



An
Bord
Pleanála

Inspector's Report PL04.RD0027

Development	Control Building at Aghada 220 kV electrical substation.
Location	Aghada, Ballincarroonig, Whitegate, Co. Cork.
Building Control Authority	Cork County Council.
Building Control Authority Reg. Ref.	17E/BDR/13793.
Applicant(s)	ESB Networks.
Type of Application	Dispensation from Parts M1, M2 and M3 of the Building Regulations 1997-2017.
Building Control Authority Decision	Refuse Dispensation
Type of Appeal	First Party
Appellant(s)	ESB Networks.
Date of Site Inspection	N/A
Inspector	Patricia Calleary.

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1.0 Introduction and Project Description

- 1.1. File No. PL04.RD0027 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 to the Building Regulations in relation to a new control building at a 220 KV electrical substation compound at Aghada, Ballincarroonig, Whitegate, Co. Cork. It would incorporate a control room, battery room, generator room and a staff toilet. The purpose of the building is to house equipment associated with the substation and it would be unmanned and remotely controlled via a System Control and Data Acquisition (SCADA) system.

2.0 Building Control Authority Decision

2.1. Decision

- 2.1.1. The Dispensation from the requirements of Parts M1, M2 and M3 of the second schedule to the Building Regulations 1997-2017 was refused by order dated 26th June 2017.

2.2. Building Control Authority Report

- 2.2.1. No report on file.

3.0 Documents reviewed

- 3.1. The following documents were reviewed as part of my assessment of this appeal.
- Application form and cover letter.
 - Dwg PE493-D014-189-001 – Site Location Plan.
 - Dwg PE493-D014-189-002 – Site Layout Plan Drawing.
 - Dwg PE493-D014-189-003 – Ground Floor Plan
 - Dwg PE493-D014-189-004 – Sections A-A and B-B
 - Dwg PE493-D014-189-005 – Elevations
 - Copy of ESB Code of Practice for People with Disabilities.
 - Order to refuse the dispensation (by Cork County Council)
 - Grounds of Appeal.
 - Response to Appeal grounds by Cork County Council.
 - Appellants further response.

3.2. I also considered relevant legislation, Technical Guidance Document: M 2010 and previous appeal cases of a similar nature.

4.0 Building Control History

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

- PL04.RD.0020 (BCA Ref: 13/W/BDR11404) – New 38kV GIS Module at Dunmanway 110kV substation, Ballyhalwick, Dunmanway, Co. Cork.
- PL04.RD.0021 (BCA Ref: 13/W/BDR11405) – MV GIS Module at Dunmanway 110kV substation, Ballyhalwick, Dunmanway, Co. Cork.
- PL04.RD.0022 (BCA Ref: 13/W/BDR11403) – New Toilet Block and associated works at Dunmanway 110kV substation, Ballyhalwick, Dunmanway, Co. Cork.
- PL04.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, Co. Cork.
- PL04.RD0025: (BCA Ref: 16N/BDR13014) - Extensions to existing 110kV control building at Charleville 110kv substation, Rathnacally, Charleville, Co. Cork.

4.1.1. In each of these cases, the Board directed the Building Control Authority to grant a dispensation from the requirements of M1, M2 and M3 of the Second Schedule to the Building Regulations.

5.0 Legislative Context and Technical Guidance

5.1. Section 4(1) of the **Building Control Acts 1990-2014** allow 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 on an application pursuant to Section 4.

- 5.2. The **Building Control Regulations 1997-2015** implement 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.
- 5.3. Part M (Access and Use) of the second schedule to the **Building Regulations 1997-2017** applies. The **Building Regulations (Part M Amendment) Regulations 2010** introduced an amended second schedule from January 2012 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.

