



An
Bord
Pleanála

DAC Report

ABP-321219-24

**Appeal v Refusal or Appeal v
Condition(s)**

Appeal v Condition

Development Description

Proposed large-scale residential development application for 853 residential units (240 houses, 613 apartments), creche and ancillary site works at Oscar Traynor Road site, bounded by Coolock Lane (R104) to the north, Castletimon Estate to the east, Lorcan Estate to the south and by the N1 to the west, south-east of M50 Junction 2 Interchange, Dublin 5/Dublin 9.

**Building Control Authority Disability
Access Certificate application
number:**

DAC2405698DC

Appellant

Roger Browne

Appellant's Agent

Maurice Johnson & Partners

Building Control Authority:

Dublin City Council

Inspector

James Hickey MRIAI RIBA ARB

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1.0 Introduction

- 1.1. The Disability Access Certificate application submitted to the Building Control Authority (BCA) relates to the construction of a 3-storey apartment block comprising Units 164 to 167, to be known as Block BZ09, at Oscar Traynor Road, Coolock Lane, Dublin 5.

The proposed residential building will consist of 4No. apartments in total;

- 2No. ground floor two storey duplex apartments with own door entry and accessed directly from the outside.
- 2No. second floor single storey apartments accessed via a communal stair at ground floor level.

A bicycle store with external access is also to be provided at ground floor level.

- 1.2. The application relates to **a new 3-storey Residential Building**.
- 1.3. The appellant (Roger Browne) is appealing Condition No.4 of the Disability Access Certificate (DAC) granted by Dublin City Council (DCC) on the 8th October 2024.

The condition being appealed is as follows;

Condition 4: A clear level area at least 1200mm wide and at least 1200mm deep shall be provided in front of each dwelling entrance door and shall be outside the necessary clear level landing area provided to the stairs at the second-floor level.

Reason: To allow people with a range of abilities to travel conveniently and without discomfort from floor to floor in order to make use of all relevant facilities.

2.0 Information Considered

- 2.1. The information considered in this appeal comprised the following:
- Report and drawings submitted with the DAC application received by the BCA on 09/08/2024.
 - Recommendation to the DCC Senior Building Surveyor dated the 27/09/2024.
 - Recommendation of the Senior Building Surveyor dated the 02/10/2024.
 - Order of the DCC Administrative Officer dated the 08/10/2024.

- Disability Access Certificate granted by DCC on 08/10/2024.
- Appeal received by An Bord Pleanála (ABP) from the appellant's agent on the 06/11/2024.

3.0 Relevant History/Cases

3.1. There are no previous DAC applications for this Building.

3.2. However, the appellants agent in their letter of appeal notes that;

- within this development to date, 16 applications have been submitted & granted.
- 13 have been granted with standard conditions, which have not materially impacted the design. However, the final 3 applications of which this is one, were granted with a condition that is at odds with a previously approved design.
- DCC granted a DAC for Block BZ03 (BCMS Ref. No.DAC2405476DC) in the same development on the 26th September 2024. Block BZ03 has the same layout as the Block in question (BZ09), however, a condition similar to that now being appealed was not attached to the previously granted certificate.

3.3. An Bord Pleanála (ABP) Case references: DS29N.321185 & FS29N.321186 may be of assistance to the Board in determining this case.

4.0 Appellant's Case

4.1. The appellant is appealing the attachment of Condition No.4 to the DAC granted by DCC on the 8th October 2024 on the basis that the requirement set out is at odds with a previously approved design within the same development and is not necessary to demonstrate compliance with Part M of the Building Regulations.

The following is a summary of the points set out in support of the appeal:

- There is no requirement within Technical Guidance Document M 2010 (TGD M 2010) for the 1200mm x 1200mm clear space to be provided in front of an entrance door to be outside of the clear landing space required to stairs.

- The requirement set out in condition 4 is at odds with a previously approved design within the same development. Block BZ03, the subject of a previous DAC application, has the same layout as the Block in question (BZ09), however, a condition similar to that now being appealed was not attached to the previous DAC granted for BZ03 on the 26th September 2024.
- Compliance with condition 4 would result in a complete redesign of the second-floor apartments, which in turn would require the submission of a new planning application.
- A satisfactory reason for the imposition of condition 4 has not been proved by BCA.
- The reason given for attaching condition 4 is without a specific design basis.
- The appellant's agent is of the view that;
 - The design as submitted & previously approved by DCC in Block BZ03, allows for people with a range of abilities to travel conveniently and without discomfort from floor to floor in order to make use of all relevant facilities.
 - In addition to satisfying prescriptive requirements, the proposed design approach satisfies the functional requirements of Part M of the Building regulations.

5.0 Building Control Authority Case

- 5.1. The ABP Memorandum dated the 19/12/2024 notes that BCA has not responded to the appeal.

However, the BCA reason for applying condition No.4 was to allow people with a range of abilities to travel conveniently and without discomfort from floor to floor in order to make use of all relevant facilities.

