

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

REPORT

8 FEBRUARY 2018

Board DAC appeal ref no.:-	29D.DS0063
Building Control Authority:-	Dublin City Council
BCA reference:-	Disability Access Certificate application 2017/0431
Appellant/Agent:-	Joe Cully Architectural Construction Technology, An Tigh, Ballyogan Avenue, Carrickmines, Dublin D18 V6X9
Proposed works:-	Single storey rear yoga studio linked to ground floor linked sub-divided main building. *
Location:-	64A St. Agnes Road, Crumlin Cross, Dublin 12
Appeal against:-	Issue of Disability Access Certificate subject to conditions

** This is the description given by the applicant on the original application form. See discussion at section 2 of report below*

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

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1 INTRODUCTION

This is an appeal against the issue with conditions by the Building Control Authority (BCA) of a Disability Access Certificate (DAC). The proposal which is the subject of the appeal is an existing single-storey building, presently in use as an artist's studio.

It is proposed to convert the artist's studio into use as a yoga studio, and to carry out small-scale material alterations to the floor plan.

Appeal references 29D.DS0062 and 29D.DS0063

Appeal references DS0062 and DS0063 are in respect of proposals for two separate buildings on the same site in Crumlin. I have examined and am reporting on these two appeals at the same time.

2 THE PROPOSALS THE SUBJECT OF THE DAC APPLICATION

2.1 The application form submitted to the BCA with the original application

The application form submitted with the original application is designed to provide clarity around the applicant's wishes and to provide a summary of the proposals for which the DAC is sought.

The application form says:- "*Address – Single storey rear yoga studio linked to ground floor linked sub-divided main building*".

At question 5 on the application form, "Classification of works or building", the response given is:

Construction of new building YES NO

Material alteration YES NO

Material change of use YES NO

Extension to a building YES NO

In the continuation of the answer to question 5, the response to "brief description of building" refers in great detail to the other building on the site but in relation to this studio proposal says only "*The existing Artist Studio & Parking to remain as approved*".

This lack of clear answers to basic questions about the small-scale proposals for which a DAC is sought, makes for confusion about what exactly is being applied for. However, the BCA accepted the applications as valid on the basis of this information provided.

The application forms submitted in respect of this single-storey 0063 and the two-storey 0062 are in all respects identical, save only for a hand-written description of the proposals, inserted under "*address of owner of the works or building*" in the answer at section 1.

As a result of providing identical answers about the nature of two very different buildings, many of the answers to other questions are incorrect. At question 8, the answer is in respect of a two-storey building and the floor area relates, not to this building but to both combined.

In my view the errors and lack of clarity in the above would have been sufficient reason for the BCA to invalidate the application. However, the BCA didn't do this and An Bord will now have to deal with the appeal on the basis of the information provided.

No survey drawings of the premises as existing were provided. These would have helped an evaluation of the proposals. An Bórd has however provided the planning appeal files in relation to the same site where survey drawings of the existing building are to be found.

2.2 The report submitted with the application

The title of the project on the front page of the report is:- *“Project: Proposed Material Change of Use, of the existing Rear Artist Studio to Pilate’s / Yoga studio & associated with the linked ground floor units with apartments overhead to the front, all at 64 St. Agnes Road, ...”*

The size of this building is small:- 5.65 m x 7.37 m, that is, an area of 42 square metres. Nonetheless the proposed use is in my view a “Place of Assembly” as defined at art. 4(4) of the building control regulations. This proposed change from Artist’s studio (essentially a private use of the space) to this public use is indeed a material change of use. Furthermore, material alterations to a place of assembly require a DAC.

At 1.1.0 M1 in the report which accompanied the application, the applicant says *“this disabled access certificate application is for the extension, material alteration and fit-out to the ground floor linked sub-divided property retail store and yoga studio to the rere only.”*

I understand this to mean that the application is for a DAC in respect of both the proposed material change of use and also the proposed material alterations.

2.3 The BCA’s description of the proposals

The BCA’s description of the proposals is set out on the Disability Access Certificate dated 7 September 2017. That description refers at length to the proposals in the *other* DAC, An Bórd reference 0062, BCA register reference 0430.

2.4 Conclusion

Having considered the proposal drawings, survey drawings from the planning files, the application forms, and the report I have come to the conclusion that the applicant intends this application to be in respect of a DAC for **“a material change of use from Artist’s Studio to Pilate’s / Yoga studio and for material alterations to the existing building, of area 42 sq m.”** The reference to floor area is only necessitated by the applicant’s incorrect information on the application form.

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	Adequate provision shall be made for people to access and use a building, its facilities and its environs.	Applies in full
M2	Adequate provision shall be made for people to approach and access an extension to a building	Not applicable. No extension.
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.	Not applicable. No extension.
M4	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.	Not applicable. No dwelling involved.

