



Fire Engineering Consultants

**Appeal Against Condition Attached to
Regularisation Fire Safety Certificate
(FSC2946/16/REG)**

Appeal Ref: 29B. FG0022

**Project Irish Whiskey Museum, 37 College
Green/119 Grafton Street, Dublin 2**

Local Authority Dublin City Council

Date 31 March 2017

Contents

1.0 INTRODUCTION

2.0 INFORMATION REVIEWED

3.0 DISCUSSION

4.0 RECOMMENDATIONS

1.0 INTRODUCTION

The project involves material alterations to the existing Irish Whiskey Museum, 37 College Green/119 Grafton Street, Dublin 2.

A Regularisation Fire Safety Certificate application for the works was granted by Dublin City Council on the 6th December 2017. The following conditions were attached: -

Condition 1

The relevant works or building, constructed in accordance with the complete and certified set of Drawings Nos: 16005-01, 16005-02, 16005-03, 16005-04, 16005-05, 16005-06, 16005-07, 16005-08, 16005-09, 16005-10, 16005-11, 16005-12, 16005-13, dated 29/07/2016, prepared by Eamon O'Boyle and Associates, must be supported by a Certificate of Compliance by reference to those drawings in respect of the relevant works with the Requirements of Part B of the Second Schedule to the Building Regulations 1997 to 2014.

Reason: To ensure that the building as constructed, complies with Part B of the Building Regulations 1997 to 2014.

Condition 2

The pressurisation systems installed in Stair 1 and it's associated lobbies shall comply with the requirements of I.S. EN 12101-6:2005 as per the previously granted Fire Safety Certificates for the building, FSC1129/14 and FSC1571/150.

Reason: To ensure that the building as constructed, complies with Part B of the Building Regulations 1997 to 2014.

Condition 3

The usage of each floor of the building shall be as specifically stated and approved in the previously granted fire Safety Certificates for the building, FSC1129/14 and FSC1571/150.

Reason: To ensure that the building as constructed, complies with Part B of the Building Regulations 1997 to 2014.

Condition 4

All stairway enclosures shall be kept clear and shall not be used for storage of any materials.

Reason: To ensure that the building as constructed, complies with Part B of the Building Regulations 1997 to 2014.

Condition 5

The doors opening from Stair 1 to Grafton Street at Ground Floor level shall open in the direction of escape and shall be recessed such that they are equidistant from the foot of the internal steps and the head of the external steps.

Reason: To ensure that the building as constructed, complies with Part B of the Building Regulations 1997 to 2014.

Condition 6

All disused electrical apparatus shall be removed from the 'Service Cupboard' in Stair 1 at Ground Floor Level. This Service Cupboard shall be used only to house the override control panel for the stair pressurisation system and the Fire Detection and Alarm System panel. A sign shall be affixed to the outside of this cupboard indicating it's contents. This area shall not be used for storage or any materials.

Reason: To ensure that the building as constructed, complies with Part B of the Building Regulations 1997 to 2014.

Condition 7

The basement extension of the Fire Detection and Alarm System shall be in accordance with IS 3218: 2013.

Reason: To ensure that the building as constructed, complies with Part B of the Building Regulations 1997 to 2014.

Condition 8

Emergency and other signage throughout the premises shall be in accordance with S.I. No 299 of 20074 – ‘Safety, Health and Welfare at Work (General Application) Regulations 2007.

Reason: To ensure compliance with Regulation B1 of the Building Regulations 1997 to 2014.

Condition 3 (the usage of each floor to remain unchanged from the previous application) is the subject of this appeal.

2.0 INFORMATION REVIEWED

In assessing this appeal the following information was considered:-

- Fire safety certificate application including
- Drawings submitted 4th August 2016
 - Site Location Plan
 - Site Layout Plan
 - Basement Floor Plan
 - Ground Floor Plan
 - First Floor Plan
 - Existing Second Floor Plan
 - Existing Third Floor Plan
 - Fourth Floor Plan
 - Section A-A
 - North Elevation
 - South Elevations
 - East Elevation
 - Section B-B
- Additional Information submission dated 15th August 2016
- Fire Safety Management Plan
- Fire Safety Certificate grant dated 6th December 2016
- Appeal submission from Eamon O'Boyle and Associates dated 21st December 2016
- Fire Officers report on the Fire Safety Certificate appeal dated 26th January 2017
- Response to Fire Officers Report letter from Eamon O'Boyle and Associates dated 13th February 2017

3.0 DISCUSSION

3.1 Right to Appeal Against a Regularisation Certificate

BCA

The BCA have argued that the appellant has waived their right to appeal any conditions attached to a Regularisation Fire Safety Certificate, based on the signing of the Regularisation Certificate Statutory Declaration. This declaration states "I/We solemnly declare to abide by any conditions, including conditions to carry out additional work considered appropriate by the Building Control Authority necessary to enable the Authority to issue a Regularisation Certificate". Therefore, by signing this document, which the appellant has done so, the BCA believe there is no right to appeal.

Appellant

The appellant argues that they are in their right to make an appeal against any Regularisation Certificate and/or any conditions attached within, by following the guidelines of the Building Control Regulations which does allow an appeals against Regularisation Certificate applications.

