



An
Coimisiún
Pleanála

DAC Report

ACP-323530-25

Appeal	Appeal v Condition
Development Description	Proposed construction of a warehouse and ancillary offices at 40-47 Shannon Industrial Estate, Shannon, Co. Clare
Building Control Authority Disability Access Certificate application number:	DAC2514342CE
Appellant	Mr. David Keating, Ei Electronics, 40-49 Shannon Free Zone, Co. Clare
Appellant's Agent	O'Neill O'Malley Architecture, Technology House, Galway Technology Park, Parkmore, Galway H91 KFD3
Building Control Authority:	Clare County Council
Inspector	Michael Mohan, FRIAI
Appendix A	Health and Safety Authority Safety Alert

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1.0 Introduction

- 1.1. The application submitted to the Building Control Authority (BCA), relates to the construction of a proposed warehouse and ancillary offices at 40-47 Shannon Industrial Estate, Shannon, Co. Clare. The proposed unit will consist of a warehouse (storage) accommodation and a 3-storey office space. The office space shall be fully compartmented from the warehouse space.
- 1.2. The application relates to **a new building**.
- 1.3. The case relates to an appeal against Condition No.1 of the grant DAC2514342CE namely:
 1. *A passenger lift shall be provided to serve the proposed mezzanine floors in compliance with the requirements of clauses 1.3.4.1.1 and 1.3.4.2 of Technical Guidance M -2022 to the Building Regulations 1997 to 2024*

REASON: In order to comply with Regulation M1 to Building Regulations 1997 to 2024

2.0 Information Considered

- 2.1. The information considered in this appeal comprised the following:
 - Drawings submitted with the application on 07/04/2025 which were received by the Board on 15/09/2025 and 29/08/2025.
 - Drawings submitted as part of further information to the BCA on 24/07/2025 and 30/07/2025.
 - BCA requests to the appellant for further information on 30/04/2025, 16/07/2025 and 30/07/2025.
 - Further information received by the BCA on 10/07/2025, 24/07/2025, and 30/07/2025.
 - Appeal received by An Coimisiún Pleanála, on 27/08/2025, and a copy of the BCA decision DAC2514342CE, dated 30/07/2025, which was received by An Coimisiún Pleanála, on 29/08/2025, on behalf of the appellant.

- Responses received by An Coimisiún Pleanála, on 15/09/2025 and 25/09/2025, on behalf of the BCA.
- Response received by An Coimisiún Pleanála, on 24/10/2025, on behalf of the appellant.

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 DAC, Revised DAC, or/and any dispensation or relaxation of the Building Regulations.

3.2. I am aware of the following relevant Board decisions at other locations:

- ABP-DS92.DS0054: Proposed extension to existing mezzanine floor in existing Industrial Food Processing Building at Grange, Nenagh, Co. Tipperary.
- ABP-308539-20: Proposed construction of a maintenance building located at Ringaskiddy, Co. Cork.

Both of these cases were referred to by the appellant in the appeal and the BCA's comments on those cases are included in Section 5 of this report.

4.0 Appellant's Case

4.1. The appellant is appealing the attachment of condition No.1 to the grant of the disability access certificate largely 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:

- The provision of a passenger lift to serve the proposed mezzanine floors, in compliance with the requirements of clauses 1.3.4.1.1 and 1.3.4.2 of TGD M 2022 to the Building Regulations 1997 to 2024 is not applicable.
- The purpose of the lift is to provide storage access to the first and second floors of Mezzanine areas. There are no other facilities on the mezzanine storage levels other than storage, which is also provided on ground floor level.

