



Determination 2015/004

Regarding the authority's exercise of powers in refusing to issue a building consent relating to the compliance of apartment entry doors with Clause G6 of the Building Code

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 and Assurance, Ministry of Business, Innovation and Employment (“the Ministry”), for and on behalf of the Chief Executive of the Ministry.
- 1.2 The parties to the determination are:
- the owners of the retirement village, Metlifecare Ltd, represented by an architect (“the applicant”)
 - Kapiti Coast District Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.
- 1.3 This determination arises from the authority's refusal to issue a building consent for stage two (of three) for an extension to an existing retirement village. The authority required the entry doors for each apartment to have a Sound Transmission Class (“STC”) rating of 55 in accordance with Clause G6.3.1 of the Building Code.
- 1.4 The matter to be determined² is therefore whether the authority is correct to refuse to issue a building consent for the building for the compliance of the apartment entry doors with Clause G6 of the Building Code.
- 1.5 In making my decision, I have considered the submissions of the parties and the other evidence in this matter.
- 1.6 Unless otherwise stated, all references to sections relate to sections of the Act, all references to clauses relate to clauses of the Building Code.

2. The building work

- 2.1 The building work consists of an extension to an existing retirement village, originally built circa 1990. The extension is being constructed in three stages. Stage one was completed in 2012, consisting of two semi-detached single storied villas and one double storied apartment building with four apartments per floor.
- 2.2 Stage two consists of seven semi-detached villas and a second apartment building (“the building”) to match stage one. Stage two is under construction. Stage three is to include a third apartment building and a single storied semi-detached duplex. This

¹ The Building Act, Building Code, compliance documents, past determinations and guidance documents issued by the Ministry are all available at www.dbh.govt.nz or by contacting the Ministry on 0800 242 243.

² Under sections 177(1)(b) and 177(2)(a)

determination will relate to Stage two, under Building Consent application No. 140265.

- 2.3 The proposed doors for the apartments are ‘acoustic fire rated’ doors with an STC of approximately 40. The door is a hinged single (or pair) flush panel door hung in a timber frame. It includes frame mounted perimeter seals and an automatic bottom seal. The door leaf thickness is approximately 47mm with an approximate weight of 26kg/m².

3. Background

- 3.1 On 27 June 2014 the authority requested further information for Building Consent application No.140265. This was followed by an email on the 29 June 2014 from the authority requesting the applicant also ‘demonstrate compliance with NZBC G6 in and along all shared corridors and entrances’.
- 3.2 On 29 July 2014 the applicant requested an update from the authority, who responded on the same day, noting in relation to sound proofing the applicant needs to consider the separation ‘as a whole’, and demonstrate compliance through the doors and ceilings.
- 3.3 On 30 July 2014 the applicant emailed the authority providing an acoustic report that was submitted for Building Consent stage 1 and additional plans and specifications including details relating to the acoustic fire rated doors.
- 3.4 On 1 August 2014 the applicant emailed the authority noting Clause G6 refers to sound attenuation between habitable spaces and doesn’t address common spaces. The applicant refers to the unavailability or impossibility of STC 55 compliant doors.
- 3.5 On 4 August 2014 the authority sought advice from an officer of the Ministry regarding the functional requirement of Clause G6, stating the opinion that the sound transmission shall not be less than STC 55 between common areas and habitable spaces, and needs to be maintained through entrances (doors). The authority provided an opinion from an acoustic company noting:
- The initial phrase of Clause G6.2 limits the functional requirements and subsequent performance requirements to building elements that are “common between occupancies”. It is clear that common spaces are not considered to be occupancies by the phrase ‘occupancies or common spaces’
 - Walls between corridors/common spaces and apartments are therefore not common between occupancies and therefore not covered by Clause G6.
- 3.6 On 7 August 2014 the officer of the Ministry provided a response, in summary:
- The Building Code should provide for sound attenuation by all building elements common with the habitable spaces of household units.
 - Under Clause G6.2 emphasis should be placed on building elements which “shall be constructed to prevent undue noise transmission from other occupancies or common spaces to the habitable spaces of household units”. However it is acknowledged Clause G6.2 can be interpreted differently.
 - The definition for ‘habitable space’ under the Building Code is provided. Bathrooms and corridors do not qualify as habitable spaces and accordingly there are no requirements for their common walls, including the doors in those common walls. There are however requirements for the common walls of the kitchens in the household units.

