

Inspectors Report

Appeal against the refusal of a Relaxation of Part M of the Second Schedule of the Building Regulations for the proposed refurbishment of existing ground floor and two storey extension to the rear for use of the building as a Beauty Salon at 9 Harty Avenue, Walkinstown, Dublin 12.

Board appeal ref no:	29D.RD0028
Building Control Authority application no:	DR/2017/0360
Appellant/Agent:	Ron and Laura Branagan.
Building Control Authority:	Dublin City Council
Date of site inspection:	N/A
Inspector:	Eoin O'Herlihy
Appendices Attached:	N/A

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1. Introduction

1.1. Site description

The proposed works relates to refurbishment of existing ground floor and two storey extension to the rear for use of the building as a Beauty Salon at 9 Harty Avenue, Walkinstown, Dublin 12.

1.2. Subject matter of application

The proposed works that formed part of the Relaxation was for the refurbishment of existing ground floor and two storey extension to the rear for use of the Building as a Beauty Salon at 9 Harty Avenue, Walkinstown, Dublin 12.

It is noted that a previous Disability Access Certificate (DAC) was refused for the proposed works (Reference No. DAC/2016/0491). This was then appealed and upheld by An Bord Pleanála (ABP) (Ref No: DS29D. DS055).

1.3. Documents lodged as part of Relaxation Application to Dublin City Council

The application made by EDA Architecture (on behalf of the appellants Ron and Laura Branagan) was received by the Building Control Authority (BCA) in Dublin City Council on the 16th June 2017 and included:

- Application Form for Dispensation/Relaxation & Application Fee Cheque of €250
- Letter from EDA Architecture outlining the grounds of the application.
- Construction Specification report
- G. Sexton & Partners Drawings:
 - Location map
 - Site Plan
 - Elevations
 - Floor plans
 - Comparison floor plans
 - Stanford University Study Figure 1x2
 - Stanford University Study Figure 2x2

1.4. Building Control Authority decision

The BCA refused the application for a Relaxation of the Building Regulation for the above works on the 4th August 2017. The main decision for refusal of the application was that the applicant failed to demonstrate that it is not reasonable or practicable to make adequate provision for people with disabilities to access and use the building.

2. Relevant history/cases

The following, previous DAC application and Appeal, is relevant to the case:

1. DAC application DAC/2016/0491 – Previously refused DAC application (DAC/2016/0491) for the works at 9 Harty Avenue, Walkinstown, Dublin 12.
2. Appeal to An Bord Pleanála – Reference No. 29D.DS0055. The Board refused permission for the Disability Access Certificate generally in accordance with the Inspectors Report (May 2017).

3. Information considered

The following information was considered as part of the appeals process:

3.1. Application for a Relaxation of the Building Regulation

An application for a Relaxation of the Building Regulation was submitted to the BCA on the 16th June 2017. Refer to section 1.3 above for further information. The application form that accompanied the Relaxation application noted that:

- The works have already taken place.
- The decision being sought is a relaxation as full compliance would remove adequate access to the first floor in contravention of TGD Part B – Width of Stairs. Consequent loss of 50% of the useable business space on a very restricted plot, thereby becoming unviable. Loss of staff toilet. This is a high density irregular shaped development site.
- The requirement of the Building Regulations concerned was described as “TGD Part M – Circulation through the building vertically and horizontally. Sanitary facilities”.

Several grounds for the application are presented in the appellant's letter for the Relaxation, mainly as follows:

- *Main ground for appeal - “The grounds of our application are on the basis of this being a high intensity use in a very small irregular shaped building, (circa 47 m2 gross internal area each floor), and the practicability of simultaneously complying with both Part M and Part B — Fire Safety. The requirements of compliance with Section 1.3 of Part M (circulation) would reduce the width of the stairs to ~ 675 mm and would make the whole of the first floor unusable, the minimum required width being 800 mm for means of escape, (ref. Drawing No. 005/0). Conversely increasing the width of the stairs to 1000 mm + would not leave sufficient width for the wheelchair accessible toilet. A Fire Safety Certificate was issued on the basis of the design of the building. Within the constraints of the site we have made every effort to accommodate disabled persons whilst providing a fire safe building for all occupants and visitors”.*
- Sanitary facilities – The appellant notes that “there are two provided; one for staff only and a wheelchair accessible WC for customers. The building is occupied and used by females only. The wheelchair WC is accessible from the main salon as illustrated by the diagrams from a

study by Stanford University, USA — Figures 1 & 2. The width of the staff toilet may be reduced by 100 mm to provide a 2200 mm deep space for the wheelchair toilet. We are advised by the applicants that to date this facility has not been availed of by a wheelchair user.

