



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	20 - 17
Applicant:	Darb-Law Pty Ltd
Assessment Manager:	Redland City Council (Council)
Concurrence Agency: (if applicable)	N/A
Site Address:	3 Canaipa Point Drive Russell Island and described as Lot 1 on RP129147 – the subject site

Appeal

Appeal under section 533 of the *Sustainable Planning Act 2009* (SPA) against an Enforcement Notice given by the Council under the *Building Act 1975* (BA) in relation to a detached dwelling house said to be a danger to public health and safety, not fit for habitation and dangerous.

Date and time of hearing:	11am 13 July 2017
Place of hearing:	The subject site
Committee:	Danyelle Kelson – Chair Chris Trewin - Member
Present:	Applicant Andrew Lawson – Director of the Applicant Wendy Dorrington, Dorrington Real Estate, Observer Terry Wilson, Observer Redland City Council Damien Jolly Graham Simpson

Decision:

On 14 July 2017, after the date of hearing and in accordance with representations it had made at the hearing, Council withdrew the Enforcement Notice the subject of this appeal on the basis that the items listed in it were not, as had been alleged at its date of issue, of a dangerous nature.

As the fundamental issue to be determined by the Building and Development Dispute Resolution Committee (Committee), has been conceded by the Council and the Enforcement Notice has been withdrawn, there is no utility in the Committee making any orders about the matter.

The appeal is accordingly **dismissed**.

Background

The subject site is a generally flat regularly shaped allotment improved with a two-storey detached house and car port. The subject site is situated on a narrow point of Russell Island and is in a relatively exposed position with significant separation from surrounding and adjacent premises.

The house is of basic timber framed construction clad with weatherboards and a Colourbond roof. Internally, the fixtures and fittings are of basic but functional quality. Internal walls are lined with plasterboard. The flooring is chipboard and is overlaid in the wet areas (2 bathrooms) and kitchen by tiles. The living and bedroom areas and a storeroom over the car port are carpeted.

The house is approximately 15 years of age. A timber front deck, extension of the rear deck and storage area above the carport are of more recent construction, with final inspection certificates Forms 16 and 21 dated 13 June and 19 July 2017 respectively issued by Gary Holley, a Private Certifier.

The house was in average condition for a residence of its age, the type of construction and its exposed position. There is evidence of wear and tear and some defects and damage of a minor and maintenance nature.

The premises were vacant at the date of hearing, but had been tenanted.

On 29 March 2017, Council had received a complaint from the then tenant of the premises that the house on the subject site was dangerous.

Council carried out inspections of the premises on 26 April and 3 May 2017.

On 5 May 2017 the Council issued Enforcement Notice ENF007410 (Enforcement Notice) without first issuing a Show Cause Notice because the matter was considered by Council to be "of a dangerous nature".

Paragraph 5 of the Enforcement Notice provided that the Council's inspections had revealed:

- i. Dwelling in dilapidated condition; and
- ii. Black mould evident in dwelling and under dwelling; and
- iii. Floor boards of dwelling are rotten and unstable; and
- iv. Damaged floorboards in the ground floor; and
- v. Unsealed window frames abutting the rear deck that allow water to enter the dwelling; and
- vi. Bracing holding up joists to the storage area above the carport do not appear to have been fixed correctly; and
- vii. Floorboards are unstable from water damaged (sic) and do not appear to meet the waterproofing standard required for a dwelling house; and
- viii. Water is escaping from upstairs bathroom through the ceiling into the kitchen area; and
- ix. Neither entry doors to the property fully close or are lockable; and
- x. The pergola/shade roof does not appear to be attached to the dwelling house according to standards; and
- xi. The storage area above the carport is being as a habitable room, ie a bedroom by the tenants.

Paragraph 6 of the Enforcement Notice noted that a Show Cause Notice had not been given because, "*the works are a danger to public health and safety and the dwelling is not fit for habitation or dangerous*".

The Enforcement Notice required the Applicant to:

- a) **IMMEDIATELY but no later than 4.00pm 10 May 2017** cease occupancy and/or use of the dwelling house;

AND

- b) **BY 4.00pm on 2 June 2017** carry out necessary work on the dwelling, including but not limited to: repairing all internal floors and walls, doors, windows, structural works and any other structural defects to make the dwelling fit for use and/or occupation, as well as provide a report from a duly qualified person (ie RPEQ engineer, Licenced Builder) to confirm that the dwelling is structurally sound.

The Applicant received the Enforcement Notice on or about 15 May 2017 and lodged this appeal against it with the Committee's Registrar on 19 May 2017.

At the hearing of this appeal on 13 July 2017, following an inspection of the premises, the Council conceded that the house was not dangerous as had been alleged in the Enforcement Notice and that such defects and damage as were evident and had been identified by W A Trewern (a Consulting Structural Engineer engaged by the Applicant) in his report dated 5 July 2017 required repair but were of a general maintenance nature only.

