

## Inspectors Report

Appeal against 2 No. conditions attached to the granted Revised Disability Access Certificate (DAC029/16) 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.

Condition 2 relates to the provision of one vertical platform lift and condition 3 relates to the provision of a ramp to allow access to unit 4 on the first floor.

<b>Board appeal ref no:</b>	26.DV0006
<b>Building Control Authority application no:</b>	DAC029/16
<b>Appellant/Agent:</b>	Taoglas Antenna Solutions Ltd.
<b>Building Control Authority:</b>	Wexford County Council
<b>Date of site inspection:</b>	N/A
<b>Inspector:</b>	Eoin O'Herlihy
<b>Appendices Attached:</b>	Appendix 1 – Conditions attached

## Table of Contents

1.	Introduction .....	3
1.1.	Site description .....	3
1.2.	Subject matter of application.....	3
1.3.	Documents lodged as part of Revised Disability Access Certificate (RDAC) application.....	3
1.4.	Building Control Authority decision .....	4
2.	Relevant history/cases.....	4
3.	Information considered .....	4
3.1.	Application for a Revised Disability Access Certificate (RDAC) .....	4
3.2.	Additional information request from WCC in relation to the RDAC application .....	4
3.3.	Response to further information request.....	4
3.4.	Building Control Authority decision .....	5
4.	Grounds of appeal .....	5
4.1.	Appeal to An Bord Pleanála.....	5
5.	Observations from the BCA in relation to the appeal .....	6
6.	Response from the appellant to the BCA observations .....	7
7.	Considerations.....	7
7.1.	Application of Part M 2010 when designing/constructing an extension. 7	
7.2.	Application of Part M 2010 when carrying out a material change of use 7	
7.3.	Determination of Practicability .....	8
7.4.	Lift provisions in buildings .....	8
7.5.	Management and day to day operations of buildings.....	9
7.6.	Inspectors observations on the application of TGD M 2010.....	9
8.	Assessment .....	10
8.1.	Conditions to be removed .....	11
8.2.	Conditions to be added.....	11
8.3.	Conclusion on Considerations/assessment .....	11
9.	Conclusions/Recommendations .....	12
9.1.	Reasons and Considerations.....	12
10.	Appendix 1 – Conditions attached to the granted RDAC related to this appeal .....	13

## 1. Introduction

### 1.1. Site description

The proposed works is the 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.

The proposed use of the building is offices which includes the following facilities:

- Ground floor - Reception area, Goods in area, testing area, conference room, kitchen, meeting rooms, 1 No. offices for approximately 6 staff, 2 No. standalone offices, stock control room and storage area.
- First floor - 1 No. open plan office for approximately 8 staff which includes a number of break-out spaces, 3 No. standalone offices, 1 No. general open plan office for approximately 15 staff, 1 no. conference room, 1 no. kitchen, and 1 no. break-out room.

### 1.2. Subject matter of application

The proposed works that formed part of DAC029/16 was for 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.

It is noted that there is a previous DAC granted (DAC074/11) for the material alterations of Unit 5 which consisted of modifications to the ground and first floor of the unit.

### 1.3. Documents lodged as part of Revised Disability Access Certificate (RDAC) application

The application made by G. Sexton and Partners Ltd (on behalf of the appellant) was received by the Building Control Authority (BCA) on the 15<sup>th</sup> June 2016 and included:

- Application Form & Application Fee Cheque €800
- Compliance Report
- G. Sexton & Partners Drawings:
  - OS Maps
  - Proposed Site Plan 160411 DAC-001 Rev A 13/06/16
  - Proposed Ground & First Floor Plans 160411 DAC 002
  - Proposed Sections 160411 DAC -003
  - Proposed Elevations 160411 DAC-004
- Additional documents/details provided are as follows:
  - Revised Disability Access Application Form
  - Site Layout Plan 160411 DAC-001 Rev A 13/06/16 - Site Boundaries indicated by solid red line; Proposed and existing /buildings uses indicated; Relative levels of point of access on boundary indicated (it is

noted that specific detail with regards to finished floor levels and all entrance doors are indicated on the proposed floor plans for ease of reference and clarity of drawings; Principle dimensions indicated.

#### **1.4. Building Control Authority decision**

The BCA granted the RDAC for the above works on the 15<sup>th</sup> July 2016. The Certificate was granted subject to 3 conditions. Refer to Appendix 1 below for outline of conditions.

## **2. Relevant history/cases**

The following previous DAC application is relevant to the case:

1. DAC 074/11 – Previous granted DAC (DAC074/11) for the material alterations of Unit 5 which consisted of modifications to the ground and first floor of the unit.

