

# Determination 2024/049

## An authority's decision to issue a notice to fix for a small detached building

**1/213 Lake Road, Belmont, Auckland**

### Summary

This determination considers an authority's decision to issue a notice to fix in relation to a small, detached building. The notice to fix alleges the owners have carried out building work without a building consent and that some of the building work does not comply with Building Code Clause B1 *Structure*. The determination considers the authority's grounds for issuing the notice to fix, and the form and content of the notice.



**Figure 1: The building which is the subject of the notice to fix<sup>1</sup>**

<sup>1</sup> Image reproduced from a photograph provided by the authority from its inspection on 24 July 2023.

In this determination, unless otherwise stated, references to “sections” are to sections of the Building Act 2004 (“the Act”) and references to “clauses” are to clauses in Schedule 1 (“the Building Code”) of the Building Regulations 1992.

The Act and the Building Code are available at [www.legislation.govt.nz](http://www.legislation.govt.nz). Information about the legislation, as well as past determinations, compliance documents (eg Acceptable Solutions) and guidance issued by the Ministry, is available at [www.building.govt.nz](http://www.building.govt.nz).

## 1. The matter to be determined

- 1.1. This is a determination made under due authorisation by me, Peta Hird, for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment (“the Ministry”).<sup>2</sup>
- 1.2. The parties to the determination are:
  - 1.2.1. the owners of the property, M and R Newsome (“the owners”), who applied for the determination
  - 1.2.2. Auckland Council (“the authority”), carrying out its duties as a territorial authority or building consent authority.
- 1.3. This determination arises from the authority’s decision to issue a notice to fix to the owners in relation to the construction of the building shown in Figure 1. The authority considers the building work required a building consent, and that some of the work does not comply with the Building Code. The owners dispute the authority’s grounds for issuing the notice to fix, as well as the form and content of the notice (including the remedies).
- 1.4. The matter to be determined, under section 177(1)(b) and 3(e), is the authority’s decision to issue notice to fix NOT21687796 dated 10 August 2023 (“the notice”).

### Issues outside this determination

- 1.5. The owners are of the view that the authority has acted contrary to its inspection powers<sup>3</sup> under the Act, in the way it carried out its visit to the owners’ property. However, the exercise of the authority’s inspection powers is not a determinable matter under section 177, therefore I have not considered this issue further.<sup>4</sup>

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<sup>2</sup> The Building Act 2004, section 185(1)(a) provides the Chief Executive of the Ministry with the power to make determinations.

<sup>3</sup> Section 222 empowers a territorial authority to enter land to carry out inspections. Section 226 restricts entry to a household unit without the consent of the occupier or a court order.

<sup>4</sup> There are other options available to the owners to address this issue, including provisions and procedures in the Act and in other enactments, or through the courts.

1.6. I have also not considered:

- 1.6.1. the infringement notice issued by the authority, except in relation to the owners' argument regarding payment of the infringement fee (see from paragraph 4.7)
- 1.6.2. the bylaw and abatement notices issued by the authority, as I have no jurisdiction to consider issues related to the Local Government Act 2002, the Resource Management Act 1991, or the authority's District Plan requirements.

## 2. Background and building work

- 2.1. The owners have constructed a single storey detached building, approximately 6m by 3m,<sup>5</sup> on timber pile foundations (refer to Figure 1). I have received no information about how the light-weight steel frame structure is fixed to foundations (if it is).
- 2.2. Photographs show timber bearers to the short ends of the building are nailed to the face of the piles at each end and, at one end of the building, to the top of a mid-span pile (refer Figures 2 and 3). What appear to be 150 x 50mm timber members<sup>6</sup> are laid flat on top of the piles in the longitudinal direction.



**Figures 2 & 3: showing pile and bearer connections**

- 2.3. On one short end of the building, bracing struts are fixed to the top of the corner piles and bottom of the mid-span pile, and at the other end (where there is no mid-span pile) the bracing is fixed at the bottom of the corner pile and to the bearer. Bracing struts have also been installed in the longitudinal direction to one side of the building.