6.0 Assessment

- 6.1. *De Novo* assessment/appeal v conditions

Having regard to the nature of the appeal which is solely against a single condition, and having considered the drawings, details and submissions on the file and having regard to the provisions of Article 40 of the Building Control Regulations 1997, as amended, 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. Accordingly, I consider that it would be appropriate to use the provisions of Article 40(2) of the Building Control Regulations (as amended).

6.2. Content of Assessment

- 6.2.1. The appellant is appealing the attachment of Condition No.4 (A clear level area at least 1200mm wide and at least 1200mm deep shall be provided in front of each dwelling entrance door and shall be outside the necessary clear level landing area provided to the stairs at the second-floor level) on the basis that the requirement set out is not necessary to demonstrate compliance with Part M of the Building Regulations (as amended).
- 6.2.2. The key requirement of Part M of the Second Schedule to the Building Regulations (as amended), which applies to the condition in question is as follows;
- M1 – Adequate provision shall be made for people to access and use a building, its facilities and its environs.
- 6.2.3. The appellant's agent in its appeal has set out a number of items to be considered by ABP in making its determination and these are outlined above. However, the central issue in my opinion relates to the basis of compliance.

The appellant's agent is of the view that;

- there is no requirement within Technical Guidance Document M 2010 (TGD M 2010) for the 1200mm x 1200mm clear space to be provided in front of an entrance door to be outside of the clear landing space required to stairs.
- The proposed design is in compliance with the following related sections of TGD M 2010;
 - 1.3.4.3 Internal stairs suitable for ambulant disabled people

(c) the landings should be level and have an unobstructed length (clear of any door swing) of at least 1200 mm or the width of the flight whichever is greater.

○ 3.2.2 Accessible entrance

(a) there should be a clear level area at least 1200 mm wide and at least 1200 mm deep in front of every accessible entrance.

I am in agreement with the agent's view, as there is no requirement within TGD M 2010 for the 1200mm x 1200mm clear space to be provided in front of an entrance door to be outside of the clear landing space required to stairs. Although it may be preferable to have larger clear spaces in front of entrance doors, TGD M 2010 notes that where works are carried out in accordance with the guidance in this document, this will, prima facie, indicate compliance with Part M of the Second Schedule to the Building Regulations (as amended). In my view, the appellant has demonstrated that the works are being carried out in accordance with the relevant guidance as set out in TGD M 2010, and that if constructed in line with the design presented with the application and the appeal, will comply with the requirements of Part M of the second schedule to the Building Regulations (as amended).

6.2.4. With regard to the appellant agent's claim that the requirement set out in condition 4 is at odds with a previously approved design within the same development. If this is the case, it would seem difficult to understand why an additional condition, which materially impacts an approved design, would be added to the DAC for a similar building.

6.2.5. The appellant's agent in its appeal has noted that in their opinion;

- The design as submitted & previously approved by DCC in Block BZ03, allows for people with a range of abilities to travel conveniently and without discomfort from floor to floor in order to make use of all relevant facilities.
- In addition to satisfying prescriptive requirements, the proposed design approach satisfies the functional requirements of Part M of the Building regulations.

7.0 Recommendation

- 7.1. I recommend that ABP direct the BCA to remove condition No.4 to which the appeal relates for the reasons and considerations set out below.

8.0 Reasons and Considerations

- 8.1. Having regard to the presented design of the proposed residential development and the accompanying compliance report, to the submissions made in connection with the Disability Access Certificate application and the appeal, and to the report and recommendation of the reporting inspector, it is considered that it has been demonstrated by the appellant in the Disability Access Certificate application and appeal that the provision of a 1200mm x 1200mm clear level area in front of each dwelling entrance door, is not required to be outside of the clear level landing area provided to the stairs at second floor level in order to meet the requirements of Part M of the Second Schedule to the Building Regulations (as amended). Therefore condition No.4 as originally attached by the Building Control Authority to the Disability Access Certificate is not necessary to meet the guidance set out in TGD Part M 2010 or accordingly to demonstrate compliance with Part M of the Second Schedule to the Building Regulations (as amended). It is considered that the proposed works if constructed in accordance with the design presented with the application and the appeal, would comply with the requirements of Part M of the second schedule to the Building Regulations (as amended).

9.0 Conditions

- 9.1. It is recommended that ABP direct the BCA to remove the following condition;

Condition 4: A clear level area at least 1200mm wide and at least 1200mm deep shall be provided in front of each dwelling entrance door and shall be outside the necessary clear level landing area provided to the stairs at the second-floor level.

Reason: It is considered that the above condition is not required in order to meet the requirements of Part M of the Second Schedule to the Building Regulations (as amended), as there is no requirement within TGD M 2010 for the 1200mm x

1200mm clear level area provided in front of each dwelling entrance door, to be outside of the clear level landing area provided to the stairs at second floor level.

10.0 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.

James Hickey MRIAI RIBA ARB

24th February 2025.