

Inspector's Report

Appeal against a Refusal of a Disability Access Certificate for refurbishment of existing ground floor and two storey extension to rear for use of the building as a beauty salon at 9 Harty Avenue, Walkinstown, Dublin 12.

Board DAC appeal ref. no.:	29D. DS0055
Building Control Authority Ref. No.:	DAC/2016/0491
Appellant/Agent:	EDA Architecture 5 The Mall, Main Street Leixlip Co. Kildare
Building Control Authority:	Dublin City Council
Date of Inspection:	24 th February 2017
Inspector:	Michael Mohan, FRIAI
Appendix Attached:	None

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1.0 Introduction

1.1. Site description

The site comprises a two storey building with a shop unit, used as a beauty salon, at ground level and an apartment at first floor level in a terrace of similar units, located at No.9 Harty Avenue, Walkinstown. A two storey extension has been constructed at the rear which is connected to and used as part of the beauty salon facilities. The apartment has its own entrance from street level. There is a shared paved parking area at the front of the terrace of shops.

1.2. Subject matter of application

The works comprise refurbishment of an existing ground floor and a two storey extension to the rear for use as a beauty salon. The works were completed before an application was submitted for a DAC. The Appellant / Agent stated in a letter to the Building Control Authority (BCA), dated 07/11/2016, that an application for a DAC was inadvertently overlooked.

1.3 Documents lodged as part of original application

The application was made by EDA Architecture and was received by the BCA on the 19/09/2016 and included:

- Completed DAC application form
- 2 No. copies of drawings:

Drawing Number	Title
Urban Place Map	Site Location Plan / OS Map
C14/104/3	Construction Site Plan
C14/105/0	Drainage Site Plan
C14/101/03	Construction Floor Plans
C14/102/02	Construction Sections and Elevations

- The required fee of €800.

Revised Information was requested by the BCA (the Applicant referred to a letter from the BCA requesting this information, dated 19/09/2016, but there is no copy of that letter on the ABP appeal file). The revised information was received by the BCA on 09/11/2016. It included two copies of a DAC Compliance Report and the following drawings:

Drawing Number	Title
DAC/001/0	Certified Location Map
DAC/002/0	Certified DAC Site Plan
DAC/003/0	Certified DAC Elevations
DAC/004/0	Certified DAC Floor Plans

1.4 Building Control Authority decision

The BCA issued a Refusal of a Disability Access Certificate (DAC) for the above works dated 13th December 2016; Disability Access Application No. DAC/2016/0491.

2.0 Information considered

The following information was considered as part of the appeal process:

1. **Planning File Ref:.**L.A. Ref. No.: 3322/13;
2. **Fire Safety Certificate Ref. No.:** FA/14/1377
3. **Disability Access Certificate application:** Ref. No. DAC/2016/0491. Application including report and drawings, listed at 1.3 above, lodged by EDA Architecture and received by the BCA on 19/09/2016 and 09/11/2016 and received by the Board on 09/01/2017.

The BCA requested Revised Information from the applicant, dated 14th October 2016. EDA Architecture's response dated 7th November 2016 was received by the BCA on 9th November 2016 and by the Board on 9th January 2017. It included a DAC Compliance Report and drawings referred to in Section 1.3 above.

4. **Refusal of Disability Access Certificate:** Ref. No. DAC/2016/0491, dated the 13th December 2016.
5. **Appeal Documentation submitted by appellant:** The appeal documentation included a cover letter, drawings, DAC Report, and copies of the Refusal Notice, Grant of Permission (Page 1) and Fire Safety Certificate (Page 1) from EDA Architecture, dated 20th December 2016, setting out the grounds of the appeal, on behalf of Ron & Laura Branagan, which was received by the Board on the 30th December 2016. The drawings lodged were:

Drawing Number	Title
DAC/001/0	Site Location Map
DAC/002/0	Site Plan
DAC/003/0	Elevations
DAC/004/02	Floor Plans (Revised drawing)

6. Application Documentation from BCA

Dublin City Council submitted a letter to the Board, dated 9th January 2017 (in response to a request from the Board, dated 3rd January 2017), which was received by the Board on 9th January 2017. It included copies of the following:

- Copy of Decision Notice
- Copy of Manager's Order
- Drawings, documentation and Building Surveyor's Report.