- 5.4. **Technical Guidance Document (TGD) M 2010: Access and Use** provides guidance in relation to Part M of the second schedule to the Building Regulations 1997-2017.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The grounds of the appeal are summarised as follows:

- 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 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 proposed development will be situated in an unmanned station, which is remotely controlled from a centralised location via SCADA system. Access by personnel will be infrequent and strictly controlled to specifically trained persons only who are permitted entry under a scheduled arrangement or for emergency response;
- The building is designed to provide a high level of security. There are strict procedures and controls in place to ensure no entry of un-authorised persons or members of the public occurs;
- 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;
- ESB recognise that Part M 2010 refers to 'people' and not just 'people with disabilities' and as such, provide full and adequate access for all able-bodied, fully trained personnel to substations throughout the country when required to attend.

6.2. Building Control Authority Response

6.2.1. The response from the BCA is summarised as follows:

- Cork County Council have previously granted dispensations from Parts M1 and M2 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 that they are based on entirely different regulations, referring to 'people' as distinct from 'people with disabilities'.

- The appellant's main argument that a dispensation should be granted on the basis that people with disabilities would not be on site does not justify a dispensation from the requirement to make adequate provision for other people, including trained ESB staff.
- In relation to the appellant's secondary argument, while some rooms within the building may be for maintenance, inspection and repair, adequate provision should be made for people to circulate around and past the building externally and to use the WC (which is not used for inspection or repair).
- Section 0.6 of TGD M: 2010 has no relevance in deciding whether or not the regulations apply in any particular situation or to any particular building, rather TGD M :2010 provides guidance on how to comply with the regulations.
- If the appellant had applied for a DAC, their arguments that people with disabilities would not be present on site would be taken into consideration in the assessment of the DAC application.

6.3. Further response from the appellant

The response restates the appellant's position on a number of points made in the original appeal. Additional points made in the response include the following:

- It is submitted that M2 which states 'Adequate provision shall be made for people to approach and access an extension to a building' is not applicable in this case as the building is not an extension;
- 'Altro' slip resistant vinyl will be the floor finish specified;
- Applicant understands the requirement of Part M 2010 is to provide adequate access for able bodied people and the difference between Part M 2000 and Part M 2010 is recognised;
- There are particular and significant health and safety hazards on the site which mean that only suitably qualified ESB personnel will have access to

the site and the site is predominately unmanned and only for repair and maintenance;

- ESB records show that no applications have been made to a Building Control Authority for any DAC.

7.0 Assessment

7.1. Introduction

- 7.1.1. I have read and considered the contents of the dispensation application, the grounds of appeal, the response by the Building Control Authority and the further response from the appellant. I have also had regard to relevant legislative provisions and applicable technical guidance. I have based my assessment below on the drawings and documents which are on file and have not inspected the substation site.

7.2. Scope of Appeal

- 7.2.1. As set out in Question 4 of the application form, ESB Networks is seeking a dispensation from M1, M2 and M3 of the second schedule to the Building Regulations on the basis that the site and building are predominately unmanned, with a very limited access by approved and highly trained ESB personnel. 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.

7.3. Review of Legislation and Technical Guidance

- 7.3.1. The Building Control Regulations 1997-2015 include a 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.**
- 7.3.2. The Building Control Regulations do not provide for an exemption for control buildings or substations from the requirement to obtain a disability access certificate (DAC). In the absence of any exemption, I am satisfied that the requirements of Part

M of the Building Regulations apply in this instance **unless a dispensation has been granted**, and consequently the requirement to obtain a DAC for the building would **normally** apply. I do not accept the argument put forward by the appellant that substations are exempt from the requirement of Part M of 2010 of the Building regulations by virtue of Section 0.6 of TGD Part M 2010, though this section is relevant in the consideration of the merits of the appeal under Section 7.4 below.