- Location of building and zoning – The appellant highlights that the building is in a Zone Z3 area and that a young couple who have operated a business in this area for many years have shown a commitment to this area by investing in the area. The appellant notes *“They have shown their commitment to this location by investing in this new and improved business and by retaining no.9 as a man's grooming salon. They also changed the floor above it from an office to a high quality residential unit, and refurbished the first floor of no. 11 to a high quality residential unit. This commitment has created circa 16 jobs to local people and provided high quality accommodation to 6 residents. Since these investments were carried out the center now has a better and more sustainable future”*.

3.2. Building Control Authority decision

Refer to section 1.4 above. As noted previously, the main decision for refusal of the application was that the applicant failed to demonstrate that it is not reasonable or practicable to make adequate provision for people with disabilities to access and use the building.

4. Grounds of appeal

4.1. Appeal to An Bord Pleanála

EDA Architecture (on behalf of the appellants) made an appeal to An Bord Pleanála on the 21st August 2017. The appeal was against the refusal by Dublin City Council of the Relaxation application. The application for the appeal included:

- A letter from EDA Architecture outlining the reason for the appeal.
- Fee Cheque €500
- DCC Refusal Notice Dated: 09/08/2017
- Site Location Map – Drawing No: 001/0 (OS NO: 3327-10)
- Site Plan – Drawing No: 002/0
- Elevations – Drawing No: 003/0
- Floor Plans – Drawing No: 004/02
- Comparison Floor Plan showing conflict with Part B 005/0
- Layout Required to comply with Part M 006/0
- Fire Safety Certificate No: Fsc1914/14

In relation to the refusal the agent, on behalf of the appellant, provided information on the planning history¹ of the building and noted that;

¹ The property was originally in use as a Hair and Beauty salon on the ground floor and residential accommodation on the first floor. A Grant of Permission for the said development was issued by Dublin City Council; Application No: 3322/13, dated 16/04/2014. A Fire Safety Certificate was issued by the Authority No: FSC1914/14, dated 20/10/2014. A previous appeal was made to ABP dated received on 08/02/2017, see the Reg. Ref. no. above.

- As the designer it was incumbent on them to deliver a safe living environment for the residents of the first floor apartment, and for the owner, staff and clients of the beauty salon. In doing so the main risk to safety of the occupants being from a fire in the property. The detailed design was carried out to comply with Part B of the Building Regulations and consequently a Fire Safety Certificate was granted on that basis.
- *“Due to the limited size and shape of the building, compliance with Part B conflicted with the circulation space requirements of Part M of the Building Regulations as shown on the attached drawings. In providing for disability access all that was Reasonably Practicable was carried out in the design and construction of the development without compromising fire safety, and the degree of risk to disabled persons minimized as far as physically possible. In reality the access to the building and the services provided are working for disabled clients without any difficulties.”*
- *“In assessing what is Reasonably Practicable consideration may also include the obligation of the employers to comply with Safety Health and Welfare at Work Regulations and the right to a livelihood for themselves and for their staff. As shown on Drawing No: 006/0 total compliance with the space requirements of Part M would render the building unusable”.*

5. Observations from the BCA in relation to the appeal

A copy of the appeal was issued to DCC Building Control Authority on 28th August 2017, and the last day for response was 25th September 2017. No response was received by the Board from the Building Control Authority in relation to the appeal.

6. Considerations

The following is an overview of the main considerations in relation to the appeal:

6.1. Application of Building Regulations when extending a building

The aim of Building Regulations² is to provide for the safety and welfare of people in and about buildings. The Building Regulations apply to the design and construction of a new building (including a dwelling) or an extension to an existing building. The minimum performance requirements that a building must achieve are set out in the second schedule to the building regulations. These requirements are set out in 12 parts (classified as Parts A to M).

It is noted that the performance requirements in Part A to M must be met when carrying out works to an extension. There is no guidance provided in the Building Control legislation to state that one Building Regulation should take priority over another Building Regulation.

² <http://www.housing.gov.ie/housing/building-standards/building-regulations/building-regulations>

6.2. Application of Part M 2010 when designing/constructing an extension.

The requirements of M1, M2 and M3 of the Second Schedule of the Building Regulations apply when an extension is being built:

- M1 states 'Adequate provision shall be made for people to access and use a building, its facilities and its environs'.
- M2 states 'Adequate provision shall be made for people to approach and access an extension to a building'.
- M3 states 'If sanitary facilities are provided in a building that is to be extended, adequate sanitary facilities shall be provided for people within the extension'.