7. **Observations from the BCA in relation to the appeal:**
Observations, dated 18th January 2017, from the BCA were received by the Board on 18th January 2017 in a letter signed by Pat Nestor, Senior Building Surveyor (A).
8. **Response from the appellant to the BCA observations:** The Board invited EDA Architecture (ABP inadvertently addressed it to “E.D.A. Architects”), in a letter dated 19th January 2017, to make submissions or observations in relation to the submission, dated 18th January 2017, from the BCA. The Board stipulated a deadline for the appellant to make submissions or observation no later than 5.30pm, 8th February 2017. EDA Architecture submitted observations dated 3rd February 2017 which were received by the Board on 6th February 2017.

3.0 Relevant history/cases

In reviewing this file reference was made to other similar cases which were decided by the Board:

1. DS 29D.DS0038 – ABP decided not to allow the appeal and directed the BCA to issue a refusal of DAC for material alterations and material change of use from residential to crèche at 188 Kimmage Road West, Dublin 12
2. DS 29D.DS0040 – ABP decided to allow the appeal and directed the BCA to issue a DAC for material alterations to part of an existing two-storey building and material change of use to part of an existing building, from use as an Office to use as a Daycare Centre
3. DS 29D.DS0047 - ABP decided to allow the appeal and directed the BCA to issue a DAC for a single storey extension to the rear of an existing Beauty Shop at Unit 72C, Brookwood Rise, Harmonstown Road, Harmonstown, Dublin 5.
4. DS92.DS0054 – ABP decided to allow the appeal and directed the BCA to issue a DAC and amend Condition 1 for a proposed extension to existing mezzanine floor in Industrial Food Processing Building.
5. DV26.DV0006 – ABP decided not to allow the appeal against 2 No. conditions attached to the granted Revised Disability Access Certificate (DAC029/16) and directed the BCA to attach the 2 conditions for the proposed Extension of Unit 5 into Units 3 & 4 and the associated material change of use of Units 3 & 4 from ‘industrial’ to ‘office’ use at Kilcannon Business Park, Old Dublin Road, Enniscorthy, Co. Wexford.

4.0 DAC application

Disability Access Certificate application: Ref. No. DAC/2016/0491. The application including drawings, listed at 1.3 above, was lodged by EDA Architecture on behalf of Ron & Laura Branagan (the applicants) and received by the BCA on 19th September 2016 and received by the Board on 9th January 2017. The BCA issued a Decision to Refuse a Disability Access Certificate, dated 13th December 2016 which was received by the board on 9th January 2017.

Reasons for Refusal of DAC:

The BCA listed the following three reasons for refusal:

Reason 1:

The applicant failed to provide adequate information showing compliance with Part M of the second schedule of the building Regulations 2010.

Reason 2:

Sufficient information has not been provided for the circulation through the building both horizontally and vertically.

Reason 3:

Adequate sanitary facilities have not been provided within the premises.

5.0 Appellant's case

EDA Architecture prepared an appeal on behalf of the applicants, dated 20th December 2016, against the BCA's Decision to Refuse the Disability Access Certificate Application, which was received by the Board on 30th December 2016. The following is a brief outline of the Appellant's case:

- Complying with conditions on the planning permission reduced the floor area and presented design challenges.
- Specialized beauty salon equipment has not been designed as suitable for persons with disabilities and therefore certain treatments cannot be offered to disabled clients.
- The range of services provided for disabled clients is confined to the main salon at the front of the building.
- It is easier for disabled clients to exit to the front of the building through the main entrance at the front of the building for safety in the event of fire.
- All clients are seen on an appointment basis and are attended to by staff at all times whilst they are on the premises.

