



An
Bord
Pleanála

Inspector's Report

DS92.DS0054

DEVELOPMENT:	Proposed extension to existing mezzanine floor in Industrial Food Processing Building.
Building Control Authority:	Tipperary County Council
Building Control Authority Reg. No:	20D20150280
Applicant/Appellant:	ABP Food Group
Application Type:	Disability Access Certificate
Building Control Authority Decision:	Grant
Type of Appeal:	First Party –v- Condition.
Date of Site Inspection:	n/a
INSPECTOR:	Patricia Calleary

1.0 SUBJECT MATTER OF APPEAL

DS92.DS0054 relates to an appeal against Condition No. 1 attached to a decision to grant a disability access certificate (DAC) for a proposed extension to a mezzanine floor in an industrial food processing building at Grange, Nenagh, Co. Tipperary.

An application for a disability access certificate (Ref: 20D/2015/0280) was lodged by Anglo Beef Processors Ltd for the works to Tipperary County Council, as the Building Control Authority (BCA). The DAC was granted with one condition attached as follows:

Condition No.1: *A passenger lift shall be provided to serve the proposed upper floor development in compliance with the requirements of clauses 1.3.4.1.1 and 1.3.4.2 of Technical Guidance Document 2010.*

Reason: *To ensure compliance with Part M of the second schedule of the Building Regulations.*

Through this appeal, the first party now requests that the BCA be directed to remove the condition.

2.0 DESCRIPTION OF WORKS

The works would comprise of an extension to an existing mezzanine floor in an industrial food processing building. It is stated that the extension would provide a storage area for dry packaging goods and would only be occasionally used. The existing mezzanine currently measures c.160 sq.m in area and post the extension, it would measure 350 sq.m. A new external ambulant disabled stair is also proposed which would provide egress from the mezzanine, presumably as a fire escape.

3.0 DOCUMENTS REVIEWED

The following documents were reviewed as part of my assessment of this appeal.

- DAC application form and supporting drawings and documents;
- Applicant's DAC compliance report;
- Further information response by applicant including reference to telephone request for further information by the BCA;
- DAC decision;

- Grounds of appeal by First Party;
- BCA Response to appeal;

4.0 DISABILITY ACCESS CERTIFICATION HISTORY

- No known previous relevant DAC history.

5.0 GROUNDS OF APPEAL

The principal grounds of the appeal lodged by the first party are summarised as follows:

Condition No.1

- Mezzanine floor will only be occasionally used, solely for box storage;
- Issue of practicability arises where beams and columns would need to be relocated thus compromising structural stability of building;
- References Clause 0.7(ii) and Clause 2.3.4.1 of TGD:M 2010;
- Same range of services/facilities are available on the ground floor; hence a passenger lift is not required;
- External escape stairs (ambulant disabled) will serve as vertical access to external ground floor.

6.0 APPEAL RESPONSES

6.1 Building Control Authority (BCA) Response

The following provides a summary of the key relevant points in the response to the appeal by the BCA.

- The extension would increase the floor area to c.350 sq.m in total which is well above the 200 sq.m threshold referenced under Clause 1.3.4.1.1 TGDM: 2010 and therefore does not meet the criteria for exemptions set out in that clause;
- In response to the request for further information on the aspect of the lift, applicant stated it was not practical (practicable) referring to structural conditions and Clause 0.7(ii) of TGD:M 2010. BCA did not agree with the arguments presented for non-provision of the lift as it was not required in the location shown on drawings and could be positioned in a more favourable position. BCA concluded the matter by deciding to grant the DAC and attaching Condition No.1;

6.2 First Party response to BCA response

- The most suitable location for a lift is adjacent to the external wall so as not to interfere with circulation and fire escape travel routes. However, it is not structurally practical to do so as it would entail moving/altering load bearing members;
- Use of mezzanine floor would be for day (dry) storage and preparation of packaging materials / making boxes;
- Only able-bodied people would be working on the existing and new mezzanine floors;
- Would comply with Clause 2.3.4.1 and 1.3.4.1 of TGD:M 2010 as no requirement for services on mezzanine floor to be accessed by staff/visitors with disabilities;
- Extension is less than 200 sq.m.

7.0 BUILDING REGULATIONS and TECHNICAL GUIDANCE

The following are considered relevant in my assessment of the appeal.

