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**Report 2993**

**An Bord Pleanála Appeal regarding the attachment of Condition by  
Dublin City Council to grant of Fire Safety Certificate for material  
alteration to basement at Gallery Quay, Grand Canal Basin, Dublin 2**

Client: An Bord Pleanála,  
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**BUILDING CONTROL ACT, 1990 – APPEAL**

**FIRE SAFETY CERTIFICATE APPLICATION  
FOR THE MATERIAL ALTERATION OF A PREVIOUSLY APPROVED MIXED USE  
BUILDING AT GALLERY QUAY, GRAND CANAL BASIN, DUBLIN 4**

**APPEAL AGAINST THE ATTACHMENT OF CONDITIONS NO. 2  
TO FIRE SAFETY CERTIFICATE (REF. FSC1873/16/REG) ON 7<sup>th</sup> JUNE 2016**

**AN BORD PLEANÁLA APPEAL REFERENCE 29B.FG0017**

Local Authority: Dublin City Council

Appellant: Grand Canal Quay Partnership c/o Jeremy Gardner Associates

**RECOMMENDATION**

It is recommended that this appeal be rejected. The retention of the subject Condition would in effect render the entire application redundant and having considered the subject de novo, it is recommended that the Regularisation Certificate should in fact be formally refused so as to accurately reflect this outcome.

**Reason:**

*Failure to comply with Part B1 of the Second Schedule to the Building Regulations, 1997 to 2014.*

**Dr. Raymond J Connolly**

BE, PhD, CEng, MIEI, MIFireE, MSFPE

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**1.0 RELEVANT INFORMATION**

- (i) Application for Regularisation Certificate by Grand Canal Quay Partnership to Dublin City Council dated 3<sup>rd</sup> March 2016, including Compliance Report YI/2974 R5 Issue 1 (dated 3<sup>rd</sup> March 2016) and drawings by Jeremy Gardner Associates.
- (ii) Regularisation Certificate (FSC 1873/16/REG) granted by Dublin City Council in respect of Application No. FA/16/1128/REG) issued on 7<sup>th</sup> June 2016 (subject of 2 no. Conditions).
- (iii) Letter of appeal from Jeremy Gardner Associates on behalf of Grand Canal Quay Partnership to An Bord Pleanála dated 1<sup>st</sup> July 2016.
- (iv) Letter sent by Dublin City Council to An Bord Pleanála dated 21<sup>st</sup> July 2016 outlining observations/comments by Fire Prevention Officer.
- (v) Letter from Jeremy Gardner Associates on behalf of Grand Canal Quay Partnership to An Bord Pleanála, dated 15<sup>th</sup> August 2016, responding to submission by Fire Authority.

## **2. BACKGROUND**

Jeremy Gardner Associates on behalf of Grand Canal Quay Partnership made an application to Dublin City Council for a Regularisation Certificate for the material alteration of a previously approved building (mixed use development) comprising change of the automatic fire detection and alarm system at basement level from Typ1 L1 to Type L2/L3. The Regularisation Certificate was granted by Dublin City Council (under Reference FSC 1873/16/REG) on 7<sup>th</sup> June 2016 subject to 2 no. Conditions including *inter-alia*:-

### Condition No. 2

*An L1 fire detection and alarm system complete with associated manual call points shall be provided. The existing fire detection and alarm system in these premises shall be upgraded where required to an L1 fire detection and alarm system complete with associated manual call points. The system shall be designed, installed and maintained in accordance with IS 3218:2013.*

### Reason:

*To comply with Part B1 of the Second Schedule to the Building Regulations, 1997 to 2014.*

On 1<sup>st</sup> July 2016, Jeremy Gardner Associates appealed on behalf of Grand Canal Quay Partnership against the attachment of this Condition (Conditions No. 2) to the Regularisation Certificate. The residual 1 no. Condition (Condition No. 1) is not subject of this appeal.

### **3. REPRISE OF APPEAL (AS PRESENTED)**

The subject works comprise the regularisation of an existing and previously approved (under FA/03/1733) multi-storey mixed use building in terms of the grade of automatic fire detection and alarm system installed (Type L2/L3) relative to the type of system approved for installation at design stage (Type L1). The change to the fire detection and alarm system applies to the basement level of the building only with same comprising an enclosed car park, commercial units storage areas and ancillary plant rooms. The original and approved Fire Safety Certificate application proposed the inclusion of a Type L1 automatic fire detection and alarm system to all non-residential areas of the mixed use (residential and retail) building. In fact, a Type L2/L3 system was installed at basement level for reasons unstated.

The appellant confirms that IS 3218:2013 recommends provision of a Type L1 system in circumstances where:-

- people congregate
- sleeping accommodation is provided
- large complex buildings
- residential (institutional) buildings

The appellant is of the view that none of these circumstances apply to the basement at Gallery Quay, which he has characterised as a lowly occupied space, which is mostly open plan, and with those persons escaping at basement level being trained and familiar with the premises.

The Fire Authority does not share this view of the development but rather characterises it as being a "large complex building". The Authority points out that the commercial units at basement level require escape into the car park as also do the residential storage units. The travel distances within the car park are stated by the Authority to exceed the recommended limits. There is also a suggestion by the Fire Authority that the car park connects to a separate development, which carries an inference of increased complexity.