## **3. Information considered**

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

### **3.1. Application for a Revised Disability Access Certificate (RDAC)**

An application for a RDAC which was submitted to the BCA on the 15th June 2016. Refer to section 1.3 above for further information.

### **3.2. Additional information request from WCC in relation to the RDAC application**

Wexford County Council wrote to the applicant on the 5th July 2016 and requested additional information including:

- Sufficient detail to adequately inform the works carried out and the proposed/existing revisions to the original DAC as granted.
- Clarification on the number of car parking spaces.
- Clarification on compliance issues relating to the new staircase.
- Proposed revisions to the existing layouts and the provision of 3 no. platform lifts.
- Revisions to the proposed ramp in order to meet the guidance in TGD M 2010.

### **3.3. Response to further information request**

G. Sexton and Partners responded to the additional information request on 7th July 2016 and this was received by the BCA on the 8th July 2016. In the response they noted that:

- The alterations that form part of the proposed works greatly improve the range of services for wheelchair users on the ground floor of the building (e.g. meeting rooms and kitchen facilities are now provided on the ground floor).
- Wheelchair accessible WCs are provided on the ground floor.
- Internal door and access routes continue to comply with the original DAC granted for the development if not improved by the proposed works.

- 2 No. accessible bays out of a total of 28 car spaces.
- The new stairway within Unit 2 will be ambulant disabled in line with section 1.3.4.3 and they list the sub clauses that would apply.
- The design team investigated the provision of 3 no. platform lifts but it was not deemed practicable to achieve same due to existing structural issues. Reference was made to section 0.7 of TGD M 2010.
- The design of the ramp was redesigned to meet the guidance in section 1.3.4.4, 1.1.3.4, 2.1.3.4 and 2.3.4.4 of TGD M 2010.

2 No. sets of revised information was submitted with the letter.

### **3.4. Building Control Authority decision**

Refer to section 1.4 above.

## **4. Grounds of appeal**

### **4.1. Appeal to An Bord Pleanála**

G. Sexton and Partners (on behalf of the appellant) made an appeal to An Bord Pleanála on the 10<sup>th</sup> August 2016. The appeal was against condition No. 2 & 3 of the granted RDAC. The following is a summary of the appeal:

In relation to condition 2 the agent on behalf of the appellant noted that:

- The RDAC application applied for relates to the proposed extension of Units 5 into 3 & 4 and the associated material changes of use from industrial use to office use. Reference is made to section 0.6 (d) of TGD M 2010 which states how to apply the requirements of Part M 2010 when carrying out a material change of use.
- Reference is made to section 0.6 (d) of TGD M 2010 and highlighting that Part M of the second schedule of the Building Regulations does not apply when carrying out a material change of use to an office. Reference is also made to Article 4(2) S.I. No. 513 of 2010 where the appellant notes:

Article 13 (2)(b) – a building which was not being used as –

- (i) a day centre, becomes so used, or
  - (ii) a hotel, hostel or guest building, becomes so used, or
  - (iv) an institutional building, becomes so used, or
  - (vi) a place of assembly, becomes do used, or
  - (vii) a shop (which is not ancillary to the primary use of the building), becomes so used, or
  - (viii) a shopping centre, becomes so used.
- They also note that given that there is an increase at first floor level (extension) it was prudent to include same in the overall assessment of the proposed development. The appeal makes reference to section 0.7(v) of TGD M 2010 in relation to the determination of practicability (where specific alternative guidance to section 1 is provided in section 2 and an existing feature or facility satisfies that guidance. Particular reference is made to section 2.3.4.1 of TGD M 2010 which states “The 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)". The appellant states that in their opinion the requirements of Part M 2010 have been met as the same range of services/facilities that are available on the first floor level shall be made at ground floor level (entry level).

- The provision of platform lifts was previously investigated and it was not practicable to install same due to existing site structural implications.

In relation to condition 3 the agent on behalf of the appellant noted that:

- Condition No. 3 relates directly to Condition no. 2 with respect to the vertical platform lift and the provision of an internal ramp at first floor level and it is the appellant's opinion that the platform lift is not required.
- The proposed development works will include a fully compliant ambulant disabled stairwell in accordance with section 1.3.4.3 of TGD M 2010.
- As compliance with section 2.3.4.1 of TGD M 2010 has been previously demonstrated by providing the same range of services/ facilities that are available on the other levels being available on the entry or accessible level(s)" and an ambulant disabled stairwell is provided, there is no need for the ramp on the first floor.

