

Determination

under the

Building Act 1991

No. 95/007: Sanitary facilities in a restaurant

1. The matter to be determined

1.1 The matter before the Authority was a dispute as to:

- (a) Whether unisex sanitary facilities may be provided for use by the patrons and staff of a restaurant as proposed by the owner, or whether separate facilities should be provided for females and for males, and
- (b) Whether the sanitary facilities may open directly into a customer service area as proposed by the owner, or whether they should be isolated from such spaces.

1.2 The Authority takes the view that it is being asked to determine whether the proposed facilities comply with clause G1 of the building code (the First Schedule to the Building Regulations 1992).

1.3 In making its determination the Authority has not considered whether the proposed building will comply with any other provisions of the building code.

1.4 The owner of the proposed building was the applicant, the other party was the territorial authority concerned.

2. The proposed building

2.1 The proposed building is a “convenience food” restaurant providing meals to be eaten in the restaurant or to be taken away. Patrons order their meals at a counter where they wait until the meal is provided. The plans submitted with the application show the counter along part of one side of a customer service area which has tables around the other walls and space for waiting customers in front of the counter. Two unisex toilets, one of which is accessible, open directly into the customer service area at one end of the counter. The accessible toilet also contains baby change facilities.

3. Discussion

3.1 General

- 3.1.1 It was not disputed that the numbers of sanitary fixtures provided comply with the building code.
- 3.1.2 The points that are in dispute are:
- (a) Whether unisex toilets are acceptable; and
 - (b) Whether it is acceptable for the toilets to open directly on to the customer service area.
- 3.1.3 The parties identified those points as coming under clauses G1.1(b), G1.3.1, and G1.3.2(d) of the building code.
- 3.1.4 The Authority recognises that the relationship of food to sanitary facilities is one of great sensitivity to many people, and believes that those sensitivities fall to be considered under clause G1.3.2(e) even though that clause was not specifically raised by the parties.

3.2 Acceptability of unisex toilets

- 3.2.1 The owner contends that the unisex toilets comply with note (3) to Table 1 of Approved Document G1/AS 1 in that:
- (a) Each facility incorporates a water closet and a hand basin, but no urinal;
 - (b) Each facility is contained in a compartment offering full privacy by way of full height walls and doors; and
 - (c) Access to the facilities is not via an area restricted to one sex.
- 3.2.2 The territorial authority points out that in Table 1 the entry for “communal non-residential” buildings, which includes restaurants, does not refer to note (3), which applies only to the entries for “commercial” and “industrial” buildings. However, the territorial authority also states that it has approved unisex toilets in other communal non-residential buildings “only where patrons do not exceed 20 people”.
- 3.2.3 The Authority notes that the entry for “housing” in Table 1 does not refer to note (3) either, which is clearly an error. The Authority recognises the possibility, but does not decide, that there might be communal non-residential buildings in which unisex toilets would not be appropriate for the people who are intended to use them and therefore contrary to clause G1.3.1 of the building code. If so, then that would explain the lack of a reference to note (3) in the entry for communal non-residential buildings. The point will be considered in the forthcoming review of Approved Document G1. (Incidentally, the Authority recognises that note (3) does not correspond exactly to paragraph 4.2.2 of the same document, which is also clearly an error, but one that has no application to this case.)