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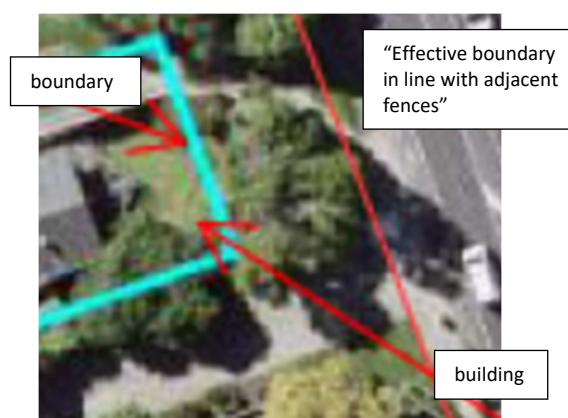
<sup>5</sup> The owners have advised these dimensions. The notice states the building is approximately 15m<sup>2</sup> in size, but there are no measurements recorded in the authority's job sheet or records relating to the notice that were submitted to the Ministry.

<sup>6</sup> These are referred to in the notice to fix as "beams".

- 2.4. The building is located between the existing dwelling on the property and the road. The owners state the building is “at the bottom of a steep bank that slopes up to the ... road and frontage”. This bank can be seen in Figure 1 to the left of the building.
- 2.5. Both parties have used Geographic Information System (GIS) mapping<sup>7</sup> to identify the position of the building in relation to the existing dwelling and the property boundary; the authority showing the highlighted rectangle in Figure 4, and the owners pointing to the location identified in Figure 5. The owners also identified what they referred to as the “effective boundary in line with adjacent fences” (referred to in their submissions as the “relevant boundary”).



**Figure 4: Authority's GIS map**



**Figure 5: Owners' GIS map**

- 2.6. On 24 July 2023, the authority visited the property in order to inspect the building. The authority's record of the site visit noted that some construction was not complete and included a number of photographs.

### Notice to fix

- 2.7. On 10 August 2023, the authority issued the notice to the owners.<sup>8</sup> The 'Particulars of Contravention or Non-compliance' section of the notice states:

Contrary to **Section 40 of the Building Act 2004 (the Act)** the following building work has been carried out without first obtaining building consent:

The construction of a single storey detached building approximately 15 square meters in size including the pile foundations which is founded into the ground

<sup>7</sup> A GIS (Geographic Information System) map is a digital representation of geographic data and used to visualise and analyse spatial relationships. Property boundaries in GIS maps are based on data sourced from Land Information New Zealand.

<sup>8</sup> On 27 July 2023, prior to the issue of the notice, the authority issued a notice to fix to a person who was not the owner of the property. That earlier notice came to the attention of the owners on 7 August 2023. On 10 August 2023, in a letter which accompanied the notice to fix that is the subject of this determination, the authority advised the owners to disregard the earlier notice as it had been “issued in error”.

closest to the eastern boundary of the property This building is closer to its own height away from the legal boundary.

Contrary to **Section 17 of the Building Act 2004 (the Act)**: All building work must comply with the building code to the extent required by this Act, whether or not a building consent is required in respect of that building work.

Incorrect fixings of the foundation piles and beams which appears to be inadequate to withstand the load (building) carried by the foundation as per the requirement under the performance of B1 of the Building Code.

**B1.3.1** Buildings, building elements and sitework shall have a low probability of rupturing, becoming unstable, losing equilibrium, or collapsing during construction or alteration and throughout their lives.

**To remedy the contravention or non-compliance you must:**

- (1) Pursue any legal option/s that may be available to you to make the structures fully compliant with the Building Act and Building Regulations (this may include applying for a Certificate of Acceptance); **or**
- (2) Remove the unauthorised building works.

