



An
Coimisiún
Pleanála

FSC Report

ABP-322422-25

Appeal v Refusal or Appeal v Condition(s)

Appeal v Condition (Condition 13)

Development Description

A development of 4 residential blocks
over basement carpark comprising
146 apartments with associated works
at

TC5 Cherrywood, Dublin 18

Building Control Authority Fire Safety Certificate application number:

FSC2202962DR
(Submission No. 3007180)

Appellant

Mr. Thomas Bather

Appellant's Agent

Mr. Anthony Fox, Maurice Johnson &
Partners (MJP), Fire Safety
Engineering and Access Consultants

Building Control Authority:

Dún Laoghaire Rathdown County
Council

Inspector

Colin Barden

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1.0 Introduction

- 1.1. The proposed development at TC5 Cherrywood, Dublin 18, consists of 4 no. residential blocks (Blocks A, B, C and D) providing 146 apartments, all over a single level basement car park. Residential Block A is 2 storeys, Block B is 3 storeys, Block C is 3 storeys and Block D is 2 storeys. Block C has the highest top floor height, at circa 10.55m above ground.
- 1.2. A Fire Safety Certificate Application, with Building Control Authority (BCA) Ref. FSC2202962DR was submitted to the BCA on 02/06/2022. That Fire Safety Certificate Application was Granted with 34 Conditions on 02/04/2025. An appeal against Condition 13, below, was lodged with An Bord Pleanála (ABP) on 30/04/2025.

“Condition 13:

A suitable automatic sprinkler system shall be installed throughout Blocks A, B, C, D, the basement car park and the basement mezzanine. The sprinkler coverage to these spaces will need to be sufficient to protect against the fire hazards within both the residential and non-residential areas. In this regard it is considered appropriate to protect the residential parts of the building using BS 9251:2021 and the non-residential parts using I.S. EN 12845:2015+A1:2019 as advised by Clause 4 of BS 9251:2021.

Reason:

To comply with 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 13).

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 02/06/2022.
 - Revised Information request dated 05/04/2023
 - Revised Information submitted on 08/11/2023
 - Revised Information request dated 21/05/2024
 - Revised Information submitted on 10/10/2024
 - Grant of Fire Safety Certificate with 34 Conditions dated 02/04/2025
 - Appeal by the Agent, Anthony Fox, Maurice Johnson & Partners, on behalf of the Appellant, Mr. Thomas Bather, lodged with ABP on 30/04/2025
 - BCA response to the Appeal, dated 07/05/2025
 - Further submission by the Agent, on behalf of the Appellant, dated 18/07/2025

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. This appeal concerns the provision of sprinklers in a basement car park. There have been other relevant Commission decisions at other locations that may be of assistance to the Commission in determining this case, a non-exhaustive list is give below.
- ABP 312605-22
 - ABP 315367-23
 - ABP 315985-23
 - ABP 317213-23
 - ABP 318731-23
 - ABP 319294-24

4.0 Appellant's Case

4.1. The Appellant is appealing the inclusion of Condition 13 to the Grant of Fire Safety Certificate Application on the basis that compliance with Part B of the Building Regulations can be demonstrated without sprinklers in the basement car park. The following points are set out in support of the appeal:

In relation to Regulation B1 the Appellant notes that:

- There are no stairs linking the basement carpark with upper, residential, levels. The stairs serving the residential levels discharges at podium level.
- The flats, and their residential cores, over the basement car park are provided with a residential sprinkler system to BS9251, the stairs are always approached by a ventilated corridor served by a natural smoke shaft and the cores have dry rising mains to assist with fire-fighting.
- Lifts do extend to basement level, which is a deviation from 1.4.9.2 of TGD-B 2006 (2020 reprint), however this was accepted by the BCA on the basis that Condition 15 requires double lobby protection of the lifts. This design mitigation measure has been, and should always be, accepted as to prevent access from the basement car park to flats overhead may be discriminatory against less able people and general users including young families.

In relation to Regulation B3 the Appellant notes that

- Section 3.5.2 of TGD-B 2006 (2020 reprint) states that car-parks are not normally expected to be sprinklered.

In relation to Regulation B5 the Appellant notes that

- Section 5.4.3.1 of TGD-B 2006 (2020 reprint) states basement car-parks are not normally expected to be sprinklered.
- A dry riser is fitted to the central basement car park.

