

APPEAL UNDER S. 7 OF THE BUILDING CONTROL ACTS 1990 (AS AMENDED)

REPORT

13 OCTOBER 2017

Board DAC appeal ref no.:-	DS 06.S.DS0058
Building Control Authority:-	South Dublin County Council
BCA reference:-	Disability Access Certificate application 17/6040D
Appellant/Agent:-	Delahunty and Harley, Architects and Designers, 122 Merrion Road, Ballsbridge, Dublin 4
Proposed works:-	Conversion of first and second storeys of existing 3-storey office building into 2 no. 1-bed apartments
Location:-	Rear of no. 6, Main Street, Lucan, Co. Dublin
Appeal against:-	Refusal of Disability Access Certificate

Report prepared by:- Board Consultant:- E. O Cofaigh Arkitekt MSA HFAIA

CONTENTS

- 1 Introduction
- 2 The proposals the subject of the DAC application
- 3 Application of Building Regulations to the proposals
- 4 The level of provision for accessibility to be applied
- 5 Information considered in this report
- 6 Building Control Authority decision on the application
- 7 Appeal received by An Bord on 12 July 2017
- 8 My consideration of the application
- 9 Other observations
- 10 Relevant history / cases
- 11 Dispensations and relaxations from building regulations requirements
- 12 Assessment and recommendations

1 INTRODUCTION

This is an appeal against a Refusal by the Building Control Authority (BCA) for a Disability Access Certificate (DAC). The proposal which is the subject of the appeal is the change of use of two storeys of a small three-storey building, built in 2007, from office to residential use.

The only matter in dispute between the appellant and the BCA is the compliance of the existing staircase with the relevant requirements of the building regulations in the proposed new circumstances.

2 THE PROPOSALS THE SUBJECT OF THE DAC APPLICATION

The application and appeal are in respect of a proposal to change from office to residential use, the upper two storeys in a small existing building on a tight site off the Main Street in Lucan.

This is a **material change of use** as defined in the Building Control Act. The proposals also involve **material alterations to the existing building**, being the construction of partitions, sanitary spaces, balconies and so on.

The proposals involve providing one 1-bedroom apartment of area 46 sq m on the first floor and one 1-bedroom apartment of area 48 sq m on the second floor.

The apartment areas are small, but the appellant advises that the Planning Authority granted Permission for this change of use. An Bord obtained a copy of the Grant of Permission and of the plans and particulars lodged, which indicate that permission did issue. The size of apartments is not a matter for regulation under building regulations.

The existing building was built on foot of a Permission issued by South Dublin County Council in 2007. It follows that the existing building when constructed was subject to the requirements of the building regulations, including the requirements pertaining to accessibility, in force at that time. The Disability Access Certificate procedures were first introduced in 2010.

The BCA received the original application on 18 April 2017. This consists of drawings and a report. At 49 pages, the report is in my view unnecessarily long. However, the report is clear in that it identifies the problems around the access stairs, in the following terms:

“The proposed new apartments will be compliant with Part M. The access stairs to these apartments is enclosed by structural walls and cannot be altered however we believe that it is within the allowable requirements for ambulant disabled movement.” (p.8)

There is what in my view is a consistent error in the figure given for the finished level of the second floor in the building both as existing and, without change, as proposed. This is shown at 34.08 whereas it would properly be 34.80. The latter, corrected, level gives a floor-to-ceiling height the same as that on the first floor. If the levels were in reality as on the drawings, the second floor would be uninhabitable, but I do not believe this is in fact the case and the error may be disregarded.

3 APPLICATION OF BUILDING REGULATIONS TO THE PROPOSALS

Building regulations apply to the proposals as follows.

