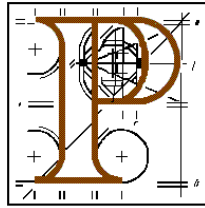


An Bord Pleanála



Inspector's Report

PL04 .RD0025

DEVELOPMENT:	Extensions to the existing 110kV control building at Charleville 110kv substation, Rathnacally, Charleville, Co.Cork.
Building Control Authority:	Cork County Council
Building Control Authority Reg. No:	16N/BDR13014
Applicant/Appellant:	ESB Networks
Application Type:	Dispensation from Parts M1, M2 and M3 of part M of the Second Schedule of the Building Regulations 2010.
Building Control Authority Decision:	Refuse Dispensation
Type of Appeal:	First Party –v- Refusal
INSPECTOR:	Patricia Calleary

1.0 INTRODUCTION

Case No. **PL04.RD0025** relates to a first party appeal against the decision of Cork County Council **to refuse a dispensation** from parts M1, M2 and M3 of the second schedule of the Building Regulations in relation to proposed works to an existing control building. The application drawings show 2 no. proposed extensions and internal alterations to the existing building.

2.0 SUBJECT MATTER OF APPEAL

An application (Ref 14/N/BDR3014) for a dispensation from parts M1, M2 and M3 of the second schedule of the Building Regulations 2010 was submitted to Cork County Council Building Control Authority on 9 March 2016 by ESB Networks c/o ESB International (Ref 14/N/BDR3014). It was accompanied by an application form, supporting letter, drawings and the ESB Code of Practice for People with Disabilities, all of which are on the Board's file. On 29 March 2016, Cork County Council issued a notification to refuse the dispensation sought. This appeal followed.

It is stated by the first party that this is the third dispensation application for the works, each of which have been issued a refusal decision by Cork County Council. It is also stated that reference was made in the application to 4 previous successful appeals at other locations which were decided by An Bord Pleanála. It is also stated that these were not accepted as precedents by the Cork County Council as the Building Control Authority, who have instead adopted a policy of refusing all applications for dispensations from the requirement of the building regulations.

3.0 DESCRIPTION OF WORKS

The development proposed would consist of 2 no. extensions to an existing control building for use within an electricity substation compound at Rathnacally, Charleville, Co.Cork. The existing control building is a single storey flat roof structure c. 260 sq.m with a layout typical of a building of its nature. The proposed extensions would add c. 80 sq.m of additional floor space providing for an extension to the control room and a new battery room. Internal changes would consist of the relocation of the WC to an area currently used as a store, the repurposing of the existing battery room and tea rooms to form a new workshop and new mess room and also blocking up of steel windows. It is stated that planning permission has been secured for the works under PL04.244096.

4.0 BUILDING CONTROL HISTORY (Part M)

The most relevant dispensation history includes the applications and appeals referred to by the first party on other sites as follows:

- PI 04.RD.0020 (BCA Ref: 13/W/BDR11404) – New 38kV GIS Module at Dunmanway 110kV substation, Ballyhalwick, Dunmanway, Co.Cork.
- PI 04.RD.0021 (BCA Ref: 13/W/BDR11405) – MV GIS Module at Dunmanway 110kV substation, Ballyhalwick, Dunmanway, Co.Cork.
- PI 04.RD.0022 (BCA Ref: 13/W/BDR11403) – New Toilet Block and associated works at Dunmanway 110kV substation, Ballyhalwick, Dunmanway, Co.Cork.
- PI 04.RD.0023 (BCA Ref: 14/N/BDR12107) – alterations to the existing Milford 38 kV station to include demolition of existing prefabricated concrete building and construction of new modular steel control building at Milford 38 kV station, Doony, Milford, County Cork.

Dispensations were **granted** by the Board in each of the above cases.

I am not aware of any DAC History, dispensations or relaxations from a requirement of the second schedule of the Building Regulations relating to this specific site or existing building. I note however, the first party states that 3 dispensation refusal decisions were issued by the Building Control Authority on the same works/building, including the current one which is now the subject matter of this appeal.

5.0 DOCUMENTS REVIEWED

The following documents were reviewed as part of my assessment of this appeal.

