

Determination 2005/95

Sound transmission between household units after alterations

1 THE MATTER TO BE DETERMINED

- 1.1 This is a determination under section 17 of the Building Act 1991 (“the Act”), as amended by section 424 of the Building Act 2004, made under due authorisation by me, John Gardiner, Determinations Manager, Department of Building and Housing, for and on behalf of the Chief Executive of that Department.
- 1.2 The matter for determination is a dispute about whether alterations to a building containing two cross-leased apartments comply with the provisions of the building code (the First Schedule to the Building Regulations 1992) for sound transmission to the required extent, and whether a code compliance certificate should have been issued in respect of those alterations.
- 1.3 I take the matter for determination to be whether, after the alterations, the building complied with clause G6 of the building code to the same extent as before as required by section 38(b) of the Act.

2 THE PARTIES

- 2.1 The applicant was the cross-lease tenant of flat 2. The other parties were the cross-lease tenant of flat 1 (“the owner”) and the territorial authority.

3 THE BUILDING AND THE SEQUENCE OF EVENTS

- 3.1 The building was erected in 1974 under a building permit issued by the territorial authority in accordance with the building bylaws of the time. Those bylaws did not require acoustic separation between household units. The building consists of a two storey unit (flat 1) with a single storey unit (flat 2) attached. Each unit has a pitched roof.

- 3.2 Flats 1 and 2 abut so that part of an external wall of flat 1 is a common wall separating the flats. That wall is of blockwork up to the underside of the first floor joists of flat 1 (the ceiling level of flat 2) and of light timber construction above that level. In other words, although the ground floor of flat 2 is separated from the ground floor of flat 1 by a block wall, the roof space of flat 2 is separated from the first floor of flat 1 by a timber framed wall. There is a pipe, which is part of flat 1's plumbing system, within the thickness of that timber-framed wall.
- 3.3 Over the period of mid November 2002 to late May 2003 the owner's predecessor in title made various alterations to flat 1 under a building consent issued by the territorial authority. The alterations included bathroom alterations involving additional connections to the pipe in the common wall. Those alterations did not affect that part of the wall between that pipe and flat 2.
- 3.4 When the alterations were completed the territorial authority duly issued a code compliance certificate. Flat 1 changed ownership at some point after the alterations had been completed.
- 3.5 After the alterations had been completed, the applicant experienced significant noise in habitable rooms of flat 2, which appeared to be coming from the pipe in the common wall when a water tap was turned on in flat 1. The applicant was advised by a plumber that the pipe concerned should have been replaced with a larger diameter pipe to suit the alterations to the plumbing system of flat 1. I have not been given any documentation as to the plumber's opinion or the facts on which it was based.
- 3.6 The applicant approached the owner's predecessor in title, the owner, and the territorial authority but the noise problem continued. The applicant applied for this determination in February 2005.

4 THE SUBMISSIONS

- 4.1 The gist of the applicant's submissions is set out in 3 above. The applicant also drew attention to certain terms of the cross-lease.
- 4.2 The owner did not make any submissions. The territorial authority submitted an account of events to date together with photographs of the building and building consent documentation.

5 THE LEGISLATION

- 5.1 The relevant provisions of the Act are:

“38. Alterations to existing buildings -- No building consent shall be granted for the alteration of an existing building unless the territorial authority is satisfied that after the alteration the building will—

- “(a) Comply with the provisions of the building code for means of escape from fire, and for access and facilities for use by people with disabilities . . . as nearly as is reasonably practicable, to the same extent as if it were a new building; and
- “(b) Continue to comply with the other provisions of the building code to at least the same extent as before the alteration.”

5.2 The relevant provisions of the building code are:

“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.”

6 DISCUSSION

- 6.1 After the Act came into force, new buildings were required to provide separation between household units having a Sound Transmission Class (“STC”) of at least 55. However, the only relevant requirement in the Act is that when a building is altered the separation between units is to comply with the sound transmission provision of the building code to at least the same extent as before the alteration, see 5.1 above.
- 6.2 The test is not what noise level is experienced in flat 2 but whether there is at least the same STC after the alterations as before.
- 6.3 On the information I have been given, the common wall has not been altered in a way that affected the STC between the pipe (the source of the noise complained of) and flat 2. I have no doubt that the sound emitted from the pipe has increased, but that is not a matter that is controlled by the Act.
- 6.4 I therefore conclude that the applicant has no remedy under the Act. That is not to say that the applicant has no remedy under the cross-lease or by way of a common law action in nuisance, but I offer no opinion as to those possibilities.

7 DECISION

7.1 In accordance with section 20 of the Building Act 1991, I hereby:

- (a) Determine that the building complies with clause G6 of the building code to the same extent as before the alterations; and
- (b) Confirm the territorial authority's decision to issue the code compliance certificate.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 14 June 2005.

John Gardiner

Determinations Manager