	Building regulation requirement	Applicability to proposals the subject of this appeal
M1	<i>Adequate provision shall be made for people to access and use a building, its facilities and its environs.</i>	Applies in full
M2	<i>Adequate provision shall be made for people to approach and access an extension to a building</i>	Not applicable – no extensions
M3	<i>If sanitary facilities are provided in a building that is to be extended, adequate sanitary facilities shall be provided for people within the extension.</i>	Not applicable – no extensions
M4	<i>Part M does not apply to works in connection with extensions to and material alterations of existing dwellings, provided that such works do not create a new dwelling.</i>	The works do create a new dwelling and Part M applies.

4 THE LEVEL OF PROVISION FOR ACCESSIBILITY TO BE APPLIED

4.1 The standing of the Technical Guidance Documents

The applicant assesses the proposed works against the 2010 edition of the technical guidance document to Part M of the building regulations. This document (“TGD-M 2010”) was published by the Minister for the Environment under art. 7 of the building regulations, 1997 (S.I. 496 of 1997). Its purpose is to

*“provide guidance with respect to compliance with the requirements of the regulations. Where works or a building to which these Regulations apply is or are designed and constructed in accordance with any guidance contained in a technical guidance document, this shall, prima facie, indicate compliance with the relevant requirements of these Regulations. **The provisions of any guidance shall not be construed as prohibiting compliance with a requirement of these Regulations by the use of any other suitable material, method of construction or specification.**”*

4.2 TGD-M Guidance on accessible stairways in existing buildings

The TGD makes general remarks on applying the guidance therein to proposals involving changes to existing buildings. Those remarks bear on the approach to be taken to assessing this application (my emphasis) -

*In the case of material alterations or change of use of **existing buildings, the adoption without modification of the guidance in this document may not, in all circumstances, be appropriate.** In particular, the adherence to guidance, including codes, standards or technical specifications, intended for application to new work may be unduly restrictive or impracticable. Buildings of*

architectural or historical interest are especially likely to give rise to such circumstances. In these situations, alternative approaches based on the principles contained in the document may be more relevant and should be considered.

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.

5 INFORMATION CONSIDERED

In considering this appeal I have reviewed the documentation on file and in particular:-

- (a) Appeal received by An Bord on 12 July 2017 and enclosures thereto**
- (b) Documentation from SDCC Planning Register, reference SD16A/0378,** being a Grant of Permission for the change from commercial use to use as 2 no. 1 bedroom apartments on the first and second floors of the existing office building, and the documents on foot of which that Grant was issued.
- (c) Documentation received by An Bord from the BCA on 6 September 2017,** including a copy of the report dated 15 June 2017, prepared by its inspector and its senior engineer, recommending the refusal of the DAC application.

An Bord forwarded the grounds of appeal to the BCA on 17 July 2017, inviting the BCA to comment thereon. A reminder was sent on 19 September. No such comments are on file.

In formulating this report I have had regard to the 2010 edition of the technical guidance document to Part M of the building regulations.

6 BUILDING CONTROL AUTHORITY DECISION ON THE APPLICATION

On 15 June 2017, the BCA issued a Notification of Decision to Refuse a Disability Access Certificate for the proposals, citing one reason for refusal:-

The stairs leading to the proposed apartments does not comply with the requirements of section 3.1, TGD M (2010).

The thinking behind this is set out in the report dated 15 June 2017.

In preparing that report and in conclusion recommending refusal of the application, the BCA assessed the application against TGD M (2010). In so doing, the BCA either identified sections of the TGD as “not applicable” or that the application drawings and report indicate compliance with the relevant sections; or, in one area only of the application, that the guidance is not complied with. That area and the BCA report content is as follows:-

Section 3.1 – approach to dwellings. 3.1.2 Access route to a dwelling. The report / drawings indicate that the distance between the walls enclosing the stairs measures 920 mm. The report indicates that the staircase has a rise of 180 mm and a tread of 255 mm.

The BCA 15.06.2017 report concludes with a recommendation for the refusal of a DAC, for the reason that:

The stairs leading to the proposed apartments does not comply with the requirements of section 3.1, TGD M (2010).

