



An
Bord
Pleanála

FSC Report

ABP-319104-24

Appeal v Refusal	Appeal against a refusal of a Seven-Day Fire Safety Certificate Application.
Development Description	Development of bedsit and maisonette in existing 3 storey building at 9 Eyre Square, Galway (emergency accommodation for displaced persons from Ukraine)
Building Control Authority Fire Safety Certificate application number:	FSC2400567GY/7DN
Appellant	Mr. John Carmody, Greenway, Knockanure, Moyvane, Listowel, Co. Kerry
Appellant's Agent	Eimear Hanly, VHA Architects, Suite 4, Cloch Mhile, Dublin Road, Co. Galway.
Building Control Authority:	Galway City Council.
Inspector	Denis O'Connell – DOCON Fire Safety Engineering Ltd.

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1.0 Introduction

- 1.1. A Seven Day Fire Safety Certificate application was submitted on 27th October 2023. A Validation letter was issued on 1st November 2023. The application was to provide a bedsit on the ground floor and a maisonette on the upper two floors. The building is an existing 3 storey building at 9 Eyre Square, Galway. The proposed accommodation was for emergency accommodation for displaced persons from Ukraine.
- 1.2. The application was refused and the appeal is against that refusal. The two reasons given for the refusal were
 - i. The proposal does not comply with the requirements of B1 of the second schedule of the Building Regulations, 1997 as amended.
 - ii. The proposal does not comply with the requirements of B1 of the second schedule of the Building Regulations, 1997 as amended

2.0 Information Considered

The information considered in this appeal comprised the following:

- Drawings submitted with the application on 27/10/2023
- Copy of BCA decision dated 30/01/2024.
- Appeal received from Eimear Hanly, VHA Architects on behalf of the appellant on 19/02/2024.
- Drawings received by the Board with the appeal on 19/02/2024
- Submissions received from the BCA on the appeal on 21/03/2024.
- Further submissions received by the appellant on 15/04/2024

3.0 Relevant History/Cases

- 3.1. I am not aware of any previous appeals in relation to similar matters.

4.0 Appellant's Case

- 4.1. The appellant submitted the Fire Safety Certificate application and declared the Purpose Group as 1C and refers to BS 9991 – 2015 to demonstrate compliance in relation to the means of escape.

Further information in relation to the appeal was submitted on 19/02/2024 it makes the following points

- The different requirements for Purpose Group 2(b) would incur significant costs.
- That there is not a limit on the number of people permitted within the premises (refers to cluster accommodation in BS 9991) and that 14 persons can be accommodated within the maisonette.
- The 7-Day Notice fire Safety Certificate application was validated and was not disputed at that time.
- According to the submission received on 19/02/2024, discussions did take place between the applicant and members of the Building Control Authority in relation to the Purpose Group being changed to Purpose Group 2(b) but agreement on this proposal was not achieved.
- Reference is made to a conversation with a “gentleman” in IPAS where they were asked about the fire safety purpose group in relation to a Maisonette.

A Further submission was received on 15/04/2024 and the following points were made

- The application was validated and therefore the Building control Authority should be disposed to granting the Fire Safety Certificate.
- That there isn't a limit to the number of occupants permitted within a maisonette and they refer to cluster accommodation within BS 9991.
- Reference is made to House in Multiple Occupation (HMO) and “Lacors Housing – Fire Safety” and that the proposed building is generally in keeping with the HMO guide referenced.
- Makes the case that the laneway is available for means of escape and that it will be kept sterile.

- Escape windows are not required as per Section 6.3 of BS 9991 (i.e. that they are not inner rooms).
- Fire Resistance relates to the chosen Purpose Group.

5.0 **Building Control Authority Case**

5.1. The application was refused and two reasons were given

- The proposal does not comply with the requirements of Part B1 of the Second Schedule to the Building Regulations, 1997 as amended.
- The proposal does not comply with the requirements of Part B3 of the Second Schedule to the Building Regulations, 1997 as amended.

The following points were further submitted on 21/03/2024 to further explain and support the reason for the refusal of the application.

- That the use of the upper floors of the premises by 14 persons should not be assessed as a maisonette and should be assessed under Purpose Group 2(b), for other residential premises.
- Reference is made to the definition of a flat / maisonette in BS 9991 which limits the occupancy to six persons.
- The definition of a House in Multiple Occupation (HMO) is provided from BS 9991 and reasons are provided why HMO is applicable to this premises.
- Reference is made to Section 0.3 of BS 9991 which outlines that BS9991 should not be used to assess HMO's.
- Cluster accommodation is outlined and it notes extra provisions required under BS 9991.
- Reference is made to BS 5588 Part 1 and that in the scope for the guidance document it excludes HMOs and that the definition of a maisonette includes the word dwelling.
- It is noted that some of the bedrooms do not have windows and the issue of window escape is discussed.