- Application form and cover letter.
- Application form for Dispensation or Relaxation of a Requirement of the Building Regulations.
- Dwg PE492-D046-118-002-001 – Site Location Plan.
- Dwg PE492-D046-118-003-001 – Site Plan Drawing.
- Dwg PE492-1118-004-000– Existing Floor Plan, Section and Elevation.
- Dwg PE492-D046-118-005-000- Proposed Elevation.
- PE492-D046-118-006-000– Proposed Plan and Section.
- Copy of ESB Code of Practice for People with Disabilities.

- 3 no. appeal decisions and a letter of comfort received from Kilkenny County Council Building Control Authority for a substation in Co.Kilkenny.
- Notification of Decision by Cork County Council.
- Grounds of Appeal.
- Response to Appeal grounds by Cork County Council.

I also considered relevant legislation, technical guidance and Board orders on previous similar appeals.

6.0 GROUNDS OF APPEAL

The grounds of the appeal are summarised below as follows:

- The ESB Network 110 kV substation incorporates the existing Control Building and compound for the sole independent use of ESB Networks.
- Section 0.6 of TGD Part M 2010 states that Part M does not apply to the part of a building used solely to enable 'inspection, repair or maintenance'. The control building and extension is intended to be used solely for the inspection, repair or maintenance of electrical sub-transmission equipment by ESB staff and therefore by implication is exempt from the requirements of Part M 2010.
- Building will comply with TGD: Part K.
- The 2 no. extensions proposed will house additional batteries and control/protection cabinets.
- The proposed development will be situated in an un-manned station, which is remotely controlled from a centralised location via a system control and data acquisition (SCADA) system. Access by personnel is infrequent and is strictly controlled to specifically trained persons who are permitted entry under a scheduled arrangement or for emergency response.
- Frequency of access is typically: monthly security inspection by one person, bi-annual detailed station inspection by one person, fault repair once in every 2 years typically and planned maintenance on average once per 3 years. Outside of these, emergency access only takes place.
- There are strict procedures and controls in place to ensure no entry of un-authorized persons or members of the public occurs. The

building is designed to provide a high level of security. Vision panels are not incorporated into the doors as this would pose a potential risk of unauthorised persons gaining entry.

- Actions are driven by statutory obligations under health and safety legislation and for reasons of security.
- Alarms need to be de-activated within a specific timeframe on entry to the building.
- Site finish is a stone insulating material (crushed rock) as a means of electrical fault protection to personnel. This would be incompatible with wheelchair users for instance.
- Due to the nature of the building, it is a requirement of ESB Networks that key holders are not in need of mobility aids to minimise risk of injury.
- ESB Networks are fully supportive of including persons with disabilities throughout the organisation and have identified some tasks and places of work which are unsuitable for certain categories of disabled people including and in particular, substations.
- The National Disability Authority (NDA) acknowledge that a number of employers have workstreams which are safety-critical or which require a highly specialised skillset but that it would be unusual for a public body not to have a range of tasks and functions which staff with disabilities could accomplish effectively and this is the case in ESB's organisation.
- Under their obligations to comply with Health and Safety legislation, ESB Networks have identified substations as dangerous places of work which can potentially cause injury or fatality. In order to eliminate the risk, ESB restricts entry of persons with categories of disabilities, including people with limited mobility and sight and hearing impairments.
- Reference is made to 3 no previous appeals to An Bord Pleanála (specified under Planning History section in Section 4 of this report). A letter on a similar matter which the appellant received from Kilkenny County Council is enclosed. Previous dispensations received from other Building Control Authorities are also listed.
- It is stated that there should be a specific exemption for electricity sub-stations included in the list of exemptions provided for under Article 11(2) of the Building Control (Amendment) Regulations 2009.

7.0 APPEAL RESPONSES

7.1 Building Control Authority (BCA) Response

- Cork County Council have previously granted dispensations from Parts M1 and M2¹ of the Building Regulations 2000, on the basis that people with disabilities would not be on site. Cork County Council have not granted dispensations from Parts M1, M2 and M3 of the Building Regulations 2010 on the basis set out under.
- Part M 2000 and Part M 2010 are entirely different. Part M1, M2 and M3 of the Building Regulations 2010 refer to **people** whereas Part M1, M2 refer to **people with disabilities**.
- While it is accepted that people with disabilities will not be permitted on site, Part M 2010 requires that adequate provision be made for able bodied people and not just people with disabilities.
- To grant a dispensation from Part M 2010 (Access and Use) would be to dispense with the requirement to make adequate provision to allow able bodied staff (including trained ESB staff) to safely access and use the building.
- If a Disability Access Certificate (DAC) was applied for, arguments that people with disabilities would not be present on site could be put forward and would be taken into consideration in the assessment of the DAC.