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 existing buildings

TGD-M makes general remarks on applying the guidance therein to proposals involving changes to existing buildings. Those remarks bear on 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 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.

In my view, these paragraphs are important when considering the proposed sanitary and refreshment facilities.

5 INFORMATION CONSIDERED

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

- (a) Appeal received by An Bórd on 4 October 2017 and enclosures thereto;**
- (b) Documentation received by An Bórd from the BCA on 19 October 2017;**
- (c) The survey drawings on An Bórd's planning register references 248907 and 247296;**
- (d) Supplementary material from the appellant dated 2 January 2018.**

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 6 September 2017, the BCA granted a Disability Access Certificate for proposals, with seven conditions. I would "headline" the conditions as follows.

Condition	Headline
1	Build per the plans and particulars lodged, together with performance requirements set out in the report which accompanied the application.
2	1800 x 1800 clear level landing immediately outside the main entrance.
3	The closest car parking space to the new yoga studio shall be designated for the holders of a disabled car parking permit and designed in accordance with section 1.1.5 and Diagram 8 of TGD Part M 2010.
4	Level threshold entrance.
5	The tea station offering access to the proposed wc and shower room shall comply with TGD-M diagram 11.
6	Provide wheelchair accessible wc and shower per TGD-M s.1.4.8.
7	The tea station shall be designed to TGD-M s.1.5.5.

There is in my view no contradiction or overlap between conditions 5 and 7. One refers to the floor layout of this space and the other, to how it might be detailed.

7 APPEAL RECEIVED BY AN BORD ON 4 OCTOBER 2017

In the 10-page letter of appeal dated 2 September (the DAC is dated 7 September) the appellant says that the DAC conditions which the BCA sought to impose are “*at variance with the conditions granted at planning*”.

Part of the text of the appeal is about appeal DS.0062, not the present appeal. In the appeal, the appellant gives reasons why conditions 2 (the 1.8 x 1.8 m level landing), 3 (the additional universally accessible parking space) and 5 (the tea station) are in his view not necessary for the proposals to comply with the TGD-M provisions referenced by the BCA; and (p.9) asks An Bord to remove conditions 2, 3 and 5 in relation to the yoga studio. At the bottom of page 3 the appellant says that “*Our client seeks a De Novo review by An Bord Pleanala.*”

8 MY CONSIDERATION OF THE APPLICATION

*** De novo assessment**

I have assessed this application de novo. No new building and no extension of the existing building is proposed. The proposals involve:-

- The existing single-storey premises, to be changed in use from an artist’s studio to a yoga/Pilates’ studio;
- Material alterations to the floor plan, to upgrade the access to the entrance to the building, and some reworking of the shower area and tea station.

A determining factor in assessing the application is which part of TGD-M 2010 it is appropriate to apply to the proposals. It seems to me that the appropriate part in relation to the existing retail premises is section 2, “Access and Use of existing buildings other than dwellings”.

8.1 Assessment of the proposals

- 8.1.1 As regards the accessible car parking, there is dispute between the applicant/appellant and the BCA about this. Some of this is connected with the planning permission. In my view, the guidance at TGD-M 2.1.5, On-site car parking, is applicable. That guidance says (my emphasis) “*The guidance in 1.1.5 should be followed, **where practicable**. Where on-site car parking is provided and it is not practicable to provide the number of designated car parking spaces in 1.1.5, as many as possible should be provided but at least one.*”

The proposals for this *overall* site (that is, DS.0062 and DS.0063) show one accessible car parking space, at the front of the site.

The BCA took the view that there should be a designated accessible parking space for each of the two buildings on the site. The appellant has said that this is not practicable, having regard to the space available between the existing buildings, and the need to comply with the required numbers of spaces in Development Plan parking requirements. A second accessible space would in my view be desirable, but is not practicable. Having regard to the site plan, and the shared nature of the two buildings, I am of the view that the TGD-M guidance at 1.5.5:- *“For buildings (including apartment buildings), at least 5% of the total number of spaces should be designated car parking spaces, with a minimum provision of at least one such space”* might reasonably be applied to the two buildings taken together and on this basis, the 1 in 5 spaces now designated as accessible complies with the relevant guidance.

* **Access to the front entrance**

8.1.2 The proposals show the existing rear yard relaid to uniform gentle gradients of 1:30 or less steep. No ramps are then required. This is a sensible approach to improving accessibility as it is both low-key and comprehensive.

8.1.3 The level access area in front of the main entrance door incorporates an 1400x1400 landing. This space, however, is encroached upon by an outward opening door. I do not understand that fire safety requirements would require an outward-opening door for the likely number of users of this space; if the door opened inwards, the problem would be less severe.