The appellant subsequently responds to these views by accepting that the development is large but states that it is not an intricate or difficult design. The appellant also for the first time suggests that a revision to the scheme in 2003 including minor changes at basement level (as approved under FA03/1733) altered the grade of fire detection and alarm system to Type L4.

#### **4. CONSIDERATION**

The subject appeal demands a *de novo* consideration.

The fundamentals of the subject application and by association the current appeal include elements that are unsatisfactory to all parties.

The motivation for making the application in the first instance was that the originally designed and approved (FA/02/1577) fire detection and alarm system has not in fact been installed within the basement - a *de facto* unsatisfactory situation that has existed for over a decade. The applicant sought to regularise matters as is his right and responsibility. In making an application for the material alteration of the basement, the applicant specifically identifies on the application form his proposal to change from Type L1 to Type L2/L3 automatic fire detection and alarm systems. There is no mention of a Type L4 system. The applicant also solemnly and formally undertook to abide by any Conditions considered appropriate by the Fire Authority.

In determining an application to change the fire detection and alarm system from Type L1 to Type L2/L3, the Fire Authority decided to grant the application subject to a Condition that a Type L1 system be installed after all - defeating the very purpose of the application. One can only conclude that the motivation of the Fire Authority is both to seek to impose the highest possible standards on the quality of fire detection system in the basement going forward, i.e. requiring a Type L1 system to the most modern (IS 3218:2013) standards and also maybe to facilitate the provision of associated trade certification as will facilitate works to be commissioned in 2016. The alternative option of simply refusing the application as would seem the more straightforward and robust approach would have left it to the failed applicant in 2016 to somehow turn the clock back to retrospectively install what should have been installed at the appropriate time, i.e. a Type L1 system to IS3218:1989, i.e. not a standard that remains in current use by the trade in 2016.

The appellant has stated in his appeal that "the residential owned storage units with basement levels **are the only areas** not provided with an L1 fire detection and alarm system coverage". In this context, it would appear that the entire difficulty with the *in-situ* arrangement relates singularly to a room c.77 m<sup>2</sup> in area and containing 22 no. 1.5m<sup>2</sup> storage units and presumably the lack of fire detection within each unit. One would speculate that an alternative approach to this

difficulty could have been evolved without casting a cloud over the quality of the fire detection system in the entire basement.

As things stand, the imposition of Condition No. 2 whilst helpful in terms procurement and installation of any new detection devices and wiring required may pose difficulties in terms of retrospectively delivering an IS 3218:2013 compliant system where its vast bulk was presumably installed to 1989 standards. This issue would appear not to arise because the applicant states in his Compliance Report that the system "**will** comply with IS 3218:2013" (in terms of L2/L3). This statement is not supported by any certification as should be available either for the original 1989 compliant system (as either a Type L2 or indeed L4 system). Equally the use of a future tense in this context is inappropriate to a Regularisation Certificate. This process is seeking validation of *in-situ* arrangements, i.e. in the present tense, or at the very least making proposals for remedial works as will be completed within 4 months. The existing system by the appellant is described as a Type L2/L3 system. If this is a considered description then it infers that the installation is now to IS 3218:2013 standards because the L2/L3 classification did not exist in the 1989 version of the standard. If this is the case upgrading of the system has already occurred and further upgrading to a Tupe L1 (2013) standard may not impose any obligations beyond the potential need for increased detection within the storage area.

If this appeal were framed in the context of a local alternative treatment of the storage area to avoid introduction of detection into 22 no. small units, then one imagines that some options might exist. However, the request for a global relaxation from the previously approved Type L1 standard is insufficiently justified. The issue that arises in such a context is whether the building is a complex building and two diametrically opposed views have been offered with respect to same. The building exists and as required under the Building Control Act should have been inspected by the Fire Authority. There is therefore no lack of understanding of the building's form, function or condition given that it exists nor indeed any guesswork required as to some future circumstances - as might arise at design stage in Fire Safety Certificate applications. The Fire Authority has determined the building to be complex and that a Type L1 system was and remains appropriate. Given their insight into the custom and practice in the implementation of IS 3218 standards across Dublin, it would be fair to surmise that the Authority has not singled out the subject building for more onerous treatment than its contemporaries. Indeed, the very word "complex" is a relative term and across a large number of buildings, the Local Authority would



appear to be better placed to judge the relative complexity of different buildings than an individual designer. In such circumstances, the appeal is not upheld.

Uncertainty as to the *in-situ* arrangements and an unwillingness to impose any new and additional requirements to an existing building leads me on balance to conclude that the most appropriate way to retrospectively deliver the necessary Type L1 fire detection and alarm system is to actually refuse the appeal. This will allow the applicant maximum flexibility in determining how best to remediate the situation giving him freedom to adopt his choice of the 1989 or 2013 versions of IS 3218 in the context of the Fire Services Act as opposed to the Building Control Act. It may also offer the applicant increased freedom to evolve an alternative design approach should the issues be localised to the storage area.

## **5. CONCLUSION**

It is recommended that this appeal be rejected and that the application be considered *de novo*.

The Regularisation Certificate should be refused.

*Reason:*

*To comply with Part B1 of the Second Schedule to the Building Regulations, 1997 to 2014.*

**Dr. Raymond J Connolly**

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