- The proposed lift is a Goods Platform Lift with attendant, to be used solely for the movement of goods to the mezzanine storage levels. It will have the following additional characteristics: to allow one or two competent attendants to accompany freight safely and easily; a constant pressure push button and emergency stop switch; a key switch in the lift car to allow the attendant to operate the lift from inside the car; the lift can also be controlled by an automatic operation at landing; the lift has an alarm in case of entrapment; the inside of the lift car is finished with coated steel sheeting with buffer rails and kick plates - it does not rely on a mesh for cab containment.
- Only limited or occasional access will be provided to the mezzanine storage areas.
- Providing a standard passenger lift in compliance with 1.3.42 would require a significant change in design and increase costs to accommodate a concrete enclosure with lift pits and all associated equipment. Considering the limited access to these floors this seems disproportionate to the intended use of these floors.
- The proposed Goods Platform Lift with attendant complies with EC Machinery Directive 2006/42/EC for platform lifts.
- TGD M Section 1.3.4.1.1 notes the following:

“Where no lift or lifting device is provided, the same range of services/facilities that are available on other levels should be made available on the entry or accessible level”.

The ground floor, or entry level, contains the equivalent range of services /facilities that are available on the first and second floor mezzanine areas.

All facilities which staff will be using, are located on the ground floor i.e. office, lockers, break rooms and WC facilities.

- TGD M Section 1.3.4.1.1 requires the provision of a passenger lift to non-residential or mixed uses buildings over 200sq.m. The Appellant believes that the intent of this clause was for areas that would be frequently accessed by occupants and also the general public and was not intended for storage areas with limited infrequent access by trained personnel.

- The lift is intended for the sole purpose of storage access in a warehouse environment. From a Health and Safety perspective it would be both impractical and unsafe for persons suffering from neurological conditions such as Multiple Sclerosis or Parkinson’s Disease to operate in this realm.
- Diagrams and text were submitted in the appellant’s response to demonstrate how goods will be transferred and the proposed racking systems in the building. The diagrams illustrate staff lifting boxes from pallets on hand pallet trucks and placing them on storage racks.

5.0 Building Control Authority Case

5.1. The BCA state that the Disability Access Certificate is essential for ensuring that buildings are accessible to people with disabilities. Providing a freight/goods lift in lieu of a passenger lift in a new building is in contravention of the requirements of Part M.

- Section 1.3.4.1(a) of TGD M 2022 “Lifts” states:

*“Passenger lifts should be provided in all multi-storey buildings to serve all storeys above and below entry level e.g. basements used for car parking, etc., except in the following situations:
(a) Non-residential or mixed-use buildings with a nett floor area per floor of less than 200 m²....”*

The proposed floor area of each mezzanine floor is 436 sq.m. which is significantly higher than the 200sq.m. maximum. The BCA are of the opinion that the exception not to provide a passenger lift only applies to buildings where the area per floor is less than 200sq.m.

- Section 0.6(f) TGD M 2022 states: *The Requirements of Part M do not apply to the part(s) of a building used solely to enable inspection, repair or maintenance of the building.*

The mezzanine floors will be used for storage and will be accessed by staff, they are not parts of the building used solely to enable inspection, repair or maintenance.

- Suggesting that a lift is not required in a building of any size, where the same “range of services” is provided on each floor is non-sensical. If that was the case it could be argued that any large building such as a multi-storey car park, hotel, sports stadium, shopping centre, school etc. may never require a lift.

- Not all people who require a lift are wheelchair users. A lift ensures that people can move around freely and use the building facilities safely and independently. In this building there will be a requirement for staff to access each mezzanine floor level. Providing a passenger lift ensures inclusivity.
- Part M requirements guarantee that users with mobility impairments can access all parts of the building safely and easily without relying on assistance.
- Lifts used for lifting goods only (freight lifts) and those used for lifting persons (passenger lifts) have different regulatory considerations.
- The Health and Safety Authority issued a Safety Alert, following a fatal accident in 2009, using a goods lift, which advised “*Under no circumstances should goods lifts be used for carrying passengers unless they meet all the requirements for passenger lifts. All employees should be clearly instructed on the dangers of inappropriate use of goods lifts.*” (See Appendix A for a copy of the HSA’s Safety Alert).
- The appellant referred to two An Bord Pleanála decisions as precedents. The BCA stated that comparison with those cases was not relevant for the following reasons:

DS92.DS0054 – “The building at the Ei facility in Shannon is a new building so the issue of “practicability” and “existing structural conditions” does not apply.”