4.2 Following receipt of the BCA's response to the initial appeal submission the Appellant also makes the following additional points:

- Regulation B1: TGD-B 2006 (2020 reprint) does not require sprinklers in basement car parks. BS9251 is a code of practice (not a specification), Clause 4.2.2 of BS9251:2021 notes that, when defining sprinkler coverage, the fire strategy for the premises should be taken into account. In this case the fire strategy is not based on full sprinkler protection of the building but rather partial sprinkler protection to offset means of escape considerations presented by the design of the open plan flats and their common corridors. In the most recent revision of BS 9251 (from 2014 version to 2021 version) the forward now states that the 2021 version includes further recommendations in non-residential protected buildings, however in an Irish context 'protected buildings' could be taken as those with a height to top floor over 30m.
- Regulation B2: The basement car park soffit insulation shall be non-combustible insulation.
- Regulation B3: Although TGD-B requires a minimum of 2.5% ventilation, to comply with TGD-F (regarding ventilation of CO₂) double that amount of ventilation, 5%, has been provided in this case.
- Regulation B4: The external walls of the apartment building overhead shall be provided with non-combustible insulation.
- Regulation B5: A dry riser and fire hose reels are provided at basement level car park.
- In addition the Appellant notes that the case study examples referred to by the BCA were all before 2020 and that the amendments to TGD-B in 2020 and 2024 provided the Department of Housing, Planning and Local Government with opportunities to include sprinkler protection in basement car parks if deemed to be required for *prima facie* compliance. The Appellant also notes that many of the case studies referenced by the BCA included design issues and/or a lack of maintenance.

5.0 Building Control Authority Case

5.1. The BCA set out their response to the Appeal as follows:

- The BCA note that residential sprinklers to BS9251 have been proposed for open-plan flats, as permitted in 1.6.3 of TGD-B. However the BCA points out that Note 3 to Subsection 4.1 of BS 9251 states; *In buildings where there is a mix of residential, non-residential and commercial use (e.g. where flats are above shops, car parks, bin stores, offices and retail units), it is generally appropriate to protect the residential parts using this British Standard and the non-residential parts using BS EN 12845. See also 5.5 and 5.6*". The BCA also notes that Section 5.4 of BS 9152 requires sprinkler protection in all parts of the premises and that the guidance in 'Item (h)' suggests that any ancillary space directly connected to a residential building should be sprinkler protected.
- The BCA contend that their background research into car park fires raises questions with regard to the statement in TGD-B that the fire load is well-defined in car parks. They note that the car park ventilation requirements of TGD-B are very likely to be inappropriate for multiple vehicles fires and EV car fires. They also note that the Draft Building Regulations and the Proposed Building Regulations required sprinklers in basement car parks.
- The BCA conclude that *"the risk presented by modern cars in car parks is over and above the environment assumed in TGD-B"* and state that *"Dublin Fire Brigade have identified that the minimum standards [i.e. in TGD-B] are insufficient"*. The BCA refers to and relies on the following in support of this conclusion,
 - UK Ministry of Technology and Fire Officers Committee Joint Fire Research Organisation (Fire Note 10),
 - BRE - Fire spread in car parks, BD 2552, Department for Communities and Local Government, 2010,
 - Selected Case Studies,
 - An examination of the increased use of EV's.

6.0 Assessment

6.1. *De Novo* assessment

Having regard to the nature of the appeal which is solely against Condition 13, 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 Commission 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

The reason for the attachment of Condition 13 to the Grant of Fire Safety Certificate is given by the BCA as *“To comply with Part B of the Second Schedule to the Building Regulations, 1997 to 2023.”* This assessment has been undertaken with regard to the requirements of Article 39 of the Building Control Regulations and has considered the extent to which the design of the building complies with the requirements of Part B of the second schedule to the Building Regulations including guidance set out in Technical Guidance Document B 2006 (2020 reprint) which is the *prima facie* guidance for compliance with Part B. To the best of my knowledge there is no dispensation from, or relaxation of, a requirement of the Building Regulations granted under Section 4 or 5 of the Building Control Act in respect of, or which is relevant to the building.

The Appellant, in their further submission to the Commission does make reference to compliance with Regulation B2 and B4 items, which is noted. However, the requirement for sprinklers in the *prima facie* guidance provided by TGD-B 2006 (2020 reprint) is primarily a Regulation B1, B3 or B5 issue. Therefore, the substantive issues raised by the Appellant and the BCA will be considered under Regulations, B1, B3 and B5 below.

