

Inspector's Report

Development:	Construction of a 9-storey building consisting of 188 residential units, 2 commercial units and associated site works at Davitt Road, Dublin 12.
An Bord Pleanála (ABP) Case No.:	ABP-321412-24
Building Control Authority (BCA):	Dublin City Council
Building Control Authority Ref. No.:	DAC2404501DC Submission No.: 4010123
Type of Appeal:	First Party against Conditions Nos. 2, 3 and 8
Appellant:	Mr Tom McGrath 36 Upper Mount Street Dublin 2
Agent:	Jason Leonard of Ryan & Associates 50 Lower Salthill Galway
Inspector:	Michael Mohan, FRIAI
Appendix Attached:	None

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1.0 Introduction

1.1. Site description

The site is located on Davitt Road, Dublin City. The front elevation faces the Grand Canal and Luas line to the north. There are industrial premises to the east and west and two-storey houses to the south. The site area is stated as 5,713.40 sq.m. and the total floor area of the building is stated in the DAC application as 18,622.20 sq.m.

1.2 Subject Matter of Application

The Disability Access Certificate (DAC) application was submitted to the Building Control Management System, BCMS Ref. No.: DAC2404501DC, Submission No.: 4010123, on 1st July 2024 for construction of the development comprising a 9-storey building consisting of 188 residential units, 2 commercial units and associated site works.

The application included:

- Completed application form for a Disability Access Certificate
- Drawings submitted to BCMS 1st July 2024:

Drawing Number	Title	Scale
DAC-00	Site Location and Layout	Noted @ A0
DAC-01	Basement Plan	1/100@A0
DAC-01	Basement Plan	1/100@A0
DAC-03	1 st Floor Plan	1/100@A0
DAC-03	2 nd Floor Plan	1/100@A0
DAC-04	3 rd Floor Plan	1/100@A0

- Drawings submitted to BCMS as Further Information 23rd October 2024:

Drawing Number	Title	Scale
DAC-01	Basement Plan (REV01)	1/100@A0
DAC-01	Ground Floor Plan	Noted@A0
DAC-01	Ground Floor Plan	Noted@A0
DAC-05	4 th Floor Plan	1/100@A0
DAC-10	North and South Elevations	Noted @ A0
DAC-11	West and East Elevations	Noted @ A0
DAC-12	Sections	Noted @ A0

- Drawings submitted with appeal to An Bord Pleanála 5th December 2024:

Drawing Number	Title	Scale
DAV-HEI-06-00-AR-CWO-AR-2000	Ground Floor GA Plan	1:100

- Disability Access Certificate Compliance Report.
- Cheque for €500.00 with respect to the application fee.

1.3 Building Control Authority Decision

- The BCA issued a Disability Access Certificate on 7th November 2024, Ref. No. DAC2404501DC, BCMS Ref. No.:4010123, subject to twelve conditions.

2.0 Information Considered

The following information was considered as part of the appeal process:

2.1. Disability Access Certificate application and decision:

DAC application, including Compliance Report and drawings, as well as responses to BCA's requests for further information, all submitted by Jason Leonard of Ryan & Associates.

Granted Disability Access Certificate (BCMS Ref. No.: DAC2404501DC, Submission No.: 4010123).

2.2. Appeal Documentation submitted by Agent:

The appeal documentation submitted by Jason Leonard of Ryan & Associates was received by An Bord Pleanála on 5th December 2024. It included:

- Letter from Jason Leonard of Ryan & Associates, dated 2nd December 2024.
- Drawing No.: DAV-HEI-06-00-AR-CWO-AR-2000.
- €500 with respect to the fee for the appeal.

2.3 Subject Matter of Appeal:

The appeal was against the following conditions attached to the Granted Disability Access Certificate:

Condition 2:

A suitably marked, accessible and separate pedestrian access route shall be provided from the external footpath at the car park entrance. This route shall be provided with suitable "STOP" signage, lighting, and pedestrian crossing in accordance with section 1.1 of TGD M 2022

Reason

To provide an independently accessible route to a building and in the interests of clarity.