**This notice must be complied with by:** Date: 09 November 2023

- 2.8. On the same day, the authority also issued the owners with an infringement notice for an offence against section 40. The owners paid the infringement fee (which the owners refer to as a “fine”) on 6 September 2023.
- 2.9. On 25 September 2023, the owners wrote to the authority responding to the notice, stating that “the wrong boundary has been measured. The nails to piles are being replaced with bolts”. The owners advised the authority that the notice had been complied with (the owners have subsequently referred to this as a “section 167 report” or “notice of compliance”).
- 2.10. On 29 October 2023, following further correspondence between the parties, the authority advised the owners that the compliance date for the notice would be extended “until a sufficient time has been given at the conclusion of my answering the [owners’] emails”. On 2 November 2023, the owners applied for this determination.

### 3. Submissions

- 3.1. The parties’ submissions in relation to whether the building work is exempt from the requirement to obtain building consent under clause 3A of Schedule 1 of the Act, and whether the work complies with clause B1.3.1, are set out below in Tables 1 and 2 respectively.

## The owners

### 3.2. The owners submit (in summary):

3.2.1. The notice is “technically defective” because the references to sections 17 and 40 are “not supported with particulars and appropriate remed[ies]”:

- The reference to section 40 is “inappropriate as there is no offence under [section] 40 because no building work is identified as being undertaken by a person at this time”. There is no “current or continuing offence”.
- The reference to section 17 “refers to [clause] B1.3.1 without any evidence of a contravention or specific reference to the performance criteria”. There is “no offence attributable to [section] 17 in the [Act]”.
- The remedies are “misstated”, and the authority’s “inappropriate demands are indicative of the lack of a breach”.

3.2.2. The “payment of the infringement fine has settled the [section] 40 offence and therefore the repetition in the [notice] is inappropriate given there is ‘nothing to fix’”.

3.2.3. The authority “has failed to properly consider [section] 167 and has not provide[d] adequate reasons for refusal of the owners notice of compliance with the [notice to fix]”.

## The authority

### 3.3. The authority submits:

3.3.1. The information contained in the notice is adequate. It “clearly identified the non-compliant building elements (being the fixings and beams). It also identifies the specific requirement in the Building Code (being Clause B1.3.1) which has not been complied with. This level explanation ... fairly tells the recipients of the non-compliance”.

3.3.2. Payment of the infringement fine does not address the breach of section 40. The “issue of an infringement notice and a [notice to fix] are distinct processes focused on distinct aspects. An infringement notice is a sanction for an unlawful activity; a [notice to fix] requires action to be taken to rectify, regularise, or remove the consequence of an illegal activity”.

3.3.3. Regarding the owners’ argument that the offence stops when the work ceases, “If a person has carried out unconsented building work, the fact that the building work then ceased at some point does not mean an offence has not been committed. The Act has still been contravened, and [section]



164(2) envisages the issuing of [notices to fix] requiring the remedying of contraventions of the Act or the Code”.

- 3.3.4. The authority did not initially treat the ‘section 167 report’ as “notification under [section 167] that the required work had been completed, as the majority of the letter related to technical arguments challenging the issue of the [notice to fix]”. However, the authority “subsequently attended the Property on 23 February 2024, but did not observe a change from nails to bolts”.

## 4. Discussion

- 4.1. Notices to fix are governed by sections 163 to 168. Section 164(1)(a) provides for an authority to issue a notice to fix if it considers, on reasonable grounds, that a specified person is contravening or failing to comply with the Act or its regulations”.<sup>9</sup> In this case, the notice alleges two contraventions or failures to comply, relating to sections 40 and 17. I will consider each of these in turn.

### Section 40

- 4.2. Section 40(1) provides that a person must not carry out any building work except in accordance with a building consent.
- 4.3. Section 41(1)(b) states that a building consent is not required if the building work falls within the exemptions under Schedule 1. Schedule 1 prescribes building work for which building consent is not required. Therefore, whether there has been a contravention of section 40 turns on whether the building work was exempt under Schedule 1.
- 4.4. The owners consider that the building is exempt from the requirement to obtain building consent under clause 3A of Schedule 1. I have assessed the building work against this exemption in Table 1, and I conclude the exemption does not apply.