The BCA inserted condition 2 on the DAC requiring this be enlarged to an “1800 x 1800 clear level landing”. The appellant accepts (appeal pp. 5-6) that the guidance for existing buildings is 1500 x 1500 mm, and says, albeit not in so many words, that this size is not practicable; and avers that *“if An Bord Pleanala do not see the proposal as an improvement our client would reluctantly agree to leave the building alone and do nothing to it.”*

This is a difficult problem. I have examined the levels shown on the site plan and consider it unlikely that the 1400 x 1400, which in any event is encroached on by the outward-opening door, can be made much larger. The existing building is not being changed in layout; the proposed level access is indeed better than the present arrangement. It would seem to me that the best course of action might have been for the applicant to seek a relaxation of the relevant requirement of the regulations.

I have considered the question of “no new or greater contravention” of the requirements, and come to the view that the change from the private artist’s studio to the public yoga studio is likely to bring more users to the premises.

On balance, I come to the view that the BCA’s requirement of a 1800 x 1800 space is impracticably strict, but that 1400 x 1400 with outward-opening door as proposed, is too small. I therefore recommend that in the event of An Bord being minded to grant a DAC for the proposals, a **condition** requiring a 1500 x 1500 level landing in front of this entrance be included, thereby leaving it to the applicant to either implement that

condition, or to revert to the BCA with an application for a relaxation of the requirement.

The applicant proposes a “25 mm low level door threshold”. This is higher than the 15 mm maximum at TGD-M s.1.2.3, and in my view would constitute an unnecessary hindrance to universal access. I recommend that a **condition** be inserted requiring a maximum 15 mm threshold height with exposed edges chamfered or pencil rounded.

- 8.1.4 The main entrance door is not dimensioned. The report refers to a minimum width of 900 mm which in the circumstances would be acceptable, but the text of the report refers extensively to the main two storey building. TGD-M s.2.2.4 would permit an entrance door as narrow as 750 mm in certain circumstances. The circumstances are not fully developed in the proposals.

In the event of An Bord granting a DAC, I recommend a **condition** requiring a minimum effective clear width of 750 mm for this door.

* **Internal circulation**

- 8.1.5 There are no entrance lobbies.

- 8.1.6 The proposals involve accessing the wc/shower area by way of the tea station. The floor space available as dimensioned on the floor plan is 1600 x 1280 mm. At their condition 5, the BCA require the tea station to “*be compliant with Diagram 11 of TGD-M 2010*”. This diagram gives “key dimensions for lobbies with single leaf doors”. The applicable plan diagram would indicate a lobby size of about 2500 x 1280 mm.

In his appeal, the appellant offers (p.7) “to redesign the tea station and wc without the need to go through one to the other”.

This seems a sensible solution to the lobby question and in the event of An Bord granting a DAC, I recommend a **condition** requiring this redesign.

* **Provision of sanitary and other facilities**

- 8.1.7 The proposals provide for a space 1800 x 1880 mm which incorporates “*an ambulant disabled unisex wc with wet room type shower area with emergency call point and door indicator visible from studio*”.

At condition 6 of their DAC, the BCA required, instead, “*a wheelchair accessible wc and shower shall be provided within the building. This facility shall be designed to section 1.4.8 of TGD Part M 2010.*” Such a facility is much larger than the proposals.

In the appeal, the appellant says (p.7) that “*a wheelchair accessible facility is proposed as part of the development in the main building it is not and never was proposed a wheelchair-accessible bathroom or shower room in the studio*”; that the size of the development makes it practicable to provide ambulant disabled facilities only; and that if the provision of a shower for able-bodied people causes “*difficulties, this can be removed from the development and the proposer can rely on the facilities provided in the main building*”. In this regard, there would then be the same level of

provision (i.e., no shower at all) in this yoga studio for either persons with disabilities or for able-bodied persons alike.

The appellant's revised proposal, i.e., no shower at all and an ambulant accessible wc, does not comply with TGD-M 2.4.3, where, if a wc is to be provided at all, this should be wheelchair-accessible at a (smaller than normal) turning space of 1500 x 1500 mm.

It is in my view contrary to the principles of universal accessibility to admit a person in a wheelchair to this premises and then to require them (but not an able-bodied person) to exit this building and use the wc in the other building alongside.

Given, as I interpret the colours of the existing and the new walls on the plan, that the partition between this space and the main yoga studio is to be newly built, I consider it practicable to enlarge that space by the 400 or so mm needed to provide this turning space, if the appellant so chooses.

In my view, the same as with the level space outside the entrance door, I therefore recommend that in the event of An Bord being minded to grant a DAC for the proposals, a **condition** requiring that a wheelchair accessible unisex WC with a minimum turning space of 1500 mm x 1500 mm be provided, leaving it to the applicant to decide how to implement this.