In order to meet the requirements of M1 for the new extension Technical Guidance Document (TGD) M 2010 recommends that the guidance in section 1 should be followed (where practicable) as the works that form part of an extension are new works. Refer to Sections 0.5 and 0.6 (b) of TGD M 2010.

6.3. Building Control Regulations and applying for a DAC

It is noted that the works have already taken place. Section 20D (2) of the BCARs states "Where a disability access certificate is required in respect of all works or buildings to which this Part applies, a person shall make an application to the building control authority for such certificate and not carry out such works or make a material change of use as regards such a building in contravention of Part M of the Building Regulations or any conditions subject to which the certificate is granted.

The Building Control Regulations do allow for works to commence on site prior to obtaining a DAC, however the building or works cannot be opened or be occupied until such time as a DAC is granted.

It is also important to note that if the works take place prior to the DAC being granted, the onus is on the owner and designer to meet the requirements of Part M of the Building Regulations or any conditions subject to which the certificate is granted. This is set out in section 20 (D) 2 of the Building Control Regulations 1997 – 2015.

6.4. DAC application and appeal to An Bord Pleanála

A DAC application for the proposed works has previously been refused and appealed to An Bord Pleanála. The Board refused permission for the Disability Access Certificate generally in accordance with the Inspectors report (May 2017).

- DAC application DAC/2016/0491 – Previously refused DAC application (DAC/2016/0491) for the works at 9 Harty Avenue, Walkinstown, Dublin 12.
- Appeal to An Bord Pleanála – Reference No. 29D.DS0055.

A number of the key observations made by the inspector in the previous appeal include, for example:

- The applicants should have applied for the DAC before constructing the extension/refurbishment works. The recommendations in Section 1 of TGD Part M for a new building are more stringent than those in Section 2 for existing buildings. It is understandable that the BCA want to make sure that regulations are complied with, that people are discouraged from carrying out construction work before making an application for a DAC and from creating a precedent for others to follow.
- The extension at the rear of the premises is not accessible to all persons as circulation routes and WC facilities are not in line with the guidance in Section 1 of TGD M 2010.
- The extension creates a new or greater contravention of the Regulations.
- The appellant claims that the equipment/services/facilities provided in the extension were not designed for people with disabilities and that disabled access is not required to these facilities. Does the appellant therefore intend that people with disabilities will be denied tanning, facial and massage treatments? The Building Regulations clearly require that "Adequate provision shall be made for people to access and use a building, its facilities and its environs". The appellant has not demonstrated how compliance with this requirement will be achieved.
- Based on the information currently available, it is apparent that the appellant has made little attempt to make the extension accessible and states that the facilities/services offered in that extension were not designed for, nor are they suitable for people with disabilities. An accessible unisex WC has been provided but the width of the corridor serving this accessible WC is too narrow to comply with the recommendation contained in Section 1.3.3.3 (h) of TGD Part M.

For a full list of the observations as part of Appeal Reference No. 29D.DS0055 refer to <http://cspwprdfc.cloudapp.net/casenum/DS0055.htm>

7. Assessment

This appeal is against a Refusal of a Relaxation of Part M of the Second Schedule of the Building Regulations. I have reviewed the reasons for the refusal and the grounds of the appeal, and I have considered the drawings, details and submissions on the file. I am of the opinion that there was sufficient information submitted in connection with the appeal to make a decision on the application/appeal.

The following is an overview of my observations in relation to the appeal:

1. **Meeting the requirements of Part A to M of the Second Schedule of the Building Regulations:** One of the main arguments of the appeal is that the requirements of Part B of the Second Schedule need to be met and these requirements take priority over the requirements of Part M of the Second Schedule of the Building Regulations. It is also noted that a Fire Safety Certificate was granted for the existing design.

As noted in section 6.1 above, the design of the extension must consider all the performance requirements of Part A to M of the Second Schedule of the Building Regulations and the requirements of one regulation should not take priority over another.

2. **Application of the Guidance in TGD M 2010:** Section 0.6 (b) of TGD M 2010 clearly sets out how to apply Part M of the Second Schedule of the Building Regulations when building an extension. It states the following:

The Requirements of Part M apply to:

- (a) works in connection with new buildings and new dwellings;*
- (b) Works in connection with extensions to existing buildings, and in particular: (i) under M2, adequate provision must be made to approach and access an extension. This may be provided by an adequate independent approach¹ and entrance to the extension, or where this is not practicable, the existing approach and entrance modified where necessary and where practicable, must provide adequate approach and access to the extension, and (ii) under M3, where sanitary facilities are provided in a building, adequate accessible sanitary facilities must be provided for the people within the extension i.e. people using the extension. These may be provided by accessible sanitary facilities in the extension or alternatively, those facilities in the existing building, modified where necessary, must be adequate and accessible from the extension.*

As noted previously in section 6.2 above, to meet the requirements of M1 for the new extension, the guidance in Section 1 of TGD M 2010 should be followed (where practicable) as the works that form part of an extension are new works.