**Table 1: Assessment of clause 3A exemption**

<p><b>3A Single storey detached buildings exceeding 10, but not exceeding 30, square metres in floor area and constructed of lightweight building products</b></p> <p>(1) Building work in connection with any detached building that—</p> <p>(a) is not more than 1 storey (being a floor level of up to 1 metre above the supporting ground and a height of up to 3.5 metres above the floor level); and</p> <p>(b) exceeds 10 square metres in floor area, but does not exceed 30 square metres; and</p> <p>(c) is built using lightweight building products for the walls and roof, and in accordance with Acceptable Solution B1/AS1 for timber or steel buildings; and</p>
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<sup>9</sup> Section 163 defines a ‘specified person’ to whom a notice can be issued, and this includes the owner of the building and the person carrying out the building work if the notice relates to the building work being carried out. Section 7 defines ‘Regulations’ as meaning “regulations in force under this Act”.

	<p>(d) does not contain sanitary facilities or facilities for the storage of potable water; and</p> <p>(e) does not include sleeping accommodation, unless the building is used in connection with a dwelling and does not contain any cooking facilities; and</p> <p>(f) if it includes sleeping accommodation, has smoke alarms installed.</p> <p>(2) However, subclause (1) does not include building work in connection with a building that is closer than the measure of its own height to any residential building or to any legal boundary.</p>
<p><b>Particular in notice</b></p>	<ul style="list-style-type: none"> <li>The construction of a single storey detached building approximately 15 square meters in size including the pile foundations which is founded into the ground closest to the eastern boundary of the property. This building is closer to its own height away from the legal boundary.</li> </ul>
<p><b>Owners' view</b></p>	<ul style="list-style-type: none"> <li>"We realise we have made a mistake (thinking our boundary was closer to the road than it is)".</li> <li>The building was "understood to be a detached [building] that was exempt from the requirement for a consent under clause 3A of Schedule 1. There is "doubt as to the correct boundary location as the owners acted in good faith believing the top of the bank was the boundary or at least the relevant boundary when considering this aspect of [clause] 3A".</li> <li>"the relevant boundary should be considered. This is defined in [Clause A2 Interpretation]. ... the relevant boundary should be the road in this case".</li> </ul>
<p><b>Authority's view</b></p>	<ul style="list-style-type: none"> <li>The criteria in subclause (1) "appear to be met".</li> <li>GIS records show the building "encroached over the legal boundary of the Property and into [authority]-owned road reserve".</li> <li>The work does not comply with subclause (2) "due to it being located over the legal boundary". Subclause (2) "refers expressly to the <u>legal</u> boundary", and "Relevant boundary has its own distinct meaning [in] the context of the Act". The definition of "boundary" in the Building Code is "consistent with the everyday meaning of the word, and it is not appropriate or necessary to read into the clause a different term that carries its own distinct meaning".</li> </ul>
<p><b>My conclusion</b></p>	<ul style="list-style-type: none"> <li>There does not appear to be any dispute between the parties as to the application of subclause (1), therefore I have not considered these requirements further.</li> <li>The effect of subclause (2) is that any building that is closer than the measure of its own height to any legal boundary is excluded from the exemption.</li> <li>The exemption does not use the term 'relevant boundary', which is a term only referred to in Clause C3 <i>Fire affecting areas beyond the fire source</i>. The 'relevant boundary' is unrelated to subclause (2).</li> <li>The exemption refers to the 'legal boundary', and I consider the appropriate definition of 'boundary' is in Clause A2 <i>Interpretation</i>, which states: <ul style="list-style-type: none"> <li><b>boundary</b> means any boundary that is shown on a survey plan that is approved by the Surveyor-General and deposited with the Registrar-General of Land, whether or not a new title has been issued.</li> </ul> </li> <li>I have considered the survey plan relating to the record of title for the property, as held by the Registrar-General of Land, which shows the legal boundary. The plan is very similar to the GIS map referenced by both the</li> </ul>



	<p>authority and the owners.</p> <ul style="list-style-type: none"> <li>• The approximate location of the building has been identified by the authority as being on the east boundary (see Figure 4 above). It is not clear from the information provided by the authority how it has ascertained the building’s location relative to the boundary, as its inspection records do not include any measurements such as the height of the building, its distance from the main house on the property, or its position relative to the east boundary. However, based on the approximate distance between the building and the house that is apparent in the photographs submitted, I accept that the building is closer than its height to the boundary.</li> <li>• As the building is closer than the measure of its own height to the legal boundary, this exemption does not apply.</li> </ul>
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4.5. Consequently, building work was undertaken without a building consent when a building consent was required, in contravention of section 40. Therefore, there were grounds to issue a notice to fix under section 164 on this basis.

