

REPORT TO AN BORD PLEANÁLA

ON

APPEAL AGAINST CONDITION ON A FIRE SAFETY CERTIFICATE

ISSUED BY DUBLIN CITY COUNCIL

FOR

MATERIAL ALTERATIONS TO NO. 14 OSSORY ROAD, NORTH STRAND, DUBLIN 3

Client: An Bord Pleanála
An Bord Pleanála Ref: FS 0573
Our Ref: CTA 1801
Date: JAN 2018

1.0 BACKGROUND

This Report sets out my findings and recommendations on the appeal submitted by Clonliffe Architects (CA) on behalf of Austin Smithers against Condition 1 on a granted Fire Safety Certificate (Register Ref. No: FA/17/1364) dated 12th September 2017, issued by Dublin City Council (DCC) in respect of an application for *Material alteration: Material alterations to include fire safety upgrade works to No. 14 Ossory Road, North Strand, Dublin 3.*

Condition 1:

The premises to be limited to 20 occupants as follows:

Bedroom 1 Max occupancy = 2
Bedroom 2 Max occupancy = 3
Bedroom 3 Max occupancy = 3
Bedroom 4 Max occupancy = 2
Bedroom 5 Max occupancy = 3
Bedroom 6 Max occupancy = 3
Bedroom 7 Max occupancy = 2
Bedroom 8 Max occupancy = 2

Reason: To comply with B1 of the Second Schedule to the Building Regulations, 1997 to 2017.

Having considered the drawings, details and submissions on the file I am satisfied that the determination by the Board of this application as if it had been made to it in the first instance would not be warranted, as no significant matters have been noted other than the subject matter of the appeal. Accordingly, I consider that it would be appropriate to use the provisions of article 40(2) of the Building Control Regulations, 1997 in this case.

1.1 SUBJECT MATTER OF THE APPEAL

- The application for a Fire Safety Certificate was lodged by CA on 27th June 2017.
- The Fire Safety Certificate, with nine conditions, was issued by DCC on 12th September 2017.
- An appeal against Condition 1 was submitted by CA, dated 10th October 2017.

1.2 DOCUMENTS REVIEWED

- Application for Fire Safety Certificate lodged by CA on 27th June 2017
 - Revised information submitted by CA on 28th August 2017
 - Appeal submission by CA to An Bord Pleanala on 10th October 2017
 - Submission to An Bord Pleanala by DCC dated 9th November 2017, with fire officers report
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2.0 FINDINGS

The case made by the building control authority is summarised as follows:

- The property was formerly a dwelling house whose use is now best characterised as a house of multiple occupation (HMO)
- Dublin Fire Brigade (DFB) inspected the property, noted fire safety deficiencies, agreed with the person in control of the property that certain fire safety upgrade works would be carried out and invited that person to lodge a Fire Safety Certificate application in respect of the upgrade works.
- The application was lodged and was granted with conditions on 12th September 2017.
- Condition 1 on the Fire Safety Certificate limits the overall occupancy to 20 persons, with an occupancy limit specified for each individual bedroom (with bedrooms being limited to either 2 or 3 residents each).
- Subsequent inspection of the premises was carried out, where it was noted that the fire safety upgrade works had not been carried out, with 30 residents in the building.
- A High Court order was obtained by DCC, ordering that the premises be vacated.
- The limit of 20 occupants is based on 5sqm per person of bedroom space, which DFB believes to be reasonable for a HMO, with a total of 102sqm of bedroom space in the house.
- A 'house of multiple occupancy' is not adequately defined in Irish law and there is a lack of guidance documents on such premises, so reference was made to the Northern Ireland Housing Executive standards for 'houses in multiple occupation' (the Standards).
- The Standards set out criteria for different categories of housing, including maximum occupancy of rooms for 'overcrowding' reasons, and includes some recommendations on fire safety issues. The limit of 20 person occupancy is taken from Section 4.4 of the Standards, under the heading of 'overcrowding'.
- The reference by CA to guidance for small guest houses from Technical Guidance Document B (TGDB) is not considered relevant in this case, as this is not a guest house but a HMO, which is not defined in TGDB.
- The occupancy load factors for residential accommodation set out in TGDB are appropriate for long term living situations, they are not appropriate for HMOs due to the transient nature of this type of accommodation, so the use of TGDB to calculate occupancy is not appropriate.
- The definition of 'overcrowding' taken from the Housing Act 1966 includes where two persons must sleep in the same room or where the free air space in the room exceeds four hundred cubic feet.

