



An
Coimisiún
Pleanála

DAC Report

ACP-324185-26

Appeal v Refusal

Appeal v Refusal of a Disability Access Certificate

Development Description

Change of use of Ground Floor and portion of Basement from retail premises to restaurant at 71 Middle Abbey Street, Dublin 1.

Building Control Authority DAC number: DAC2517745DC

Appellant Mr. Govind Anikumar – Leksar Foods Limited

Appellant's Agent Kane Architecture

Building Control Authority: Dublin County Council North

Inspector David Whelan

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1.0 Introduction

- 1.1. The subject building is located at 71 Middle Abbey Street, Dublin 1. The Disability Access Certificate (DAC) application relates to the **change of use** of Ground Floor and portion of Basement from a retail premises to a restaurant. The Ground Floor includes mainly the dining area, and the Basement includes the Kitchen and support spaces.
- 1.2. The Building Control Authority (BCA) refused a DAC application, dated 12/03/2026. This case relates to the **appeal v refusal**.
- 1.3. The BCA refused the DAC application for the below 4 No. reasons:
 - Reason 1: The applicant failed to provide adequate information showing compliance with the requirements of Part M of the Second Schedule of the Building Regulations.
 - Reason 2: The applicant has failed to demonstrate that the proposed works will comply with the requirements of Part M of the Second Schedule of the Building Regulations particularly in relation to the access to the building, internal circulation within the building and the use of facilities within the building.
 - Reason 3: The applicant has failed to provide adequate and independently sanitary facilities suitable for people with disabilities and wheelchair users.
 - Reason 4: The applicant has failed to comply with the request of the Building Control Authority to provide necessary additional information required to demonstrate compliance with the requirements of Part M of the Second Schedule of the Building Regulations.

2.0 Information Considered

- 2.1. The information considered in this appeal comprised the following:
 - Drawings submitted with the DAC application on 05/12/2025
 - Further information and Drawings received by the BCA on 12/02/2026
 - Copy of BCA decision and supporting internal report
 - Appeal prepared by Kane Architecture on behalf of the appellant

- Drawings or documents received by the Commission with the appeal on 01/04/2026
- Submissions received from the BCA on the appeal on 30/04/2026
- Further submissions received by the appellant on 07/05/2026

3.0 Relevant History/Cases

- 3.1. The Inspector is not aware of any relevant Building Control history relating to the appeal site, including any previous DAC or Revised DAC or/and any dispensation or relaxation of the Building Regulations.

4.0 Appellant's Case

- 4.1. The appellant is appealing the refusal of DAC issued by the BCA, the following are reasons in support of their appeal:

- The appellant firstly states that the DAC was wrongly refused on the basis that requested additional information had not been provided. The appellant submitted evidence confirming the BCA had receipt of the revised information and contends that all requested information was submitted.
- The appellant maintains that the application relates only to the restaurant at Ground and Basement levels and not to the wider building, which is outside the applicant's control and the scope of the application.
- The appellant states that the revised submission addressed the issues raised by the BCA, including:
 - Removal of proposed entrance alterations that were not granted planning permission.
 - Evidence to support compliance with floor finishes, stairs, handrails, corridors and sanitary facilities to comply with TGD Part M 2022.
 - Confirmation that floor levels remain unchanged.
 - Demonstration of compliance with provisions of TGD Part M 2022.

- The appellant states that no bar counter is proposed, as the premises will operate as a restaurant and such a feature would not be permitted under licensing legislation.
- The appellant contends that the refusal was unjustified, that unnecessary additional requirements were imposed during the assessment process, and that the decision should be overturned and the DAC granted.