By letter dated 14 July 2017 and provided to the Registry on that date, the Council notified the Applicant that it had withdrawn the Enforcement Notice.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice', grounds for appeal, documents and correspondence accompanying the appeal lodged with the Committees Registrar on 19 May 2017
2. ABSee Pre-Purchase Standard Property Report prepared by Charles Ferguson on 22 May 2017
3. Applicant's Reply to Enforcement Notice (including photographs, inspection certificates and evidence of historical maintenance and repairs to the property) submitted by the Applicant to the Committees Registrar on or about 19 June 2017
4. Photographs from Council's Compliance taken 26 April 2017
5. Council's Compliance Investigation Log commenced 29 March 2017
6. Report of W.A Trewern, Consulting Structural Engineer dated 5 July 2017 (the Trewern Report)
7. The submissions and representations made by the parties at the hearing
8. Correspondence from Redland City Council to the Applicant dated 14 July 2017
9. The *Sustainable Planning Act 2009* (SPA)
10. The *Building Act 1975* (BA)

Findings of Fact

The Committee makes the following findings of fact:

The subject site and its improvements

1. The subject site is located at 3 Canaipa Point Drive, Russell Island and more particularly described at Lot 1 on RP129147.
2. The subject site is improved with a two-storey detached house and car port on a generally flat, otherwise unimproved regularly shaped allotment. It is noted that the property is in a relatively exposed position with significant separation from adjacent residences.
3. The house is of basic timber framed construction clad with weatherboards and Colourbond roof. It has been estimated at approximately 15 years of age.

4. A timber front deck, extension of the rear deck and storage area above the carport are of more recent construction, with final inspection certificates Forms 16 and 21 dated 13 June and 19 July 2017 respectively issued by Gary Holley, a Private Certifier.
5. Internally, the fixtures and fittings are of basic but functional quality. Internal walls are lined with plasterboard. The flooring is chipboard and is overlaid in the wet areas (2 bathrooms) and kitchen by tiles. The living and bedroom areas and a storeroom over the car port are carpeted.
6. The house is in an average state of repair given its age, the type of construction and its exposed position. There is evidence of wear and tear and some defects and damage (including some water damage to flooring in the wet areas and exposed evidence of a pest infestation and damage within the store room), however the house is habitable, is structurally sound and nothing within it appears to be a danger to occupants or to the wider public.
7. Reports tendered by the Applicant (the Trewern Report and ABSee Pre-purchase Standard Property Report prepared by Charles Ferguson dated 22 May 2017) detail various items requiring repair and attention. These items are of a general maintenance nature only.
8. On the date of the hearing, the premises were vacant.

The Enforcement Notice

9. On 29 March 2017 Council received a complaint by a former tenant of the premises that the property was a dangerous structure.
10. The complainant provided photographic evidence to support the complaint on 20 April 2017.
11. The Council inspected the premises on 26 April 2017. Not all areas of the house were available for inspection, on that date as the downstairs bathroom had been locked by the managing real estate agent as a precaution given damage to the internal floor where (by reports) the tenant had fallen through due to water damage.
12. Information was received by the Council on 28 April 2017 that a builder had repaired the bathroom floor.
13. The Council revisited the subject site on 3 May 2017 to take measurements and photographs.
14. On 5 May 2017, the Council issued Enforcement Notice ENF007410 (the Enforcement Notice).
15. The Enforcement Notice was issued by the Council without first issuing a Show Cause Notice under section 248(4) of the BA because it alleged, "*the works are a danger to public health and safety and the dwelling is not fit for habitation or dangerous*".
16. Paragraph 5 of the Enforcement Notice provided that the Council's inspections had revealed:
 - i. Dwelling in dilapidated condition; and
 - ii. Black mould evident in dwelling and under dwelling; and
 - iii. Floor boards of dwelling are rotten and unstable; and
 - iv. Damaged floorboards in the ground floor; and
 - v. Unsealed window frames abutting the rear deck that allow water to enter the dwelling; and
 - vi. Bracing holding up joists to the storage area above the carport do not appear to have been fixed correctly; and
 - vii. Floorboards are unstable from water damaged (sic) and do not appear to meet the waterproofing standard required for a dwelling house; and

- viii. Water is escaping from upstairs bathroom through the ceiling into the kitchen area; and
- ix. Neither entry doors to the property fully close or are lockable; and
- x. The pergola/shade roof does not appear to be attached to the dwelling house according to standards; and
- xi. The storage area above the carport is being used as a habitable room, ie a bedroom by the tenants.