Note

It was not considered that the BCA response required cross circulation as no new issues arose.

8.0 LEGISLATIVE CONTEXT and TECHNICAL GUIDANCE

1. Section 4(1) of the **Building Control Act 1990-2014** allows a Building Control Authority (BCA) to grant a dispensation from, or a relaxation of, any requirement of the building regulations in respect of buildings or works which are situated within its functional area. Section 7 provides for an appeal to An Bord Pleanála where the applicant is dissatisfied with the decision of the BCA.
2. **Building Control (Amendment) Regulations 2009 SI No.351 of 2009** implemented the requirement to obtain a Disability Access Certificate in respect of new buildings (other than dwellings) and

¹ No specific reference is made to M3.

certain works **to which the requirements of Part M apply**. The Principal regulations and the subsequent regulations, including the Building Control (Amendment) regulations 2014 and Building Control (Amendment) (No.2) regulations 2015, are cited together as the **Building Control Regulations 1997 to 2015**.

3. **Part M (Access and Use)** of the second schedule of the Building Regulations 1997-2014 applies. The **Building Regulations (Part M Amendment) Regulations 2010**, i.e. **S.I. No. 513 of 2010** came into operation on the 1st January 2012. The Building Regulations 1997, as amended, were further amended by substituting a new part M (access and use) into the second schedule. The Building regulations, including further amendments since 2010, are currently cited together as the **Building Regulations 1997 to 2014**.
4. **Technical Guidance Document (TGD) M 2010: Access and Use** provides guidance in relation to **Part M** of the second schedule of the Building Regulations 1997-2014.

9.0 ASSESSMENT

9.1 Introduction

I have read and considered the contents of the dispensation application, the grounds of appeal and the response by the Building Control Authority. I have also had regard to relevant legislative provisions and technical guidance. I have based my assessment on the drawings and documents which are on file and have not inspected the existing control building or substation site.

9.2 Part M (Access and Use)

The requirements of **Part M (Access and Use)** of the Second Schedule of the Building Regulations are set out below as follows:

Access and Use:

M1 -Adequate provision shall be made for people to access and use a building, its facilities and its environs.

Application of the Part:

M2 - Adequate provision shall be made for people to approach and access an extension to a building.

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.

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.

9.3 Appeal Background

The applicant, ESB Networks, is seeking a dispensation from M1, M2 and M3 of the second Schedule of the regulations on the basis that the site and building are predominately unmanned, with a very limited access by approved and trained ESB personnel only. In addition, having regard to the safety hazards which are inherent with a substation, it is stated that access must exclude unauthorised personnel, staff that are untrained and persons with limited or impaired mobility, sight or hearing in order to protect their safety. Cork County Council, as the Building Control Authority (BCA) issued a decision to refuse the application for the dispensation.

A subsequent submission on the appeal was provided by the BCA to the Board during the appeal process outlining the reasons for the refusal of the application. Their main argument centred around the change of emphasis from **'people with disabilities'** under Part M 2000 to **'people'** under Part M 2010. They consider that adequate provision must be provided for all people on site (including trained ESB staff) to safely access and use the control building and therefore a dispensation of the requirement of Part M would not be justified.

9.4 Review of Legislation and Technical Guidance

The Building Control (Amendment) Regulations 2009 implemented the requirement to obtain a Disability Access Certificate in respect of new buildings (other than dwellings) **and certain works to which the requirements of Part M apply.**

The Building Regulations generally apply to works or buildings in which a material alteration or change of use takes place. Minor works are excluded and some exemptions also apply. As stated in Section 8 above, Technical Guidance M 2010 (Access and Use) provides guidance in relation to Part M of the Second Schedule of the building regulations as amended by the Building Regulations (Part M Amendment) 2010. At the outset, I note that Part M:2010 aims to foster an all-inclusive approach to providing access to and use of buildings by all people, regardless of their age, size or ability. Where works are carried out in accordance with the guidance in TGD:M 2010, this will, *prima facie*, indicate compliance with Part M of the Second

Schedule to the Building Regulations (as amended). The adoption of other approaches is not precluded provided that the requirements of the building regulations are complied with.

