

Determination 2005/167

Fire safety consideration in the addition of a covered car parking area to a house at 3 Streatlam Crescent, Strathmore, Wellington

1 The matter to be determined

- 1.1 This is a determination under Part 3 Subpart 1 of the Building Act 2004 (“the Act”) 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 applicant is the Wellington City Council (“the territorial authority”). The other parties are L and R Cook (“the owners”) and J M and M J Smith (“the neighbours”).
- 1.3 The application arises from a dispute about whether an addition to a house complies with the provisions of the building code for the protection of the neighbours’ property.
- 1.4 I take the view that the matters to be determined are:
 - (a) Whether the building work concerned complies with clause C3 Spread of fire of the building code (the First Schedule to the Building Regulations 1992), and
 - (b) Whether I should confirm, reverse, or modify the territorial authority’s decision, under section 49 of the Act to grant a building consent for the work.
- 1.5 In making my decision I have not considered any other aspects of the Act or of the building code.

2 The Building Work

- 2.1 The building work consisted of erecting a roof over the space between the owners’ house and a concrete block external wall of the neighbours’ house, with the covered car parking space (“the garage”) so created closed in by a garage door at one end but open at the other end. The roof is supported on timber posts and is not attached to the block wall. I have not been informed as to the area that has been enclosed. The block

wall extends beyond the doors at the front of the garage, but does not extend beyond its other end.

- 2.2 The garage was erected under a building consent that also covered other building work.
- 2.3 The neighbours complained to the territorial authority to the effect that the building work did not comply with the building code and did not comply with the district plan under the Resource Management Act 1991.
- 2.4 The territorial authority applied for this determination as to whether the building work complies with the building code. I have, of course, no jurisdiction to decide as to whether it complies with the district plan. (Because the matter to be determined relates entirely to the new building work, not to the existing building, I do not need to consider section 112 of the Act, which relates to mandatory upgrading of an existing building when it is altered.)

3 The legislation and the Acceptable Solutions

- 3.1 The relevant provisions of the Act are:

Section 17:

“All building work must comply with the building code to the extent required by this Act . . .”

Section 67:

- “(1) A building consent authority that is a territorial authority may grant an application for a building consent subject to a waiver or modification of the building code.
- “(2) A waiver or modification of the building code under subsection (1) may be subject to any conditions that the territorial authority considers appropriate. . . .”

Section 176:

“In sections 177 to 190, party, in relation to a determination, means any or all of the following persons affected by the determination:

- “(a) the territorial authority . . .
- “(e) if the matter for determination relates to—
- (i) a provision in the building code that has the purpose of protecting other property, the owner of the other property”

Section 177:

“A party may apply to the chief executive for a determination in relation to 1 or more of the following matters:

- “(a) whether particular matters comply with the building code:

- “(b) a building consent authority's decision to—
 - “(i) issue, or refuse to issue, a building consent . . .”

Section 188:

- “(1) A determination by the chief executive must—
 - “(a) confirm, reverse, or modify the decision or exercise of a power to which it relates; or
 - “(b) determine the matter to which it relates.
- “(3) A determination may incorporate—
 - “(a) waivers or modifications of the building code; and
 - “(b) conditions that a territorial authority or regional authority, as the case may be, is able to grant or impose.”

3.2 The relevant provisions of the building code are:

“**C3.3.5** External walls and roofs shall have resistance to the spread of fire, appropriate to the fire load within the building and to the proximity of other household units, other residential units, and other property.”

3.3 In this case, the relevant provisions of the acceptable solution C/AS1 are:

- (a) For the roof: Paragraph 7.9, which requires either a parapet on the external wall or fire rating that part of the roof that is within 5 m horizontally of the boundary.
- (b) For the external wall: Paragraph 7.10.6, which, in this case requires a FRR of 30/30/30 for a wall less than 1 m from the boundary.

3.4 There are special provisions for open sided buildings such as car ports and the like, but they have no application to this case because the roof of the garage is adjacent to the boundary.

