



An
Coimisiún
Pleanála

DAC Report

ACP-324224-26

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

Appeal of four conditions attached to a
granted Disability Access Certificate

Development Description

Reconfiguration of restaurant
providing a lounge area and
restaurant area units and associated
works.

**Building Control Authority DAC
number:**

DAC2618759DC

Appellant

Mr Ian Keegan

Appellant's Agent

Mr Brian Bourke
Forward Fire Engineering

Building Control Authority:

Dublin County Council

Inspector

Brian Crowley

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1.0 Introduction

- 1.1. The development comprises of the configuration of an existing restaurant to provide a lounge area and restaurant area, works include the relocation of the kitchen, provision of a compartment floor, rewiring and installation of a fire suppression system.
- 1.2. The application relates to material alterations to an existing building
- 1.3. This appeal is made in respect of four conditions attached to a granted Disability Access Certificate
- 1.4. The conditions being appealed are.

Condition 5: A Wheelchair Accessible Unisex WC shall be provided in accordance with Sub-section (a) of Section 1.4.3.1 of TGDM 2022 which requires that buildings with a net floor area greater than 200m² provide a wheelchair accessible unisex WC with a minimum rectangular turning space of 1800 x 1800 mm, all in full accordance with Diagram 15a.

Condition 7: A Wheelchair Accessible Unisex WC for the sole use of staff shall be provided in accordance with Sub-section (a) of Section 1.4.3.1 of TGDM 2022 with a minimum rectangular turning space of 1500 x 1500 mm, all in full accordance with Diagram 15b.

Condition 8: Adequate changing facilities and lockers shall be provided for people with disabilities.

Condition 12: Appropriate provision, comprising a 1500mm (min) long section of counter at a level not more than 850mm above the floor together with a minimum clear manoeuvring space of 1800 X 1800mm, shall be made as per section 1.5.5 of TGD M 2022.

2.0 Information Considered

- 2.1. Set out the information considered. A general example is provided below:

The information considered in this appeal comprised the following:

- Drawings submitted with the application on 27/01/2026
- Further information and Drawings received by the BCA on 31/03/2026

- Copy of BCA decision
- Appeal prepared by Mr Brian Bourke on behalf of the appellant
- Drawings or documents received by the Commission with the appeal on 15/04/2026
- Submissions received from the BCA on the appeal on 20/05/2026.
- Further submissions received by the appellant on 29/05/2026

3.0 Relevant History/Cases

- 3.1. I am not aware of any relevant Building Control history to this appeal site.
- 3.2. There are notable previous An Coimisiún Pleanála appeals for similar appeals to condition 7 which were referenced in the appellants response.

4.0 Appellant's Case

- 4.1. The appellant is appealing the attachment of conditions 5, 7, 8 & 12 attached to the Disability Access Certificate issued by the BCA, largely on the basis that it sets out requirements that are not necessary to demonstrate compliance with Part M of the Building Regulations. The following points are set out in support of the appeal:

- Condition 5
 - The nett floor Area is less than 200m² as the common sanitary facility is not included in the floor area calculation, therefore a wheelchair accessible WC in accordance with Diagram 15a is not required.
 - Compliance with this clear technical threshold in TGD M 2022 has been adhered to, making the councils subjective assessments irrelevant.
 - The wheelchair accessible unisex WC provided is in conformance with the guidance in TGD M Section 1.4.3.1 and Diagrams 15(b), 16 & 17.
 - Compliance with TGD M 2022 has been satisfied