5.0 Building Control Authority Case

5.1. Below is a summary of BCA submission on the appeal.

- The BCA argues that the DAC was correctly refused because the application failed to demonstrate compliance with Part M1 of the Building Regulations, despite the opportunity to submit revised conforming information.
- The BCA states that the application contained inaccuracies and inconsistencies, including:
 - References to the outdated 2010 TGD Part M guidance.
 - Contradictory descriptions of the development.
 - Failure to provide existing floor plans, preventing a full assessment.
- The BCA considers access to the building inadequate, as the entrance door arrangement does not demonstrate a clear unobstructed space of at least 300mm between the leading edge and the return wall, as per Section 1.2.4.2(b) of TGD Part M 2022.
- The BCA considers internal circulation inadequate due to:
 - Insufficient manoeuvring space to the corridor at the kitchen and accessible WC on the Ground floor as per Section 1.3.3.3(b) of TGD M 2022.
 - Lack of information on the slip resistance of the floor surface.
 - Insufficient evidence that the staircase and handrails comply with TGD Part M 2022.
- The BCA states that the sanitary facilities are non-compliant, due to the following:

- The wheelchair accessible WC does not meet layout requirements as per Diagram 15(b) of TGD Part M 2022.
- No WC cubicle suitable for ambulant disabled users is provided at Basement level as per Section 1.4.6.2 of TGD Part M 2022.
- The BCA argues that an accessible service counter has not been provided and that other legislative restrictions do not remove the obligation to comply with Part M.
- The BCA maintains that the applicant did not adequately address the issues raised in the Request for Further Information and that significant compliance concerns remained unresolved.

6.0 Assessment

6.1. *De Novo* assessment/appeal v refusal

- 6.1.1. Having regard to the nature of the appeal, which is against the refusal of a DAC, and having considered the drawings 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 of this application by the Commission as if it had been made to it in the first instance is warranted. Accordingly, I consider that it is appropriate to undertake a de novo assessment of the application in accordance with Article 40(1) of the Building Control Regulations 1997, as amended.

6.2. Content of Assessment

6.2.1. Scope of the Application

One issue arising in this appeal concerns the scope of the DAC application. The appellant has maintained that the application relates solely to the restaurant accommodation at Ground floor and Basement level and does not extend to the wider building. The appellant's compliance report had mentioned First and Second floor however this report was revised and corrected the error. The revised documentation reflects the true extent of the proposed works.

6.2.2. Accuracy of Submitted Information

The BCA identifies inconsistencies within the compliance report and drawings, including references to the TGD Part M 2010. This error is not sufficient to justify the refusal of the DAC application provided the application complies with TGD Part M 2022.

6.2.3. Adequate access to the Building

The BCA refused the DAC based on access to the building and specifically the entrance door arrangement. The applicant had not provided a minimum 300mm leading edge unobstructed clearance adjacent to the leading edge of the door, as per Section 1.2.4.2(b) of TGD Part M 2022. The appellant stated that the previously proposed alterations to the entrance were omitted due to planning constraints and that the entrance arrangements remain substantially unchanged. Section 0.7 (f) of TGD Part M 2022 states that *“Where a specific planning condition prohibits modification of an identified existing feature.”* As this is a planning constraint there is no additional impact or change imposed on the existing condition of the entrance to the building.

6.2.4. Circulation within the Building

The BCA identifies concerns regarding corridor manoeuvring spaces, floor finishes and staircase design.

The BCA state that *“the corridor at the rear of the Ground floor serving the kitchen and wheelchair accessible WC has been designed with inadequate manoeuvring space in accordance with Section 1.3.3.3(b) of TGD M 2022.”* However where TGD Part M 2022 states *“where it is not practicable to provide a passing place at all locations in 1.3.3.3, they should be provided where practicable.”* As this is an existing building and based on the proposed plans it would not be considered practical to provide a 1800x1800mm manoeuvring space in accordance with Section 1.3.3.3(b) of TGD M 2022.

The appellant has identified ‘ Altro safety flooring ’ to the accessible WC, however no statement or specification on the products slip resistance was demonstrated in their documentation.

In relation to the stairs and handrails, the appellant stated that *“Details of handrails being provided to the stairs are provided in drawings as attached..”* however it is not clear from the submitted drawings where the provision of handrails is included. The appellants compliance report states how handrails will be compliant with building

regulations. The report should have noted which stairs have handrails and the drawings to indicate such locations.