- 3.2.4 The Authority considers that the lack of a reference to note (3) does not mean that unisex toilets are necessarily inappropriate for the staff and patrons of the restaurant concerned. The Authority can see no justification for a policy of accepting unisex toilets only for restaurants catering for a certain number of patrons.
- 3.2.5 The only doubt about whether the facilities complied with note (3) and paragraph 4.2.2, and therefore with clause G1.3.2(d) of the building code, was in respect of privacy. The owner contended that the toilets complied with paragraph 4.1.1 of Approved Document G1/AS1 in that there was no direct line of sight between a general public area and a water closet, urinal, bath, shower, or bidet. The territorial authority responded that it was simplistic to consider only whether there was a view of the water closet without considering the privacy of users in close proximity to it. The Authority recognises that privacy is required for people not for fixtures, but points out that under section 50 of the Building Act the territorial authority must accept the Approved Document as specifying a level of privacy that meets the requirements of the building code.
- 3.2.6 The territorial authority also quotes the opinion of “several different groups of people” in its district, including the local community constables, to the effect that they were “not in favour of unisex facilities particularly by families with young children and older persons”. Reasons given in support of that view were:
- (a) Most females do not want to use facilities that men have just vacated.
 - (b) Males not liking the positioning of sanitary towel disposal unit.
 - (c) Females not liking using facilities after males have urinated over the seats etc especially in this case as no urinals will be provided.
- 3.2.7 The Authority takes that to be a contention to the effect that unisex toilets would not be appropriate for the people, particularly for the females, who are intended to use them, and would therefore be contrary to clause G1.3.2 of the building code.
- 3.2.8 The Authority disagrees, because it considers that for this type of building any aversion will be related to the state of the toilets not to the mere fact of their having been used by or being suitable for the opposite sex. The state of the toilets is a management matter, and the owner submitted details of its cleaning routines and staff instructions. The Authority does not generally take management matters into account in considering whether a building complies with the building code, and the fact that this determination could affect the entire range of "eating establishments" meant that the owner's submissions as to its cleaning routines and staff instructions were irrelevant. What is relevant is that the Food Hygiene Regulations 1974 require proper attention to hygiene, particularly hand-washing and cleanliness, in all premises where food is handled. The Building Act requires in effect that any such building lends itself to proper hygiene procedures, but the Building Act cannot control such procedures. However, the Authority considers that it is entitled to rely on compliance with the Food Hygiene Regulations when considering the requirements under the Building Act for buildings to which those Regulations apply.

3.2.9 Thus the Authority considers that the proposal to provide unisex toilets does not contravene clause G1 of the building code.

3.3 *Toilets opening directly on to a customer service area*

3.3.1 The territorial authority contends that toilets opening directly into a customer service area are unacceptable because “there is a lack of privacy . . . no ventilated isolation compartment . . . [and] it is generally accepted that for commercial food premises . . . two doors are required between the toilets and the dining and kitchen areas”.

3.3.2 The question of privacy for those using the toilets is discussed in 3.2.5 above.

3.3.3 Neither the building code nor Approved Document G1/AS1 mention a ventilated isolation compartment, although such a compartment could well contribute to compliance with the building code.

3.3.4 The reference to two doors being “required between the toilets and the dining and kitchen areas” appears to refer to the practice under the Drainage and Plumbing Regulations 1978. Those Regulations have now been revoked, and the relevant current requirements are in clauses G1.3.2(b) and (e) as follows:

G1.3.2 *Sanitary fixtures* shall be located, constructed, and installed to:

(b) Avoid risk of food contamination,

(e) Avoid affecting occupants of adjacent spaces from the presence of unpleasant odours, accumulation of offensive matter, or other annoyance

3.3.5 The corresponding acceptable solution is given by paragraph 3.2.1(a) of Approved Document G1/AS1 as follows:

3.2.1 No space containing a *soil fixture* shall open directly into:

a) A space used for the preparation, sale or consumption of food

3.3.6 The Authority considers that in this case the presence of toilets not only opening directly into the customer service area but also situated immediately alongside the food counter would adversely affect patrons of the restaurant.

3.3.7 That effect could be because of unpleasant odours and noises, but more importantly it would be because the proximity of the toilets to the food counter would create an annoyance, arising from the association between food and toilets, for patrons at the counter and at the adjacent tables.

3.3.8 As the Authority considers that the proposed toilets contravene clause G1 of the building code for that reason, it is not necessary to address the issue of food contamination.

4. The Authority's decision

4.1 The Authority therefore determines that:

- (a) The provision of unisex toilets for the patrons and staff of a restaurant does not contravene the building code, but
- (b) The fact that toilets in the restaurant concerned open directly into a customer service area does contravene the building code.

4.2 Accordingly, in accordance with section 20(a) of the Act the Authority hereby modifies the decision of the territorial authority to the effect that that the unisex toilets are not to open directly into a customer service area.

Signed for and on behalf of the Building Industry Authority on this 21st day of December 1995

J H Hunt
Chief Executive