- The requirements under the Housing Act equate to around 5sqm per person of bedroom space, which is in line with DFB policy, and is considered reasonable.
- DFB would be in contravention of the Housing Act if it were to allow any more than 20 occupants reside in the premises.
- Overcrowding represents major issues in the event of a fire or an emergency. The escape of persons can be detrimentally impeded due to overcrowding, which represents a hazard which can affect the means of escape in a premises. DFB are concerned that a fire in an overcrowded premises could endanger or put at serious risk the occupants of such a premises.
- DFB is of the view that having 20 occupants in this house of multiple occupation would be a fire hazard, would contravene Section 23 of the Housing Act 1966 and would go against best practice for houses of multiple occupation.

The case made by the Appellant is summarised as follows:

- It is unnecessary and unwarranted to limit the number of occupants to a maximum of 20 persons.
- On the basis of the fire safety upgrades proposed (including the level of fire detection and alarm, smoke venting of the staircase, upgrading of intermediate floors and provision of escape and rescue windows to all bedrooms), it is reasonable to proceed on the basis of the design occupancy in the individual bedroom spaces.
- The proposed bedroom accommodation at ground floor would be 12 bed spaces, so the aggregate at first and second floors would be 16 bed spaces. This is consistent with the guidance in TGDB for small guesthouses which contemplates the possibility of a small guesthouse with 8 bedrooms (4 at first floor and 4 at second floor) and it would be reasonable to assume that some of these bedrooms would accommodate 3 bed spaces, giving rise to a notional maximum occupancy under the guidance of up to 24 persons (on upper floors, with 3 occupants in each of the upper floor rooms).
- Given this equivalency analysis, the proposal for 16 bed spaces on the first and second floor combined is reasonable and acceptable in the circumstances, with 12 persons at ground floor, a total of 28 persons.

3.0 CONSIDERATIONS:

DCC references the Housing Act 1966 in defining the premises as 'overcrowded', which they assess as requiring at least 5sqm of bedroom space per occupant (a figure adopted as a guide for space requirements in terms of fire safety). However, it can be reasonably assumed that the Housing Act requirements are based on general living conditions, including environmental health (air space),

cooking and sanitary facilities, privacy etc. They also state that DFB would be in contravention of the Housing Act if it were to allow any more than 20 occupants reside in the premises.

However, under Section 15 of the building control regulations, DCC are restricted in this case to considering only the extent to which the design of the works complies with the requirements of Part B (Fire) of the building regulations, and it is considered that standards arising under different legislation should not be applied in this case. It is noted that DCC have also taken enforcement procedures with regard to fire safety standards at the premises, under the Fire Services Act.

It is noted that the application relates to material alterations only, and does not include material change of use. The building is not likely to be considered as a hotel, hostel or guest building ('for overnight accommodation for reward') as referenced in the Building Control Regulations, so might still be considered as a dwelling house for the purposes of those regulations.

Nonetheless, the proposed alterations include subdivision of Bedroom 1 into two separate bedrooms (Bedrooms 1 and 2), upgrade of the stairway enclosure, doors and intermediate floors and installation of new emergency lighting and fire detection and alarm systems. General implementation of these alterations are not in contention, as the common means of escape, structural fire separation etc. will be adequately provide for (under these proposals and the granted Fire Safety Certificate).

The only issue arising is the number of occupants in each bedroom, in terms of 'overcrowding' vis-à-vis adequate means of escape under the requirements of regulation B1.

DCC quotes '*Houses in Multiple Occupation Standards*' (Northern Ireland Housing Executive) as an appropriate guide to occupancy numbers in this premises, with specific reference to Section 4.0 (Overcrowding). This recommends minimum space standards for occupants of bedrooms in HMOs, which equates to around 5sqm per person. However, as for the Housing Act noted above, these are general 'living conditions' space factors, and do not relate directly to fire safety.