- The officer of the authority noted ‘in the drawing provided we would only see a requirement to sound rate the common wall between the (yellow shaded) corridor and the kitchens’.
- 3.7 On 7 August 2014 the authority emailed the applicant that it still requires the STC 55 rating to be applied to the doors separating the habitable areas in each occupancy from the shared corridors/common spaces, advising them to cancel the Building Consent application or apply for a determination.
- 3.8 On 7 August 2014 the applicant sought advice from an acoustic engineer, who responded on 8 August 2014, in summary:
- The objective of Clause G6.1 is to safeguard people from illness or loss of amenity as a result of undue noise being transmitted between abutting occupancies. This is the ‘overarching intent’ of the G6 provisions. G6.2 requires building elements between occupancies to prevent undue noise transmission to habitable spaces.
 - Clause G6.3 specifies the STC of “walls, floors and ceilings”. There is no mention of doors or windows. A door is therefore not required to meet the STC 55 requirement. The quality of the door should be of a type and weight that would prevent undue transmission.
 - The access corridor does not form part of an occupancy; it happens to have an external wall and so gives added protection for the occupancies from any external noise.
- 3.9 The Ministry received an application for determination on 8 December 2014.

4. The submissions

- 4.1 The applicant provided a written submission with their application for determination. In summary:
- The issue for this determination is the STC rating of the apartment entry doors off the shared corridor. The authority has required the doors to have an STC 55 rating, the same as the walls between occupancies, habitable spaces and a shared corridor.
 - The matching stage one building apartment building did not require the entry doors to be sound rated. This building has a code compliance certificate.
 - The applicant submits it is not possible to provide a door with a STC 55 rating; the proposed doors are fire rated and smoke sealed with around STC 40.
 - The applicant submits compliance with Clause G6.2 should be applied consistently between the stages of the development.
 - In order to comply with the request from the authority a lobby would be required inside each new apartment, there is limited space for a lobby and additional doors would create difficulty for elderly occupants accessing their homes.
 - The building has been designed so noise does not enter habitable spaces from the adjacent State Highway One and the railway line. The completed stage one building is very quiet in the corridor and apartments and there have been no complaints due to undue noise entering the apartments from the corridor.

- Treating the apartment front doors differently seems ‘practically illogical’.
- The applicant provides information from their acoustic engineer, as detailed in paragraph 3.8.

4.2 On 15 December the applicant provided an amendment to its submission. The applicant submits there is no requirement for the STC 55 entry doors as there are no individual titles for the apartment. Clause G6.1 refers to undue noise transmission to the habitable spaces of household units. The definition of a household unit refers to ‘specialised accommodation’. The applicant considers the retirement village to fall under the ‘specialised accommodation’ category as the entire village is under one title and there is no individual ownership. The apartment occupants purchase a right to occupy only.

4.3 The applicants provided the following documentation with their application:

- building plans for stage two of the construction of the buildings
- a request for further information, dated 27 June 2014 from the authority
- various email exchanges between the applicant and the authority and an officer of the Ministry dated between 29 June 2014 and 8 August 2014.
- information regarding the acoustic, fire resistant doors proposed to be installed

4.4 The authority did not provide a written submission to the determination application.

5. The draft determination and further submissions

5.1 On 19 December 2014 I issued a draft determination to the parties. In summary the draft determination found the authority was incorrect to refuse to issue a building consent in requiring the apartment doors to have an STC rating of 55 for the building.

5.2 On 16 January 2015 the applicant accepted the draft determination without comment.

5.3 On 30 January 2015 the authority provided a detailed written submission with reasons why the draft determination was not accepted. In summary:

- The authority’s view is that the applicant’s original proposal for the doors did not meet the requirements of G6.3.1.
- The authority submits the door and the wall are building elements. The corridor is not a building element, but is a common space and constitutes an occupancy.
- The authority overlooked the requirement for the similar stage 1 building that has a code compliance certificate.
- The authority does not agree the applicant’s amended submission relating to specialised accommodation is relevant.
- The authority believes having ‘common spaces’ included in the functional requirement removes any exclusivity of ownership. The applicant owns the building exclusively as one owner.
- The functional requirement of G6 requires sound attenuation from other occupancies or common spaces to the habitable spaces of household units. The corridor does not need sound attenuation from the apartment; however, the apartment does need sound attenuation from the corridor.

- The authority does not accept the conclusion in the draft determination as the corridor fits the definition of occupancy and does not need to be a habitable space.

6. Discussion

6.1 The objective of Clause G6.1 is to ‘safeguard people from illness or loss of amenity as a result of undue noise being transmitted between abutting occupancies’. The functional requirement of Clause G6.2 states building elements which are common between occupancies shall be constructed to prevent undue noise transmission from other occupancies or common spaces, to the habitable spaces of household units.