In refusing the application, the BCA formed the view that the proposals comply with the relevant requirements of Part M of the building regulations, save only that the stairs from the entrance level into the building, which gives the only access to the two proposed apartments, does not meet the guidance in TGD-M (2010) and that, as a result, the proposals do not demonstrate compliance with the requirements of Part M.

7 APPEAL RECEIVED BY AN BORD ON 12 JULY 2017

The appeal is all about the stairs.

In the report which accompanies their appeal, the appellants say the BCA should not have refused the application with reference to TGD M s.3.1.2. They point out that s.0.5 of TGD M (2010) says that “*the guidance in Section 3 Does not apply to the common area of apartment blocks. The guidance in Section 3 also applies to the common areas in duplex buildings.*”

The appellants go on to accept that section 2 of the TGD does-

“apply to the access stairs to the apartments and is a relevant consideration in this appeal. This is an existing staircase and will be dealt with below.”

The appellants say that the-

“existing staircase in this structure does not comply with Part M, we believe that we have a considered and co—ordinated design which provides access for people as allowed in the regulations. We would also argue that due to the specific circumstances of this site we cannot “practically” alter the corridor width and refer to Part M, Note on Existing Buildings – in the case of material alterations of existing buildings, the adoption, without modification, of the guidance in the document may not, in all circumstances, be appropriate. Specifications intended for new work may be unduly restrictive or impracticable.”

s.0.7 of TGD M (2010) lists, as circumstances to be considered when determining “practicability”, the following:-

(ii) Where the existing structural conditions would require moving or altering a load bearing member which is an essential part of the overall structural stability of the building;

(iii) Where other existing physical or site constraints would prohibit modification of an existing feature;

(iv) Where the works would need to be carried out on part of a building, its facilities or environs that are not under the same control / ownership[e.g. in the case of a sub-leaseholder in a multi-occupancy building.]”

The kernel of the appellants’ case is:-

“Although we acknowledge that the width of the flight is slightly narrower than that allowed by the regulations and that the going of the step is slightly less. We submit that these can still be considered substantially compliant and within the spirit of the regulations.”

8 MY CONSIDERATION OF THE APPLICATION

8.1 Considerations other than the vertical circulation, and the stairway

In assessing the application *de novo* I have formed the view, as did the building control authority, that save only for the issue of the stairway accessing the two proposed apartments, the report and drawings otherwise indicate the proposals comply with the requirements of Part M of the building regulations.

8.2 The vertical circulation, and the stairway

From my review of the requirements of the building regulations and of the associated technical guidance in force at the time this premises was constructed as offices sometime after 2007, and of the dimensions and details of the stairway as set out in this application and appeal, I am of the view that the stairway complied with the requirements of the building regulations as regards accessibility to the upper floors of offices at the time when it was built.

If built today, the stairway would not comply with the guidance on accessible stairways for offices in TGD-M 2010, in the same manner and to the same extent as it doesn’t comply for residential.

So that the stairway now is just as satisfactory or as unsatisfactory in terms of meeting current standards for offices, and presumably in reality in terms of actually facilitating people with impaired movement travel up and down, as it would be if the use of the upper storeys were changed to residential.

8.3 Vertical circulation - should a lift be provided at the converted premises

Many new buildings should have lift access to floors above or below entry level to provide adequate access for people with impaired mobility. The thresholds at which the building regulations technical guidance indicates provision of a lift were lowered in 2010- that is, after the premises was constructed in accordance with the building regulations in force at that time, but before this present application.

There is disagreement between the appellant and the BCA as to precisely which part of TGD-M (2010) should be applied to the proposals as regards provision of a lift- whether the provisions for a new building, or for an existing building, should be applied. The relevant text from TGD-M 2010 follows.