- Condition 7
 - 1 no. wheelchair accessible unisex is provided in the restaurant and this can be used by a staff member if required.
 - TGD M Section 1.4.3.1(c) does not explicitly mandate separate accessible WC's for staff and public if a single, centrally located, compliant unisex WC is accessible to all.
 - Section 1.4.3 requires the provision of accessible sanitary facilities whether this is for customers, visitors or staff working in the building. It does not create a requirement for the provision of sanitary facilities in a building for different user groups.
 - An Coimisiún Pleanála has adjudicated on this issue before and the board directed to remove similar conditions.
 - The scope of the Disability Access Certificate is strictly limited to Part M of the Building Regulations. Food hygiene and occupational welfare laws fall under entirely separate statutory codes and enforcement bodies. Introducing external regulations to justify conditions under the Building Control act is *ultra vires* and irrelevant to the appeal, therefore not admissible.
 - Compliance with TGD M 2022 has been satisfied
- Condition 8
 - There are no changing facilities provided for staff in this building as they are provided in another building in close proximity.
 - There are no building regulation requirements to provide facilities in a building, such as toilet and changing facilities., but where they are provided they need to comply with Part M
 - The scope of a Disability access Certificate is strictly bound to the Building Control Act. Food Hygiene and workplace welfare fall under entirely separate statutory codes enforced by separate statutory codes enforced by separate regulatory bodies.
 - Compliance with TGD M 2022 has been satisfied.

- Condition 12
 - Table service is provided, therefore there is no requirement to provide a low level counter for customers.
 - Customers do not order, pay or consume food at a counter. Because the does not feature a customer-facing interaction counter, section 1.5.5 of TGD M 2022 is functionally irrelevant to the layout
 - Compliance with TGD M 2022 has been satisfied.

5.0 Building Control Authority Case

5.1. The BCA response was as follows

- Condition 5
 - Section 1.4.3.1 of TGD M does not mandate the use of a turning circle of 1500mm x 1500mm. This represents a minimum provision rather than a default standard, and the guidance explicitly states that where space permits, a larger turning space should be provided.
 - Guidance on existing buildings in Section 2.4.3(c) notes that where it is not practicable to provide a wheelchair accessible WC with a turning space of 1800mm x 1800mm, a minimum turning space of 1500mm x 1500mm may be provided (refer to diagram 15b).
 - The applicant has not claimed that it is impractical to provide a universal accessible WC with a turning space of 1800mm x 1800mm
 - The applicant has not claimed that the space does not permit the provision of a universal accessible WC with a turning space of 1800mm x 1800mm.
 - The drawings demonstrate that space does permit the provision of a WC with a turning circle of 1800mm x 1800mm and that it is practical to do so.
 - DCC Building Control officers inspected the premises and are satisfied that the space does permit the provision of a universal accessible WC

with a turning circle of 1800mm x 1800mm and that it is practical to do so.

- The Building Control Authority considers the provisions of TGD M describe the minimum standards necessary to achieve the requirements of the building Regulations (Access and Use).
- The Building Control Authority submits the appellant's professional judgement in this regard is influenced by the understandable desire of his principals to maximize commercial floor area,
- Condition 7
 - The Disability Access Certificate (DAC) Compliance Report states that "the number and location of sanitary facilities will suit the nature, size and occupancy of the building and will be in accordance with the Safety, Health and Welfare at Work (General Application) Regulations, 2007. Sanitary facilities are for staff and visitors and will be accessible." Condition 8. Article 19. Rest room and rest areas, Article 20. Sanitary and washing facilities and Article 21 Changing rooms and lockers of S.I. No. 299/2007 - Safety, Health and Welfare at Work (General Application) Regulations 2007 set out the applicable law.
 - In a typical restaurant setting, it would not be considered appropriate for kitchen staff, chefs and floor staff to rely on toilet facilities intended for patrons. The absence of designated staff sanitary provision raises concerns in relation to compliance with Building Regulation Part M (Access and Use), S.I. No. 299/2007 and accepted operational standards.
 - EU food hygiene law (Regulation (EC) 852/2004) and industry standards such as BRCGS do require that restaurants provide adequate, hygienic, and properly located staff toilets, changing rooms, and handwashing facilities to prevent contamination.
 - From a regulatory perspective, the provision of dedicated facilities is typically required under health, safety, and food hygiene standards, while also promoting greater privacy and dignity for both staff and

customers. Separate facilities ensure that staff always have uninterrupted access to basic amenities and customers have their own dedicated provision. The absence of separate sanitary facilities represents poor practice.