Specifically, and as referred to by the first party in their appeal, Section 0.6 of TGD:M 2010 states as follows:

*'The Requirements of Part M **do not apply** to the part(s) of a building used **solely** to enable **inspection, repair or maintenance**.'*

The first party considers that this provision has the effect of exempting the proposed development from the requirement of Part M of the second schedule of the Building Regulations. I do not agree with this argument. A control building within a substation serves a very specific purpose to collect information and provide local control, monitoring and communication in direct connection with electricity generation, transmission and distribution. It is stated by the first party that the building's purpose would be to accommodate electrical switch gear, batteries and control equipment and that the extensions would house batteries and control/protection cabinets. It is further stated that a System Control and Data Acquisition (SCADA) system would be operated remotely. In my opinion, the extensions proposed to the control building would not form **part of a building** and would clearly have a purpose beyond '**solely** for **inspection, repair or maintenance**'. Accordingly I do not consider that Section 0.6 of TGD M: 2010 applies to the works proposed to an existing control building in this instance.

The Building Control Regulations 1997 to 2015 do not provide for an exemption for control buildings or sub stations from the requirement to obtain a disability access certificate (DAC).

In addition, it is also important to note that the Building Regulations (Amendment) Regulations 2006 amended the 1997 Building regulations by the deletion of buildings listed under Class 9, Column 1, Article 8 of the Third Schedule (Exempted Buildings), removing exemptions previously afforded to a building constructed for and used by the ESB (or other Transmission systems operators) as **a generating, transmission or distribution station**. The explanatory note attached to these regulations states as follows: *'The Regulations also terminate, with effect from 1 September 2006, the exemption from Building Regulations of construction works on electricity generation, transmission and distribution stations'*.

An ESB control building within a substation compound would in my view clearly fit this category and accordingly would not enjoy an exemption from the requirements of Part M of the Building regulations. In the absence of any exemption, I am satisfied that the requirements of Part M of the Building Regulations apply in this instance.

On the basis of the above considerations, I am clear that Part M of the Building regulations would normally apply, unless a dispensation has been granted, and consequently the requirement to obtain a DAC for the building would normally apply. The first party submitted an application for a dispensation from the requirement of Parts M1, M2 and M3. Cork County Council issued a decision to refuse the dispensation and the remainder of my assessment detailed under considers the merits of the appeal against that decision.

9.5 Consideration of Merits of the Appeal

In accordance with Section 4(1) of the **Building Control Act, 1990-2014**, I am obliged to consider, having regard to all circumstances in this case, whether or not it is reasonable to recommend that the board would grant a dispensation in this instance from Part M1, M2 and M3 of the second schedule of the building regulations, in respect of the extensions proposed to the existing control building.

The nature of the building, including the alterations and extensions, is very specific serving a defined purpose associated with and for sole use by ESB Networks. It is designed to be operated via a remotely controlled link connected to a centralised location. Access, which is infrequent, is restricted to skilled and authorised personnel on specific planned entry and on occasional emergency response. The nature of the building is one where there is limited flexibility in the design, having regard to its purpose and use, the strict provisions under Health and Safety legislation and high security within which it must operate.

I accept the arguments made by the first party in relation to the strict requirements of the design led by statutory obligations under Health and Safety legislation, for example crushed stone site surface finish as a means of electrical fault protection to personnel and omission of vision panels in the interest of high security. These, and other arguments presented in relation to the access and use of the building are entirely reasonable in my view and align with the specific nature and purpose which it serves in electricity transmission and distribution.