***Other points raised by the owners in relation to section 40***

4.6. Regarding the owners’ view that there is no section 40 “current or continuing offence” because the building work was undertaken in the past, this argument was considered in Determination 2024/026.<sup>10</sup> In that case, it was concluded that there is no requirement for building work to be ongoing for there to be grounds to issue a notice to fix. In addition, there is no time limit on when a notice to fix can be issued. I agree with those findings and that they apply in this case.

4.7. The owners say that payment of the fine relating to the infringement notice “has settled the section 40 offence and therefore the repetition in the notice is inappropriate given there is ‘nothing to fix’”.

4.8. It is correct that the form for an infringement notice (Building (Infringement Offences, Fees, and Forms) Regulations 2007, Schedule 2) states that it is “a complete defence against proceedings for an [infringement] offence if the fee for the offence has been paid” to the authority within the specified period. However, an infringement notice is a separate enforcement procedure to a notice to fix, and payment of an infringement fee (fine) is not a defence to a notice to fix.

4.9. This difference has previously been considered in *Christchurch City Council v Smith Crane & Construction Ltd*, where the court stated:<sup>11</sup>

[35] There is nothing in the Act to preclude a building consent authority laying a charge under section 40 and, either at the same time or at a later date, issuing a

<sup>10</sup> Determination 2024/026 *The authority’s decision to issue a notice to fix in relation to a retaining wall* (27 May 2024), at [4.7]-[4.9].

<sup>11</sup> *Christchurch City Council v Smith Crane & Construction Ltd* DC Christchurch CRI-2009-009-12480, 19 February 2010.

notice to fix. Non-compliance with the notice may result in a second and more serious charge (in terms of penalty).

## Section 17

4.10. Section 17 states that all building work needs to comply with the Building Code to the extent required by the Act, whether or not a building consent was required.

4.11. The owners say that “there is no offence attributable to section 17” in the Act.<sup>12</sup> The owners are correct that it is not an offence to breach section 17, in the sense that a criminal prosecution cannot be taken. However, because section 17 imposes a positive obligation on those carrying out building work to ensure the work complies with the Building Code (to the extent required by the Act) it follows that if the work does not comply then section 17 has been contravened.

4.12. I have assessed the compliance of the building work specified in the notice to fix in Table 2, and I conclude it does not comply with clause B1.3.1.

**Table 2: Assessment of compliance with clause B1.3.1**

<b>B1.3.1 Buildings, building elements and sitework</b> shall have a low probability of rupturing, becoming unstable, losing equilibrium, or collapsing during <i>construction or alteration</i> and throughout their lives	
<b>Particular in the notice</b>	Incorrect fixings of the foundation piles and beams which appears to be inadequate to withstand the load (building) carried by the foundation as per the requirement under the performance of B1 of the Building Code. [quotes B1.3.1 as above]
<b>Owners' view</b>	<ul style="list-style-type: none"> <li>• “The [building’s] structural behaviour that only needs support at 4 corners. The other timber is offering some lateral support to posts and bracing but the structure does not rely on this for stability, equilibrium or collapse”.</li> <li>• “The [building] is integral and structurally independent and only needs support with posts at the corners. ...the cross members and bracing are simply adding greater lateral support. Bolts are being provided to complement the nail fixing which are not primary structural connections”.</li> <li>• The building abuts a deck that “also contributes to the [building’s] structural stability”.</li> </ul>
<b>Authority’s view</b>	<ul style="list-style-type: none"> <li>• “the timber beams did not appear to be of a structural grade and were nailed to the piles”</li> <li>• “the fixings used to connect the beams to the piles appears to be randomly nailed. No nail plates, bolts or staples were observed ...”</li> <li>• “This was not considered to be an acceptable solution as contained in</li> </ul>

<sup>12</sup> It is not a contravention under Crimes Act 1961 section 107– this section provides that it is an offence to contravene any enactment, except in certain circumstances.