- 8.1.8 As regards refreshment facilities, the layout shows a space 1600 x 1880 mm overall (including a 600 mm wide worktop) with a sink, designated "Tea" on the floor plan.

At their condition 7, the BCA require that "any refreshment facility (tea station) within the building be designed to Section 1.5.5 of TGD Part M 2010."

TGD-M gives guidance at section 1.5.5 and in diagram 28 for "*Provision for a wheelchair user in a typical shared self service canteen*". The guidance provides that "*where it is not practicable to provide the minimum clear manoeuvring space in 1.5.5, a minimum clear manoeuvring space of 1500 mm x 1500 mm should be provided in front of a counter or bar outside of any circulation route*" with a counter minimum 900 mm long. This guidance is intended to improve accessibility in public bars. Its application to the small kitchenette proposed here is, in my view, at the limit of its applicability. I have considered requiring the provision of knee space under the counter and consider this is not warranted in the proposals.

In the appeal (p.8) the appellant says he has a "*fully wheelchair accessible kitchen*" in the two storey building less than 7 metres away; and that the provision of the small tea station was to provide a facility for an able-bodied person; and "*if this is not acceptable, our client can remove the provision which will remove the need for the condition and rely instead on the facility provided in the main building. This however is discriminatory against an able-bodied person.*"

The appellant has (see 8.1.6 above) offered to redesign the tea station to eliminate the need for the wc lobby. As the partitions to all these spaces are shown coloured on the floor plan as if to be newly constructed, it seems to me to be practicable to enlarge the tea station by the 250 or so mm needed to achieve a 1500 mm turning circle.

I therefore recommend that in the event of An Bord being minded to grant a DAC for the proposals, a **condition** requiring that a minimum turning space of 1500 mm x 1500 mm be provided in the tea station.

8.1.9 As regards switches, outlets and controls, the report which accompanies the application undertakes that these will conform to TGD-M s.1.5.7 and diagram 30. In my view, compliance with that guidance is readily achievable within the proposed plans and this is satisfactory.

8.1.10 As regards aids to communication, the report which accompanies the application undertakes that these will conform to TGD-M s.1.6.2. In my view, such compliance is also readily achievable within the proposed plans and this, too, is satisfactory. The report accompanying the application gives specific detail on a Public Address system to link this building and the main two storey building.

9 RELEVANT HISTORY/CASES

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

10 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.

11 ASSESSMENT AND RECOMMENDATIONS

11.1 Description of the proposals assessed

Given the lack of clarity in the application and in the BCA description, An Bord may wish to consider altering the description of the proposals from the BCA's over-long description which is not all applicable to this building in any event.

Proposal:- Material change of use from Artist's Studio to Pilate's / Yoga studio and for material alterations to the existing building.

11.2 Summary of my views

In accordance with art. 39(a) of the Building Control Regulations (as amended), I have restricted my assessment of this appeal 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 this regard I consider that the guidance on “practicability” in existing buildings in the introductory sections of the TGD, and also the detail guidance on existing buildings in the design sections of the TGD, are relevant.

On considering the application and appeal, I have formed the view that if the proposals are modified in accordance with the conditions in the following section, they would, if constructed in accordance with the plans, calculations, specifications and particulars submitted, comply with the requirements of Part M of the Second Schedule to the Building Regulations 1997 to 2017.

11.3 Recommendation

I recommend that An Bórd allow this appeal and grant this Disability Access Certificate for the proposals therein, subject to conditions as follow.

	Condition	Reason
1	A level landing at least 1500 mm x 1500 mm clear of any door or gate swing to be provided immediately in front of the main entrance door. The threshold to this door to have a maximum height of 15 mm with exposed edges chamfered or pencil rounded.	To facilitate universal access to the building in compliance with building regulation requirement M1.
2	The main entrance door to have a minimum effective clear width of 750 mm.	To facilitate universal access to the building in compliance with building regulation requirement M1.
3	The layout to be modified so that the WC can be accessed without the need to go through the Tea area.	To facilitate universal use of the building in compliance with building regulation requirement M1.
4	The layout of the WC to be modified to provide a wheelchair accessible unisex WC with a minimum turning space of 1500 mm x 1500 mm (refer to TGD-M Diagram 15b).	To facilitate universal use of the building in compliance with building regulation requirement M1.
5	The layout of the tea station to be modified per TGD-M Diagram 28 to provide a minimum turning space of 1500 mm x 1500 mm in front of the counter outside of any circulation route.	To facilitate universal use of the building in compliance with building regulation requirement M1.

E. O Cofaigh Arkitekt MSA HFAIA
12 January 2018