6.2.5. Sanitary Facilities

The BCA is correct in that the accessible WC at Ground floor level does not fully comply with Diagram 15(b) of TGD Part M 2022 and that no ambulant accessible WC cubicle is provided at Basement level. The Ground floor accessible WC includes an inward opening door, Section 1.4.4 (f) of TGD Part M 2022 states that *“It is preferable to have outward opening doors (or sliding doors) to accessible sanitary facilities. If inward opening doors are used, the size should be increased to ensure that the swing of the inward opening door does not encroach into the wheelchair turning space/activity space or transfer area”* A sliding door could be provided to comply with Diagram 15(b) of TGD Part M 2022. The sanitary fixtures layout could be rearranged to comply with this diagram.

The Basement does not provide an accessible cubicle as per Section 1.4.6.2 of TGD Part M 2022. The appellant noted *“WC cubicles within the washroom at the Basement floor level. are as set out in attached drawings.”*, the drawing does not indicate an accessible cubicle and this could easily be accommodated.

6.2.6. Other Facilities within the building

6.2.7. The BCA raises concerns regarding the absence of details demonstrating compliance of a service counter. The appellant clarified no bar counter forms part of the proposal and on that basis there is no assessment required under TGD Part M 2022.

7.0 Recommendation

7.1. I recommend that ABP direct the BCA to grant a DAC to which the appeal relates for the reasons and considerations set out below

8.0 Reasons and Considerations

8.1. Having regard to the DAC application, the additional information submitted in response to the BCA's request for further information, the submissions made by the appellant and the BCA, the requirements of Part M of the Second Schedule to the Building Regulations 1997, as amended, the guidance contained in Technical Guidance

Document Part M 2022, it is considered that the proposal should be assessed in the context of works to an existing building and having regard to the provisions of Sections 0.7, 0.8 and Section 2 of TGD Part M 2022.

It is considered that the appellant adequately demonstrated that the application relates solely to the restaurant accommodation at Ground floor and Basement level and that certain inconsistencies identified within the submitted documentation, including references to earlier editions of TGD Part M, do not in themselves demonstrate non-compliance with the requirements of Part M.

While certain aspects of the submitted design, including the accessible WC layout, provision of an ambulant accessible WC cubicle, stair handrail details and specification of floor finishes, require clarification or amendment to fully demonstrate compliance with TGD Part M 2022, these matters are considered to be minor and capable of resolution without substantial redesign of the proposed development.

Having regard to the nature of the proposed works as a material alteration to an existing building, and noting that the proposed works would not result in a new or greater contravention of the Building Regulations, it is considered that the proposal substantially demonstrates compliance with Requirement M1 of Part M of the Second Schedule to the Building Regulations.

It is therefore considered that, once the attached conditions addressing the remaining accessibility issues identified in this assessment are met, the building will comply with the requirements of Part M of the Second Schedule to the Building Regulations 1997, as amended.

9.0 Conditions

I recommend the DAC to be granted subject to the following conditions:

9.1. Condition No. 1:

The Disability Access Certificate is granted in accordance with the drawings and report submitted and the additional information received, except where altered or amended by the following conditions.

Reason: To comply with the requirements of Part M 2022 of the Building Regulations.

9.2. Condition No. 2:

A handrail should be provided to the rear staircase in compliance with Sections 2.3.4.3 and 2.3.4.5 of TGD Part M 2022.

Reason: To facilitate safe and independent vertical circulation within the building by people with disabilities.

9.3. Condition No. 3:

All internal floor surfaces should be firm, level and slip resistant when wet and dry.

Reason: To Ensure adequate provision shall be made for people to access and use a building, its facilities and its environs.

9.4. Condition No. 4:

The wheelchair accessible WC at Ground floor level shall be revised to comply with Section 1.4.5 and Diagram 15(b) of TGD Part M 2022, including door arrangement and sanitary fitting layout.

Reason: To ensure the building provides adequate, appropriate and accessible sanitary facilities for all people.

9.5. Condition No. 5:

At least one WC cubicle within the Basement sanitary facilities shall be an ambulant accessible WC cubicle in accordance with Section 1.4.6.2 of TGD Part M 2022.

Reason: To ensure the building provides adequate, appropriate and accessible sanitary facilities for all people.

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.

David Whelan

16th June 2026