

## ***Determination 2005/99***

### ***Alterations to a house***

#### **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 house comply with the building code in various respects, and whether a code compliance certificate should have been issued in respect of those alterations.

#### **2 THE PARTIES**

- 2.1 The applicant was the owner of the house. The other parties were a building certifier engaged by the owner and the territorial authority. The building certifier went into receivership during the course of the alterations. I considered that the builder was an “appropriate person” in terms of section 19(1)(b) of the Act and accordingly required the applicant to provide the builder with the application and accompanying documents, and gave the builder an opportunity to make submissions.

#### **3 THE ALTERATIONS AND THE SEQUENCE OF EVENTS**

- 3.1 The owner engaged an architect to prepare plans and specifications for alterations to the house, which was to be extended by partially in-filling a basement and building over the top. The territorial authority issued a building consent (which I have not seen) on the basis of a building certificate from the building certifier (which I have also not seen). The builder commenced work in early 2001. A need to retain certain fill was discovered, and additional crib walling was constructed for that purpose. I do not know if the building consent was amended to include that work.

- 3.2 Various inspections were made by the building certifier. One of the main stages of the alterations was postponed, and in September 2002 the building certifier issued an interim code compliance certificate for the work completed to date.
- 3.3 In December 2003, the owner became aware of certain non-compliance with the plans and specifications. The owner engaged a consulting engineer (“the first consultant”) to investigate by visual inspection only. The owner’s consultant reported that certain foundations did not comply with the plans and specifications and raised doubts about the structural integrity of at least part of the house. The report recommended that more detailed investigations should be made so that the necessary remedial work could be designed.
- 3.4 The building certifier, having received the report by the first consultant, engaged another consulting engineer (“the second consultant”), again to investigate by visual inspection only. The second consultant came to essentially the same conclusions as had the first consultant.
- 3.5 By this stage, the building certifier had gone into receivership, and the builder advised the owner that it would engage the second consultant to prepare a scope of work for correcting deficiencies and would do that work.
- 3.6 I have not seen the scope of work being prepared for the builder.
- 3.7 I have received submissions from the owner and the builder which did not dispute the reports from the first and second consultants but mainly related to contractual issues. I have not received any submissions from the building certifier, which is in receivership with its files transferred to the Department of Building and Housing. I have not received any submissions from the territorial authority, which has had no involvement with the project since it issued the building consent.
- 3.8 As to particular defects:
- (a) The first and second consultants’ reports state, and I accept, that the work does not comply with the building code because:
- Certain foundations are inadequate for various reasons, including that some have not been carried down to the required depths;
  - The support to the existing chimney has been compromised by either excessive excavation, or a failure to provide backfill, or both;
  - The stairs are inadequately connected to the deck; and
  - Untreated timber has been used in ground contact.
- (b) In addition, the owner has identified various defects, some of which are disputed by the builder. Defects which have not, or not yet, been confirmed, include:
- There is unsuitable fill material beneath the basement floor slab and some foundations;

- A roof is leaking because of inadequate sealing against wind and water penetration;
- Waterproofing and its protection, drainage, and backfilling has been omitted from certain walls;
- Certain flashings are ineffective; and
- Certain crib walling is defective.

3.9 In the application for determination, the owner requested a formal hearing. Accordingly, I sent a draft determination to the owner, the territorial authority, and the builder asking them to advise whether they accepted the draft, subject to non-controversial amendments, or required a formal hearing.

3.10 Each of the parties and the builder accepted the draft subject to certain non-controversial corrections and amendments, which have been made.

#### **4 DISCUSSION**

4.1 There appears to be no dispute as to the fact that the alterations do not comply with the plans and specifications.

4.2 The owner and the builder must consider their contractual relationship in respect of the plans and specifications. I am not concerned with contractual matters but only with whether the completed building work complies with the building code.

4.3 On the information before me, I must conclude that the completed building work does not comply with the building code.

4.4 The building certifier, having ceased to operate, is unable to withdraw the interim code compliance certificate.

4.5 I therefore conclude that I must reverse the building certifier's decision to issue that certificate.

#### **5 WHAT IS TO BE DONE?**

5.1 With the interim code compliance certificate cancelled and the building certifier unable to play any further part in the project, regulatory control passes to the territorial authority, which is required by section 57 of the Act to "make such inspections and issue such notices to rectify as it considers necessary".

5.2 How the house is to be brought to compliance with the building code is not for me to decide. 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.

5.3 I offer no opinion as to whatever legal obligations apply between the owner and the builder.

**6 DECISION**

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

- (a) Determine that the building work concerned does not comply with the building code; and
- (b) Reverse the building certifier's decision to issue the interim code compliance certificate.

Signed for and on behalf of the Chief Executive of the Department of Building and Housing on 30 June 2005.

John Gardiner

**Determinations Manager**