4 The submissions

4.1 Written submissions

4.1.1 The territorial authority submitted a report that it had commissioned from a firm of consulting engineers (“the territorial authority’s consultants”) to the effect that the building work did not comply with the building code but:

“the risk to [the neighbours’ property] is not significantly more effected [*sic*] than if [the building work] had been constructed to comply with the code except that a fire in the carport may result in some damage to the block wall (i.e. other property)

4.1.2 The neighbours submitted a report that they had commissioned from another firm of consulting engineers (“the neighbours’ consultants”) to the effect that the building work did not comply with clause C3 of the building code because there was “no provision to prevent the spread of fire to adjacent property”.

- 4.1.3 I prepared a preliminary draft determination and sent it to the parties with a note to the effect that if all parties accepted it (subject to non-controversial corrections) then it would be issued as a final determination, but otherwise there would be a formal hearing of the matter.
- 4.1.4 The territorial authority accepted the draft subject to non-contentious amendments relating to the description of the building work concerned and to the fact that it was only a small part of the work covered by the building consent. I amended the draft accordingly.
- 4.1.5 The neighbours accepted the draft, and also provided photographs of the building work.
- 4.1.6 The owners did not accept the draft and requested a formal hearing.

4.2 The hearing

- 4.2.1 I sent the parties the amended draft before the hearing, which was held on 16 December 2005. The hearing included a site visit accompanied by the parties.
- 4.2.2 At the hearing, the neighbours emphasised their concern that the garage and its contents, being against one wall of their bedroom, threatened their safety.
- 4.2.3 At the site visit, I observed that the block wall did not extend beyond the end of the bedroom.

5 Discussion

- 5.1 I note that the Act defines “other property” in terms of legal boundaries. I therefore consider that the neighbour’s property is “other property” in relation to the building work. Accordingly, I agree that the garage does not comply with the building code in that it does not include any external wall along the boundary that would resist the spread of fire to the neighbours’ property as required by clause C3.3.5 of the code. Similarly, the roof of the garage is not fire rated within 5 m horizontally of the boundary. I therefore conclude that the building work concerned does not comply with the building code.
- 5.2 I consider that the neighbours are entitled to have their property, including the block wall, protected against the spread of fire from the owners’ property.
- 5.3 However, I also consider that the neighbours need not fear for their safety. If a fire were to occur in the garage, the neighbours’ own block wall would protect their bedroom at least.

6 What is to be done?

- 6.1 There are several ways in which the garage could be brought to compliance with the Building Code. The simplest way would be if the owners and their neighbours reached an agreement to the effect that:

- (a) The neighbours give the owners the right, in the form of a duly registered easement, to attach the roof to the block wall 450mm below the top or parapet of the existing wall.
- (b) As part of that easement, the owners agree that the neighbours or their successors in title may at any time, on reasonable notice, remove the block wall, whereupon the owners will alter the garage so that it complies with the Building Code.
- (c) The owners would either:
 - (i) Extend the block wall for a distance of at least 0.7 m beyond the back of the garage (which would have the added advantage of protecting the owners against a fire in the neighbours' bedroom), or
 - (ii) Install a return wall with a FRR of 30/30/30 for at least 0.2 m along the back of the garage.

If such an agreement were to be finalised, then I consider that it would be reasonable for the territorial authority, under section 67 to waive the requirements of the Building Code relating to the FRRs required for the roof and wall of the garage.

6.2 However, that is only a suggestion and the final decision as to how the garage is to be brought to compliance with the building code is not for me to make. That is a matter for the owner to propose and for the territorial authority to accept or reject, with any of the parties entitled to submit doubts or disputes to me for another determination.

7 Decision

7.1 In accordance with section 188(1) of the Act, I hereby:

- (a) Determine that the building work concerned does not comply with clause C3 of the building code, and
- (b) Modify the territorial authority's decision to grant the building consent to the effect that the consent is to be amended to include whatever work is to be done in order to bring the garage to compliance with the Building Code subject to any waivers or modifications that the territorial authority may choose to grant.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 20 December 2005.

John Gardiner
Determinations Manager