



Determination 2008/109

1 December 2008

Refusal by an authority to issue a code compliance certificate for a six-year-old garage at 222 Horndon Street, Darfield

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, I and A Dalley (“the applicants”) acting through an agent, and the other party is the Selwyn District Council (“the authority”). I consider that R and K Taylor, who have an agreement to purchase the property (“the purchasers”), are also parties to this matter.
- 1.2 The matter for determination is whether the territorial authority was correct in its decision to refuse to issue a code compliance certificate for a 6-year-old garage because it was not satisfied that the building work complied with Clause B2 Durability of the Building Code² (First Schedule, Building Regulations 1992) considering the age of the garage.
- 1.3 I note that the authority has raised no matters relating to other clauses of the Building Code, and this determination is therefore restricted to considering the durability requirements related to this building.
- 1.4 In making my decision, I have considered the documentation received from the applicant, and other evidence in this matter.

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

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

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 Code.

2. The building

- 2.1 The building work consists of a single-storey detached proprietary garage building, which is situated on a flat site. The garage is of very simple shape in plan and form, with concrete foundations and floor slab, light timber frame construction, metal weatherboards, aluminium windows and a profiled metal gabled roof.

3. Background

- 3.1 The authority issued a building consent (No. 002159) for the garage on 24 September 2002, under the Building Act 1991. The building consent when issued contained various information addressed to the owner, including an advice note (and proforma 'Advice of Completion of Building Work') requesting that the form be completed and returned on completion of the works.
- 3.2 During 2002, the territorial authority carried out various inspections of the construction. It appears that the garage was completed during 2002, although the applicants did not seek a code compliance certificate until intending to sell the property in 2008.
- 3.3 The territorial authority carried out two final inspections dated 18 August 2008 and 29 August 2008, the latter including a note that the exterior cladding was still in good condition.
- 3.4 In a letter to the applicants dated 1 October 2008, the authority outlined the durability periods required in the building code and noted that it was unable to issue a code compliance certificate because:
- ...as a result of the time lapsed, the Council cannot now be satisfied on reasonable grounds that the building work and elements will continue to satisfy the durability provisions of the Building Code for the prescribed period after the Code Compliance Certificate has been issued.
- The authority raised no other matters of non-compliance.
- 3.5 The Department received an application for a determination on 20 October 2008 and sought further information, which was received on 3 November 2008.

4. The submissions

- 4.1 The agent forwarded copies of:
- the consent documentation
 - the letter from the authority dated 1 October 2008
 - various other statements, certificates and other information.
- 4.2 The authority made a submission received by the department on 17 November that included a copy of the building consent and various inspection records. The covering letter stated that the authority's opinion regarding the issue of a code compliance certificate remained unchanged.

- 4.3 The draft determination was issued to the parties on 14 November 2008. The draft was issued for comment and for the parties to agree a date when the garage complied with Building Code Clause B2 Durability.
- 4.4 In response to the draft determination all parties agreed that compliance with B2 was achieved on 30 November 2002.

5. Discussion

- 5.1 The authority has concerns about the durability, and hence the compliance with the building code, of certain elements of the building taking into consideration the age of the building work completed in 2002.
- 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 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 The 6-year delay between the substantial completion of the garage and the applicants’ request for a code compliance certificate raises the issue of when all the elements of the garage complied with Clause B2. I have not been provided with any evidence that the authority did not accept that those elements complied with Clause B2 when the garage was completed in 2002.
- 5.5 It is not disputed, and I am therefore satisfied, that all the building elements complied with Clause B2 on 30 November 2002. This date has been agreed between the parties, refer paragraph 4.4.
- 5.6 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 matters raised in this determination.
- 5.7 I continue to hold the views expressed in the previous relevant determinations, and therefore conclude that:

- (a) the authority has the power to grant an appropriate modification of Clause B2 in respect of all of the building elements in the building that were constructed under the building consent.
- (b) it is reasonable to grant such a modification, with appropriate notification, because in practical terms the construction is no different from what it would have been if a code compliance certificate had been issued when the building had been substantially completed in 2002.

5.8 I strongly recommend that the 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 building complied with clause B2 on 30 November 2002
- (b) the building consent is 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 30 November 2002 instead of from the time of issue of the code compliance certificate for all the building elements as described in Determination 2008/109.
- (c) following the modification set out in (b) above, the 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 1 December 2008.

John Gardiner
Manager Determinations