## 5. Observations from the BCA in relation to the appeal

Observations from the BCA were received by the Board on the 25<sup>th</sup> August 2016. The following is a brief summary of their response:

- The application of Part M 2010 to existing building other than dwellings apply to any material alterations subject to the requirements of Part A, B and M and there are material alterations taking place as part of the works to support the material change of use (e.g. new internal circulation routes).
- In the appellants RDAC submission and further request the determination of practicability (structural issues) related to 3 no. lifting platforms to serve the building as previously demonstrated.
- On assessment of the application and subsequent further information as supplied, and in the opinion of the Building Control Authority, having consideration for the principals of good design, increased accessibility and usability, it is deemed practicable for the provision of one vertical lifting platform appropriately located to serve the varying first floor in compliance with TGD M 2010 Section 2.3.4.1. (i.e. approximately located around gridline D/2 supported by an internal ramp at gridline E-F/2).
- The same range of services provided for on the first floor are not available on the ground floor i.e. bulk of facilities for open plan office, large meeting room facilities and specifically the two number of breakout areas commonly associated with staff welfare, thus excluding certain groups (e.g. those restricted to working on the ground floor due to limited mobility). Therefore, non-compliance with the Building Regulations 2010, TGD M, Section 2.3.4.

## **6. Response from the appellant to the BCA observations**

Observations from the appellant to the BCA observations were received by the Board on the 12<sup>th</sup> October 2016.

The main observation in this letter from the appellant is that it is clear that BCA are applying the requirements of section 2.3.4.1 of TGD M 2010 yet, they are limiting the provision of same by not accepting the alternative arrangement that the same range of services/facilities that are available on the other levels should be made available on the entry or accessible levels.

They also note that they are of the opinion that the same range of facilities have been provided. In relation to break out spaces on the first floor, they argue that there is meeting, conference and kitchen facilities also provided on the ground floor and these can be utilized by staff when required.

## **7. Considerations**

Having reviewed the documentation available in connection with the application and appeal, I consider that it is not necessary that the determination of the board on the application should be as it if had been made to in the first instance (a De Novo approach is not warranted). I therefore consider it appropriate to determine the appeal against the conditions only. The following is an overview of my observations in relation to the appeal:

### **7.1. Application of Part M 2010 when designing/constructing an extension.**

The requirements of M1, M2 and M3 of the Second Schedule of the Building Regulations apply when an extension is being built:

- M1 states 'Adequate provision shall be made for people to access and use a building, its facilities and its environs'.
- M2 states 'Adequate provision shall be made for people to approach and access an extension to a building'.
- M3 states 'If sanitary facilities are provided in a building that is to be extended, adequate sanitary facilities shall be provided for people within the extension'.

In order to meet the requirements of M1 for the new extension TGD M 2010 recommends that the guidance in section 1 should be followed (where practicable) as the works that form part of an extension are new works.

Note: There is no reference in TGD M 2010 in relation to extending a building into an adjoining unit to create an extension.

### **7.2. Application of Part M 2010 when carrying out a material change of use**

The requirements of Part M apply in the following instances:

"0.6 (d) of TGD M 2010 - an existing building or part of an existing building, which undergoes a material change of use to a day centre<sup>(i)</sup>, hotel, hostel or guest building<sup>(ii)</sup>, institutional building<sup>(iii)</sup>, place of assembly<sup>(iv)</sup>, shop<sup>(v)</sup> (which is not ancillary to the primary use of the building) or shopping centre<sup>(vi)</sup>.

S.I. No. 513 of 2010 amends Article 13 of the Building Regulations dealing with material changes of use to require Part M to apply to certain material changes of use. Where such material change of use applies to the whole building (including approach and access, where practicable), the building must comply with M1. Where such material change of use only applies to part of the building, that part must comply with M1, the approach and access to that part (through independent access or through another part of the building) where practicable (refer to 0.7) must comply with M1 and any sanitary facility provided in or in connection with it must comply with M1”.

Note: There is no reference to Part M 2010 applying when carrying out a material change of use to an office.

### **7.3. Determination of Practicability**

Section 0.7 of TGD M 2010 (Determination of Practicability) has been introduced in TGD M 2010 for existing buildings as the scope of Part M was broadened in S.I. 531 of 2010 relating to its application to existing buildings (i.e. material alteration, certain material changes of use).

The concept of practicability recognises that certain existing buildings due to a range of considerations (e.g. historic, terraced, urban, restricted sites, structural issue etc.) may not be able to comply with the guidance for new buildings in Section 1 of TGD M 2010.