	[Acceptable Solution] B1/AS1 <sup>[13]</sup> , [New Zealand Standard] NZS 3604:2011 <sup>[14]</sup> . Depending on the calculated loads, the pile foundation would, in the [authority's] view, require bolts (at a minimum)".
<b>My conclusion</b>	<ul style="list-style-type: none"> <li>• In considering the performance requirement in clause B1.3.1, clause B1.3.3 is relevant. That clause states that "Account shall be taken of all physical conditions likely to affect the stability of buildings, building elements and sitework, including ..." and then lists 18 conditions or factors, including self-weight, earthquake and wind.</li> <li>• The steel framed structure is light weight, and the gravity load will be predominantly transferred to the corner piles. The remaining piles are for lateral loads (such as wind) and form part of the bracing of the foundation system. The connection between the pile and bearer (or 'beams') is to prevent the top of the pile moving laterally.</li> <li>• I agree with the authority that the fixings connecting the piles and beams are inadequate given the physical conditions likely that create lateral loads.</li> <li>• Consequently, I consider that the building will not have a low probability of rupturing, becoming unstable, losing equilibrium, or collapsing throughout its life. I am therefore of the view that the building work does not comply with clause B1.3.1.</li> <li>• I note that the authority re-inspected the building work on 23 February 2024 and advised "the nails have not been replaced by bolts", so the contravention had not been remedied by then.</li> </ul>

4.13. As the building work does not comply with the Building Code, there were grounds to issue a notice to fix under section 164 for a contravention of section 17.

### Form and content of the notice

4.14. Section 165 sets out the requirements for the form and content of a notice to fix. The prescribed form<sup>15</sup> provides a space to insert the "particulars of contravention or non-compliance". The courts and previous determinations have discussed the requirement that the recipient of a notice to fix be "fairly and fully informed" by the particulars in a notice, so they can address the identified issues.<sup>16</sup>

#### ***Particulars of contravention***

4.15. Where an authority is of the view a particular exemption in Schedule 1 does not apply, in setting out the basis for that view it is appropriate to refer to the words or wording in the exemption. In doing so the particulars of contravention are aligned

<sup>13</sup> Acceptable Solution B1/AS1 (first edition, amendment 20, effective 29 November 2021 to 1 December 2023).

<sup>14</sup> New Zealand Standard NZS 3604:2011 *Timber-framed buildings*.

<sup>15</sup> Form 13 of the Building (Forms) Regulations 2004.

<sup>16</sup> See *Andrew Housing Ltd v Southland District Council* [1996] 1 NZLR 589 (which related to a 'notice to rectify', the equivalent of a notice to fix in the predecessor to the Act, the Building Act 1991); *Marlborough District Council v Bilsborough* [2020] NZDC 9962 at [106]-[107]; and Determination 2024/029 *An authority's decisions to issue a series of notices to fix* (27 May 2024) at [4.2]-[4.3].

to the wording of the relevant exemption. I consider the owners would have understood from the description of the contravention in the notice to fix why the authority was of the view the building work was not exempt under clause 3A(2).

- 4.16. The authority identified the section 17 contravention as being in relation to clause B1.3.1 of the Building Code, and identified the building work as the fixings of foundation piles and beams. However, the notice states the fixings “appears to be inadequate”. This indicates a lack of certainty as to non-compliance.
- 4.17. Specific evidence that the Act or regulations are being contravened is required before a notice to fix can be issued.<sup>17</sup> It is not sufficient that the authority thinks there may be a contravention, or that it appears there may be. It is not appropriate for an authority to invoke enforcement powers, which carry significant financial consequences for recipients, unless it is of the view, based on the evidence obtained, that there is in fact a contravention or non-compliance.
- 4.18. For this reason, I am of the view the section 17 particulars did not adequately specify the “particulars of contravention or non-compliance” as required by the prescribed form. However, as I have subsequently concluded that the building work does not comply with clause B1.3.1 I can confirm there were grounds for issuing the notice to fix for a contravention of section 17.