ABP-308539-20 – “The mezzanine floors in the building are not intended to be used for routine maintenance of equipment.”

- A passenger lift is a vital and regulated provision of the Building Regulations to ensure that new buildings provide people with disabilities with equal access and mobility.
- The Appellant states that the standard to which this proposed goods lift complies is Machinery Directive 2006/42/EC which is a general machinery directive and does not deal with the specific requirements of lifts intended for use by persons with impaired mobility which is dealt with in the relevant parts of I.S. EN 81.

6.0 **Assessment**

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

- 6.1.1. Generally, a *de novo* assessment will only be carried out where the appeal is against a refusal to grant a disability access certificate.
- 6.1.2. Having regard to the nature of the appeal which is solely against a 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, 1997, as amended.

6.2. Content of Assessment

- 6.2.1. The Assessment as far as is relevant to the appeal refers to the Building Regulations Technical Guidance Document M 2022, Access and Use.
- 6.2.2. The appellant proposes (a) a Goods Platform Lift with attendant, which complies with EC Machinery Directive 2006/42/EC (b) the mezzanine floors will be used for storage purposes only and will not be occupied areas (c) the lift cab will be fully enclosed (d) trained personnel using the lift will need to be able to perform a certain range of physical activities (including lifting boxes onto/off storage racks). The appellant describes this as an “industrial building” to be used for storage. Consequently, he argues that the provision of a passenger lift to serve the proposed mezzanine floors, in compliance with the requirements of clauses 1.3.4.1.1 and 1.3.4.2 of TGD M 2022 to the Building Regulations 1997 to 2024 is not applicable. The Appellant believes that the intent of TGD M Section 1.3.4.1.1 (i.e. requiring passenger lifts for non-residential or mixed uses buildings where the area of each upper floor is over 200sq.m.) was for areas that would be frequently accessed by occupants and also the general public and was not intended for storage areas with limited infrequent access by trained personnel. The appellant stated that providing a standard passenger lift in compliance with 1.3.42 would require a significant change in design and increase costs to accommodate a concrete enclosure with lift pits and all associated equipment.
- 6.2.3. Part M of the Second Schedule to the Building Regulations, (as amended), requires that *“Adequate provision shall be made for people to access and use a building, its facilities and its environs”* and *“In order to satisfy the requirements of Part M, all buildings should be designed and constructed so that (a) people can safely and independently approach, gain access and use a building its facilities and environs and (b) elements of the building do not constitute an undue hazard for people, especially for people with vision, hearing or mobility impairments.”*

- 6.2.4. TGD M 2022 does not refer to “industrial buildings” or other specific building types. It states that Building Regulation requirements apply to **all** non-residential or mixed-use buildings and dwellings.
- 6.2.5. Section 0.6(f) TGD M 2022 states: *The Requirements of Part M do not apply to the part(s) of a building used solely to enable inspection, repair or maintenance of the building.* This is not the case in this building as the mezzanine floors will be used for storage.
- 6.2.6. In summary the BCA state that (a) a passenger lift is a vital and regulated provision of the Building Regulations to ensure that new buildings provide people with disabilities with equal access and mobility (b) there is no practical reason why a passenger lift cannot be installed in this new building (c) Section 1.3.4.1(a) of TGD M 2022 “Lifts” requires that *passenger lifts should be provided in all multi-storey buildings to serve all storeys above and below entry level* (d) the mezzanine floors will be used for storage and not for routine maintenance of equipment.
- 6.2.7. The proposed Goods Platform Lift with attendant will not provide independent access to all people, including disabled people. They are not designed to transport passengers. They are governed by different regulatory considerations compared to passenger lifts.
- 6.2.8. The Health and Safety Authority (HSA) issued an alert on the operation of passenger and goods lifts which advised, *inter alia*: “*Under no circumstances should goods lifts be used for carrying passengers unless they meet all the requirements for passenger lifts.*” (See Appendix A).
- 6.2.9. The appellant submitted that the proposed use of the building will require trained personnel who are physically capable of using a goods lift, lifting boxes and that a number of disabled people may not be able to carry out these tasks. However, the Building Regulations do not make an exception for this. They require that all persons can independently access and use a building. To do so, people will require a passenger lift rather than a goods platform lift to access the mezzanine floors. This may seem harsh to the appellant but Sections 0.2 and 0.3 of TGD M 2022 state that: “*all buildings should be designed and constructed so that people can safely and independently approach, gain access and use a building, its facilities and environs*” and:

in the case of buildings other than dwellings: *“people can circulate within a building and use the building’s facilities”*

6.2.10. While the appellant argues that this is an industrial building with limited/infrequent access to the mezzanine floors, requiring able-bodied trained personnel, nonetheless

6.2.11. a passenger lift will be required to meet the requirements of the Building Regulations.

7.0 Recommendation

7.1. Having regard to the above, I recommend that the Board rejects the appeal against the BCA’s decision and directs the BCA to retain condition No.1 and the reason attached in the granted Disability Access Certificate.

8.0 Reasons and Considerations

8.1. Having regard to the presented design for the construction of the warehouse and ancillary offices, 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 Condition No.1 as originally attached by the Building Control Authority to the disability access certificate is reasonably necessary to satisfy the requirements of Part M. The Board concluded with respect to this condition that it has not been demonstrated by the first party/appellant in the disability access certificate application and appeal documentation that the provision of “a goods platform lift with attendant”, would be compliant with Regulation M1 to the Building Regulations 1997 to 2024 and specifically with Sections 0.2 (The Requirements) and 0.3 (Buildings Other than Dwellings) of TGD M 2022 such as to ensure that people can safely and independently approach, gain access and use a building, its facilities and environs and that people can circulate within the building and use the building’s facilities. The Board is therefore satisfied that it would be appropriate to retain Condition No.1 in the Granted Disability Access Certificate.

9.0 Conditions

9.1. Condition No.1 to be retained:

A passenger lift shall be provided to serve the proposed mezzanine floors in compliance with the requirements of clauses 1.3.4.1.1 and 1.3.4.2 of Technical Guidance M -2022 to the Building Regulations 1997 to 2024

REASON: In order to comply with Regulation M1 to Building Regulations 1997 to 2024

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.

Michael Mohan

28th November 2025

11.0 APPENDIX A:

Health and Safety Authority Safety Alert:

Operation of Passenger and Goods Lifts



Following a recent fatal accident involving operation of a goods lift, the Health and Safety Authority is asking all employers to ensure that the lifts on their premises have undergone the necessary thorough examination by a competent person.

The HSA would advise all employers in all sectors that passenger and goods lifts including pavement hoists and dumb waiters, are subject to requirements set out in chapter 2 of the Safety, Health and Welfare at Work (General Application) Regulations, [S.I No.299 and 732 of 2007].

Lifts must have a periodic thorough examination by a competent person every 6 months. Reports of such examinations shall be kept available for inspection by a HSA inspector.

All repairs required to lifts must also be carried out by a competent person.

Under no circumstances should goods lifts be used for carrying passengers unless they meet all the requirements for passenger lifts. All employees should be clearly instructed on the dangers of inappropriate use of goods lifts.

Lifts which are not designed for lifting persons shall be clearly marked to this effect.

Employers are required to maintain a register of lifting equipment which shall also be kept available for inspection by a HSA inspector.

Employers who currently have either passenger or goods lifts on their premises should ensure that they have undergone the required thorough examination and that the risks associated with the use of such lifts are addressed in the Safety Statement to ensure that these risks are controlled.

Details of the legislation can be obtained from Government Publications or online at www.irishstatutebook.ie or www.hsa.ie