

Determination 2005/67

Sanitary fixtures in a weight loss and fitness centre

1 THE MATTER TO BE DETERMINED

- 1.1 This is a determination under section 17 of the Building Act 1991 (“the Act”), as amended by section 424 of the Building Act 2004, made under due authorisation by me, John Gardiner, determinations manager, Department of Building and Housing, for and on behalf of the chief executive of that Department.
- 1.2 The matter for determination is a dispute about whether a shower must be installed in the conversion of part of an office and retail building to a weight loss and fitness centre.
- 1.3 I take the view that I must determine whether, without a shower, the fitness centre complies with clause G1 Personal hygiene of the building code (the First Schedule to the Building Regulations 1992) as nearly as is reasonably practicable required by section 46(2)(a) of the Act.

2 THE PARTIES

- 2.1 The applicant was the proprietor of the centre apparently acting on behalf of or with the permission of the owner. The other party was the territorial authority.

3 BACKGROUND

- 3.1 The centre occupies approximately 100 m² of the lower ground floor of an existing commercial and retail building. It caters for a maximum of 16 clients at any one time, together with 2 staff.
- 3.2 Towards the end of 2004, the applicant gave notice to the territorial authority of the proposed change of use under section 46(1) of the Act 1991 and applied for a building consent under section 33.

- 3.3 The territorial authority required further information and there was correspondence between the parties until the territorial authority was apparently satisfied on all points except the need for a shower.

4 **THE SUBMISSIONS**

- 4.1 The applicant submitted:

(a) “There is not enough space in the premises leased by the applicant for a shower to be able to be installed. The possibility of installing a shower in a small vacant space on the same floor has also been investigated, but the issue of ventilation has proved a barrier. The space has no air conditioning and a separate air conditioning system would be needed but as the space is below ground and has no external wall space, extracting to an external termination point is not feasible.”

(b) It proposed an alternative solution to the shower required by the acceptable solution G1/AS1, saying:

“The alternative solution proposed is the provision of changing rooms equipped with towels and products such as deodorants, toners, sprays and refresher wipes. . . .

“The application for an alternative solution is based on the grounds that the exercise program being provided by the applicant is of limited nature only, being only 30 minutes in duration and only involving exercise of 30 seconds at a time, and does not result in the participants needing to shower afterwards.”

(c) As to the nature of the programme offered at the centre:

“Participants spend 30 seconds on a hydraulic machine performing strength training movements. They then move to a recovery station where they spend 30 seconds moving quietly in time to the music while their muscles recover. Alternating between 30 seconds of strength training and 30 seconds of recovery means very little perspiration occurs.”

The operation of the centre was further explained in an illustrated brochure.

(d) A report from an independent fitness instructor gave a more detailed description of the programme and concluded: “I do not consider showers are necessary following the 30 minute exercise programme offered by [the centre]”.

- 4.2 The territorial authority, in correspondence with the applicant, cited the acceptable solution G1/AS1 as requiring, in Table 2, at least one accessible shower in “Places of active recreation, swimming pools, squash courts, gymnasiums”, and said:

“It is appreciated that in many instances women will not need the use of showers following the exercises. But this reason does not negate compliance with the Act . . .

“There may also be cases where women need physio-therapy and exercises who are, following an accident, or injury that need building up strength and are handicapped in some way, who may need the facility.”

The applicant reiterated those comments in response to the application for determination.

5 THE CODE AND THE ACCEPTABLE SOLUTION

5.1 The relevant provision of the building code are:

“**G1.1** The objective of this provision is to:

“(b) Safeguard people from loss of amenity arising from the absence of appropriate personal hygiene facilities, and

“**G1.2** Buildings shall be provided with appropriate spaces and facilities for personal hygiene.

“**G1.3.1** Sanitary fixtures shall be provided in sufficient number and be appropriate for the people who are intended to use them.”

5.2 As mentioned in 4.2 above, the relevant requirement of the acceptable solution is for at least one accessible shower to be provided in “Places of active recreation, swimming pools, squash courts, gymnasiums”.

6 DISCUSSION

6.1 Under section 46(2)(a) of the Act, the building in its new use is required to comply with the provision of the building code for sanitary facilities as nearly as is reasonably practicable as if it were a new building”.

6.2 Those words were considered in *Auckland CC v NZ Fire Service* 19/10/95 [1996] 1 NZLR 330 in which it was held that whether a building complied with a particular requirement of the building code “as nearly as is reasonably practicable to the same extent as if it were a new building”:

“... must be considered in relation to the purpose of the requirement and the problems involved in complying with it, sometimes referred to as ‘the sacrifice’. A weighing exercise is involved. The weight of the considerations will vary according to the circumstances and it is generally accepted that where considerations of human safety are involved, factors which impinge upon those considerations must be given an appropriate weight.”

The “as nearly as is reasonably practicable” test has been applied in numerous determinations.

6.3 In this determination, I take the view that the factors to be weighed are:

- (a) It would be difficult to install a shower in the space available, see 4.1(a) above. That does not necessarily mean that a shower is not required, it might mean that the space is not acceptable as a fitness centre, but it is a factor to be taken into account.
- (b) The centre comes within the description of places of active recreation in G1/AS1. However, the activities in the centre are less physically demanding than would normally be expected in a gymnasium or the like.
- (c) In an expert's opinion, see 4.1(d) above, the programme offered by the centre is such that showers are not necessary.
- (d) The fact that there is no accessible shower is a less weighty consideration than, for example, the facts that there are accessible toilets and fully complying means of escape from fire.

6.4 I am conscious that the submissions addressed the needs of the centre's clients but not of its staff. I have no information as to how active staff members must be when guiding clients through the programme, but it seems inevitable that the availability of a shower will be at least as important for staff as for clients, and probably more so.

6.5 I am also conscious that the programme offered at the centre is a management matter that could change at any time.

6.6 Nevertheless, balancing the considerations involved I conclude that the centre complies with the provision of the building code for sanitary facilities as nearly as is reasonably practicable.

7 DECISION

7.1 In accordance with section 20 of the Act, I hereby:

- (a) Determine that the centre complies as nearly as is reasonably practicable with clause G1 of the building code, and accordingly
- (b) Reverse the territorial authority's decision to refuse to grant the building consent unless a shower is installed.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 6 May 2005.

John Gardiner
Determinations Manager