6.2.1. Regulation B1

Regulation B1 – ‘Means of Escape in Case of Fire’. The Appellant submits on appeal that there is no requirement in Section 1 of TGD-B 2006 (2020 reprint) for sprinklers to be provided in basement car parks. They note that the provision of sprinklers in residential areas is solely to address the risk presented by the design of the open-plan flats and their common corridors. The BCA on the other hand refers to BS 9251 and its recommendations that sprinklers be installed throughout all parts of the premises.

TGD-B sets out the *prima facie* guidance for the provision of residential sprinkler systems in building containing flats. TGD-B 2006 (2020 reprint) only requires sprinkler protection in this case due to the design of the open plan flats and their common corridors. 1.8.1 of TGD-B states “*Where a sprinkler system is provided, it should be in accordance with BS 9251:2014, or equivalent*”. The sequence of this wording is important, 1.8.1 of TGD-B is clearly stating that where a sprinkler system is provided that sprinkler system should comply with the guidance in BS9251. The intent here, in my opinion, is that BS 9251 is being referred to as a code practice for the detailed design of such a system. I see no evidence within TGD-B of an intention to cede authority to BS 9251 regarding the fire strategy / sprinkler coverage required for buildings in Ireland. Therefore arguments about what BS 9251 does and does not say about fire strategy / sprinkler coverage are, in my opinion, outside the scope of the authority given to that document by the references made to it in the *prima facie* guidance provided by TGD-B.

I therefore agree with the Appellant on this point, there is no requirement in TGD-B to provide sprinklers to the basement car park under Regulation B1.

6.2.2. Regulation B3

The Appellant submits on appeal that there is no requirement in Section 3 of TGD-B 2006 (2020 reprint) for sprinklers to be provided in basement car parks. The BCA contend that the guidance in TGD-B 2006 (2020 reprint) is out of date and does not account for the fire load of modern vehicles nor the increased presence of EVs. The Appellant points out that TGD-B has been amended multiples times since 2006.

I note that the version used as the design code in this application (the 2020 reprint) was subject to public consultation in 2019. I further note that the most recent version of TGD-B 2024 which came into effect on 1st May 2025 also underwent extensive public consultation, with the guidance relating to car parks in TGD-B 2024 having been updated and a new Section 8 added specifically dealing with sprinkler systems. During this most recent review of TGD-B there was opportunity for due consideration of the fire load of modern vehicles and the increased presence of EVs however the 2024 edition has not been amended to require sprinklers in basement car parks.

Although the BCA do raise some valid items of consideration regarding fires in modern vehicles TGD-B is the *prima facie* guidance for compliance with Part B of Building Regulations and, neither TGD-B 2006 (2020 reprint), (as used as the primary design code in this case), nor the more recent TGD-B 2004 require sprinklers in basement car parks.

I would therefore agree with the Appellant on this point, there is no requirement in TGD-B to provide sprinklers under Regulation B3.

6.2.3. Regulation B5

The Appellant notes that 5.4.3.1 of TGD-B specifically states “*Basement car parks are not normally expected to be fitted with sprinklers*”. The BCA’s case on this point appears to be substantially the same as with Regulation B3 above, however they do also make reference to difficulties with fire-fighting.

I note that the Appellant has highlighted that a dry riser and fire hose reels are being provided to the basement car park which may assist firefighting. I also note that the stairs from upper residential levels does not continue down to the basement level.

I agree with the Appellant on this point, there is no requirement in TGD-B to provide sprinklers under Regulation B5.

7.0 Recommendation

Having regard to the above assessment it is recommended that the Appeal be upheld and that the Building Control Authority be directed to remove Condition 13 from the Grant of Fire Safety Certificate for the reasons and considerations set out below.

8.0 Reasons and Considerations

Having regard to the design of this mixed use development, 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 the appeal, and to the report and recommendation of the reporting inspector, it is considered that it has been demonstrated by the first party Appellant that the basement car park does not require sprinkler protection to meet the requirements of Part B of Building Regulations (as per the *prima facie* guidance set out in Technical Guidance Document B - 2006 (2020 reprint)). Therefore, the attachment of Condition 13 to the Grant of Fire Safety Certificate was considered by the Commission to not be warranted. The Commission was satisfied that it has been demonstrated that the works, if constructed in accordance with the design presented within the application and appeal, would comply with the requirements of Part B of the second schedule to the Building Regulations 1997, as amended and therefore directs the Building Control Authority to remove Condition 13.

9.0 Conditions

- 9.1. Not applicable. The recommendation is to uphold the appeal and remove Condition 13.

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

07/10/2025