



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	14 - 12
Applicant:	Kamini Nirmala Richards Ajitkumar Chandrarajan Richards
Assessment Manager:	Brisbane City Council (Council)
Concurrence Agency: (if applicable)	N/A
Site Address:	15 Ashfield Street, East Brisbane and described as Lot 242 on SP 11242 — the subject site

Appeal

Appeal under section 533 of the *Sustainable Planning Act 2009* (SPA) against the giving of an Enforcement Notice by Brisbane City Council (Council) under section 578 of the SPA. The Enforcement Notice was issued by Council in relation to building works being carried out without an effective development permit.

Date of hearing:	1:00pm on Thursday 5 April 2012
Place of hearing:	The subject site
Committee:	Geoffrey Mitchell – Chair
Present:	Kamini Nirmala Richards – Applicant Ajitkumar Chandrarajan Richards – Applicant John Panaretos – Applicant’s representative Nicholas Copeland – Applicant’s representative Glen Davidson – Brisbane City Council Glen Reimer – Brisbane City Council John Grimsey – Brisbane City Council

Decision:

The Committee, in accordance with section 564 of the SPA **confirms** the decision of Council to give the Enforcement Notice. The Committee also **changes** the Enforcement Notice by replacing point 1 of the requirements to read:

1. On receiving this Enforcement Notice you are directed to cease all building works that require a development application to Council namely:
 - a. The construction of the garage portion which runs to the Northern Boundary
 - b. The alteration to the existing roof structure
 - c. The replacement of the front western side verandah other than restoring it to its original form.

Background

The subject site is a rectangular block 420m² in size. The site is located in the "Character Residential Areas", "Demolition Control Precinct", East Brisbane/Coorparoo District Local Plan: under the Brisbane City Planning Scheme.

On 6 February 2012 a Development Approval for Building Works was given by a private certifier for additions and alterations to an existing dwelling.

On 2 & 6 March 2012 Council officers conducted an inspection of the subject site and determined that the works were not in accordance with the provisions of the relevant Planning Scheme and that the works required a Code Assessable Application to be made to Council.

On 9 March 2012 Council advised the private certifier and the builder of their concerns and indicated that an Enforcement Notice would be issued.

On 13 March 2012 Council issued an Enforcement Notice under section 578 of SPA requiring that :

1. Immediately on receiving this enforcement notice you are directed to cease all building work on the property until further notice; and
2. You are required to lodge a properly made Town Planning Application (development application) to Brisbane City Council's Development Assessment Team for the demolition of the pre 1946 front western side verandah, the garage constructed between the raised dwelling and the northern side boundary, the garage built to boundary wall within the required 1.5m setback from the adjoining habitable window on the adjoining property, the proposed front western side verandah, the non recessed garage component and the modification of the existing pre 1946 dwellings roof pitch.

On 26 March 2012, the applicants lodged an appeal with the registrar of the Building and Development Dispute Resolution Committee (Committee) against the Enforcement Notice.

On 27 March 2012 the applicant's representative submitted a Material Change of Use (Development Permit) and Carrying out Building Work (Preliminary Approval) for a house on a Small Lot, and Demolition (Partial) in the Demolition Control Precinct.

On 5 April 2012, a hearing was held at the subject site to discuss the issues in relation to the Enforcement Notice.

At the hearing the applicant's representative (John Panaretos) described the works which were believed to be self assessable against the Planning Scheme and those works which formed part of the planning application to Council.

The applicant's representative (Nicholas Copeland) advised that there was no deliberate intention in the works being conducted and they were of the belief that all the proper approvals had been obtained by receiving the Development Permit for Building Works from the private certifier.

The applicant's representative (Nicholas Copeland) advised that the existing front verandah was structurally unstable (which was supported by a report from a structural engineer) and that is why the demolition had taken place.

The applicant's representatives showed the Committee what works had continued to be undertaken to secure the premises and showed the Council representatives that no further works had been conducted on the areas subject to the planning approval.

Council's representatives advised the Committee that they appreciated the urgent response and the actions of the applicants in attempting to resolve the issues.

Council representatives advised that they had no objection to works that were exempt or permitted under the planning scheme continuing.

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 Registrar on 26 March 2012
2. Enforcement Notice dated 13 March 2012
3. Verbal submissions from the applicants representatives at the hearing
4. Verbal submissions from the Council's representatives at the hearing
5. Brisbane City Council Plan
6. The SPA

Findings of Fact

The Committee makes the following findings of fact:

- The site is located in the "Character Residential Areas", "Demolition Control Precinct", East Brisbane/Coorparoo District Local Plan: under the Brisbane City Planning Scheme.
- On 6 February 2012 the applicants received a Development Approval for Building Works for alterations and additions to the subject premises.
- Elements of the proposal as depicted in the Development Approval for Building Works do not fall within the exempt or self assessable provision of the planning scheme.
- On 2 & 6 March 2012 Council inspected the premises to determine compliance.
- On 9 March 2012 Council contacted the Building Certifier and the applicants representative (Nicholas Copeland) and advised of their concerns.
- On 13 March 2012 Council issued an Enforcement Notice under section 578 of SPA.
- On 27 March 2012 the applicant's representative submitted a Material Change of Use (Development Permit) and Carrying out Building Work (Preliminary Approval) for a house on a Small Lot, and Demolition (Partial) in the Demolition control Precinct.

Reasons for the Decision

The Committee agrees with the applicant's that the following works are permitted without referral to Council:

- raising the existing building (providing the appropriate side boundary clearances are achieved)
- enclosure and building in under the raised dwelling
- additions to the rear of the existing dwelling
- rebuilding the former front verandah to its original form.

The applicants have submitted the appropriate applications to Council for approval.

The applicants have advised they will not proceed further with the works that are subject to the planning approval.

Council representatives advised that they had no objection to works that were exempt or permitted under the planning scheme continuing.

Building and Development Committee Chair
Date: 17 April 2012

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 Local Government and Planning
PO Box 15009
CITY EAST QLD 4002
Telephone (07) 3237 0403 Facsimile (07) 3237 1248