17. The Enforcement Notice required the Applicant to:

a) IMMEDIATELY but no later than 4.00pm 10 May 2017 cease occupancy and/or use of the dwelling house;

AND

b) BY 4.00pm on 2 June 2017 carry out necessary work on the dwelling, including but not limited to: repairing all internal floors and walls, doors, windows, structural works and any other structural defects to make the dwelling fit for use and/or occupation, as well as provide a report from a duly qualified person (ie RPEQ engineer, Licenced Builder) to confirm that the dwelling is structurally sound.

18. The hearing was conducted at the subject site on 13 July 2017. During the course of the hearing, an inspection of the premises was undertaken. The Applicant tendered the Trewern Report which identified defects requiring attention but which could be classified as a general maintenance nature only.
19. By letter dated 14 July 2017 addressed to the Applicant, and in accordance with a concession made at the hearing, the Council withdrew the Enforcement Notice on the basis that the items listed in it (items 5i to 5xi) were not of a dangerous nature.

Reasons for the Decision

1. This appeal was lodged against an Enforcement Notice issued by the Council pursuant to section 248 of the BA. The Council dispensed with the giving of a show cause notice and proceeded straight to the issue of an Enforcement Notice as it alleged, *“the works are a danger to public health and safety and the dwelling is not fit for habitation or dangerous”*.
2. Section 248(1) of the BA provides that a local government may give an enforcement notice to the owner of a building if it reasonably believes the building is dangerous (section 248(1)(b)), in a dilapidated condition (section 248(1)(c)) or is unfit for use or occupation (section 248(1)(d)).
3. Generally, section 248(3) of the BA requires a local government to give a Show Cause Notice before issuing an Enforcement Notice to permit the owner an opportunity to show cause why a notice should not be issued, however section 248(4) of the BA allows the local government to proceed straight to the issue of an Enforcement Notice in the cases where the issue is of a dangerous or minor nature.
4. “Dangerous” is not defined in the BA or the SPA. When a section of an act uses plain words with well-known or understood meanings, there is no need to depart from those plain ordinary meanings. Having regard to the Macquarie Dictionary, “dangerous” means “full of danger or risk; causing danger; perilous; hazardous; unsafe”.
5. During an inspection of the premises on the day of the hearing, it was observed that the property, although in need of repair and maintenance was not dilapidated nor dangerous. The house did not appear to present a danger to either occupants or other members of the public as there was nothing about it which was manifestly dangerous, perilous or unsafe.
6. The Trewern Report tendered at the hearing by the Applicant confirmed that while the house did require maintenance to address certain items, it was not inherently unfit or structurally unsafe.

7. Following the inspection and tender of the Trewern Report, the Council conceded that the premises were not dangerous and indicated an intention to withdraw the Enforcement Notice. The Applicant's representative in response indicated that if the Enforcement Notice was withdrawn, the appeal would be withdrawn.
8. The Applicant also indicated that the items detailed in the Trewern Report would be addressed.
9. By letter dated 14 July 2017 addressed to the Applicant, the Council withdrew the Enforcement Notice on the basis that the items listed in it (items 5i to 5xi) were not of a dangerous nature. The Council noted that it considered the items listed in the Trewern Report to be general maintenance only.
10. By letter dated 7 August 2017, the Committee asked the Applicant whether in light of the Council's withdrawal of the Enforcement Notice it intended to discontinue the Appeal. On 10 August 2017, by email to the Committees Registry, the Applicant requested the Appeal proceed.
11. The Committee's jurisdiction is framed by the provisions in SPA. Section 564 of the SPA sets out decision making powers of the Committee. Although the Committee's power to make orders and directions expressed in the section is broad, the orders it makes must have utility and be reasonable in the circumstances.
12. The subject matter of this appeal was the issue of the Enforcement Notice by the Council. As a result of the concessions made by Council at the hearing and its subsequent action taken withdrawing the Enforcement Notice, there is no live matter before the Committee in respect of which any utile order might be made.
13. In the circumstances, the appeal is dismissed.

Danyelle Kelson
Building and Development Committee Chair
Date: 01 November 2017

Appeal Rights

Section 479 of the *Sustainable Planning Act 2009* provides that a party to a proceeding decided by a Committee may appeal to the Planning and Environment Court against the Committee's decision, but only on the ground:

- (a) of error or mistake in law on the part of the Committee or
- (b) that the Committee had no jurisdiction to make the decision or exceeded its jurisdiction in making the decision.

The appeal must be started within 20 business days after the day notice of the Committee's decision is given to the party.

Enquiries

All correspondence should be addressed to:

The Registrar of Building and Development Dispute Resolution Committees
Building Codes Queensland
Department of Housing and Public Works
GPO Box 2457
Brisbane QLD 4001
Telephone (07) 1800 804 833 Facsimile (07) 3237 1248