

Determination 2007/120

Determination regarding a code compliance certificate for 12-year-old house at Bluff Road, Sheffield

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 Mr and Mrs Kelly (“the applicants”) and the other party is the Selwyn District Council (“the territorial authority”).
- 1.2 The matter for determination is the territorial authority’s decision to refuse to issue a final code compliance certificate for a 12-year-old house because of the age of the consent.
- 1.3 In making my decision, I have considered the documentation received from the parties, and the other evidence in this matter.
- 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 Code² (First Schedule, Building Regulations 1992).

2. The building

- 2.1 The building work consists of a two-storey detached house situated on a gently sloping site which is in a very high wind zone for the purposes of NZS 3604³. The building is relatively complex in plan and form. It has a mix of concrete slab and

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.

³ New Zealand Standard NZS 3604:1999 Timber Framed Buildings

concrete pile foundations, timber framing, aluminium joinery, corrugated steel roof cladding, and vertical corrugated steel wall cladding.

3. Sequence of events

3.1 According to the applicant the territorial authority issued a building consent for the work in 1995. I have not seen a copy of that consent.

3.2 Various inspections were carried out between 27 April 1995 to 12 July 1995, with the July inspection being a lining inspection with some exceptions noted. There appear to have been no further inspections until the final inspection carried out on 17 April 2007. The final inspection was a “pass” with no re-inspection required; the inspection concluded “*Generally looking very tidy*”.

3.3 In a letter to the applicant dated 18 July 2007 the territorial authority explained why it was unable to issue the code compliance certificate for the work saying:

Due to the time which has elapsed since the building consent was granted and the final inspection requested (being over 12 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.

The territorial authority directed the applicants to the Department for a determination if they wished to contest this decision.

3.4 An application for a determination was received by the Department on 23 August 2007. In the application the applicants said:

We would be agreeable to the [territorial authority] issuing the Code Compliance Certificate on the inspection notice dated 12th July 1995.

4. The submissions

4.1 The applicants set out the background to the matter at issue and concluded that a “durability period” commencing from July 1995 would be appropriate.

4.2 The applicants forwarded copies of:

- the plans
- inspection records, some engineers calculations and information relating to the on-site effluent disposal
- the letter dated 18 July 2007 to the applicant from the territorial authority.

4.3 Copies of the evidence were provided to each of the parties. In response to the application, the territorial authority sent a letter to the Department dated 22 August 2007 saying:

. . . although the inspection on the 17/04/2007 indicates a pass, there are two documents still required under the conditions of the Building Consent issued as follows:

1. [the applicants] engineers to provide verification of the effluent disposal system.
2. Verification that the water supply meets the New Zealand Drinking Water Standards . . .

4.4 A copy of the draft determination was forwarded to the parties for comment on 31 August 2007. The draft was issued for comment and for the parties to agree a date when the building elements of the house complied with Building Code Clause B2 Durability.

4.5 The applicants accepted the draft but were concerned about the two outstanding issues that are set out in paragraph 4.3. Following a request for confirmation from the Department, the applicants agreed that 12 July 1996 was the appropriate durability provision date.

4.6 The territorial authority accepted the draft, noted that the two outstanding issues (paragraph 4.3) had been resolved, and also agreed that the building elements complied with the durability provisions of B2 on 12 July 1996.

5 Discussion

5.1 The territorial authority has concerns about the durability, and hence the compliance with the building code, of the elements of the building, taking into consideration the completion of the building sometime in 1995. I note that the final inspection did not take place until 17 April 2007.

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 applicable 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 12-year delay between the completion of the building work and the applicant's request for a final inspection and code compliance certificate 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 comply with clause B2 if a code compliance certificate were to be issued now.
- 5.5 It is not disputed, and I am therefore satisfied that all the building elements installed in the building complied with clause B2 on 12 July 1996. This date has been agreed to between the parties, refer paragraphs 4.5 and 4.6 above.
- 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 issues raised in this determination.
- 5.7 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 elements of the building
 - (b) It is reasonable to grant such a modification, with appropriate notification, because in practical terms the building is no different from what it would have been if a code compliance certificate had been issued in 1996.
- 5.8 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 hereby determine that:
- (a) all the building elements installed in the building complied with clause B2 on 12 July 1996.
 - (b) the building consent is amended as follows:

The building consent is subject to a modification to the Building Code to the effect that, clause B2.3.1 applies from 12 July 1996 instead of from the time of issue of the code compliance certificate for all of the building elements as described in Determination 2007/120.

- (c) the territorial 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 23 October 2007.

John Gardiner
Manager Determinations