- The appeal documentation refers to two previous appeals relating to similar conditions which An Coimisiún Pleanála struck out. These appeals are not relevant to the appeal at hand and reliance on these appeals is misplaced and does not provide a valid basis for determining the appropriateness of the condition under appeal.
- Condition 8
 - The compliance report accompanying the application claimed in Section 4.5 that changing and / or showering facilities were not applicable. This claim has transpired to be incorrect, as Brian Bourke confirmed in the appeal dated 11th April 2026 that 'There are no changing facilities provided for staff in this building as staff changing facilities and lockers are provided in another building in close proximity to the subject building, operated by the applicant.
 - The plans and particulars accompanying the application do not identify that essential staff welfare facilities, necessary for the safe and hygienic operation of the restaurant, are located beyond the site boundary.
 - The proposed arrangement, whereby changing facilities are located in a separate building that does not form part of the application, is extraordinary and is deemed to be non-compliant with the minimum requirements of Building Regulation Part M (Access and Use).
 - There are no evident site constraints or physical impediments that would prevent the provision of appropriate staff changing facilities within the restaurant itself.
 - The provision of staff facilities is a fundamental component of a properly functioning restaurant and their omission from the primary building cannot, in the absence of any valid constraints, be justified.

- Condition 12
 - A review of this revised drawing indicates that the layout of the service counters does not accurately reflect the as-built counter facilities on site. Contrary to what is represented on the drawing, a substantially larger counter installation has been constructed in place of the small, square-shaped counter shown on the submitted plan FFE J059-24-I-DAC-003 REV A. In practice, two substantial counter facilities have been installed as part of these works, one located in what is described as the “lounge” and the second located in what is identified as the “restaurant”. Neither of these counters incorporate an accessible low-level counter section and the installations have not been designed or constructed to accommodate the needs of people with disabilities.
 - The provision of a section of low-level counter is not solely linked to the mode of service delivery (i.e. table versus counter service), but is a fundamental aspect of inclusive design, ensuring that all users, including people of short stature, limited reach, wheelchair users and others with reduced mobility can independently access facilities, make enquiries, complete transactions, and engage with staff in a dignified and equitable manner.
 - Accordingly, the absence of a compliant low-level counter cannot be justified on the basis of a table service model alone. The requirement exists to ensure universal accessibility and should be incorporated as an integral element of the fit-out’s design, regardless of the operational approach of the business.
 - The appellant does not identify any site specific constraints, design limitations, or practical difficulties that preclude the provision of lowered sections of counters within this restaurant.

6.0 Assessment

6.1. Appeal v conditions

Having regard to the nature of the appeal which is solely against conditions, 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

Condition 5

Section 1.4.3.1 (a) TGD M stipulates that;

*“Buildings with a net floor area greater than 200m² **should** provide a wheelchair accessible unisex WC with minimum turning space of 1800 mm x 1800 mm (Refer to Diagram 15a).”*

*“Buildings with a nett floor area per floor of 200 m² or less may provide a minimum turning space of 1500 mm x 1500 mm (Refer to Diagram 15b). Where space permits, a turning space in excess of 1500 mm x 1500 mm **should be considered.**”*

TGD M Section 1.4.3.1 (a) is clear that a wheelchair accessible unisex WC with minimum turning space of 1800 mm x 1800 mm is only required where the net floor area is greater than 200m². For premises with a net floor area less than 200m², a turning space of 1500mm x 1500mm is acceptable, and providing anything in excess of this should be considered, as opposed to being a statutory requirement to comply with TGD M.

Both the BCA and the appellant have agreed that the total floor area is less than 200m², therefore based on the foregoing, a WC with a turning space of 1500 mm x 1500 mm (Refer to Diagram 15b) is considered acceptable in this case

Condition 7

Section 1.4.3 TGD M stipulates that;

“the provision of accessible sanitary facilities where sanitary facilities are provided in a building, whether this is for customers, visitors, or staff working in the building. It does not create a requirement for the provision of sanitary facilities in a building or for different user groups e.g. for people other than staff where provision has only been made for staff.”