Section 1.3- Circulation within buildings other than dwellings. 1.3.4 Vertical features. 1.3.4.1.1 Lifts

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 and with no floor having an entrance level more than 4500 mm above or below the main entrance level, or
- (b) apartment buildings with four (or less) dwellings on any storey other than the entrance storey and with no dwelling having an entrance level more than 4500 mm above or below the main entrance level.
- (c) duplex buildings with two (or less) dwellings on any one storey other than the entrance storey and with no dwelling having an entrance level more than 6500 mm above or below the main entrance level.

Buildings in cases (b) and (c) above are generally apartment or duplex buildings containing dwellings only, however they may incorporate mixed use elements at the entrance storeys e.g. retail units, etc.

In my view, a building with two apartments only with no dwelling having an entrance level more than 6500 mm above or below the main entrance level need not be provided with a lift. The BCA formed this view also.

8.4 Vertical circulation – the stairs

The report which accompanied the application deals in detail (pp.34-35) with the question of providing a staircase to the proposed apartments. The stairs is existing; it was designed and constructed in 2007 to comply with the then applicable requirements. The applicant says *“stairs from ground to first floor level are existing and are constrained by the existing load bearing wall between the entrance / stairs area and the ground floor office and apartments on first and second floor levels.”*

The applicant accepts that the existing stairs does not comply with the guidance at s.1.3.4.3 of TGD M (2010). The areas of divergence are as follow.

Topic	TGD M (2010)	Application report
Minimum clear width between handrails	1200 mm	920 mm
Step rise	Should be 150 – 180 mm	180 mm
Step going	Should be at least 300 mm (Rationale, a larger going helps avoid accidents, as it allows a person to place more of their foot on the step)	255 mm
Handrail	Provide on both sides	Provided on one side, not enough space for two

Otherwise, the TGD-M accessible staircase guidance (on landings, single steps, nosings, consistency of treads and risers, lighting and soffites) is complied with.

In existing buildings, TGD-M 2010 gives further guidance at 2.3.4.3- Internal stairs suitable for ambulant disabled people.

Where internal stairs suitable for ambulant disabled people are provided in existing buildings the guidance in 1.3.4.3 should be followed except:

(a) where it is not practicable to provide the minimum clear width in 1.3.4.3, it should be as wide as possible, but the minimum unobstructed width between handrails should be not less than 1000 mm

(c) where it is not practicable to provide steps with the going in 1.3.4.3, they should be as large as possible but with a going not less than 250 mm

8.5 Commentary

If it were practicable to widen this existing staircase so that its width more nearly approached that in the 2.3.4.3 guidance, in my view this would need to be a requirement. But in my view, given the configuration of the existing building and of the site, this is not practicable.

An important consideration in any ambulant accessible stairway is the length of the flight and the total rise on the flight. The existing stairway complies with the latest guidance in this regard.

The existing staircase also complies with the guidance in (c) as regards a going not being less than 250 mm.

That being so, the only issues upon which there is any serious dispute have to do with the width of the staircase and the provision of handrails. The width of the staircase as it exists is 920 mm.

The width of a new “ambulant accessible staircase” in TGD-M 2010, 1200 mm clear between two handrails, facilitates a person walking alongside an ambulant disabled person walking up or down, and supporting or restraining them according as may be needed or useful. At a width of 920 mm, in my view such assistance is still possible, but is far more problematic. It’s really too narrow for two people to walk side-by-side.

In my view, there are two possible outcomes to this application and appeal. In either outcome, the existing staircase will be retained with its existing design. In one outcome, the use of the upper floors of the building will be changed to residential; in the other outcome, the use of the upper floors of the building will remain as offices. I do not see any other use as likely as the same “accessible staircase considerations” arise in any other change of use situation, the same as for residential.

The question is, is it better to keep the premises in office use – the applicant has provided evidence to the effect that he cannot let the premises as offices – with the existing staircase; or, is it better to permit a residential use, also with the existing staircase; and, by permitting such residential use, to what extent does one condone a staircase which does not meet present-day standards? And to what extent is a precedent being set, if such permission is granted?

In my view, the revival of “Living Over the Shop” initiatives in the current housing situation may lead to more proposals of this nature coming forward.

