



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	11 - 12
Applicant:	Michael Erlbaum Erez Erlbaum
Assessment Manager:	Brisbane City Council (Council)
Concurrence Agency: (if applicable)	N/A
Site Address:	6 Brook St, South Brisbane and described as Lot 4 on RP 11698 – the subject site

Appeal

Appeal under section 533 of the *Sustainable Planning Act 2009* (SPA) against the giving of an enforcement notice by 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:	9:30am on 15 th June 2012
Place of hearing:	Level 5 3 George St Brisbane QLD 4000
Committee:	Geoffrey Mitchell – Chair
Present:	Allan Erlbaum – Applicant's representative Trevor Gerhardt – Applicant's representative Mark Higgam – Council representative Glen Reimer – Council representative John Grimsey – Council representative

Decision:

The Building and Development Dispute Resolution Committee (the Committee), in accordance with section 564 of the SPA **confirms** the decision of Council to give the enforcement notice.

Background

The subject site is a rectangular block 440m² in size. The site is located in the "Low-Medium Residential Area", "Demolition Control Precinct", "West End / Woolloongabba District Local Plan: under the Brisbane City Planning Scheme.

On 9 February 2012 an officer of Council visited the premises to investigate possible works being conducted without approval

On 14 February 2012 Mr Trevor Gerhardt the private certifier for the project sent Council an email copy of a decision notice for building work which was dated 9 February 2012 which was for enclosing under an existing dwelling and a new covered deck.

On 22 & 23 February 2012 officers of Council conducted inspections of the subject site and discussed concerns in relation to the raising of the existing dwelling and the proximity of the side boundary. The advice provided to Council was that the building would be lowered to its original height on completion of the excavation under the dwelling. At these inspections other matters were raised in relation to a roofed deck between the two dwellings and alterations to the front façade.

On 9 March 2012 officers of Council again visited the site and determined that the:

- The dwelling appeared to have been lifted by a height less than 1 m
- The eastern side boundary setback to a newly constructed masonry block wall did not comply with Brisbane City Councils "Residential Small Lot Code" – building requirements measured to the wall.

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

On 12 March 2012 officers of Council again visited the site and met with the applicant and the builder and advised that the building would need to be lowered to its original position or a development permit would be required. The officers also advised they were proceeding with enforcement.

On 15 March 2012 Council issued an Enforcement Notice under section 578 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 development application for assessment under Brisbane City Council's City Plan 2000 "Residential Design Small Lot Code" for the raising of the existing dwelling and non compliant eastern side boundary setback.

On 19 March 2012, the applicants lodged an appeal with the registrar of the Building Development Committees against the enforcement notice.

On 30 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 outside the building envelope. This application was subsequently amended to include the words "and raise 400mm".

On 15 June 2012, a hearing was held at Level 5, 63 George St Brisbane.

At the hearing the Council produced a series of pictorial images of the premises showing the building works on 15 February 2012, 22 February 2012 and 28 March 2012.

At the hearing the applicants representatives argued that the building had being lowered to it original position and that there was survey evidence to confirm this. The survey evidence was unable to be supplied to the committee

At the hearing the applicant's representative advised that his Development Approval for Building Works did not consider a raising of the property.

At the hearing the Council representatives maintained their position that the premises has been raised as evidenced in the planning application to Council

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 15 March 2012
3. Written information and photographs from the Council representatives produced at the hearing
4. Verbal submissions from the applicant's representatives at the hearing
5. Verbal submissions from the Council's representatives at the hearing
6. Additional photographs provide by Council after the hearing
7. Additional information provided by the applicant's representatives after the hearing.
8. The Planning Scheme of the Council
9. The SPA
10. The Building Act 1975 (BA)
11. The Building Regulation 2006 (BR)
12. Queensland Development Code MP 1.1 (QDC)

Findings of Fact

The Committee makes the following findings of fact:

- The site is located in the "Low-Medium Residential Area", "Demolition Control Precinct", "West End / Woolloongabba District Local Plan: under the Brisbane City Planning Scheme.
- The property is 440sqm in area and is therefore defined as a "small lot" in Brisbane City Council's City Plan 2000 Volume 1 Chapter 5 Residential Design Small Lot Code".
- The Residential Design Small Lot Code gives:
"This code does not apply to building work involving only renovations and extensions to existing building where the proposed extensions are fully contained within the building envelope..."
- The Residential Design Small Lot Code gives:
"This Code does not apply to the following building work outside the building envelope ...
 - *Raising an existing house where the side boundary setbacks comply with the setbacks under the Building Regulation and the maximum height does not exceed 8.5m above ground level. All windows of habitable rooms, decks, verandahs or balconies are screened to the side boundaries in accordance with the Code. For the purpose of this provision the setbacks of the Building Regulation are to be read as taken to the wall, not the outermost projection.*
- The BA refers to the QDC rather than the BR for the siting provisions.
- The building as sited at approximately 400 mm from the eastern boundary, does not comply with the building envelope provisions of the "Small Lot Code" or the side setback conditions of the QDC
- From the photographic evidence provided the original building sat on a masonry base wall consisting of ten (10) courses of block work.
- From the photographic evidence it would appear the new slab levels of the lower floor are at or near

the original slab level.

- From the photographic evidence provided the new works sits on a masonry base wall consisting of 12 courses of block work above the new slab level.
- Development Approval for Building Works for alterations and additions to the subject premises was given by GECON – Trevor Gerhardt a private certifier on 9 February 2012.
- The plans forming part of that approval show the ground floor to ceiling height of 2700mm
- The plans forming part of the application to Council have the ground floor to ceiling height of 2400mm.
- On 9,22,23 February and 9 and 12 March 2012 Council inspected the premises to determine compliance
- On 9 March 2012 Council contacted the Building Certifier and the applicants and advised of their concerns
- On 15 March 2012 Council issued an enforcement notice under section 578 of SPA
- On 19th March 2012 the applicant's initiated this appeal to the Building and Development Committee.
- On 30 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 outside the building envelope, existing house raised 400mm.

Reasons for the Decision

Based on the evidence provided, the committee is of the opinion that the building is now at a level higher than what existed on the premises in its original state.

The building being at a higher level, triggers an assessment against Brisbane City Council's City Plan 2000 Volume 1 Chapter 5 Residential Design Small Lot Code, which has to be referred to Council for approval.

The relevant approvals for assessment against the above are not in place.

If the Development Approval for Building Work given by the private certifier did not include an aspect of raising the existing dwelling, the committee is of the opinion that the works are not in accordance with the aforesaid approval.

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

Building and Development Committee Chair
Date: 25 June 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 Housing and Public Works
PO Box 15009
CITY EAST QLD 4002
Telephone (07) 3237 0403 Facsimile (07) 3237 1248