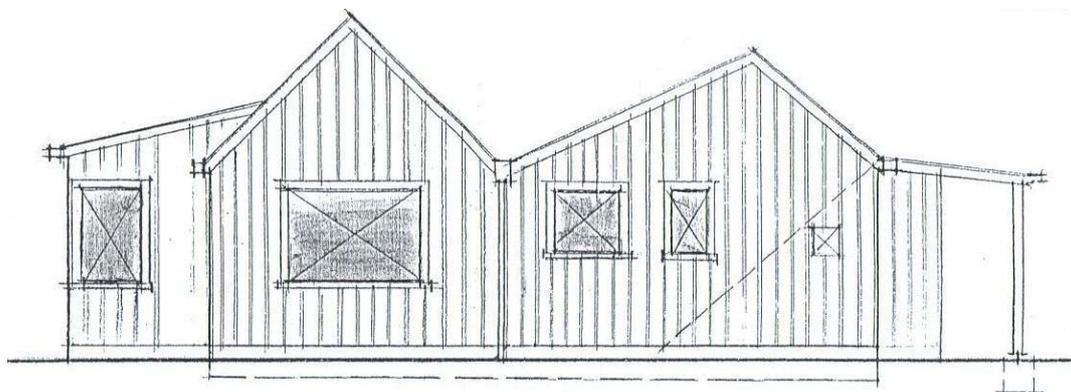


Determination 2007/90

The durability of building elements installed in the alterations and additions to a house at 605 Bealey Road, Aylesbury, RD1, Christchurch



1. The matter to be determined

- 1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004¹ (“the Act”) made under due authorisation by me, John Gardiner, Manager Determinations, Department of Building and Housing (“the Department”), for and on behalf of the Chief Executive of that Department. The applicants are the owners, Mr K Alfeld and Ms J Pelling, acting through their legal advisors as agents (“the applicants”) and the other party is the Selwyn District Council (“the territorial authority”).
- 1.2 The matter for determination is the territorial authority’s decision to refuse to issue a code compliance certificate for the 7-year-old alterations and additions to a house because of the age of the consent.
- 1.3 In making my decision, I have considered the documentation received from the applicant, which was the only information provided to me, together with a legal opinion that I have obtained.

¹ The Building Act 2004 is available from the Department’s website at www.dbh.govt.nz.

- 1.4 In this determination, unless otherwise stated, references to sections are to sections of the Act and references to clauses are to clauses of the Building Code² (First Schedule, Building Regulations 1992).

2. The building

- 2.1 The building work consists of alterations and additions to an existing single-storey house situated on a level section (“the alterations”).

3. Background

- 3.1 The territorial authority issued a building consent for the alterations on 23 November 1999.
- 3.2 The territorial authority inspected the construction of the alterations during December 1999. Following a final inspection on 11 December 2006 and a final re-inspection on 2 March 2007, the territorial authority stated on an “Inspection Notice” that all the work referred to during that inspection had been completed, with the exception of the installation of a third restraining strap to the hot water cylinder. The territorial authority also noted “CCC to issue”.
- 3.3 In a letter to the applicants dated 12 June 2007, the territorial authority noted that it could not issue a code compliance certificate due to the age of the alterations. This was due to the territorial authority not being able, on reasonable grounds, to be satisfied that the building work and elements comprising the alterations will continue to satisfy the durability requirements of the Building Code.
- 3.4 On 20 June 2007, the Department received an application for a determination.

4. The submissions

- 4.1 In a letter to the Department dated 16 June 2007, the applicants set out the background to the dispute. The applicants had been under the impression that once the hot water cylinder restraining stay was installed they would be able to obtain a code compliance certificate for the alterations. According to the applicants, the territorial authority claimed that it had sent a letter to the applicants in November of 2000 informing them of the need to apply for a code compliance certificate. The applicants had not received this letter and the territorial authority could not provide a copy as it was a standard computer-generated letter.
- 4.2 In a covering letter to the Department dated 18 June 2007, the applicants’ legal advisors set out the background and noted that the applicants were unaware of any time frames regarding completion of the building work. A prospective purchase of the applicants’ house was being delayed due to the code compliance certificate not having been issued.
- 4.3 The applicants forwarded copies of the:
- plans for the alterations
 - consent and inspection documentation

² The Building Code is available from the Department’s website at www.dbh.govt.nz.

