

Determination 2008/49

The refusal to issue a code compliance certificate for a 9-year old house at 3 Karanga Road, RD 2, Leeston



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 applicant is the owner, Mrs D Soper (“the applicant”), and the other party is the Selwyn District Council (“the territorial authority”).
- 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 an approximately 9-year-old house because it was not satisfied that the building work complied with Clause B2 “Durability” of the Building Code² (Schedule 1, Building Regulations 1992) considering the age of the house.
- 1.3 In making my decision, I have considered the documentation received from the applicant and the territorial authority.

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.

- 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 Code.

2. The building

- 2.1 The building work consists of a single-storey detached house on a flat site. The house is of a simple shape in plan and form, and is generally of light timber frame construction on a concrete slab. The house has a 40° pitched gable-end roof with 400mm wide verges and eaves ranging in width from approximately 100mm to 400mm. The house is clad with brick veneer, corrugated steel roofing with a mix of timber and aluminium exterior joinery.

3. Background

- 3.1 The territorial authority issued a building consent for the house on 7 September 1998.
- 3.2 I have not seen copies of any inspections completed during the course of the construction. I am not aware of the status of the completed inspections or when the final inspection took place. I have received no information as to when the code compliance certificate was sought by the applicant.
- 3.3 The territorial authority sent a letter to the applicant, dated 10 March 2008, saying that:
- Due to the time which has elapsed since the building consent was granted and the final inspection requested (being over 9 years) the Council will not be able to issue a Code Compliance Certificate for this project. This is 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.
- 3.4 The territorial authority advised that testing of the potable water to the house had not been completed. However, this requirement is not disputed by the applicant and is not the subject of this determination.
- 3.5 I conclude that the territorial authority is satisfied that the building complies with the Building Code in all other respects.
- 3.6 The application for determination was received by the Department on 9 May 2008.

4. The submissions

- 4.1 In a note to the Department the applicant stated that after the final house inspection made by the territorial authority only minor points were noted as requiring attention. These had been attended to and the house was structurally sound.
- 4.2 The applicant forwarded copies of the:
- the building consent and the plans
 - correspondence with the territorial authority.

- 4.3 The territorial authority provided:
- the PIM and building consent
 - correspondence with the applicant.
- 4.4 A draft determination was sent to the parties on 15 May 2008. The draft was issued for comment and for the parties to agree a date when the building complied with Building Code Clause B2 “Durability”.
- 4.5 The parties accepted the draft and agreed that compliance with Clause B2 was achieved on 18 December 1999. It is understood this is the date when the applicant moved into the house after its completion.

5. Discussion

- 5.1 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).

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.
- 5.2 In this case the delay between the completion of the building work in 1999 and the applicant’s request for a code compliance certificate in 2008 has raised concerns with the territorial authority that various elements of the building are now well through their required durability periods and would consequently no longer be expected to comply with Clause B2 if a code compliance certificate were to be issued effective from today’s date.
- 5.3 The territorial authority is satisfied that the building complies with all the provisions of the Building Code with the exception of B2 “Durability” and G12 “Water Supplies”. However, evidence that the building work complies with Clause G12 is presently being obtained by the applicant, and in any event (refer paragraph 3.4) is not a matter for this determination.
- 5.4 It is not disputed, and I am therefore satisfied, that all the building elements complied with Clause B2 on 18 December 1999. This date has been agreed between the parties, refer paragraph 4.5.
- 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 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 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 building complied with Clause B2 on 18 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 18 December 1999 instead of from the time of issue of the code compliance certificate for all of the building elements as described in Determination 2008/49.
- (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, once it is satisfied that the building work complies with Clause G12.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 9 June 2008.

John Gardiner
Manager Determinations