The appellant notes however that the requirements of Section 1 of TGD M 2010 are too onerous and would result in extension being unusable. Arguments presented for example are that if the stairs were widened to make it ambulant disabled it will have a negative impact on the design of the accessible WC. They also state that it is not practicable to achieve the guidance in Section 1 of TGD M 2010 due to space constraints, provision of limited access to the first floor for people with disabilities and substantial compliance with Part M.

Having reviewed the information provided, the extension has not been designed or built to meet the guidance in Section 1 of TGD M 2010. It is also clear that appellant made little attempt to make the building accessible or meet the guidance in Section 1 of TGD M 2010.

3. **Impact of Health and safety of staff and users of the building:** An argument made by the appellant is that the owners (as employers) need to ensure the obligations of *Safety Health and Welfare at Work Regulations are met* and that the main health and safety issues within the building relate to Fire safety.

It could also be argued that the owners have an obligation to meet the health and safety needs of the end users of the building and that accessibility design issues are applicable (i.e. Health and safety of someone using a stairs). The requirements of M1 of Part M of the Second Schedule of the Building Regulations states that "Adequate provision shall be made for people to access and use a building, its facilities and its

environs". Page 9 of TGD M 2010 indicates that 'people' includes all people regardless of their age, size or disability. Given that this building will be open to members of the public (by appointment) and will facilitate people of all ages and sizes their health and safety needs should also be met.

An example of this is that as part of the relaxation application, the appellant is requesting that the requirement for an ambulant disabled stair be relaxed. This would have an impact on the overall health and safety for older people and people with reduced mobility to access the Facial, Massage and General Treatment areas on the first floor.

- 4. Provision of WC facilities:** In the relaxation application made to DCC the appellant states that two WCs are provided, one for staff and one accessible WC for customers. They then indicate that the facility will only be used by females only and access is provided to the accessible WC. Further on in the application letter it states the No. 9 Harty Avenue will be retained as a Man's Grooming salon. This is confusing and unclear.

It is noted that the corridor leading to the staff WC is only 900mm wide and only 1200mm space is provided in the corridor leading to the accessible WC. The door of the accessible WC is opening directly onto the corridor and not in line with the guidance in Section 1.3 of TGD M 2010.

- 5. Total compliance and results in the building being unusable:** As part of the Relaxation Application the Appellant presents an alternative solution which indicates an ambulant stairs and accessible corridors on the ground floor. This solution indicates impacts on existing load bearing walls, inaccessible areas as a result of the changes and indicates that the usable space will be significantly reduced if the extension was designed to meet the requirements of Part M.

In my opinion the requirements of Part M should have been explored at an early stage and compliance with Part M should have been identified or alternative solutions explored.

Finally, if the appellant couldn't design the extension in accordance with Section 1 of TGD M 2010, they should have presented this in a DAC application prior to construction and demonstrated to the Building Control Authority that all of the key facilities and services provided in the building will be made available at entry level. This does not take away the fact that an ambulant disabled stair should be provided. In my opinion it is also too late to argue non-compliance when the building is built.

8. Conclusions/Recommendations

I recommend that the Board reject the appeal against the BCA's decision. I recommend that the Board **Refuse** to issue a Relaxation of Part M of the Second Schedule of the Building Regulations.

8.1.1. Reasons and Considerations

Having regard to the provisions of the Building Regulations 1997 to 2017, Second Schedule, Part M, to the nature and layout of the proposed works and to the submission made in connection with the Relaxation and Appeal and to the report and recommendation of the reporting inspector, it is

considered that the works or building to which the application relates, if constructed in accordance with the plans, calculations, specifications and particulars submitted, **fails** to comply with the requirements of Part M of the Second Schedule to the Building Regulations 1997 to 2017 for the following reasons:

Reason 1:

The applicant failed to provide adequate information showing compliance with Part M of the Second Schedule of the Building Regulations 2010 and failed to demonstrate in their Relaxation application that adequate provision shall be made for people to access and use the building, its facilities and its environs.

Reason 2:

The proposed horizontal and vertical circulation throughout the building would create a new or greater contravention to the requirements of Part M of the Second Schedule of the Building Regulations.

Reason 3:

Access to adequate sanitary facilities have not been provided within the premises.



Eoin O'Herlihy B Tech (Ed.), M.Eng, CEng MIEI, MIES

Inspector

7th December 2017