



APPEAL
Integrated Planning Act 1997

File No. 3-01-056

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Redland Shire Council

Site Address: 31 Dorsal Drive, Birkdale on land described as Lot 63 on RP No. 209633.

Nature of Appeal

Appeal under section 4.2.13 of the Integrated Planning Act 1997 against the decision of the Redland Shire Council to issue an enforcement notice pursuant to section 22 of the Building Act 1975 in respect to the commencement of building works ("the works") without a development permit. The enforcement notice requires the following to be done:-

1. Apply for a "Development Permit" for "the Works" under the Integrated Planning Act 1997 by 19 November 2001.
 2. In seeking a "Development Permit" ensure "the Works" are constructed and/or altered to comply with the Building Act 1975 and its regulations (including the Standard Building Regulation and Building Code of Australia).
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Date and Place of Hearing: 9.30am on Thursday 24 January 2002
at the office of the Department of Local Government and Planning,
Level 25, 41 George Street Brisbane

Tribunal: Gregory Schonfelder

Present: Applicant
Gary Tallis - Applicant's Representative
Graham Simpson - Redland Shire Council Representative
David Howarth - Redland Shire Council Representative

Decision

I determine that the requirements of the Enforcement Notice No: EN005121 issued by Redland Shire Council dated 6 November 2001 be **confirmed**.

Background

The applicant, prior to purchase of the property on 16 December 1996 became aware of a structure on the southern side of the dwelling extending to the boundary which was not shown on the two building permits issued by the Redland Shire Council to the previous owners. The solicitor for the current owners raised the issue of approvals for this structure and the previous owners supplied letters from Council, which they said, related to this structure and was evidence of Council's approval for the structure to remain.

The current owner's solicitor accepted the letter as confirmation of approval of this structure. As the applicants were under the impression the structure already had Council approval they do not now believe it is necessary for another approval and/or changes necessitating from that approval if granted for the structure.

The Council in response stated that the letters were in relation to a structure/building, which has since been removed from the property and these letters do not represent an approval of the subject structure.

According to Council records there has been no building permit issued or Council approval granted for the siting variation of this structure. The structure does not comply with the requirements of the Building Code of Australia in particular: fire rating, moisture resistance, termite protection and ventilation. Changes have been made to the existing structure without a Building Permit.

Material Considered

1. Letter from the Redland Shire Council to the previous owner dated 23 January 1995, regarding an inspection of the subject property, revealed a roofed addition to the dwelling built to the boundary.
2. Letter from the Redland Shire Council to the previous owner dated 31 July 1995, reference 93.3247, advising that the property has been re-inspected and the subject structure has been rectified.
3. Letter from the Redland Shire Council to the applicants dated 16 July 2001, reference P.103289, advising that Council has become aware of an "unapproved structure" along the southern boundary of the subject property.
4. Letter from Redland Shire Council to the applicants dated 8 August 2001, reference P.103289, advising that the previous correspondence dated 23 January 1995 and 31 July 1995 to the previous owners did not relate to the structure under investigation.
5. Letter from the Redland Shire Council to the applicants dated 30 October 2001, reference P.103289, confirming discussions which were held between the Council and the applicants where options were provided to bring the structure into conformity with the regulations by changing the structure and its classification.
6. Enforcement notice no: EN005121 and advisory notes dated 6 November 2001 addressed to the applicants requiring the owners of Lot 63 RP 209633 situated at 31 Dorsal Drive, Birkdale to apply for a Development Permit for "the works".

7. Letter from Redland Shire Council to the applicants dated 21 November 2001, reference P.103289, advising that the Council has not received notice that a Development Permit has been issued for the work and that the Enforcement Notice has been breached.
8. Appeal Form dated 30 November 2001, and accompanying letter from the applicants appealing the Council's decision to issue an Enforcement Notice.
9. Interview with the neighbour to the south of the subject property conducted at his property at 33 Dorsal Drive, Birkdale at 6.30pm on Thursday 24 January 2002.
10. Inspection with the applicant's representative of the subject property at 7.00pm on Thursday 24 January 2002.
11. The Standard Building Regulation 1993.
12. The Integrated Planning Act 1997.

Findings of Fact

1. The Council presented plans for a building permit issued for the dwelling in 1989.
2. The Council also presented plans for additions to the existing dwelling (rear covered deck) which was approved on 13 January 1994, reference number 93.3247. The stamped plans had the reference number incorrectly stamped 93.3274.
3. A frame inspection for this dwelling addition was conducted and approved on 22 February 1994 and no final inspection was recorded which the Council advised was the practice at that time.
4. The letter from the Council dated 31 July 1995 had the reference 93.3247, which related to the Council issued building permit for the dwelling additions.
5. The roofed structure, which is the subject of the enforcement notice, was not shown on either of the sets of approved plans of the building permits.
6. The structure did exist on the property prior to the purchase of the property by the current owners.
7. The original structure was used as a spa enclosure.
8. No record was provided by either party of a building permit being issued for the installation of the spa and associated pool fencing.
9. The current owners have replaced the roof covering, removed the pavers which were laid, and had the end walls modified to incorporate the installation of glass bricks, which matched the boundary wall, which has remained unchanged. No building permit has been issued for these changes.

10. An inspection of the structure has revealed that it appears not to comply with various aspects of the Building Code of Australia being: fire resistance of materials, moisture protection, ventilation, and termite protection.
11. There is no record of a building permit being issued for the structure.
12. There is no record of a Council approval being given to vary the siting of the structure.
13. There was no evidence provided to verify the siting of the building in relation to the allotment boundary.

Reasons for the Decision

Although the structure was constructed on the property prior to the purchase by the current owners, it has undergone changes in both form and function since then.

There have been no building permits or Council approvals for the original structure or the modifications made to the current building.

The poorly worded and ambiguous letter from the Redland Shire Council (31 July 1995) cannot be construed as an approval for this structure.

As the structure/building has existed in a similar form for several years the main issue with this building is its compliance with the Building Code of Australia (technical requirements). The siting of the building is not considered to be a major issue.

Gregory Schonfelder
Building and Development
Tribunal Referee
Date: 7 February 2002

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 and Planning
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