Condition 3:

Doors in general use, opening outwards onto external circulation routes or access routes, shall be sufficiently recessed so as to not cause an obstruction or hazard to people passing by as set out in Section 1.1.3 of TGD M 2022.

Reason

To reduce the risks to people with vision impairment.

Condition 8:

Level access shall be provided to all balconies and entrance terrace area to facilitate people who use wheelchairs.

Reason

To provide for people to travel within a building conveniently and without discomfort in order to make use of all relevant facilities.

2.4. Application Documentation from BCA

The BCA submitted a letter and enclosures to An Bord Pleanála, dated 23rd December 2024, in response to a request from An Bord Pleanála, dated 10th December 2024. An Bord Pleanála received the documents on 23rd December 2024. The BCA's letter described the enclosures as follows:

1. Copy of certified copy of decision notice (dated 7th November 2024).
2. Copy of certified copy of the manager's order (dated 7th November 2024).

3. Drawings, documentation and report.

The documentation included copies of the following:

- BCA letters to the Applicant requesting Further Information, dated 2nd July 2024 and 20th August 2024.
- Copy of Form of Application for a Disability Access Certificate.
- The Agent's Compliance Report.
- Agent's letter to the BCA, dated 22nd October 2024 with revised information.
- BCA's Building Surveyor's Assessment Report, dated 5th November 2024.
- The BCA provided a list of supporting documents i.e. drawings which were uploaded by the Agent to the BCMS file. It is assumed that the BCA considered that not all of those drawings were relevant to the appeal and therefore the only drawings provided by the BCA were those referred to above in Section 1.2 of this inspector's report.
- Copy of the BCA's recommendation on the DAC application, dated 5th November 2024.

3.0 Relevant history/cases

There is no previous DAC history of relevance pertaining to the site. An Bord Pleanála made previous decisions on DAC appeals which dealt with some similar issues relevant to the subject appeal:

- ABP-308863-20 – ABP ordered that a condition be omitted (requiring wheelchair access to external terraces/balconies). This is similar to Condition 8 of the subject application
- ABP-315136-22 – ABP were satisfied that adequate details were provided on the accessible approach and entrance to and circulation around the building.

4.0 Appellant's case

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

The Agents stated that their Compliance Report outlined the means by which compliance with Part M of the Building Regulations 1997 is to be achieved and the main reference document referred to throughout is Technical Guidance Document Part M 2022.

Condition 2:

- Section 1 of TGD M 2022 does not outline requirements for a pedestrian access route to be provided where a ramped vehicle access route is provided to a basement car park.
- It is impractical to provide a compliant ramp in accordance with TGD M due to the difference in levels of 3.725m. between ground and basement levels.
- There are 2 accessible and separate access routes provided leading to the basement car park for pedestrian access through the building leading from the entrances at ground floor level from where lifts and stairs can be used to access the basement.
- In addition, there is a separate access route and stairs equipped with bike rails to transport bikes to the basement level.

Condition 3:

- Section 1.1.3.1 of TGD M permits the use of appropriate guarding for outward opening doors in general use.
- The main pedestrian access / circulation routes along the front and sides of the building provide adequate space outside the door swings and are not obstructed by the door swings. Appropriate guarding is proposed by guarding rails, planters and bike racks which are all to be located behind the 1800mm. min. width footpath lines along the front of the building and at the sides there is ample room for maneuvering around guarded outward opening doors.
- If the doors were recessed, they would cause a knock effect non-compliance at the landings serving the gently sloped entrances and the bike stairs.
- If the doors are recessed, the applicant is concerned that they will create dry covered areas which may contribute to anti-social hangout locations.
- Doors at the rear of the building are for escape purposes only. They will not be in frequent use, do not form part of the access or circulation routes and will only be used in the event of an emergency.

Condition 8:

- The basis of compliance for individual dwellings and apartments is Section 3 of TGD M while Section 1 relates to the common areas of apartment buildings.
- There is full accessibility available to the shared terrace/balcony areas accessible from the common areas of the apartment block”.
- There are a total of 4No. internal private balconies only accessible from within each individual dwelling of a total of 144No. units (or less than 3% of the total) that are provided with a step and therefore not fully accessible. The Management operations of the building will provide an option for less able-

bodied users/customers to be provided with an accessible terrace/balcony.