- 7.3.3. The relevant requirement of Part M of the Second Schedule to the Regulations in this instance is Part M1. It requires that 'Adequate provision shall be made for people to access and use a building, its facilities and its environs'. 'Environs' includes access routes (defined as approach routes to buildings and circulation routes around buildings). Facilities include WC facilities.
- 7.3.4. Part M2 and Part M3 are also referenced in the appeal and the application form and the refusal issued by the BCA also referred to Part M1, M2 and M3. In the further response received by the Board on 9th October 2010, the appellant states its understanding that M2 is not relevant.
- 7.3.5. Part M2 of the Building Regulation refers to 'Adequate provision shall be made for people to approach and access an extension to a building'. Part M3 refers to 'a building that is to be extended'. I consider that neither are applicable in the consideration of the dispensation application for a control room, which is itself a building entity within an electrical substation and not an extension to a building.
- 7.3.6. However, noting the application which was refused included Parts M1, M2 and M3, I consider it would be appropriate to continue my assessment with reference to the overall Part M of the second schedule to the Building Regulations which encapsulates the relevant part(s).

7.4. **Consideration of Merits of the Appeal**

- 7.4.1. In accordance with Section 4(1) of the Building Control Acts 1990-2014, my assessment considers, having regard **to all circumstances in this case**, whether or not it is reasonable to recommend that the Board would grant a dispensation from Part M of the second schedule to the Building Regulations, in respect of the proposed control building.

- 7.4.2. The nature of the building is very specific and would serve a defined purpose associated with and for sole use by ESB Networks. It is designed to be operated via a central location via a remote control link. Access would be infrequent and would be restricted to skilled and authorised personnel for specific planned entry and for 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 the high security within which it must operate.
- 7.4.3. I accept the arguments made by the appellant 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 relation to the transmission and distribution of electricity.
- 7.4.4. 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 of which is on file. The code expressed high priority around 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 certain 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.
- 7.4.5. I consider that it is entirely reasonable in the particular circumstances of the building nature and the ability to fully include persons with disabilities, safely and elsewhere throughout the workplace.
- 7.4.6. 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 state that they do not contest the appellant's claim that people with disabilities would not be permitted on site for health and safety reasons. Nonetheless, they state that they are precluded

from granting the dispensation sought, as to do so would be dispensing from the requirement to make adequate provision for able-bodied persons (including trained staff) to safely access and use the building. I do not concur with the BCAs argument that the granting of a dispensation would effectively dispense with the requirement to make adequate provision to allow able-bodied staff to safely access and use the control building. It is clear from the grounds of appeal that safety is central to the rationale around restricting its access to highly skilled and trained staff, which I consider to be 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 Acts which allows the granting of a dispensation from the requirement of the Building Regulations, where it considers it is reasonable 'having regard to all circumstances of a case'.

- 7.4.7. 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' which I accept the control building as described would fit, notwithstanding that it is an entire building rather than a part of a building.

7.5. **Appeal Conclusion**

- 7.5.1. Arising out of my assessment, I am satisfied that, having regard to all circumstances of this appeal case, it would be reasonable in this instance to grant a dispensation from the requirements of Part M of the Second Schedule to the Building Regulations, in respect of the proposed control building. I do not consider that a requirement to apply for a DAC would be warranted in this case.

8.0 **Recommendation**

- 8.1. I recommend that the Building Control Authority should be directed to issue a dispensation from the requirements of Part M of the second schedule to the Building Regulations 1997-2017 for the following reasons and considerations:

9.0 Reasons and Considerations

- (a) Having regard to the specific nature, function and use of the building concerned, namely an unmanned control building within an electrical substation compound, which would be accessed infrequently by authorised trained personnel in order to carry out maintenance or emergency response,
- (b) the location of the control building within a secure ESB substation compound where authorised personnel accessing the building would be familiar with the approach routes and
- (c) the legislative context and supporting guidance contained in Technical Guidance Document M (2010) with respect to the circumstances within which a dispensation might be appropriate,

it is considered that the granting of a dispensation from the requirements of Part M of the Second Schedule to the Building Regulations, 1997 to 2017 is appropriate in this case.

Patricia Calleary
Senior Planning Inspector

11th October 2017