9 Other considerations

If this application for a Disability Access Certificate is now refused on appeal, presumably the premises will continue in office use and, when it is let, people will continue to use the stairway to access the two upper floors. Those people will on balance likely have a similar degree of impairment or of able-bodiedness as those would use the stairway if the two upper floors are in residential use.

In my view the BCA did not put sufficient weight on the fact that this premises is an existing one. Clearly, if the premises were being newly built at this time, any case for a “non-compliant accessible stairs” would be very weak. If the stairs were being built now, it should in my view comply with the relevant guidance.

But the premises is not new, and the staircase already exists. At a practical level, it is very difficult indeed, practically speaking impossible without major demolition and reconstruction, to reconstruct that stairway to make it 12 inches wider on each flight, and every step two inches longer.

The question then is, at a practical level can people with impaired mobility use this stairs to access the upper floors. Clearly, not every such person can. On the other hand, given that the stairs complied with the 1997 TGD M on so-called “ambulant disabled stairways”, it is clear that at least some people with impaired mobility can.

The case for “residential vs. offices” at this site is not a building regulations one but a planning one, and the planning authority have decided that a residential use does not contravene the Development Plan.

10 RELEVANT HISTORY/CASES

Neither the BCA nor the appellant have adduced any specific building control history relevant to this case.

An Bord DAC appeal ref no.:- DS 29.D DS0040, 93A Sandymount Road, Sandymount, Dublin 4, involved a proposal for part change of use of an existing building, from use as an Office to use as a Daycare Centre. Much of the dispute, where the BCA refused a DAC, was about the design of an existing staircase (narrower and steeper than the one in the present appeal).

In that case, An Bord overturned the decision of the BCA to refuse a DAC and granted a DAC subject to two conditions, one of which read-

The new staircase shall be provided as per TGD-M (2010) section 2.3.4.3 except that the unobstructed width between handrails shall be as wide as practicable.

11 DISPENSATIONS AND RELAXATIONS FROM REQUIREMENTS

Neither the BCA nor the appellant have referred to any dispensations from, or relaxations of, the requirements of the building regulations which have been granted in respect of or which might be relevant to the proposals. Accordingly, the provisions of art. 39(b) of the Building Control Regulations (as amended) do not come into consideration.

12 ASSESSMENT AND RECOMMENDATIONS

12.1 Summary of my views

In accordance with art. 39(a) of the Building Control Regulations (as amended), I have restricted my assessment to considering the extent to which the design complies with the requirements of Part M of the Second Schedule to the Building Regulations. In reviewing this application and these conditions I have considered (i) the requirements of Part M of the building regulations (ii) the content of the 2010 edition of TGD-M.

In my view, given that:-

- (a) the guidance in TGD-M 2010 is not mandatory;
- (b) the stairs was built in accordance with the guidance on accessible stairways in TGD-M and would have been considered acceptable at that time;
- (c) if the premises were kept in unchanged office use, the stairway would be considered acceptable and remain as the only way of allowing people with impaired mobility to the upper storeys;
- (d) the impracticality of rebuilding the stairs to make it conform to the guidance in TGD-M 2010;
- (e) the advantage to the common good of providing two, albeit modest, dwellings at this location--

It is reasonable to overturn the BCA decision and allow the appeal.

12.2 Recommendation

In my view, having regard to

- the impracticability of altering the width of the stairs to achieve compliance with the width and handrails provisions of TGD-M (2010) s.1.3.4.3;
- the compliance of the proposals with all other guidance in TGD-M (2010);

I recommend that An Bórd allow this appeal and grant this Disability Access Certificate for the proposals therein.
--

As the staircase is an existing one, and as I do not consider that any material improvement in accessibility would result if it were taken out and rebuilt, I do not see that to impose a condition along the lines of that in DS 29.D DS0040 would serve any useful purpose.

E. O Cofaigh Arkitekt MSA HFAIA
16 October 2017