6.2 Although the performance requirements under Clause G6.3 provide the technical level of performance that buildings falling within the scope of G6 are required to achieve, the functional requirement needs to be satisfied before Clause G6.3 is applied.

6.3 A building element is defined under the Building Code as:

building element any structural or non-structural component and assembly incorporated into or associated with a building. Included are fixtures, services, drains, permanent mechanical installations for access, glazing, partitions, ceilings and temporary supports

There is no dispute that an entry door to an apartment constitutes a ‘building element’. The corridor itself is not a building element.

6.4 Clause G6.2 refers to ‘building elements which are common between occupancies’. The word ‘occupancy’ has not been defined under the Act or Building Code. It is appropriate to refer to the ordinary and natural meaning of ‘occupancy’;

- The action or fact of occupying something; the condition of being an occupant; actual possession, esp. of land; (*Law*) the action of taking possession of something having no owner, as constituting a title to it; actual residence in a place; an instance of this.³
- the act of occupying; possession of a property⁴
- the taking possession of those things which before belonged to nobody⁵
- Living in or using premises, as a tenant or owner⁶

6.5 Based on these definitions, I am of the view that ‘occupancy’ denotes a sense of ownership and not just usage. A common area is owned, however owned in common. In the context of G6 I consider there is a sense of exclusive ownership implied. A common area is not exclusively owned and therefore does not fall within the definition of ‘occupancy’ for G6. I consider ‘exclusive ownership’ in a broader sense than the person named on a certificate of title. Clause G6 is about the occupants of a building who use the building and not the ‘owner’ of a building in a strict legal sense.

6.6 Furthermore, a corridor does not fall within the definition of ‘habitable spaces’ under the Building Code:

habitable space a space used for activities normally associated with domestic living, but excludes any bathroom, laundry, water-closet, pantry, walk-in wardrobe, corridor, hallway, lobby, clothes-drying room, or other space of a specialised nature occupied neither frequently nor for extended periods

³ Oxford English Dictionary www.OED.com Oxford University Press 2014

⁴ Collins English Dictionary www.collinsdictionary.com Collins 2014

⁵ Butterworths New Zealand Law Dictionary, Fourth Edition, March 1995

⁶ Legal Dictionary www.dictionary.law.com Publisher Fine Communications

It is clear from the definition of ‘habitable space’ that this would include areas like a bedroom, lounge or dining room as activities associated with domestic living. These types of domestic spaces are the focus of the functional requirement of G6.2, and are intended to be protected from noise emanating beyond the household unit. I do not consider a corridor is a habitable space.

6.7 Clause G6.2 relates to building elements such as walls, floors and ceilings between household units and other occupancies.

6.8 In conclusion, as a corridor does not fall within the definition of ‘occupancy’ nor a ‘habitable space’, the entrance door to the apartment is not required to satisfy the performance requirements of G6.3.1 to have an STC of no less than 55.

6.9 Specialised accommodation

6.9.1 The applicant has raised the argument that, as a retirement village, the building falls within the definition of ‘specialised accommodation’ which is excluded from the definition of household unit under section 7 of the Act.

specialised accommodation means a building that is declared by the Governor-General, by Order in Council, to be specialised accommodation for the purposes of this Act

6.9.2 The definition provided under section 7 of the Act related to the Building Act 1991 (“the former Act”) where, in the absence of a definition for specialised accommodation, the ordinary and natural meaning was used. However, the current Act does provide a definition of specialised accommodation. There has been no Order in Council issued in respect of specialised accommodation. Therefore the definition for specialised accommodation only includes hostels and boardinghouses.⁷ I do not consider the building constitutes a hostel or boardinghouse, and therefore does not fall within the definition of specialised accommodation under the current Act.

7. The decision

7.1 In accordance with section 188 of the Building Act 2004, I hereby determine that:

- the entry doors to the apartments are not required to have an STC rating of 55, and
- I reverse the decision of the authority to refuse the issue of the building consent for that reason.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 24 February 2015.

John Gardiner
Manager Determinations and Assurance

⁷ Determination 2006/092 Is a compliance schedule required for a new IHC residential home, *Department of Building and Housing* 19 September 2006.

Appendix A

A.1 The relevant clauses of the Building Code

Clause G6—Airborne and impact sound

Objective

G6.1 The objective of this provision is to safeguard people from illness or loss of *amenity* as a result of undue noise being transmitted between abutting occupancies.

Functional requirement

G6.2 *Building elements* which are common between occupancies, shall be constructed to prevent undue noise transmission from other occupancies or common spaces, to the *habitable spaces of household units*.

Performance

G6.3.1 The *Sound Transmission Class* of walls, floors and ceilings, shall be no less than 55.