



An
Bord
Pleanála

FSC Report

ABP-321321-24

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

Appeal v Condition (Condition 1)

Development Description

5 Storey Residential Apartment Block
at

Adamstown Way, St. Helens III,
Adamstown, Lucan, Co. Dublin

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

FCS2404641SD

Appellant

Mr. Jeffrey Johnson

Appellant's Agent

Brian McCormack, AKM Design

Building Control Authority:

South Dublin County Council

Inspector

Colin Barden

Contents

1.0 Introduction	3
2.0 Information Considered	3
3.0 Relevant History/Cases	4
4.0 Appellant's Case	4
5.0 Building Control Authority Case	5
6.0 Assessment	6
7.0 Recommendation.....	7
8.0 Reasons and Considerations.....	8
9.0 Conditions.....	8
10.0 Sign off	8

1.0 Introduction

- 1.1. The proposed development at Adamstown Way, Lucan is a new 5-storey residential apartment block. The lowest level is a partially below ground 'undercroft' and entrance level with the 4 upper levels being exclusively flats.
- 1.2. A Fire Safety Certificate Application, with Building Control Authority (BCA) Ref. FCS2404641SD was submitted to the BCA on 12/03/2024. That Fire Safety Certificate Application was Granted with 6 Conditions on 29/10/2024. An appeal against Condition 1, below, was lodged with An Bord Pleanála (ABP) on 25/11/2024.

Condition 1:

Additional information received 27th September 2024 shall be incorporated in the works except where the conditions below note otherwise.

Reason:

To comply with the provision of Part B of the Second Schedule to the Building Regulations, 1997 to 2023.

- 1.3. The subject of this report is an appeal v condition (Condition 1).

2.0 Information Considered

- 2.1. The information considered in this appeal comprised copies of the following:
 - Statutory and supporting documents submitted with the application on 12/03/2024.
 - BCA Request for Revised Information dated 13/08/2024
 - Revised Information submitted on 27/09/2024
 - Grant of Fire Safety Certificate with 6 Conditions dated 29/10/2024
 - Appeal by the Agent, AKM Design on behalf of the Appellant, Jeffrey Johnson, lodged with ABP on 25/11/2024
 - BCA response to the Appeal, 17/12/2024
 - Further submissions from the Appellant dated 12/03/2025

For clarity, references to the 'Appellant' in this report include submissions made on their behalf by their Agent in this appeal process. The term 'Applicant' is used when referring to the Fire Safety Certificate Application process.

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. I am not aware of any relevant Board decisions at other locations that may be of assistance to the Board in determining the case.

4.0 Appellant's Case

- 4.1. The Appellant is appealing the attachment of Condition 1 to the grant of the fire safety certificate 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:

- Following submission of Fire Safety Certificate Application FCS2404641SD the BCA issued a revised information request. The revised information request included a request to provide sprinklers to the basement car park.
- In response to the revised information request the Agent, on behalf of the Appellant, agreed to the provision of sprinklers in the basement car park within the submission of revised information on 27/09/2024.
- The BCA attached a condition (Condition 1) requiring that the additional information received on 27/09/2024 be incorporated in the works.
- The Appellant is appealing Condition 1 and asks the Board to reconsider the amendment made via their revised information submission. The Appellant asks that the provision of sprinklers at basement level be removed.
- In response to the BCA submission on the appeal the Appellant also makes the following points.
 - The revised information request issued by the BCA prescribed and imposed the requirement for sprinklers in the basement car park.
 - The Appellant asks the Board to re-consider the application via a *de novo* assessment.
 - Technical Guidance Document B 2006 (2020 reprint) does not require sprinklers in a basement car park.