1. **Part M (Access and Use) of the 1997-2014 Building Regulations.**
The 2010 updated regulations revised the technical requirements of Part M and these regulations came into operation on 1 January 2012.
2. **Technical Guidance Document (TGD) M: Access and Use (2010)**

Section 2.0 - Introduction

Section 0.7 – This provides a **non-exhaustive** list of circumstances to consider for the **determination of practicability**

Section 0.8 Existing Buildings –

- *The term ‘**practicability**’ is used in connection with works (e.g. material alterations and certain material changes of use) to existing buildings which identifies instances where achieving standards of accessibility associated with new buildings is not feasible because of particular circumstances.*
- *Works to existing buildings, such as extensions, material alterations and certain material changes of use, can present many design challenges because of the individual character, appearance and environs of existing buildings. The **adoption without modification of the guidance in this document may not in all circumstances be appropriate.***

Section 2.3 – Circulation within existing buildings other than dwellings.

Section 2.3.1 ‘Objective - *The objective is for people to travel horizontally and vertically within a building conveniently and without discomfort **in order to make use of all relevant facilities**’.*

2.3.4.1 Provides that guidance in 1.3.4.1 should be followed except where it is not practicable to provide a passenger lift in an existing building, an enclosed vertical lifting platform should be provided in accordance with 2.3.4.1.1. **Alternatively, the same range of services/ facilities that are available on the other levels should be made available on the entry or accessible level(s).**

Other relevant sections under Section 1 include **1.3.1 and 1.3.2, 1.3.4, 1.3.4.1, 1.3.4.1.1.**I have included extracts of the aforementioned provisions within the appendix to this report.

8.0 ASSESSMENT

I have read and considered the contents of the Disability Access Certificate application, decision, grounds of appeal and response as well as relevant legislative provisions and technical guidance. I have not inspected the building in this instance. I note from the drawings and detail on file that the works proposed include material alterations and extension to an existing mezzanine floor resulting in additional floor area.

Having reviewed all relevant documentation and drawings on file, I am satisfied that the determination by the Board of this application as 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 1997-2015 in this case. My assessment below considers the appeal against the attachment of condition No.1.

8.1 Consideration of Condition No.1

The effect of Condition No.1 would be to require the provision of a passenger lift to serve a mezzanine floor in its extended format. The proposed mezzanine including extension is referred to in the condition as ‘the upper floor’.

8.2 Case summary

The applicant argues that the mezzanine would only be occasionally used and would serve solely for box storage. Referring to Section 2.3.4.1 of

TGD:M 2010 and that the same range of services would be available on the ground floor, the applicant considers a passenger lift is not required. Referring to Section 0.7 (ii), the applicant states the issue of practicability arises where beams and columns would need to be relocated to facilitate the installation of a passenger lift and thus affecting the structural stability of the building. Reference is made to the provision of a new external escape stair which is ambulant disabled. The BCA on the other hand consider that as the extension would increase the floor area to c.350 sq.m in total it is over 200 sq.m threshold and therefore would not meet the criteria for the exemption afforded under Section 1.3.4.1.1 of TGD M:2010. The BCA refute the argument for the non-provision of a lift on grounds of 'practicability' as they consider there is scope to provide it in a location which would not impact on structural elements of the building.

8.3 TGD:M 2010 Applicable requirements

Where works are carried out in accordance with the national guidance in this document, this will, *prima facie*, indicate compliance with the access and use requirements set out in Part M of the Second Schedule to the Building Regulations. The adoption of an approach other than that outlined in the guidance is not precluded provided that the relevant requirements of the regulations are complied with.

At the outset, I consider that the requirements of TGD M: 2010, Section 2 – 'Access and Use of **existing buildings** other than dwellings', is most relevant in the assessment of this appeal. Section 2 of the guidance also refers back to Section 1, which deals with new buildings, in many of its provisions and hence those provisions are also relevant.

- **Section 2.0 – Introduction** recognises the access opportunities and constraints of existing buildings are likely to result in **different ways of addressing accessibility** but that the fundamental priorities of accessibility under M2 should be the same as those set out in Section M1, i.e. accessing and using a building, its facilities and environs.
- **Section 0.7** provides guidance on the determination of 'practicability', including a **non-exhaustive** list of 6 circumstances which should be considered.

- **Section 0.8** recognises that works to existing buildings can be challenging and **the adoption without modification is not always appropriate** and that the fundamental priorities of accessibility should be **‘accessing and using a building, its facilities and environs’**.
- **Section 2.3.1** has a stated objective for people to travel horizontally and vertically within an existing building conveniently and without discomfort **in order to make use of relevant facilities**;

Other specific sections which are relevant are listed above under Section 7.

8.4 Discussion

The building appears to be a single storey industrial type building with an existing mezzanine floor of c.160 sq.m which is proposed to be extended to c.350 sq.m. It is evident that the BCA, drawing from section (a) of 1.3.4.1.1 of TGD:M 2010, consider that as the extended mezzanine floor would exceed 200 sq.m, it would not enjoy an exemption from the requirement to provide a passenger lift.