- Reference is made to the laneway for means of escape and it is noted that the laneway was not addressed in the original submission.
- Due to the Building Control Authority's opinion that the premises should be a different Purpose Group, they make the point that the elements of structure should be allocated different fire resistance
- They summarise their submission with the point that Purpose Group 1(c) should does not meet the needs of the intended use of the premises. Assessment

5.2. Content of Assessment

5.2.1. In making the assessment, reference was made to the submissions by the Appellant and the Building Control Authority. Reference was also made to

- Technical Guidance Document B - Fire Safety 2006 (reprinted 2020).
- BS 5588 Part 1 "Fire precautions in the design, construction and use of buildings: Code of practice for residential buildings: 1990".
- BS 9991:2015: "Fire safety in the design, management and use of residential buildings – Code of practice".
- Building Control Circular BC 02 – 2020

6.0 Assessment

Having reviewed the submissions the following notable points should be made

- 6.1.1. Very little information was submitted in relation to describing the use of the premises in the initial application submitted on 27/10/2023.
- 6.1.2. Only BS 9991-2015 was used by the applicant in relation to the original application and in relation to the submissions for this appeal.
- 6.1.3. The Building Control Authority referred to BS 9991-2015 and BS 5588 – Part 1 in relation to their submissions to this appeal process.
- 6.1.4. Reference should be made to Circular BC 02 - 2020 which states – "In this regard, in the case of buildings containing flats, BS 9991 is not considered as a means to prima facie indicate compliance with Part B of the Second Schedule to the Building Regulations."

- 6.1.5. BS 9991 should not be used as the main reference document to assess the means of escape. It is understandable that it could be referenced to add to a relevant point but it should not be used as the main reference document to demonstrate compliance with Part B1 of the Building Regulations.
- 6.1.6. Once an application is deemed valid, the Building Control Authority can then assess the application and decide to grant or refuse the application. The BCA is not obligated to grant an application once it has been validated.
- 6.1.7. Houses in Multiple Occupation (HMO) is recognised in British Guidance Documents and Standards but is not included in the Irish Technical Guidance Document B “Fire Safety”. There are multiple versions of HMO but a typical version refers to bedrooms occupied independently with shared kitchen and facilities. There are multiple guidance documents in relation to fire safety and HMO’s. Both the appellant and the BCA refer to this property and that it’s use would be similar to a HMO in their submissions.
- 6.1.8. Reason Number 2 on the refusal is directly linked to Reason Number 1 and is therefore not necessary in this case.
- 6.1.9. It is possible that a case could be made that would permit similar fire resistance standards provided with this submission.
- 6.1.10. Window escape is not required unless inner rooms are provided which is not the case. The provision of windows is outside of the scope of Part B of the Building Regulations in this case.
- 6.1.11. Issues that were not raised in the submissions relate to the occupancy and the fire alarm and detection system within the premises.
- 6.1.12. The critical issue that is relevant to this case is the Purpose Group allocated to the application. The fire safety design of any building relies very heavily on the allocated purpose Group, it is a critical point in the fire design of a building. Both parties referred to Houses in Multiple Occupation which is the closest usage of the premises. The purpose group for this premises is not obvious but in my opinion it is not suitable to allocate the premises as a maisonette - Purpose Group 1(c).

- 6.1.13. In the scope of BS 5588 Part 1, it states that the document does not deal with HMO's. This would reinforce the opinion that HMO's are not Purpose Group 1(c) and therefore the purpose group for this premises is not PG 1(c).

7.0 Recommendation

- 7.1. My recommendation in this case is that the refusal of the Fire Safety Certificate by the Building Control Authority should be upheld in this case.
- 7.2. A further recommendation is that Condition and Reason Number 2 should be removed from the refusal to which this appeal relates.

8.0 Reasons and Considerations

1. Having regard to the proposed use of the premises and the compliance report, drawings and submissions received from the appellant in relation to Fire Safety Certificate application and the appeal, and to the report and recommendation of the reporting inspector, it is considered that it has not been demonstrated by the first party appellant in the fire safety application and appeal that the premises is in compliance with the requirements of Part B1 of Technical Guidance Document B - Fire Safety 2006 (reprinted 2020) [TGD: Part B].
2. The Building Control Authority have not clearly demonstrated the need for enhanced fire resistance in relation to the premises. Therefore condition number 2 as originally attached by the Building Control Authority to the refusal of the fire safety certificate is not required and should be removed.
3. The Board was satisfied that, subject to the Condition 1 (excluding condition 2, as removed by the Board), the appeal against the refusal of the Fire Safety Certificate is declined but amended.

9.0 Sign off

I confirm that this report represents my professional assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Denis O'Connell BE C-Eng

12th December 2024