6.0 Building Control Authority's case

The BCA provided a copy of their assessment report, dated 9th November 2016, which was prepared prior to making their decision on the application and which was received by the Board 9th January 2017. In summary, the main issues which the BCA report highlighted were:

- 50mm step at the front door.
- Only the front ground floor salon is highlighted as accessible for people with disabilities.
- The remainder of the building is accessed by narrow corridors or stairs only.
- No information has been provided regarding a reception desk.
- No information has been provided for the design of internal doors.
- While stating that the corridor to the accessible WC on the ground floor will be designed to Section 1.3.3.3 of TGD Part M 2010, no information has been provided for the remaining corridors in the building.
- No information has been provided for the stairs which is not designed for ambulant disabled people.
- No details have been provided of the design of the disabled accessible WC and the door has been shown opening inwards, obstructing the required clear manoeuvring space within the WC.

Further comments from the BCA were received by the Board on the 18th January 2017 in which the BCA stated that:

- The works were described as existing but this was not considered relevant to their determination of the application.
- The applicant failed to adequately demonstrate compliance with Part M of the Second Schedule of the Building Regulations including:
 - The central corridor at 900mm wide is inadequate.
 - The internal stairs was not designed as suitable for ambulant disabled persons.
 - The wheelchair accessible WC failed to meet the requirements of TGD Part M Section 1.4.3 and 2.4.3.

BCA Conclusion:

- In consideration of the proposed development failing to meet key internal circulation requirements of Part M of the Building Regulations, and being of the view that the application of conditions to alter the internal layout would be either difficult to comply with or to enforce, the decision to refuse the application was made.

7.0 Summary of the appellant's comments on the BCA submission

EDA Architecture submitted a response addressing the BCA's comments on the appeal, dated 3rd February 2017 which were received by the Board on 6th February 2017. The following comments were submitted:

- If an ambulant disabled person has no problem negotiating their own home then they will have no problem with this premises as the dimensions of the circulation areas, stairs and toilet are equal to or greater than those provided for by the regulations for domestic dwellings.
- Disabled clients will be attended to by staff whilst they are on the premises.
- Disabled clients can be catered for in the salon (at the front of the building).

8.0 Considerations

8.1 Level of detail provided in the application to meet the requirements of the Building Control (Amendment) Regulations 2009

Section 20 (D) 3(b) of the Building Control (Amendment) Regulation 2009 states that a DAC application should:

- *Identify and describe the works or building to which the application relates;*
- *Enable the building control authority to assess, whether the said works or building would, if constructed in accordance with the said plans and other particulars, comply with the requirements of Part M of the Second Schedule to the Building Regulations;*
- *Identify the nature and extent of the proposed use and, where appropriate, of the existing use of the building concerned.*

Section 20(D) 4 of the Building Control (Amendment) Regulation 2009 states:

- (c) *Where a building control authority consider that an application for a disability access certificate does not comply with paragraph (3), they may, as they consider appropriate, having regard to the extent of the failure to comply with the said paragraph, by notice in writing—*
- (i) inform the applicant that the application is invalid and cannot be considered by the authority, or*
 - (ii) require the applicant to furnish such further plans, calculations, specifications or particulars, or such additional fee, as may be necessary to comply with the said article*

- (d) *Where a building control authority serve a notice in accordance with subparagraph (c), they shall return to the applicant all the documents and the fee which accompanied the application*

8.2 Meeting the requirements of Part M of the Building Regulations

Legislative Considerations

EDA Architecture stated in their Compliance Report (which was submitted as part of the Revised Information) that the design of the areas accessible by disabled visitors/clients is in substantial compliance with TGD Part M 2010.

Part M of the Second Schedule to the Building Regulations, (as amended), provides as follows:

To meet the requirements of M1: *“Adequate provision shall be made for people to access and use a building, its facilities and its environs”.*

To meet the requirement of M2: *“Adequate provision shall be made for people to approach and access an extension to a building”.*

To meet the requirement of M3: *“If sanitary facilities are provided in a building that is to be extended, adequate sanitary facilities shall be provided for people within the extension”.*

Technical Guidance:

TGD M 2010 states:

- *Where works are carried out in accordance with the guidance in this document, this will, prima facie, indicate compliance with Part M of the Second Schedule to the Building Regulations (as amended). However, 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. Those involved in the design and construction of a building may be required by the relevant building control authority to provide such evidence as is necessary to establish that the requirements of the Building Regulations are being complied with.*
- **0.6 Application of Part M:**
The requirements of Part M apply to:
.....(b) works in connection with extensions to existing buildings, and in particular:
(i) under M2, adequate provision must be made to approach and access an extension. This may be provided by an adequate independent approach and entrance to the extension, or where this is not practicable, the existing approach and entrance modified where necessary and where practicable, must provide adequate approach and access to the extension, and
under M3, where sanitary facilities are provided in a building, adequate accessible sanitary facilities must be provided for the people within the extension i.e. people using the extension. These may be provided by accessible sanitary facilities in the extension or alternatively, those facilities in the existing building, modified where necessary, must be adequate and accessible from the extension.