### ***Remedies***

- 4.19. When read in conjunction with the particulars of the contraventions, I consider the remedies specified in the notice are appropriate. It is for the building owner to consider the options available to bring the building work into compliance with the Act and the Building Code.
- 4.20. I also note the owners say the remedies in the notice required the “obtaining” of a certificate of acceptance. That is not correct; the notice stated, “this may include applying for a certificate of acceptance”, which is an available remedy under section 165(1)(c) for building work carried out without building consent.<sup>18</sup>

### ***Date for compliance***

- 4.21. The authority advises that by email on 29 October 2023, the notice compliance date was extended to provide time for the authority to respond to the various matters raised in the owners’ correspondence. However, it appears no new date was specified, and the owners applied for the determination shortly after the extension,

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<sup>17</sup> As discussed in Determination 2019/036 *Regarding a notice to fix and whether a structure on trailers is a vehicle or building* (25 July 2019) at [6.3.12]-[6.3.13].

<sup>18</sup> The owners also say, “Obtaining a [certificate of acceptance] and removal of the unauthorised works (if so) cannot be required and is contrary to the [authority’s] own AC1805 guidance document”. This practice note, AC1805 *How unauthorised building work is assessed* (v9, March 2020), is guidance published by the authority and is outside the scope of this determination.

which suspended the authority's powers in relation to the notice (under section 183).

- 4.22. Section 165(1)(b) requires a notice "must state a reasonable timeframe within which it must be complied with". It follows that if a compliance date is extended, the time by which it is extended, or the new compliance date, must be clearly stated. This did not occur in this case.

## Section 167

- 4.23. The owners consider that section 167 applies because they provided a 'section 167 report' to the authority that purported to notify the authority of compliance with the notice. Previous determinations have discussed the process in section 167 regarding the inspection of building work that is required to be completed under a notice to fix.<sup>19</sup>
- 4.24. I do not consider that the owners' 'notice of compliance' was a notification under section 167 that building work had been completed, rather it was disputing the grounds on which the notice had been issued. In any event, as at the date of the 'section 167 report' (25 September 2023), it appears the owners had not completed any building work that was required by the notice. The owners stated in the report the "nails to piles are being replaced with bolts"; they did not state that this had been done.<sup>20</sup> Therefore, section 167 does not apply, as the authority had not been notified that relevant building work had been completed.

## 5. Conclusion

- 5.1. I have found that the notice was deficient in terms of the wording of the section 17 contravention but there were grounds for the issuing of a notice to fix in relation to contraventions of both sections 40 and 17, because there was building work carried out without building consent when one was required and because the fixings of the bearers to the piles do not comply with clause B1.3.1.
- 5.2. However, in extending the date for compliance with the notice to fix no new date was specified, and I consider the notice to fix no longer in effect after 9 November 2023; therefore, I have elected not to reverse the authority's decision to issue the notice to fix.

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<sup>19</sup> See Determination 2024/016 *The issue of a notice to fix for building work associated with a two storey building with sanitary fixtures* (11 April 2024), at [4.34]-[4.36]; and Determination 2024/026 at [4.23]-[4.25].

<sup>20</sup> I also note the authority has advised it carried out a further inspection on 23 February 2024, at which it observed "the nails have not been replaced by bolts".

## **6. Decision**

- 6.1. In accordance with section 188 of the Building Act 2004, I determine there were grounds for issuing the notice in relation to the contraventions specified in the notice.

Signed for and on behalf of the Chief Executive of the Ministry of Business, Innovation and Employment on 24 September 2024.

**Peta Hird**

**Lead Determinations Specialist**