HMOs are a legally-defined entity for certain types of premises, legally registered on a public register, occurring in Northern Ireland, Scotland, Wales and England. The definitions and legal requirements differ slightly between the above, and they can include bedsits, flats, shared houses, lodgings and long stay hostels/bed and breakfasts/guesthouses and hotels. There is no similar legislative basis here for defining premises such as this one, as to whether it is a dwelling house or otherwise.

DCC notes that the occupancy load factors for residential accommodation set out in TGDB are appropriate for long term living situations, and are not appropriate for houses in multiple occupation due to the transient nature of this type of accommodation, so the use of TGDB to calculate occupancy is not appropriate. However, it is likely that residents of this premises will not be transient in the sense that they will stay there for more than a passing night or two, and will more likely use it as their residence, for instance while working or studying for a number of months at least.

The only reference to space factors in TGDB occurs in Table 1.1, where a bedroom/study bedroom can have an occupancy load based on the number of bed spaces provided, which is the basis of the proposed layout in this case. The applicant also references recommendations for small single stairway guesthouses in TGDB, where that is permitted subject to a maximum of three storeys and no more than four bedrooms on any upper storey which, as per CA, could reasonably have up to 24 occupants (at 3 per room).

In this building, the first floor has four bedrooms and the second floor has one bedroom. The only relevant factor to be considered in this case (under Regulation B1) is whether adequate means of escape are provided for. In the HMO Standards, there is provision with regard to 'over occupation' due to factors including lack of storage, cooking or sanitary facilities, as well as adequate means of escape and other fire precautions.

Under the 'means of escape' provisions, the standards for a three-storey 'shared house' look for a stair enclosure in 30 minutes fire resisting construction, with FD30S doors, which are provided for in the current proposals. It also has provisions for travel distances, inner rooms, the number and width of exits and escape windows, as well as fire alarm and emergency lighting provisions. All of these are provided for under the current proposals. There are no recommendations with respect to occupancy number limits under the fire safety part of the Standards document.

The means of escape provisions should be assessed with regard to the functional requirements of Regulation B1. In terms of common escape routes and other protections, there is no issue with the provisions as proposed. In terms of travel distance and escape route widths within bedrooms, as well as escape window provision, DCC has not demonstrated that the means of escape provisions will be inadequate for the number of occupants proposed in the bedrooms. Whereas the rooms may not meet general housing standards under the Housing Act or the HMO standards, there is no evidence that they will not meet the necessary standards under Regulation B1.

Clearly, the short travel distances, exit widths, protected stairway, escape windows, fire alarm etc. will be adequate per se for a room proposed to have up to 6 occupants, unless shown otherwise. While there may be concern regarding 'overcrowding' in such a premises, it is considered that applying a condition limiting the number of occupants as set out is not warranted per se in terms of compliance with Regulation B1 of the building regulations.

The only conceivable concern may be with regard to the way the bedrooms will be furnished and the storage arrangements for personal belongings etc., which could potentially lead to obstruction of routes to a room exit (door or escape window). However, this is a fire safety management issue (under the Fire Services Act) rather than an issue of compliance with Regulation B1, which relates to the way the rooms and escape routes are constructed and protected.

Concerns such as the above can be addressed under other legislation (Fire Services Act, Housing Standards Act etc.). It is not considered to be within the scope of the building regulations to apply general housing standards or to assume that poor levels of fire safety management will be applied when the premises is occupied, when assessing for compliance with Regulation B1.

3.1 CONCLUSIONS:

It is considered that the proposed bedroom occupancy limits are not warranted in terms of assessing the proposed works for compliance with regulation B1, and that Condition 1 should be removed.

4.0 REASONS and CONSIDERATIONS:

Having regard to the submissions made in connection with the Fire Safety Certificate application and the appeal, the type of use and layout of the building and having regard to the proposed upgrading of means of escape provisions and structural elements, it is considered that the functional requirements of Part B1 of the Second Schedule of the Building Regulations 1997-2017 are being satisfied and that Condition 1 on the Fire Safety Certificate should be removed.

Signed by:

COLM TRAYNOR BE FIEI Chartered Engineer

Date: 23 Jan 2018