The appellant has also drawn attention to the wording on the Regularisation Fire Safety Certificate grant which, states "An applicant who is dissatisfied with a decision of a Building Control Authority may appeal to An Bord Pleanala".

In addition, the appellant has included references to previous appeals against Regularisation Certificates made and accepted by An Bord Pleanala (Ref. Nos: 06F.FG.0020, 29B.FG.0015 and 61.FG.0014).

Discussion

The Regularisation Certificate Statutory Declaration does not make any specific reference to waiving the right to appeal a Regularisation Fire Safety Certificate. Although some confusion may arise from this declaration, the appellant has drawn attention to the grant certificate which clearly states "an applicant who is dissatisfied with a decision of a Building Control Authority may appeal to An Bord Pleanala". Therefore, the BCA have specifically stated that an appeal can be made here.

Furthermore, the right to appeal a Regularisation Certificate is stated in Section 7-(1) of the amended Building Control Regulations 2007, where "an applicant who is dissatisfied with the decision of a building control authority on an application pursuant to— (a) section 6(2)(a)(vii), for a regularisation certificate... may appeal to An Bord Pleanala."

The Building Control Regulations allow for appeals against Regulation Fire Safety Certificates, which have been accepted and reviewed in the past by An Bord Pleanala, and the appellant is within their right to submit this appeal.

3.2 Condition No. 3

Condition 3

The usage of each floor of the building shall be as specifically stated and approved in the previously granted fire Safety Certificates for the building, FSC1129/14 and FSC 1571/150.

Reason: To ensure that the building as constructed, complies with Part B of the Building Regulations 1997 to 2014.

BCA

The main concern of the BCA is that the Regularisation Fire Safety Certificate is only concerned with material alterations and does not include a change of use. They note that the previously approved Fire Safety Certificate stated that the premises will be used as a museum tasting bar and by changing this to a public bar, they believe a change of use has occurred which is beyond the scope of the application.

The BCA also believe that the new public bar will have a higher risk profile than the tasting bar in the museum, which would also result in a change of use. In addition, they are concerned that a public bar would have a greater number of occupants than the maximum of 27, as stated in the previous Fire Safety Certificate, and this would negatively affect the safe evacuation in the event of a fire.

Appellant

The appellant has argued that the alteration of the museum tasting bar to a public bar does not constitute a change of use. BS 9999: 2008 assigns a B2 risk profile to both a bar and a museum and the TGD-B classifies both uses as Assembly and Recreation purpose group and therefore the appellant claims that a change of use has not taken place.

In addition, the appellant argues that BS 9999: 2008 does not differentiate between the amount of alcohol consumed in different premises, i.e. tasting bar or a public bar, and therefore the use of this area will remain unchanged.

The appellant has stated that the means of escape from the first floor has been based on the occupancy load factor of the floor area, and not the maximum group size of 27, which is sufficient for the public bar. The appellant has also commented that the fire load will remain unchanged and therefore no greater contravention is occurring.

Discussion

The BCA argue that by including a public bar, a change of use will be carried out which was not part of the Regularisation Fire Safety Certificate. However, the Fire Safety Certificate has been designed in accordance with the recommendations of BS 9999: 2008, which classifies a bar and a museum as both having a B2 risk profile, which does not constitute a change of use. The BCA have further argued that there is a change in occupant characteristic which would thus count as a change in risk profile. BS 9999: 2008 does in fact recognise that occupants consuming alcoholic beverages may have a longer evacuation time and therefore it recommends a reduction in the travel distances limitations by 25%. The appellant has shown that the travel distances from the public bar comply with these recommendations. It should be noted that this recommendation does not change the risk profile of the building, and therefore cannot be considered a change of use. I am in agreement that the new bar does not constitute as a change of use and therefore declaring the works as material alterations is in line with code guidance.

It should also be noted that the Technical Guidance Document - B classifies an Assembly and Recreation type building as "*(i) a public theatre, public library, hall or other building or public resort used for social or recreational purposes*" and "*(iv) a public house*". According to the above, both museums and public bars are classified under the same purpose group and therefore any changes would only be regarding as material alterations and not as a change of use, as the appellant has argued. It should also be noted that the guidance in TGD-B, which the appellant would have been entitled to use as the basis for design, does not make any distinction between the characteristics of occupants of a bar and a museum.

The BCA's concern regarding the now lower level of supervision in the public bar, from the previous strict staff to visitor ratio of 1:26, is not related to any recommendations in either code guidance. BS 9999: 2008 and TGD-B do not require a supervision ratio of staff to members of the public in a public bar, only that the means of escape is appropriately calculated for the maximum number of occupants based on the applicable floor area. The appellant has appropriately calculated the means of escape based on the floor areas in line with the code guidance recommendations, and not on the maximum permitted group size. I believe that the appellant has appropriately designed the escape strategy from the public bar to be in line with the relevant code guidance.

I am of the opinion that the change to a new public bar does not constitute as a change of use and is compliant with the relevant code guidance of both BS 9999: 2008 and the TGD-B. Therefore, Condition 3 should be removed from the Regularisation Fire Safety Certificate grant.

4.0 RECOMMENDATIONS

The BCA should be directed to remove condition 3.

Signed.....
Martin Davidson
B.Eng MSc (Fire Eng) CEng MIEI

Date: 31 March 2017