



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	18 - 17
Applicant:	John and Susan Gallagher
Assessment Manager:	Brisbane City Council (Council)
Concurrence Agency: (if applicable)	N/A
Site Address:	14 Rathdonnell Street, Auchenflower in the State of Queensland 4066 and described as Lot 3 on RP54265 – the subject site

Appeal

Appeal under section 533(1) of the *Sustainable Planning Act 2009 (SPA)* against the giving of an Enforcement Notice to the Applicant by the Council. The Enforcement Notice was given on the basis that the Council reasonably believed that the Applicant failed to comply with section 128G(1) of the *Plumbing and Drainage Act 2002* which required the Applicant to take all reasonable steps to ensure all plumbing and drainage on the premises is kept in good condition and operates properly.

Date and time of hearing:	13 June 2017
Place of hearing:	The subject site
Committee:	Samantha Hall – Chair Chris Trewin - Member
Present:	Susan Gallagher – Applicant Andrew Brimblecomb – Friend of Applicant Paula Sundholm – Brisbane City Council Aidan Winton – Brisbane City Council Mark Higgins – Brisbane City Council

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with section 564 of the SPA confirms the decision of the Council to issue the Enforcement Notice to the Applicant.

Background

This appeal was lodged by the Applicant against the giving of an Enforcement Notice by the Council.

The subject site is owned by the Applicant. The Council contends that the Applicant failed to comply with the *Plumbing and Drainage Act 2002 (PDA)*.

On or about 21 March 2017, the Council gave the Applicant an Enforcement Notice, the grounds of which was that the Applicant had breached section 128(G)(1) of the PDA which requires:

“the owner of premises must take all reasonable steps to ensure all plumbing and drainage on the premises is kept in good condition and operates properly.”

The facts and circumstances identified in the Enforcement Notice can be summarised as follows:

1. On 13 March 2017, the Council received a complaint from the Applicant’s neighbour at 16 Rathdonnell Street, Auchenflower (**neighbouring property**), regarding effluent entering the rear of the neighbouring property from the subject site;
2. On 14 March 2017, a Council officer conducted a site investigation and confirmed that effluent was entering the rear of the premises and that the source of the effluent may be the subject site;
3. On 15 March 2017, the Applicant did not grant the permission sought by the Council officer to enter the subject site but the Applicant did provide permission for the Council officer to use a drain camera to enter the combined sanitary drain on the subject site to investigate the source of the effluent seepage;
4. On 16 March 2017, the Council officer used the drain camera and recorded eight (8) defects in the combined sanitary drain within a 12 metre distance into the subject site. The defects included cracks in the earthenware pipe, joint misalignment and plant/tree root ingress.

The Enforcement Notice required the Applicant to *“undertake repairs or replacement of the combined sanitary drain to discontinue the contamination of 16 Rathdonnell Street, Auchenflower by untreated effluent entering the premises”*.

The Applicant’s appeal was lodged on 26 April 2017.

The hearing was conducted at the subject site on 13 June 2017.

At the hearing, the Council produced a replacement Enforcement Notice dated 5 May 2017, which had been sent to the Applicant by registered post, however, the Applicant had not collected it from the Post Office (**Replacement Enforcement Notice**). The Replacement Enforcement Notice was largely the same as the Enforcement Notice with the reason given by the Council at the hearing for issuing the Replacement Enforcement Notice being that the following paragraph had been omitted from the Enforcement Notice:

“This Enforcement Notice is being given to you without a Show Cause Notice being issued because Council believes that the condition of 16 Rathdonnell Street constitutes a health risk to its occupants”.

After the Applicant was given time to consider the Replacement Enforcement Notice, the Applicant and the Council agreed to proceed with the hearing of the appeal on the basis of the Replacement Enforcement Notice and to consider the hearing to be the Applicant’s exercise of their appeal rights in respect of the Replacement Enforcement Notice. The Council confirmed its agreement to this position in a subsequent email dated 27 June 2017.

During the hearing of the appeal, following the presentation by the Council of its evidence to support the grounds of the Replacement Enforcement Notice, the Applicant and the Council commenced discussions about rectification works that could be undertaken by the Applicant to address the requirements in the Enforcement Notice.

The Committee adjourned the hearing to allow the parties to pursue these discussions and, as documented through subsequent email correspondence between the parties, the Applicant carried out rectification works that were completed on 6 July 2017.

