



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL
Integrated Planning Act 1997

File No. 03-07-051

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Ipswich City Council

Site Address: *withheld* – “the subject site”

Applicant: *withheld*

Nature of Appeal

Appeal under the *Integrated Planning Act 1997* against the decision of Ipswich City Council to issue a “Form 21 – Final Inspection Certificate” for a residence erected on “the subject site”.

Date and Place of Hearing: 9.00 am Tuesday 2 October 2007 at “the subject site”

Tribunal: Peter John Nelson – Chairperson
Greg Rust – General Referee

Present: Applicants/Owners;
Applicants’ representative;
Mr David Porter – Ipswich City Council Certifier;
Mr Neville Madsen – Ipswich City Council Certifier;
Ms Fiona May – Sunrise Homes Representative.

Decision:

The decision of the Ipswich City Council to issue a “Form 21 - Final Inspection Certificate” is **upheld** and **the appeal is dismissed**.

Background

1. The Applicants entered into a contract with Sunrise Homes to build the residence on “the subject site”;

2. The contract allowed that the owners would be responsible for certain aspects of the construction. These included; (but there may be additional items), supply and installation of the kitchen, some tiling, painting, paths and driveways.
3. On completion, the owners felt that there had not been a final inspection by the Certifier, even though a Certificate had been issued.
4. The appeal to the Tribunal is to determine if a Final Inspection was made, and if so was it satisfactory.

Material Considered

1. "Form 10 – Appeal Notice" lodged with the Building and Development Tribunals on 10 September 2007 with accompanying documentation;
2. Verbal submissions at the hearing from Ipswich City Council Certifiers;
3. Verbal submissions at the hearing from the applicants and the applicants representative;
4. On-site inspection at hearing;
5. Photographs shown at the hearing by the applicants;
6. The Queensland Development Code;
7. The *Building Regulation 2006*;
8. The *Integrated Planning Act 1997*; and
9. The *Building Act 1975*.

Findings of Fact

The Tribunal makes the following findings of fact:-

1. The site has a new brick-veneer residence erected on a level section of "the subject site" that is about 2 metres above the street level.
2. The owners have built a driveway to the garage and a pathway from the driveway to the front entry. There has been no allowance for drainage under the pathway, and this is causing the flooding in this area. This issue is the responsibility of the owners and was constructed after the final inspection, so the Certifier cannot be held responsible for not reporting the issue.
3. The yard drainage will be resolved when the owner completes the landscaping, and installs a gully pit at the appropriate level. The builder has done what is reasonably expected to provide adequate drainage. The Certifier was correct in approving the drainage.
4. It was revealed that there is a civil dispute in court at the present time about the final payment.
5. The tiling issues will be resolved by the current civil action. This is not a matter for the Certifier.
6. The articulation of the brickwork is satisfactory. The Certifier is correct in approving this item.
7. The laundry area is satisfactory.

8. The broken pipes and internal electrical problems will be resolved in the current civil action. This is not a matter for the Certifier to report on. The problems occurred after the final inspection.
9. The electrical supply from the street to the residence is the responsibility of the electrical trade. A Certifier has no authority to refuse Certification on these grounds.

Reasons for the Decision

The applicant's representative read a list of items that are causing concern to the applicants.

The items were as follows –

- (a) There was no final inspection made by the Certifier;
- (b) Articulation of brickwork was not satisfactory;
- (c) Seal laundry tub to wall;
- (d) Broken pipes;
- (e) Internal electrical problems;
- (f) Flooding at entry;
- (g) Electrical wiring from the house to the main box at the street;
- (h) They have not received an Engineer's Certificate for the articulation;
- (i) Grout sealing to bathroom wall tiles; and
- (j) Drainage of the yard.

The Tribunal will deal with each of the items in the order above –

Item (a) The Certifier stated that the final inspection was done on 26 July 2006.

Item (b) The articulation of the brickwork was examined around the house. Each break was sealed with silicone and there were more than sufficient breaks needed to successfully articulate the brickwork.

Item (c) The area around the tub was correctly sealed for vermin.

Item (d) The broken pipes have been repaired by the owner and are part of a civil action.

Item (e) The internal electrical problems are part of a civil action.

Item (f) The flooding at the entry has been caused by a path being placed across the overland flow path. The path was placed after the final inspection and was built by the owner. There has been no allowance for a pipe under the path to allow drainage from this area.

Item (g) It is not the Certifiers responsibility to inspect the electrical installations in buildings – it is the responsibility of the electrical trade and their controlling body and the electricity supplier to ensure that the electrical system is safe and conforming to the relative Codes and Standards. The Tribunal does however strongly advise that the service from the street to the house be made safe without delay.

Item (h) It is not normal for an engineer to issue a certificate for the brickwork articulation in a dwelling house. The Certifier's inspection is all that is required.

Item (i) The complaint was in respect to some grouting that had fallen out in places. The builder confirmed that a waterproof membrane was in place as required, and a certificate by the installation trade was provided. This is not a reason for the Certifier to refuse a Final Certificate.

Item (j) Photographs were shown of the yard during and after heavy rain. The yard was indeed covered in about 150 mm of water. The yard is stony and is basically level in the main yard area, slightly higher on the southern side. The builder has provided a drainage pipe in the centre of the yard, and this pipe is about 900 mm above the ground level. The landscaping needs to be done by the owners with grades made to this pipe, and a gully pit installed into the pipe after it has been cut off at the desired level. The pipe provided will drain the yard to the stormwater pipes that carry away the roof water to the street. This will solve the problem. The builder has done what is reasonably expected to drain the site, prior to landscaping.

Conclusion -

1. The Certifier has performed his duties in accordance the *Integrated Planning Act 1997* & the *Building Act 1975*.
2. The balance of the complaints within the appeal occurred after the final inspection of “the subject site” and are maintenance issues that are currently being contested in a civil action.

PETER JOHN NELSON
Building and Development Tribunal Chairperson
Date: 17 October 2007

Appeal Rights

Section 4.1.37. of the *Integrated Planning Act 1997* provides that a party to a proceeding decided by a Tribunal may appeal to the Planning and Environment Court against the Tribunal's decision, but only on the ground:

- (a) of error or mistake in law on the part of the Tribunal or
- (b) that the Tribunal 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 Tribunal's decision is given to the party.

Enquiries

All correspondence should be addressed to:

The Registrar of Building and Development Tribunals
Building Codes Queensland
Department of Local Government, Planning, Sport and Recreation
PO Box 15031
CITY EAST QLD 4002
Telephone (07) 3237 0403 Facsimile (07) 32371248