- Section 3 of TGD M permits a stepped change in level within a dwelling, provided at least one habitable room and a room containing a WC can be accessed from the accessible entrance.
- The apartment floor slab and balcony slab are cast as one to address cold bridging. Removal of the upstand will create problems with cold bridging, weathering and drainage.
- It is not considered reasonable or practicable given the requirements of Section 3 of TGD M to require level access onto each balcony.
- Access and use of common areas comply with TGD M 2022 Section 1.

5.0 Building Control Authority's case/response

The BCA did not offer any further explanation relevant to the conditions under appeal other than listing the conditions and the reasons in the granted Disability Access Certificate and in the BCA's Building Inspector's Report. Those conditions and the reasons for them are set out in Section 2.3 of this report.

6.0 Considerations

6.1 Level of detail provided in the application to meet the requirements of the Building Control Regulations 1997 to 2018

Section 20 (D) 3(b) of the Building Control (Amendment) Regulation 2009 states that a DAC application should:

- *Identify and describe the works or building to which the application relates;*
- *Enable the building control authority to assess, whether the said works or building 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;*
- *Identify the nature and extent of the proposed use and, where appropriate, of the existing use of the building concerned.*

Section 20(D) 4 of the Building Control (Amendment) Regulation 2009 states:

- (c) *Where a building control authority considers that an application for a disability access certificate does not comply with paragraph (3), they may, as they consider appropriate, having regard to the extent of the failure to comply with the said paragraph, by notice in writing—*
 - (i) *inform the applicant that the application is invalid and cannot be considered by the authority, or*

(ii) require the applicant to furnish such further plans, calculations, specifications or particulars, or such additional fee, as may be necessary to comply with the said article
(d) Where a building control authority serve a notice in accordance with sub-paragraph (c), they shall return to the applicant all the documents and the fee which accompanied the application.

6.2 Meeting the requirements of Part M of the Building Regulations

6.2.1 Legislative Considerations

Part M of the Second Schedule to the Building Regulations, (as amended), provides as follows:

To meet the requirements of M1: *Adequate provision shall be made for people to access and use a building, its facilities and environs.*

Section 20(D) 7(b) of the Building Control (Amendment) Regulation 2009 states:

A disability access certificate granted under this Part shall only be construed as certifying that the building or works, if constructed in accordance with the plans, documents and information submitted, would comply with the requirements of Part M of the Second Schedule to the Building Regulations.

SI No. 306/1991 – Building Regulations 1991 includes the following definitions:

"dwelling" means a house or flat forming a separate unit of residential accommodation;

"flat" means a self-contained premises constructed or adapted for residential use forming part of a building;

SI No.497/1997 – Building Regulations 1997 includes the same definition for a “dwelling” and expands the definition of a “flat” as follows:

"flat" means separate and self-contained premises constructed or adapted for residential use and forming part of a building from some other part of which it is divided horizontally;

6.2.2 Technical Guidance:

Technical Guidance Document M 2022 was published by the Minister for Housing, Local Government and Heritage under article 7 of the Building Regulations 1997. It provides guidance in relation to Part M of the Second Schedule to the Regulations as amended by the Building Regulations (Part M Amendment) Regulations 2022 (S.I. No. 608 of 2022). 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).

The TGD M document 2022, 0.5 titled '*Use of the Guidance*' states that *Technical Guidance Document M 2022 is divided into 3 sections. Each section deals with different types of works* and it sets out the minimum level of provision to meet the requirements of M1.

Section 1: applies to

- (a) buildings other than dwellings and their environs, and*
- (b) the common areas of apartment blocks and their environs.*

Section 2: *applies to access and use of existing buildings other than dwellings...and... also applies to the common areas of existing apartment blocks and their environs.*

Section 3: *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.*

7.0 Assessment

This appeal is made against Conditions attached to a Disability Access Certificate. Having considered the drawings, reports, details and submissions on file it is considered that a *de novo* approach is not warranted.