The Council returned to the subject site and carried out a further drain inspection by camera on 13 July 2017 which confirmed that the rectification works carried out by the Applicant to reline the drain was visually satisfactory. The Council continued to monitor the neighbouring property to confirm that that seepage was progressively drying out.

By email dated 27 July 2017, the Council advised the Registry that it was satisfied the rectification works performed by the Applicant were satisfactory to address the requirements of the Replacement Enforcement Notice and that no further seepage of effluent was occurring.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Committees Registrar on 26 April 2017.
2. Enforcement Notice dated 5 May 2017 provided to the Committee at the hearing by the Council.
3. Written submission prepared by Andrew Brimblecomb on behalf of the Applicant and provided to the Committee at the hearing.
4. Drain camera footage played by the Council at the hearing.
5. Oral representations at the hearing.
6. Email from Paula Sundholm of the Council dated 14 June 2017, providing photographic evidence, including that of a "test strip" showing the levels of ammonia in the neighbouring property as at 14 March 2017, shown to the Committee at the hearing.
7. Email exchanges between the Registry and the parties following the hearing.
8. *Plumbing and Drainage Act 2002 (PDA)*.
9. *Sustainable Planning Act 2009 (SPA)*.

Findings of Fact

The Committee makes the following findings of fact:

1. At the hearing, the Council provided evidence to demonstrate that the combined sanitary drain within the subject site was the source of the effluent ponding at the rear of the neighbouring property.
2. The drain camera footage shown by the Council at the hearing, demonstrated that the combined sanitary drain within the subject site contained at least eight (8) defects within a twelve (12) metre distance commencing from the boundary of the subject site with the neighbouring property. As identified in the Replacement Enforcement Notice, these defects included some quite significant cracks in the earthenware pipe, joint misalignment and plant/tree root ingress.

3. The subject site is located above that of the neighbouring property, such that any runoff from the subject site would naturally flow or seep, depending upon volume and velocity, into the neighbouring property.
4. The Council's testing of the content of the fluid ponding at the rear of the neighbouring property showed high levels of ammonia in that fluid, being greater than 6 parts per million. This was demonstrated in the photograph of a "test strip" shown to the Committee at the hearing. Council Officers advised that a further test conducted the day before the hearing again showed the same high levels of ammonia in the fluid ponding at the rear of the neighbouring property, being greater than 6 parts per million.
5. The Committee finds that the Council produced sufficient evidence at the hearing to demonstrate that the defects within the combined sanitary drain within the subject site were the cause of the seepage of sewage from the subject site downhill which was ponding at the rear of the neighbouring property.

Reasons for the Decision

Section 128G(1) of the PDA, imposes an obligation on an owner of premises to "take all reasonable steps to ensure all plumbing and drainage on the premises is kept in good condition and operates properly".

At the hearing, the Applicant expressed concern that building works on the neighbouring property may have contributed to the defects within the combined sanitary drain within the subject site.

However, section 128G(1) of the PDA is clear in that the obligation is imposed on the owner of the premises to keep all plumbing and drainage on the premises in good order and operating properly. This is a strict obligation on the owner and does not take into account any contributory factors, such as impacts caused by neighbouring property owners, environmental factors or other such things. If the Applicant was minded, the Applicant could choose to pursue by way of a civil action any other person that the Applicant considers contributed to the defect in the combined sanitary drain on the subject site. However, in the context of the Replacement Enforcement Notice, the Applicant as the owner of the subject site on which the defective pipe is located, has the responsibility.

For this reason and given the evidence presented by the Council at the hearing, the Committee is satisfied that the Applicant as the owner of the subject site did not take all reasonable steps to ensure all plumbing and drainage on the premises was kept in good condition and operated properly. Accordingly, the Committee confirms the decision of the Council to issue the Replacement Enforcement Notice to the Applicant.

The Committee notes that following the hearing, the Applicant decided to comply with the requirements of the Replacement Enforcement Notice and to undertake repairs to the combined sanitary drain within the subject site. The Council has expressed satisfaction with the rectification works done by the Applicant and confirmed that no further seepage of effluent is occurring.

Accordingly, the requirements of the Replacement Enforcement Notice have been met and no further action is required to be taken by the Applicant.

Samantha Hall
Building and Development Committee Chair
Date: 17 August 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