- **0.8 Existing Buildings**

.....Where works to existing buildings are carried out in accordance with the guidance in Section 1 of this document, this will, prima facie, indicate compliance with Part M. Where it is not practicable to apply the guidance in Section 1 and works are carried out to Section 2, this will also prima facie indicate compliance with Part M.

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. While each existing building and site will present its own unique access opportunities and constraints, which may result in different ways of addressing accessibility, the fundamental priorities of accessibility should be as set out in M1, i.e. accessing and using a building, its facilities and environs.

- **1.3.3.3 Corridors and passageways**

.....Where corridors and passageways are provided:

(a) the unobstructed clear width should be at least 1200 mm.

(b) passing places should be provided where the unobstructed width of the corridor is less than 1800 mm....

(h) if the door from the unisex accessible WC opens into a corridor that is not a major access route or an escape route, there should be a clear width remaining in the corridor as illustrated in Diagram 12 (clear width of 900mm min. is indicated in that diagram).

- **1.3.4.3 Internal stairs suitable for ambulant disabled people**

At least one set of stairs suitable for ambulant disabled people should be provided to access all floors above or below entrance level in a building.....the minimum clear width (between enclosing walls, strings or upstands) should be 1200 mm;..... the landings should be level and have an unobstructed length (clear of any door swing) of at least 1200 mm or the width of the flight whichever is greater;.....the rise of a flight between landings should not exceed 1800 mm;..... there should be a continuous handrail on each side of flights and landings in accordance with 1.1.3.6. The minimum unobstructed width between handrails should be not less than 1000 mm;

- **1.4.3.1 Provisions for wheelchair accessible unisex WCs**

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).

Diagrams 15a, 15b, 16 and 17 provide guidance on layouts, location of sanitary fittings, grab rails etc. in wheelchair accessible unisex WCs.

9.0 Assessment

This appeal is against a Refusal of a Disability Access Certificate. I have reviewed the reasons for the refusal and the grounds of the appeal, and I have considered the drawings, details and submissions on the file. I am of the opinion that there was sufficient information submitted in connection with the appeal to make a decision on the application/appeal.

The following is an overview of my observations in relation to the appeal:

- EDA Architecture stated in their Revised Information that the drawings submitted were as constructed and that the application for a DAC was inadvertently overlooked. The BCA did not consider this relevant to their determination of the application. They treated the application as if was

for a proposed refurbishment/extension rather than for works/extension to an existing building.

- The applicants should have applied for the DAC before constructing the extension/refurbishment works. The recommendations in Section 1 of TGD Part M for a new building are more stringent than those in Section 2 for existing buildings. It is understandable that the BCA want to make sure that regulations are complied with, that people are discouraged from carrying out construction work before making an application for a DAC and from creating a precedent for others to follow.
- On the other hand, if someone makes a genuine mistake then it could be argued that they should be given a fair hearing. The extension was existing when the DAC application was submitted therefore the BCA could be considered as being harsh in not deeming this as relevant. The applicants engaged professional consultants to act on their behalf therefore I am less inclined to accept the consultant's excuse that they inadvertently overlooked making a DAC application. They submitted the planning application and obtained planning permission before construction work was carried out and before submitting the DAC application.
- The applicants may have been unaware of all of this and perhaps they should be given a certain amount of sympathy. They have an existing building which has been refused a DAC and it should not be used or occupied until one is granted.
- The extension at the rear of the premises is not accessible to all persons due to (a) the restrictive width of the corridor, measuring 900mm. The minimum recommended width of a corridor should be 1200mm, (b) the stairs was not designed for ambulant disabled use and (c) the corridor to the unisex WC is too narrow because a clear width of 900mm min. from the edge of the outward opening door is not possible in a corridor which is only 1200mm wide to comply with 1.3.3.3 (h).
- The extension creates a new or greater contravention of the Regulations.
- The appellant argues that (a) access to services for people with disabilities is provided in the front room (salon) (b) services offered to clients in the extension are not suitable for or are not designed for people with disabilities and therefore the corridor and stairs are adequate for those using those facilities and (c) an accessible WC is provided.
- EDA Architecture claim that complying with the conditions contained in the planning permission presented design challenges and reduced the floor area. It is clear from the drawings which were submitted for the