The foregoing is clear that it is acceptable to provide a single unisex wheelchair accessible WC for the use of both customers and staff as has been provided in the subject premises, therefore there is no requirement to provide separate accessible WC's for staff and customers.

Condition 8

Section 1.4.3.5 (a) TGD M stipulates that;

“Where communal separate-sex changing and/or showering facilities are provided, accessible changing and/or showering facilities should be provided in communal areas by subdividing the area and providing accessible space and fittings as for self-contained facilities as per 1.4.9”

As per the foregoing, TGD M does not stipulate that you have to provide changing rooms, only that if they are provided they have to comply with the requirements of section 1.4.9

The scope of this application is for the premises at 121-123 Ranelagh as outlined on the drawings and compliance report.

There are no changing facilities noted in the submitted drawings or report within the scope of the application, therefore the requirements of section 1.4.3.5 (a) TGD M do not apply in this instance

Condition 12

Section 1.5.5 (b) TGD M stipulates that;

*In bars and **restaurants**, a section of the working surface of a bar or serving counter 1500 mm long (min) should be permanently accessible to wheelchair users and at a level of not more than 850 mm above the floor;*

Whilst I note the appellant's rational reasoning for providing table service, there are no such allowances in TGD M, therefore compliance with Section 1.5.5 (b) TGD M is required.

7.0 Recommendation

On the basis of my assessment above I recommend that An Coimisiún Pleanála direct the BCA to remove conditions 5, 7 & 8 and uphold condition 12 as amended below.

Condition 12: Appropriate provisions for the working surface of a bar or serving counter, comprising a 1500mm (min) long section of counter at a level not more than 850mm above the floor together with a minimum clear manoeuvring space of 1800 X 1800mm, shall be made as per section 1.5.5 of TGD M 2022.

8.0 Reasons and Considerations

Having regard to the presented design of the proposed development and the accompanying compliance report, 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 it has been demonstrated by the appellant in the Disability Access Certificate application and appeal that the requirements of conditions 5, 7 & 8 are not required in order to meet the requirements of Part M of the Second Schedule to the Building Regulations 1997, as amended. Therefore conditions 5, 7 & 8 as originally attached by the Building Control Authority to the Disability Access Certificate are not necessary to meet the guidance set out in TGD Part M 2022 or accordingly to demonstrate compliance with Part M of the Second Schedule to the Building Regulations 1997, as amended. It is considered that the proposed works relating to conditions 5, & & 8, if constructed in accordance with the design presented with the application and the appeal, would

comply with the requirements of Part M to the second schedule to the Building Regulations 1997, as amended.

Having regard to the presented design of the proposed development and the accompanying compliance report, 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 it has not been demonstrated by the appellant in the Disability Access Certificate application and appeal that the requirements of condition 12 is not required in order to meet the requirements of Part M of the Second Schedule to the Building Regulations 1997, as amended. Therefore conditions 12 as originally attached by the Building Control Authority to the Disability Access Certificate is necessary to meet the guidance set out in TGD Part M 2022 or accordingly to demonstrate compliance with Part M of the Second Schedule to the Building Regulations 1997, as amended. It is considered that the proposed works relating to condition 12, if constructed in accordance with the design presented with the application and the appeal, would not comply with the requirements of Part M to the second schedule to the Building Regulations 1997, as amended.

9.0 Conditions

I recommend that An Coimisiún Pleanála direct the BCA to remove conditions 5, 7 & 8 and uphold condition 12 as amended below.

Condition 12: Appropriate provisions for the working surface of a bar or serving counter, comprising a 1500mm (min) long section of counter at a level not more than 850mm above the floor together with a minimum clear manoeuvring space of 1800 X 1800mm, shall be made as per section 1.5.5 of TGD M 2022.

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.

Brian Crowley

04/08/2026