

Construction - Germany

Federal Court Sets Out Principles of Sound Insulation in Residential Construction

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In the past two years the Federal Court of Justice has ruled on several cases regarding the problem of what standard of sound insulation is required in the construction of semi-detached houses and owner-occupied apartments. The issue arose following significant regulatory changes. This update discusses the most important case law principles which have emerged from the court's rulings.

Background

The debate over the level of sound insulation that is contractually required in the construction of semi-detached houses and owner-occupied apartments arose due to the lack of relevant binding requirements under civil law in this area. The Civil Code, the Residential Ownership Act and Part B of the Standard Building Contract Terms deal only with impairment and disadvantages, make provisions for general rights in the event of defects and establish 'accepted engineering standards'.

The federal building regulations stipulate requirements under public law for the level of sound insulation in buildings. However, adherence to these requirements is mandatory in the private sector only if they have been set out in the building contract. In spite of this, the provisions of public law are limited to the requirements and interventions which are necessary to preserve public order and safety, and thus under these regulations only a minimum standard must be provided for residential accommodation. In many cases, reference is made to the German Standards Institute's technical provision DIN 4109, Supplement 1.⁽¹⁾ However, Supplement 2 is not referred to. But even the standards DIN 4109 and the Association of German Engineers guideline VDI Standard 4100 are not binding regulations under civil law, since they merely constitute private technical standards of the character of recommendations.⁽²⁾ The same applies to the recommendations of the Acoustics Association.

This situation gives rise to the question of what sound insulation (ie, what standard of construction) is required in the construction of semi-detached houses and owner-occupied apartments. Two recent Federal Court of Justice judgments represent major landmarks in the answer to this question.⁽³⁾

Case Law Principles

The Federal Court of Justice rulings established certain principles which are likely to be applied equally to semi-detached houses and owner-occupied apartments in the future.

The level of sound insulation which is required for the construction of semi-detached houses and owner-occupied apartments is primarily determined by the interpretation of the contract. The definitive factors to be considered are (i) the objective impression given to the contract's recipient, and (ii) an interpretation that balances the respective interests. In this interpretation, all concepts expressed in the contract about the quality of the sound insulation are decisive. This overall balance takes into consideration not only the contractual text itself (ie, the purchase contract), but also:

- the explanatory and defining statements made by the parties to the contract (especially the building specifications, the developer's exposé or other claims made orally or in writing);
- the other circumstances associated with the contract;
- the specific situation of the building and its environment;
- the quality standards;

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- the architectural aspirations; and
- the designated purpose of the building.

These circumstances will often give rise to sound insulation requirements which are significantly higher than the minimum requirements and therefore justify the assumption of a higher standard of sound insulation.

If reference is made to DIN 4109 in the contract, this does not lead to the conclusion that only the minimum standard in DIN 4109 has been agreed upon and is required. The reference to DIN 4109 is taken to mean merely that sound insulation complying with this standard is promised insofar as DIN 4109 is in keeping with accepted engineering standards. However, the sound insulation requirements of DIN 4109 constitute only the accepted engineering standard insofar as they apply to protection from unreasonable noise disturbance.

The purchaser of a normal owner-occupied apartment can always expect that the vendor of a newly built apartment will implement the sound insulation in accordance with the accepted engineering standard at the time of acceptance (ie, the normal standard of quality and comfort).

If a normal standard of quality and comfort is required, the necessary sound reduction index value must be based on this agreement. To guarantee the normal standard of quality and comfort (ie, a situation in which the residents will "generally have peace and quiet"), the sound reduction index values according to DIN 4109 are cannot be applied automatically as the accepted engineering standards, since they merely define the minimum requirements to prevent unreasonable noise disturbance, rather than provide general peace and quiet.

An indication of what constitutes the normal standard of quality and comfort can be found in sound protection Levels II and III as defined in VDI Standard 4100 (1994) and in Supplement 2 to DIN 4109. According to Section 3(1)(2) of VDI Standard 4100, sound protection Level II should apply to dwellings which comply with normal comfort standards in the quality of their general fittings and finishings.

Fundamentally, the best possible sound protection quality that can be achieved with the building materials used without any unreasonable extra expense is always required in the construction of buildings. Therefore, if building materials are used which have special sound insulation qualities, they must be installed in keeping with their purpose in such a way that they achieve the best possible sound insulation.

If the vendor wishes to deviate contractually from the sound insulation required by the normal standard of quality and comfort, it must clearly point this out to the purchaser. Mere reference to "sound insulation according to DIN 4109" in the specifications is insufficient. Rather, the vendor must specifically inform the purchaser (i) that the values no longer comply with the accepted engineering standards, and (ii) of the consequences of this fact for the use and purchase of the property.

Comment

If a specific sound reduction index value is agreed, this is deemed to constitute an assured characteristic in accordance with Section 633(2), Sentence 1 of the Civil Code. If no specific sound reduction index values have been agreed, the product of the work must be suitable for the use that is assumed under the contract, or that is customary (commercial or residential). In the latter case, the building must have 'normal characteristics', as per Section 633(2), Sentence 2 of the Civil Code. Despite any special contractual agreements and without considering the standard building contract terms, the developer is obliged to deliver a building which complies with accepted engineering standards, since these standards are always deemed to have been agreed under Section 633(2), Sentence 2(2) of the code (ie, the building must be suitable for its use and the standards which have been applied are those which are normal for buildings of the same type).

This requirement to comply with the accepted engineering standards does not in itself define a specific level of sound insulation. However, on the basis of the above principles, it must be assumed that sound protection Level II in VDI Standard 4100 will be used as a starting point for defining the accepted engineering standards – especially in light of technological progress and the greater demands of users regarding sound insulation – even if no details are given regarding the quality of sound insulation.

In view of the recent Federal Court of Justice case law rulings, in future developers must give careful consideration to the level of sound insulation that they wish to offer. As a result, their advertising materials and contractual documents, especially exposés, must be made consistent. Ultimately, merely claiming to use sound-insulating materials, high-quality appointments and fittings, and quiet lifts could be the decisive factor which means that the developer is required to comply not only with the sound reduction index values of sound protection Level II in VDI Standard 4100, but also with

the stricter sound reduction index values defined in sound protection Level III in VDI Standard 4100.

Failure to meet sound insulation requirements could lead to expensive and complicated remediation work in the context of subsequent fulfilment. Developers risk facing drastic price reductions or compensation claims, or even cancelled purchase contracts, if due consideration is not given to the issues relating to sound insulation.

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Endnotes

(1) The German Standards Institute works together with representatives of interested parties to develop consensual standards as a service for business, the state and society.

(2) The Association of German Engineers promotes the inter-disciplinary cooperation of honorary experts from science, industry and the public administration to develop technically competent and generally valid working results (VDI standards).

(3) Decision VII ZR 45/06, June 14 2007 and Decision VII ZR 54/07, June 4 2009.

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