Section 0.8 of TGD:2010 introduced the term ‘practicability’ which can be used to identify situations where achieving standards of accessibility associated with new buildings are not feasible in existing buildings. Section 0.7 of TGD:M provides a **non-exhaustive** list of circumstances which can be considered in the determination of the term ‘practicability’. The applicant making reference to section (ii) of Section 0.7, argues that it is not practicable to provide a lift because of structural issues which would arise. The BCA dispute this stating that the lift is not required adjacent to the stairs and could be provided elsewhere so long as it serves the purpose.

While this particular issue relying on Section 0.7 (ii) remains somewhat unresolved, it is of relevance to note that the applicant states the same services are provided at ground floor level as well as mezzanine level. I interpret this to mean that there is adequate space designated for box storage at ground floor level. I am satisfied that a suitable arrangement of box storage services/facilities on the ground floor (in addition to that proposed to be provided at mezzanine level) can meet the guidance set out in Section 2.3.4.1. I note that no other services/facilities are proposed at mezzanine level and that it is stated that it is currently used solely for storage. I also have regard to the building being a place of employment, where the storage areas at mezzanine and ground floor would be

accessible to people who are familiar with its layout and would not be accessible to the general public.

In reviewing the drawings submitted with the DAC application and Section 1.1.1 (Page 2) of the compliance report, I note that Dwg. No.214103-D01 relates to a different part of the building complex than that of the mezzanine area and appears to have been submitted to demonstrate the approach and access into the building through which the mezzanine would then be accessed internally (at a different location).

Overall, I note that the drawings presented are somewhat limited as they do not show the ground floor in the area beneath the mezzanine or the arrangements for storage on the ground floor in support of the applicant's arguments. The Board may wish to request further information in this regard prior to concluding the assessment. Such information which would be of assistance would include a ground floor plan at the area of the mezzanine, drawing and details of the storage arrangement at both mezzanine and ground floor levels, a building cross section drawing and an overall key plan of the building complex.

Based on the information currently available, I accept that it would be possible to provide a designated area on the ground floor for storage, and that in turn the provision of Section 2.3.4.1 can be met. I am equally satisfied that the **fundamental priorities of accessibility** i.e. **accessing and using a building, its facilities and environs** as set out under Section 0.8 (Existing Buildings) and Section 2.3.1 of Part M:2010 would not be diminished by this alternative arrangement.

Having regard to the above, I do not consider that a passenger lift is necessary to provide access to the mezzanine level in order to achieve compliance with the requirements of Part M (Access and Use) of the Second Schedule to the Building Regulations 1997-2014. This is so on the basis that the mezzanine is used solely for goods storage and that adequate arrangements are provided for the same range of storage on the ground floor.

I consider that the BCA should be directed to amend the condition requiring the applicant/appellant to submit details of the extent, type and location of storage provided or to be provided on the ground floor level and also at mezzanine level for agreement with the Building Control Authority. I accept that the extent of storage capacity required on the ground floor would be proportionately less than that at mezzanine floor level.

I recommend that the amended condition should also serve to regulate the use of the mezzanine floor for the stated storage purposes only as my conclusions are arrived solely on the basis of this use.

9.0 CONCLUSIONS AND RECOMMENDATION

Arising out of my assessment above, I recommend the Building Control Authority should be directed to amend Condition No.1 attached to the disability access certificate for the reasons set out below.

REASONS AND CONSIDERATIONS

Having regard to the type, use and layout of the building, the nature and extent of the proposed works, to the proposal to provide the same services/facilities (box storage) on the ground floor as on the extended mezzanine level, to the guidance given in Technical Guidance Document M: 2010 (Access and Use), and to the submissions made in connection with the Disability Access Certificate application and appeal, it is considered that subject to the amendment of Condition No.1 that compliance with the requirements of Part M of the Second Schedule to the Building Regulations 1997-2014 would be achieved to ensure that adequate provision would be made for people to access and use the building, its facilities and environs.

Condition No.1

- (a) Prior to the commencement of the works, full details of the location and extent of the storage that will be provided at ground level and mezzanine level, shall be submitted to, and agreed in writing with, the Building Control Authority, or in default of agreement, shall be referred to the Board for determination.
- (b) The mezzanine floor shall be used for storage of goods of dry packaging or similar goods only and shall not be altered to provide any other facilities/services.

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

Patricia Calleary
Senior Planning Inspector
24 September 2016

Appendix:

1. Extracts from TGD: M: 2010.