5.0 Building Control Authority Case

5.1. The BCA set out their response to the appeal which can be considered as follows:

- Condition 1 attached to the Grant of Fire Safety Certificate is a “standard condition” used when revised information has been submitted as part of an application.
- Article 16 of Building Control Regulations states that a Building Control Authority may require the Applicant to submit revised plans, specifications or other particulars and may decide to grant a Fire Safety Certificate in respect of the revised plans, specifications and particulars submitted.
- Condition 1 does not mention the provision of sprinklers in the basement car park.
- The revised information requested on 13/08/2024 was in respect of 39 separate points of information. Item 33 of 39 noted that the BCAs expectation was that sprinklers be provided in basement car parks.
- The revised information submitted on 27/09/2024 included 10 documents/plans addressing the revised information request along with a letter stating the following in response to Item 33:
 - *“We have agreed to comply with your request to extend the sprinkler system to cover the Level 00 (undercroft) car park. A sprinkler system will be provided to these areas in accordance with I.S. EN 12845:2015+A1:2019, and Section 5.4.1 has been re-written to confirm this. Section 5.8.4 has also been amended for consistency.”*
- The Appeal of a Grant of Fire Safety Certificate to An Bord Pleanála is enabled by Section 7 of the Building Control Act which states that an appeal may be made when an applicant is dissatisfied with the decision of the BCA. In this case the decision, to provide sprinklers in the basement car park, was not made by the BCA. The decision to Grant a Fire Safety Certificate Application was made on the basis of the information submitted by the Applicant to the BCA (including the proposal to provide sprinklers).
- The BCA consider that the appeal has no foundation and ask the Board to dismiss the appeal.

6.0 **Assessment**

6.1. **De Novo assessment/appeal v conditions**

- 6.1.1. I note that the Appellant, in their submission to the Board dated 12/03/2025, requests that a *de novo* assessment be carried out. However, having regard to the nature of the appeal which is solely against a condition (Condition 1), 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, 1997, as amended.

6.2. **Content of Assessment**

- 6.2.1. There is a technical argument, made by the Appellant, referenced within this appeal that does have some merit. The Appellant is correct in noting that TGD-B 2006 (2020 reprint), as the *prima facie* guidance setting out compliance with Part B of the Second Schedule to the Building Regulations, does not require sprinklers in basement car parks.
- 6.2.2. However, the Condition being appealed in this case does not require sprinklers in the basement car park. Condition 1 being appealed states the following:

“Additional information received 27th September 2024 shall be incorporated in the works except where the conditions below note otherwise.”

The BCA note that this condition is a “standard condition” and is not strictly necessary as Article 16 of Building Control Regulations permits the Granting of a Fire Safety Certificate based on revised information received. The BCA states that this standard condition is used by them to highlight to the Applicant that the revised information received forms part of the BCAs decision to Grant the Fire Safety Certificate.

6.2.3. In the revised information submitted to the BCA during the Fire Safety Certificate Application the Applicant made the following commitment, as point 33 of 39:-

“We have agreed to comply with your request to extend the sprinkler system to cover the Level 00 (undercroft) car park. A sprinkler system will be provided to these areas in accordance with I.S. EN 12845:2015+A1:2019, and Section 5.4.1 has been re-written to confirm this. Section 5.8.4 has also been amended for consistency.”

6.2.4. The purpose of an appeal to An Bord Pleanála is, as set out in Section 7 of the Building Control Act, to provide an appeals process for decisions made by the Building Control Authority. The Appeal process was not intended, in my opinion, to provide a process to withdraw commitments made by the Applicant to the BCA during the Fire Safety Certificate Application process.

6.2.5. In assessing this appeal, it is worth considering what impact the removal of Condition 1 would have. Article 16 of Building Control Regulations enables a BCA to Grant a Fire Safety Certificate based on revised information received and, as the BCA notes, attaching Condition 1 to the Grant of Fire Safety Certificate was not strictly necessary. Therefore, if this appeal was upheld and Condition 1 was removed from the Grant of Fire Safety Certificate there would be no design change. The Applicants commitment, made in the revised information submitted with the Application, to provide sprinklers in the basement car-park would stand.

6.2.6. I believe it is for this reason that the Appellant requests a *de novo* assessment be carried out. Although a *de novo* assessment may be carried when considering the decision of a BCA in the appeals process it is not appropriate, in my opinion, for a *de novo* assessment to be carried out for the primary purpose of withdrawing commitments made by the Applicant to the BCA during the Fire Safety Certificate Application process.

7.0 Recommendation

7.1. Having regard to the above assessment it is my recommendation that the Board refuse this appeal.

8.0 Reasons and Considerations

- 8.1. Having regard to the statutory and supporting documents, submitted in connection with the Fire safety Certificate Application, the documents submitted by the Appellant and the Building Control Authority as part of this appeal, and to the report and recommendation of their reporting inspector, the Board is satisfied that the removal of Condition 1 is not warranted in this case.

9.0 Conditions

- 9.1. Not applicable. The recommendation is to refuse the appeal.

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.

Colin Barden

BEng (Hons) (Fire Eng.), MSc (Fire Eng.), CEng MIEI

14/06/2025