- documentation relating to the title of the property
 - territorial authority's letter to the applicants dated 12 June 2007.
- 4.4 In an email dated 5 July 2007, the territorial authority stated that, due to the time that had elapsed since the building consent was issued, the territorial authority was concerned that the alterations did not now comply with clause B2. The territorial authority also noted its concern regarding the maintenance of the building.
- 4.5 The draft determination was forwarded to the parties on 11 July 2007. The draft was issued for comment and for the parties to agree a date when the building elements installed in the alterations and additions complied with Building Code Clause B2 Durability.
- 4.6 The territorial authority accepted the draft subject to the clarification of the time frames set out in the determination. The territorial authority also stated that it accepted that the building elements in the alterations and additions complied with the durability provisions of the building code in December 1999. The territorial authority also provided additional inspection records to clarify the inspections undertaken on the building.
- 4.7 The applicants accepted the draft determination subject to the changes sought by the territorial authority. The applicants accepted that 21 December 1999 was the date when the alterations and additions complied with the durability provisions of clause B2.

5. Discussion

- 5.1 The territorial authority has concerns about the durability, and hence the compliance with the building code, of the building elements making up the alterations and additions, taking into consideration the completion of the building work in late 1999. I note that a final re-inspection did not take place until 2 March 2007.
- 5.2 The relevant provision of clause B2 of the Building Code requires that building elements must, with only normal maintenance, continue to satisfy the performance requirements of the Building Code for certain periods ("durability periods") "from the time of issue of the applicable code compliance certificate" (clause B2.3.1).
- 5.3 These durability periods are:
- 5 years if the building elements are easy to access and replace, and failure of those elements would be easily detected during the normal use of the building
 - 15 years if building elements are moderately difficult to access or replace, or failure of those elements would go undetected during normal use of the building, but would be easily detected during normal maintenance
 - the life of the building, being not less than 50 years, if the building elements provide structural stability to the building, or are difficult to access or replace, or failure of those elements would go undetected during both normal use and maintenance.
- 5.4 It is not disputed, and I am therefore satisfied that all the building elements installed in the alterations and additions complied with clause B2 on 21 December 1999. This date has been agreed between the parties, refer paragraph 4.7.

- 5.5 In order to address these durability issues when they were raised in previous determinations, I sought and received clarification of general legal advice about waivers and modifications. That clarification, and the legal framework and procedures based on the clarification, is described in previous determinations (for example, Determination 2006/85). I have used that advice to evaluate the durability issues raised in this determination.
- 5.6 I continue to hold the views expressed in the previous relevant determinations, and therefore conclude that:
- (a) The territorial authority has the power to grant an appropriate modification of clause B2 in respect of all of the building elements in the alterations and additions.
 - (b) It is reasonable to grant such a modification, with appropriate notification, because in practical terms the alterations and additions are no different from what it would have been if a code compliance certificate had been issued in December 1999.
- 5.7 I strongly recommend that the territorial authority record this determination, and any modification resulting from it, on the property file and also on any LIM issued concerning this property.

6. The decision

- 6.1 In accordance with section 188 of the Building Act 2004, I determine that:
- (a) all the building elements installed in the alterations and additions complied with clause B2 on 21 December 1999.
 - (b) the building consent is hereby modified as follows:
 - The building consent is subject to a modification to the Building Code to the effect that, clause B2.3.1 applies from 21 December 1999 instead of from the time of issue of the code compliance certificate for all of the building elements.
 - (c) following the modification set out in (b) above, the territorial authority is to issue a code compliance certificate in respect of the building consent as amended.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 16 August 2007.

John Gardiner
Manager Determinations