It also recognizes that the rigid application of guidance for new buildings could seriously limit the potential use of existing buildings as it may not in some cases be possible to comply.

It allows an applicant to adopt concept where the particular circumstances (set out in section 0.7 of TGD M 2010) apply for existing buildings.

The main purpose of section 0.7 of TGD M 2010 is to provide a less onerous set of guidance (section 2 of TGD M 2010) in certain circumstances where it may not be practicable to meet the guidance provided in Section 1 of TGD M 2010 for works taking place at an existing building.

### **7.4. Lift provisions in buildings**

TGD M 2010 provides guidance on the provision of lifts in section 1 of TGD M 2010 (which applies to new buildings and existing buildings where practicable). It states:

“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 m<sup>2</sup> 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
- d) than the entrance storey and with no dwelling having an entrance level more than 6500 mm above or below the main entrance level”.

It continues to say “Consideration should be given to other lifting devices, such as lifting platforms that facilitate vertical travel to facilities, especially in buildings to which the exceptions (a) to (c) above apply. Lifting platforms should comply with 2.3.4.1.1. For further information on these devices refer to ‘Building for Everyone’”.

And “Where no lift or lifting device is provided, the same range of services/ facilities that are available on the other levels should be made available on the entry or accessible level”.

TGD M 2010 also provides the following guidance in section 2 of TGD M 2010: “2.3.4.1 Provision - The 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)”.

## **7.5. Management and day to day operations of buildings**

Section 0.12 of TGD M 2010 notes that “whilst the provisions of the Building Regulations do not relate to management or maintenance and compliance with the Regulations is not dependent on these, it is acknowledged that they are important functions and contribute to the ongoing accessibility of the building”.

It is noted by the inspector that management can play a key role in making sure that buildings remain accessible but also to ensure that staff are reasonably accommodated within the workplace. Reasonable accommodation is addressed through equality legislation but allows for adequate provision for employees with disabilities in the workplace (e.g. workplace adaptations).

## **7.6. Inspectors observations on the application of TGD M 2010**

There are a number of important factors that make this case unique:

- The proposed extension that forms part of the works is being extending into existing units of the building.
- The proposed works is defined as an extension and a material change of use. As noted by the appellant the requirements of Part M do not apply when carrying out a material change of use to an office. However, it is important to note that the requirements of Part M do apply to an extension (see section 7.1 above).
- As part of the change of use significant revisions are taking place and significant alterations to the layouts of the existing extended areas are taking place.

- The proposed use of the building is defined as offices. Therefore, the management team at the offices will be able to identify the end user requirements within the building. It is also recognized that limited access only will be provided to members of the public. If the use of the building was a place of assembly (e.g. public theatre), it would be more difficult to adopt a management solution as the end users would generally be unknown. Therefore in my opinion it is easier to adopt a management solution to an office environment as most of the users will be staff and limited access will be provided to members of the public.

## 8. Assessment

The following is an overview of my assessment of this case:

1. There is no guidance in TGD M 2010 to suggest that section 2 of TGD M 2010 could be used for new build extensions or that the concept of practicability applies for new build extensions. This extension is unique in that the extension is extending into an existing building (i.e. Units 3 & 4).
2. Even though technically Part M of the Second Schedule of the Building Regulations does not apply to a material change of use from 'industrial' use' to 'office use' there are significant revisions taking place and significant alterations to the layouts of the existing extended areas (e.g. provision of new offices, conference rooms, WCs). The main question to be answered here is that should the requirements of Part M apply to significant alterations that are taking place. Given that these alterations are significant and would be classed as material alterations, it is my opinion that the works would be subject to the requirements of Part M of the second schedule of the Building Regulations.
3. One of the key arguments made by the appellant in this case is that the same range of services and facilities are available at entry level and this is an alternative solution to meet the requirements of Part M 2010 without the necessity to install a lift. Wexford County Council dispute this and note that the "bulk of facilities for open plan office, large meeting room facilities and specifically the two number of breakout areas commonly associated with staff welfare, thus excluding certain groups (e.g. those restricted to working on the ground floor due to limited mobility)".
4. The key facilities to allow someone with reduced mobility to carry out their role in the Taoglas Antenna Solutions Ltd office environment are as follows:
  - a. Provision of an accessible entrance to allow the employee get into the building.
  - b. Provision of a workstation to allow the employee carry out their duties.
  - c. Ensuring accessible WCs are in place.
  - d. Ensuring the area that they work in is easy to get around.
  - e. Ensuring refreshment/kitchen facilities are in place.
  - f. Ensuring access to meeting/conference room facilities to ensure staff with reduced mobility can liaise directly with their work colleagues.

