

Fire Service access to a residential development

1 The matter to be determined

- 1.1 The matter before the Authority is a dispute as to whether a gate at the entrance to a residential development is wide enough for Fire Service vehicles and appliances.
- 1.2 The Authority takes the view that it is being asked to determine whether vehicular access to the property is adequate to facilitate the specific needs of Fire Service personnel to carry out rescue operations and control the spread of fire as required by clause C3.3.9 of the building code (the First Schedule to the Building Regulations 1992).
- 1.3 In making its determination the Authority has not considered any other aspects of the building code or the Building Act 1991.

2 The parties

- 2.1 The applicant was the owner. The other parties were the building certifier concerned, the territorial authority concerned, and the New Zealand Fire Service (specifically, the Fire Officer (Operations) at the local fire station).

3 Background

- 3.1 The gate concerned controls vehicular access to a residential development consisting of 10 units and a manager's residence.
- 3.2 Vehicular access is through security gates giving a clear opening width of 2.9 m.
- 3.3 The Fire Officer (Operations) from the local fire station inspected it and, in a fax copied to the Chief Fire Officer of the local brigade, wrote to the owner saying:

. . . I can confirm that in my opinion the vehicle entranceway is of sufficient width to allow access for fire appliances.

This decision was made only after the width was widened and the gate hinges repositioned onto the rear of the pillar.

Consideration is also given to the fact that the units have a smoke detection system and the garages are protected by thermal detection. The stairwell ventilation and 1-hour FRR between fire cells are added passive protection.

- 3.4 Nevertheless, the building certifier directed the owner to alter the gates, saying that “Access to the site must have a clear opening of 3.5 m”. The territorial authority, apparently following the lead of the building certifier, then issued a notice to rectify under a covering fax that referred to “the provisions of the Building Code (C3)”, and stated:

Although I understand that the matter is under consideration by [the building certifier] in the light of a letter received from the local Fire Service representative, the Council is still very concerned at the safety implications of potentially compromising the Building Code requirements in this case.

- 3.5 The owner responded by writing to the building certifier saying that it would be applying to the Authority for a determination and asking for the building certifier’s reasons in writing for refusing to issue a code compliance certificate.
- 3.6 The building certifier replied confirming its requirement for a clear opening of not less than 3.5 m and saying:

. . . The letter [from the Fire Service officer] is not sufficient evidence to enable [the building certifier] to accept this entranceway width as an alternative solution.

- 3.7 The owner then applied to the Authority under section 17 of the Building Act for determination of the dispute.
- 3.8 The application was supported by a statement of the facts outlined above and copies of relevant documents. No submissions were made by any of the other parties.

4 The Building Act, the building code, and the acceptable solution

- 4.1 The relevant provision of the Building Act is:

49. Documents for use in establishing compliance with building code— (1) The Authority may prepare or may approve, in whole or in part and subject to any modification it considers necessary or desirable, any document for use in establishing compliance with the provisions of the building code.

(2) Any document, prepared or approved by the Authority under subsection (1) of this section shall be accepted for the purposes of this Act as establishing compliance with those provisions of the building code to which it relates, but it shall not be the only means of establishing such compliance.

- 4.2 The relevant provision of the building code are:

C3.3.9 The fire safety systems installed shall facilitate the specific needs of fire service personnel to:

- (a) Carry out rescue operations, and
- (b) Control the spread of fire.

4.3 The relevant provisions of C3/AS1, the acceptable solution issued under section 49 of the Building Act are:

2.17 Fire service vehicular access

2.17.1 Where buildings are located remote from the street boundaries of a property, pavements situated on the property and likely to be used for vehicular access by fire appliances shall:

- c) Have a minimum width of 4.0 m, and
- d) Provide a clear passageway of no less than 3.5 m in width and 4.0 m in height at site entrances, internal entrances and between buildings,

5 Discussion

5.1 The mandatory requirement is for the gate to be wide enough to “facilitate the specific needs of fire service personnel . . .”. The acceptable solution C3/AS1 establishes a width of 3.5 m as complying with the building code, but is not the only way of establishing compliance. Other things being equal, a territorial authority or a building certifier (within its scope of approval) is required to accept an alternative solution if satisfied on reasonable grounds that it complies with the building code.

5.2 In Determination 2000/5, the Authority said:

6.3.3 The Authority makes the following general observations about acceptable solutions and alternative solutions:

- (a) Some acceptable solutions cover the worst case so that in less extreme cases they may be modified and the resulting alternative solution will still comply with the building code.

5.3 The residential development concerned seems unlikely to be the worst case for Fire Service personnel carrying out rescue operations or controlling the spread of fire. In particular, it seems unlikely that the Fire Service will need to deploy its largest appliances at the development. Accordingly, some modification of the acceptable solution could well be justified. The Authority considers that the Fire Service itself is best placed to decide whether the vehicular access to a particular property meets its needs.

5.4 That decision appears to be exactly what is set out in the fax quoted in 3.3 above. That fax is a clear and reasoned decision, based on personal inspection, made by an officer of the Fire Service holding the position of Fire Officer (Operations) in the local Brigade. That title appears to indicate that the officer has special knowledge of fire fighting operations, which presumably includes a knowledge of the access required for the appliances that would be used to fight fires on the property. Furthermore, the fax was copied to the Chief Fire Officer of the Brigade.

5.5 The Authority concludes that the fax is reasonable grounds for accepting that the gate is, in the officer’s words, “of sufficient width to allow access for fire appliances”.

- 5.6 Neither the territorial authority nor the building certifier gave any reasons for not accepting the opinion of the Fire Officer (Operations). In the absence of any evidence to the contrary, the Authority therefore accepts that fact as establishing that the gate concerned complies with the building code.
- 5.7 This determination is not to be taken as implying that the opinion of an officer of the Fire Service is always to be accepted, even in matters relating to the specific needs of Fire Service personnel. Each case must be treated on its merits.

6 THE AUTHORITY'S DECISION

- 6.1 In accordance with section 20, the Authority hereby determines that vehicular access to the property is adequate to facilitate the specific needs of Fire Service personnel to carry out rescue operations and control the spread of fire as required by clause C3.3.9 of the building code.
- 6.2 The Authority therefore reverses the building certifier's decision to refuse to issue a code compliance certificate. The Authority also reverses the territorial authority's decision to issue a notice to rectify.

Signed for and on behalf of the Building Industry Authority on this 14th day of August 2001

W A Porteous
Chief Executive