposed development seems to be nearing completion, and should the appeal of condition No.9 not be upheld this may impact the projects Substantial Completion date.

6.2.6. The appellant's agent in its appeal has noted that;

- Access and use of the common areas serving this development will comply with the requirements of Section 1 of the TGD M 2022
- The individual apartments will comply with Section 3 of the TGD M 2022.

7.0 Recommendation

7.1. I recommend that ABP direct the BCA to remove condition No.9 to which the appeal relates for the reasons and considerations set out below.

8.0 Reasons and Considerations

8.1. Having regard to the presented design of the proposed residential development and the accompanying 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 it has been demonstrated by the appellant in the Disability Access Certificate application and appeal that the provision of level access to the external balconies of individual apartments is not required in order to meet the requirements of Part M of the Second Schedule to the Building Regulations (as amended). Therefore condition No.9 as originally attached by the Building Control Authority to the Disability Access Certificate is not necessary to meet the guidance set out in TGD Part M 2022 or accordingly to demonstrate compliance with Part M of the Second Schedule to the Building Regulations (as amended). It is considered that the proposed works if constructed in accordance with the design presented with the application and the appeal, would comply with the requirements of Part M of the second schedule to the Building Regulations (as amended).

9.0 Conditions

9.1. It is recommended that ABP direct the BCA to remove the following condition;

Condition 9: Level access should be provided to each external terrace/balcony areas.

Reason: It is considered that the above condition is not required in order to meet the requirements of Part M of the Second Schedule to the Building Regulations (as amended). As Section 3 of TGD M 2022 permits a stepped change of level within a dwelling provided at least one habitable room and a room containing a WC can be accessed from the accessible entrance.

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.

James Hickey MRIAI RIBA ARB

11th October 2024.