Having reviewed the proposed floor plans, it is my opinion that these facilities are proposed at ground floor (entry level) and an employee with reduced mobility can be reasonably accommodated in the workplace. I do note that there are no breakout spaces provided at ground floor level and therefore recommend that the ground floor kitchen area is designed to be a fully wheelchair accessible kitchen/canteen for staff.

I conclude that given that the general use of the building is proposed for office use with limited access for members of the public<sup>1</sup>, the same range of facilities and services are provided at entry level and therefore there is no requirement for lift access to the first floor. I also conclude that each application for a DAC should be assessed on its individual merits within the constraints of the specific nature and use of the building concerned to identify how the requirements of Part M of the Second Schedule of the Building Regulations should be met.

### **8.1. Conditions to be removed**

Having regard to the information provided above and noting that the basis of compliance for the RDAC application, to meet the requirements of Part M 2010, it is my opinion that condition No. 2 and Condition No. 3 are not required and should be removed. This is based on the fact that the same range of facilities/services are provided on the ground floor (entry level) and staff with reduced mobility can be reasonably be accommodated on the ground floor of the offices.

### **8.2. Conditions to be added**

Following review of all the relevant documentation, I also recommend that 1 No. new condition should be added to ensure the extension provides reasonable access to all users. The proposed condition is:

- Condition: The design and fit out of the kitchen on the ground floor shall be designed in accordance with recommendations made in section 1.5.5 of TGD M 2010. Reason: In order to adequately provide for people with reduced mobility and to ensure independent access to staff welfare and canteen facilities.

### **8.3. Conclusion on Considerations/assessment**

Taking on board the information provided above and noting that the basis of compliance for the RDAC application, to meet the requirements of Part M 2010, it is my opinion that condition No. 2 and Condition No. 3 are not required and should be removed. This is based on the fact that the same range of facilities/services are provided on the ground floor (entry level) and staff with reduced mobility can be reasonably be accommodated on the ground floor of the offices.

I also recommend that 1 No. new condition should be added to ensure adequate canteen facilities are provided on the ground floor for staff members with reduced mobility.

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<sup>1</sup> Note: Members of the public can also be accommodated on the ground floor within the proposed facilities

In conclusion, further to the above assessment of matters pertaining to this appeal, I consider that the information submitted in support of this application and appeal is adequate to determine the case and that, subject to removing Condition No. 2 & 3 on the granted RDAC on the 15<sup>th</sup> July 2016 and including 1 No. additional condition, the subject works/building to which the application relates would satisfy the requirements of Section 4 & 5 of the Building Control Act 1990-2007 and Part M of the Second schedule of the Building Regulations 1997 to 2014.

## 9. Conclusions/Recommendations

I recommend that the Board directs that the BCA grants the RDAC subject to Omitting Condition No. 2 and Condition 3 and imposing the following condition:

**New Condition:** The design and fit out of the kitchen on the ground floor shall be designed in accordance with recommendations made in section 1.5.5 of TGD M 2010.

Reason: In order to adequately provide for people with reduced mobility and to ensure independent access to staff welfare and canteen facilities.

### 9.1. Reasons and Considerations

Having regard, to the nature and layout of the proposed works and to the submission made in connection with the application and appeal, it is considered that the proposed works, subject to Omitting Condition No. 2 and Condition 3 and including 1 new condition would comply with the provisions of the said Part M of the Second Schedule the Building Regulations 1997 to 2014.



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**Eoin O'Herlihy**  
Inspector  
25<sup>th</sup> October 2015

## **10. Appendix 1 – Conditions attached to the granted RDAC related to this appeal**

**Condition: 2** – Notwithstanding the stated provision of similar services at both ground and first floor level, a Material change of use requires that part of the building to which a material change of use applies shall comply with Part M. The proposed increase of first floor area from 224m<sup>2</sup> to 473m<sup>2</sup> in accordance with the requirements of section 2.3.4.1 TGD M 2010, the provision of one vertical lifting platform shall be provided for, located appropriately addressing access to serve the varying first floor.

**Reason: 2** - To ensure the proposed development accords with the requirement of the Building Regulations 2010 Technical Guidance Document M Access and Use.

**Condition: 3** An internal ramp shall be provided for in conjunction with the vertical lifting platform to support ease of access throughout the first floor (unit 4).

**Reason 3:** To ensure the proposed development improves the accessibility and usability of the building in accordance with the application of Part M to existing building and the requirements of the Building 2010 Technical Guidance Document M Access and Use.