planning permission that no attempt had been made to make the extension accessible before any conditions were imposed:

- The corridor in the rear of the extension was shown as 875mm wide on the planning application (900mm on DAC application);
- There were two treatment rooms on ground floor shown in the planning application whereas the number of treatment rooms on the ground floor were increased to four in the DAC application;
- Four treatment rooms were shown on the first floor in the planning application. The first floor area was reduced in the DAC application compared to the planning application but there are still four rooms shown on the first floor.
- The width of the stairs is shown as 1000mm in the planning application and 975 mm in the DAC application. In both cases it has a single flight stairs with no intermediate landing. Neither application included for an ambulant disabled stairs.

It is clear that the conditions attached to the planning permission did not have the impact on the design which the appellant claims.

- The appellant claims that the equipment/services/facilities provided in the extension were not designed for people with disabilities and that disabled access is not required to these facilities. Does the appellant therefore intend that people with disabilities will be denied tanning, facial and massage treatments? The Building Regulations clearly require that *“Adequate provision shall be made for people to access and use a building, its facilities and its environs”*. The appellant has not demonstrated how compliance with this requirement will be achieved.
- The appellant has not provided evidence to demonstrate compliance with Part M with respect to level access at the main entrance; the fittings and layout of the front salon; details of doors; fittings to the accessible WC such as handrails; or refreshment facilities suitable for people with disabilities.
- Based on the information currently available, it is apparent that the appellant has made little attempt to make the extension accessible and states that the facilities/services offered in that extension were not designed for nor are they suitable for people with disabilities. An accessible unisex WC has been provided but the width of the corridor serving this accessible WC is too narrow to comply with the recommendation contained in 1.3.3.3 (h) of TGD Part M.
- Having regard to the information currently available, I am of a mind to recommend refusal of a DAC. However, the Board may wish to request further information from the appellant as to the exact nature

of the services which are on offer in the extension and to (a) indicate why they are not suitable for people with disabilities, (b) if, on reconsideration, the appellant decides that some or all of the services could be used by people with disabilities then to demonstrate how they could be provided in the part of the building which is accessible (c) provide drawings to show how the accessible WC could be made to comply with the recommendation contained in 1.3.3.3 (h) of TGD Part M, (d) demonstrate how access to refreshment facilities can be provided for disabled staff and (e) demonstrate how level access can be provided at the main entrance. The Board may decide if it is satisfied, on receipt of such information, to allow the appeal.

10.0 Conclusions / Recommendations

I recommend that the Board reject the appeal against the BCA's decision.
I recommend that the Board **Refuse** to issue a Disability Access Certificate for the following reasons:

10.1 Reasons and Considerations

Having regard to the provisions of the Building Regulations 1997 to 2017, Second Schedule, Part M, to the nature and layout of the proposed works and to the submission made in connection with the DAC application and appeal and to the report and recommendation of the reporting inspector, it is considered that the works or building to which the application relates, if constructed in accordance with the plans, calculations, specifications and particulars submitted, **fails** to comply with the requirements of Part M of the Second Schedule to the Building Regulations 1997 to 2017 for the following reasons:

Reason 1:

The applicant failed to provide adequate information showing compliance with Part M of the second schedule of the building Regulations 2010.

Reason 2:

Sufficient information has not been provided for the circulation through the building both horizontally and vertically.

Reason 3:

Adequate sanitary facilities have not been provided within the premises.



Michael Mohan, Dip. Arch.; B. Arch. Sc.; FRIAI
Inspector, 1st March 2017