Reference to Google maps shows that the construction phase is well advanced on site. As ABP will be aware, a DAC is required before a building can be occupied. It is not necessary to obtain a DAC prior to commencement of a development but it is advisable.

The assessment below considers the appeal against Conditions 2, 3 and 8.

Condition No.2:

The BCA requested that a marked, accessible and separate pedestrian access route be provided from the external footpath at the car park entrance.

The design provides accessible and separate pedestrian access routes to the basement car park by way of two staircases and two lifts. These are accessible from within the building. In addition, another staircase with bike rails is provided at the side of the building.

Section 1.1.3.4(i) of TGD M 2022 states: *An alternative means of access for wheelchair users should be provided e.g. a platform lift, where the ramp is 1:20 or greater and the total rise of the ramp is greater than 2000 mm.*

Rationale: Ramps simply become too tiring for wheelchair users beyond this height.

TGD M 2022 1.1.3.1 (f) states: *The danger of inadvertently walking into a vehicular route should be minimised by providing a separate pedestrian route.*

For safety reasons it would be desirable to have a pedestrian access route(s) located away from a ramped vehicular access. It would also be impracticable to provide one in this case as the level difference between ground level and basement level is 3.725m. which exceeds the maximum total rise of 2.0m. which is recommended in 1.1.3.4 (I) TGD M 2022.

There are many examples of car parks in Dublin where pedestrian access is separated from the vehicular car park entrance, e.g. Stephens' Green Centre/College of Surgeons; the Setanta Centre, the Mater Hospital to mention just a few. In these examples access is provided inside the buildings by lifts and staircases. They also provide signage indicating that the ramps are not to be used by pedestrians.

If one examines how the basement car park will be used. The car park spaces will be used by residents or their visitors. Cars would be driven into the basement in the first instance. People would then enter the building via the lifts or stairs. Likewise, they would use the lifts or stairs to access the basement car park from the upper floors when leaving the building.

In my opinion, Condition 2 should be amended to remove the requirement to provide a marked, accessible and separate pedestrian access route at the car park entrance. Instead, appropriate signage should be provided at the car park entrance, prohibiting people from using the vehicular ramp and directing them to the building entrances for pedestrian access to the car park.

Condition No.3:

TGD M 2022 1.1.3.1 (a) states:

Projecting features, which may present hazards, should be avoided to reduce the risks to people with vision impairment. However, if they are unavoidable, hazard protection should be provided if objects project more than 100 mm into an access route and their lower front edge is more than 300 mm above the ground. A window or door in general use should not open out onto these routes, within a height of 2100 mm above floor or ground level. Where such hazards are unavoidable, the area should be protected by guarding, planting or other suitable barrier incorporating low level cane detection (refer to Diagrams 1 and 2 in the TGD M)

The width of the footpath along the front of the building exceeds the minimum standard of 1800mm. The Agent advises that it measures 2170mm wide and that there is ample space at the front and sides of the building clear of all door swings. He said that the outward swinging doors will be provided with appropriate guarding in accordance with TGD M 2022.1.1.3.1.

The Agent stated that there would be practical difficulties if these external doors were recessed, they would be located on the level landings to the bottom of the gently sloped entrances causing a knock-on effect non-compliance. The door to the bike access stairs would also encroach the top landing again causing a knock-on effect non-compliance. While not mentioned by the Agent, the fact that construction of the development is well advanced on site exacerbates the situation. To recess the entrance doors at this stage would require significant alterations to the parts of the structure which have already been built.

The Agent also identified a concern of the Appellant that covered recessed areas may contribute to anti-social hangouts. It could be argued that this view is supported by Crime Prevention Through Environmental Design (CPTED) which is a multi-disciplinary approach to crime prevention that uses urban and architectural design and the management of built and natural environments. It aims to build a sense of community among inhabitants so they can gain territorial control of areas, reduce crime, and minimize fear of crime.