It is very clear that ESB (including ESB Networks) as an organisation embraces the inclusion of persons with disabilities and this is laid down in their Code of Practice, a copy which is included with the appeal. The Code gives high priority to Health and Safety at work and recognises that particular risks to persons with a disability arise and states that these are managed or eliminated where possible. ESB Networks have identified substations as dangerous places of work which can potentially cause injury or fatality. In order to eliminate the risk, it restricts entry of persons with categories of disabilities, including people with limited mobility and sight and hearing impairments. It also excludes access by other people, including non-trained personnel, visitors and the public.

I consider that it is reasonable to restrict access to a control building within a substation to persons who are skilled and who do not have reduced mobility, hearing or sight so as to minimise risk of injury, in the particular circumstances of the building nature and the ability to fully include persons with disabilities, safely and elsewhere throughout the workplace.

It is evident from the drawings submitted that, notwithstanding the application for the dispensation, works to improve access to the building are proposed. Such works include a proposed new ramp and handrail on the east elevation and a proposed new handrail and steps on south elevation of the building.

Part M:2010 aims to foster an all-inclusive approach to providing **access** to and **use** of buildings by all **people**. The Building Control Authority have stated their acceptance that persons with certain disabilities are not permitted on site for health and safety reasons. They consider, however, that they are precluded from granting a dispensation sought as to do so would be dispensing from the requirement to make adequate provision for able bodied persons (including trained staff) to safety access and use the building.

I do not concur with the BCAs argument that the granting of a dispensation would remove the requirement of safe access and use by persons entering the substation site and control building. It is clear from the submission made by ESB Networks that safety is at the centre of the design of the building and the rationale to restrict its access to highly skilled and trained staff is entirely reasonable. The building would not be accessed or used by all **people** in this instance. Notwithstanding the change of emphasis from Part M 2000 (**people with disabilities**) to Part M 2010 (**people**), there has been no change to the provision available under Section 4(1) of the Building Control Act 1990, as amended, to grant a dispensation of the requirement of the Building regulations.

9.6 Appeal Conclusion

Section 4(1) of the **Building Control Act, 1990-2014** allows a Building Control Authority to grant a dispensation from the requirement of the building regulations where it considers it is reasonable having regard to all circumstances of a case. I have had regard to all circumstances in my consideration of this appeal.

Arising out of my assessment, I am satisfied that it would be appropriate and reasonable in this instance, having regard to the highly specific nature, the purpose of the building and the health and safety requirements associated with its purpose and use, **to grant a dispensation from the requirements of Part M1 and M3** of the Second Schedule of the Building Regulations in respect of the extensions and alterations proposed to the existing control building within a substation compound. I do not consider that a requirement to apply for a DAC would be reasonable or appropriate in this case.

I note from the site layout plan submitted that the existing control building is located within an existing ESB substation compound where approach to the building would be similarly infrequent and limited to specific personnel with specialised training. In that context, I do not consider it would be necessary to address matters in relation to the approach to the building and accordingly I am also recommending **the granting of a dispensation from the requirements of Part M2** of the Second Schedule of the Building Regulations.

10.0 RECOMMENDATION

I recommend that the Building Control Authority should be directed to issue a dispensation from the requirements of Parts M1, M2 and M3 of the second schedule of the Building Regulations 1997-2014 in accordance with the following draft order.

REASONS AND CONSIDERATIONS

Having regard to:

- a) the specific nature, function and use of the building concerned, namely an unmanned electrical substation control building, which is only accessed and used infrequently by specific personnel requiring special training,
- b) the location to the extensions to an existing control building within a secure Electricity Supply Board substation compound, where personnel accessing the building would be familiar with the approach routes,
- c) the strict statutory requirements for eliminating health & safety risks to personnel and providing high security controls to prohibit unauthorised entry,
- d) the building control legislative context and guidance contained within Technical Guidance Document M (2010) which inform the circumstances where a dispensation might be appropriate where all relevant circumstances have been considered,

it is considered that the granting of a dispensation from the requirements of Parts M1, M2 and M3 of the second schedule of the Building Regulations 1997 to 2014, is appropriate in this case.

Patricia Calleary
Senior Planning Inspector
07 June 2016

Appendix:

Extract from Building Control Act, 1990.

Extract from Building Control (Amendment) Regulations 2009

Extract from Building Regulations (Part M Amendment) Regulations 2009

Extract from Building Regulations (Amendment) Regulations 2006

Extract from TGD: M: 2010.