In my opinion, recessed entrance doors would be preferable to reduce the risks to people with vision impairment. To do so at this stage of the construction work would present practical difficulties requiring significant re-design and physical alterations to the existing structure which may create difficulties achieving compliance with Part M due to the knock-on effects. Providing appropriate guarding and tapping rails would provide protection for pedestrians, including those visually impaired. It is regrettable that construction work commenced before this issue was resolved. On balance and considering all the facts I am of the opinion

that a pragmatic solution would be to amend Condition 3 to remove the requirement to recess the doors opening outward onto external circulation routes or access routes and to require the provision of appropriate guarding and tapping rails at the sides of the doors in question.

Condition No.8:

TGD Part M 2022 provides guidance requiring dwellings to be 'visitable'. The spirit of the guidance is that persons with varying access needs, which includes persons in wheelchairs, can visit another person's private home (dwelling or apartment).

TGD M 2022 Clause 0.1(e) sets out the requirements for private dwellings (which include private apartments), requiring that 'new dwellings are visitable'. This is further expanded in Clause 0.4:

Dwellings should be designed and constructed so that:

(a) *People can safely and conveniently approach and gain access. Where due to site specific constraints or where all entrances are on other than ground level and a suitable passenger lift is not provided, it is considered adequate to provide access by means of steps, or a stairway suitable for use by ambulant disabled people;*

(b) *People can have access to the main habitable rooms at entry level.*

Where there is no habitable room at this level, it is considered adequate to provide for access to habitable rooms on the storey containing the main living room. Access to this storey from the entry storey may be by means of a stairway suitable for use by ambulant disabled people;

(c) *A WC is provided at entry level or, where there are no habitable rooms at this level, on the storey containing the main living room.*

The BCA is promoting a greater standard of access which is desirable. Denying level access to balconies in individual apartments is contrary to the principles of universal design. However, the current guidance in TGD M 2022 does not require that residents or persons visiting a private dwelling or apartment have level access to an external balcony/terrace. Furthermore, An Bord Pleanála directed, in a previous case, Ref. No. ABP-308863-20, that a similar condition to No.8 be omitted. In my opinion it would be an improvement in the next revision of TGD M if balconies and terraces to individual dwellings and apartments were required to provide level access.

Balconies are not referred to in TGD M 2022 Section 3, Access and Use of Dwellings. The requirement for level access to a balcony applies to buildings other than dwellings and to common areas of apartment buildings and does not apply to individual dwelling units / apartments.

The apartments in this development have habitable rooms and accessible WCs, located at entry level. They meet the criteria for 'visitable' apartments and comply with TGD M 0.1(e) and TGD M 2022 0.4. There is no requirement in TGD M 2022 Section 3 for level access to balconies within individual dwellings or apartments. Accordingly, in my opinion, Condition No.8 should be omitted.

8.0 Conclusions / Recommendations

In conclusion, I recommend that An Bord Pleanála directs the Building Control Authority to amend Conditions Nos. 2 and 3 as follows and to omit Condition No.8 of the granted Disability Access Certificate.

Condition 2:

Appropriate signage shall be provided at the entrance to the basement car park, directing people to the pedestrian entrance doors in the building and prohibiting pedestrians from using the vehicular ramp.

Reason

To provide an independently accessible route to a building and in the interests of clarity.

Condition 3:

Doors in general use, opening outwards onto external circulation routes or access routes, shall have appropriate guarding on each side and tapping rails with their undersides 150mm (max.) above ground level to provide cane detection.

Reason

To reduce the risks to people with vision impairment.

8.1 Reasons and Considerations

Having regard to the provisions of the Building Regulations 1997 to 2024, Second Schedule, Part M, the nature and layout of the proposed works and the submissions made in connection with the Disability Access Certificate application and appeal and to the guidance set out in Technical Guidance Document M (Access and Use) 2022, it is considered that the works to which

the application and appeal relates, if constructed in accordance with the plans, calculations, specifications and particulars submitted, and subject to compliance with the conditions as set out above, will comply with the requirements of Part M of the Second Schedule to the Building Regulations 1997 to 2024.

Michael Mohan, FRIAI
Inspector

10th March 2025