



Building and Development Tribunals
Queensland Government

Department of Local Government, Planning,
Sport and Recreation

APPEAL

File No. 3-04-040

Integrated Planning Act 1997

BUILDING AND DEVELOPMENT TRIBUNAL – DECISION

Assessment Manager: Brisbane City Council.

Site Address: 88 Main Street, Kangaroo Point.

Applicant:

Nature of Appeal: Appeal under Section 24 of the *Building Act 1975*, against the decision of the Brisbane City Council to issue an Enforcement Notice concerning unlawful building work and change of use to premises described as Lot 7 on RP No. 51549 and situated at 88 Main Street, Kangaroo Point.

Date and Place of Hearing: 3:00 pm on Wednesday 29 July 2004
Department of Local Government, Planning, Sport and Recreation
Level 25, Mineral House
41 George Street, Brisbane.

Tribunal: B J Williamson

Present: B J Williamson Tribunal Referee
Applicant
Applicant
Brisbane City Council

(After taking submissions, the hearing was adjourned to enable both parties to supply additional information, including information from old Brisbane City Council files.)

Decision:

The tribunal's decision is:

- (a) The applicants are to apply to the Brisbane City Council for a development approval for a material change of use (planning) for the work undertaken, within four (4) weeks of receiving the decision and the tribunal requests the Brisbane City Council in assessing the planning application to favourably take into account the conditions that existed in 1996 and the past history of this project which dates back to 1996; and

- (b) Within four (4) weeks of receiving the development approval for a material change of use (planning) approval, the applicants are to submit a development (building) application to the Brisbane City Council or to a Private Certifier; and
- (c) The development (building) application is to be assessed under transitional provisions; and
- (d) The whole building is to be classified as a Class 3 building and approval of the Brisbane City Council or a Private Certifier has to be obtained before any future change can occur in the classification of the building from Class 3 to Class 2; and
- (e) The applicants are to notify the Development & Regulatory Services, Customer & Community Services Division of the Brisbane City Council:
 - (i) When application is made for development approval for the material change of use (planning) approval; and
 - (ii) When the application is made for development (building) approval; and
 - (iii) When development approval for the material change of use (planning) and development (building) approvals are obtained or refused; and
- (f) The Enforcement Notice (dated 22 June 2004) is to come into force only if the applicants are unable to obtain the required development approval for the material change of use (planning) and development (building) approvals for the work undertaken.

Background:

The applicants maintain that at the time of the purchase of the property in 1987, the building was divided into the number of compartments that currently exist. In 1996 the applicants lodged a building application for four ensuites for units 1 – 4 so that the seven compartments would be self-contained individual units. In 1996 the Council requested planning approval be obtained and information on partition sound ratings. The applicants maintain that the requested information was supplied on 2 April 1996. The Council file has no record of receiving the requested information or any other any other action taken until the current Enforcement Notice was issued.

Material Considered

1. Copy of the Show Cause Notice dated 10 May 2004 (Ref. 223/60-PL430/88) issued by the Brisbane City Council.
2. Copy of the reply by the applicants dated 26 May 2004 to the Show Cause Notice together with:
 - (i) Copy of the Brisbane City Council Plan of House Drainage with approval date of 3.02.1982 (Ref. No.45401);
 - (ii) Copy of receipt dated 27.02.1996 issued by Quick Draw Drafting for submission of drawings to Brisbane City Council to modify the building internal space to include four additional bathrooms, additional kitchens and laundries with appropriate drainage connections;
 - (iii) Copy of the Brisbane City Council Plan of House Drainage provided to applicants in 1997. (This plan is dated 1964 and is very similar to the plan listed in (i) above.)
 - (iv) Copy of the Brisbane City Council Plan of House Drainage dated 22.02.1996 (date drawing checked);

- (v) Copy of payment for Minor Installation Fee of \$225.00 (“additional sink & ldy to relocate ex- w.c.”) dated 20.03.1997.
 - (vi) Copy of Brisbane City Council letter dated 29 February 1996 requesting application for development approval and information on the sound rating for the walls between habitable rooms and bathrooms;
 - (vii) Copy of letter from the applicants to the Brisbane City Council dated 2.04.1996 concerning the sound rating of walls request.
3. Copy of the Enforcement Notice dated 22 June 2004 (Ref. No. 223/60-PL430/88) issued by the Brisbane City Council.
 4. Copy of Form 10 Building and Development Tribunals Appeal Notice dated 30 June 2004 together with statement giving the grounds for appeal.
 5. Letter dated 30 June 2004 from the applicants to Brisbane City Council.
 6. Copy of the plans lodged in 1996 for Building Approval.
 7. Copy of the Notice by Commissioner, Queensland Fire and Rescue Service dated 29 October 2003 stating that “the requirements of the notice that was issued under the Queensland Fire and Rescue Service Act Section 104G or 69 on 03/07/03 & 08/10/03 have now been complied with.”
 8. Copy of email message from Brisbane City Council dated 07.09.04.
 9. Copy of email message from Brisbane City Council dated 14.09.04.
 10. Verbal submission at the hearing by the applicants outlining the applicants’ position.
 11. Verbal submission at the hearing by Brisbane City Council outlining the reasons for the Enforcement Notice to be issued.

Findings of Fact

I made the following findings of fact:

1. The building was divided into compartments before the current owners purchased the property in 1987. The drainage plan (dated before the current owners purchased the property) lists 2 kitchen sinks, 3 baths or showers, 2 w.c., 2 laundry facilities.
2. The plans submitted in 1996 show:
 - (i) The existing layout with 6 bedrooms noted, a common room plus other rooms assumed to be bedrooms with ensuites; and
 - (ii) The proposed layout to provide four additional ensuites by reducing the number of bedrooms in the front of the building from 6 to 4. This resulted in the building having 7 compartments with ensuites although the drawing still listed one room connected to one of the compartments as a common room. (At the hearing the applicants stated that the room noted as a common room is really part of a unit.)
3. The plans submitted in 1996 do not indicate where the cooking facilities are located.
4. Based on information supplied the events seem to be as follows:
 - (i) Plans for additional fixtures prepared in 1996 by Quick Draw Drafting.
 - (ii) Plan of House Drainage prepared by the Brisbane City Council (22.02.96)
 - (iii) Plans lodged for Building Approval in 1996.

- (iv) Brisbane City Council letter dated 29.02.1996 requested application for development approval and information on sound rating for partitions.
 - (v) Additional payment made for Minor Installation 20.03.1996.
 - (vi) Letter dated 2 April 1996 from the applicants to Brisbane City Council, stated that the requested wall sound rated information was attached. The letter also referred to a meeting with Brisbane City Council.
 - (vii) No further action occurred until the issue of the Show Cause Notice in 2004.
5. The Council BA file has no record of an application for development approval or the supply of the sound rating for the walls between the habitable rooms and the bathrooms or a copy of the applicants' letter dated 2 April 1996.
 6. It should be noted that the applicants letter dated 2 April 1996 to Brisbane City Council, besides indicating that the requested sound information was attached, it states that -
 - (i) A meeting took place in March 1996 between Brisbane City Council, and the applicant; and
 - (ii) The applicant indicated that if there was any other matter arising concerning the project for Brisbane City Council to contact the applicant.
 7. It appears the above mentioned building surveyor left the Brisbane City Council some time after the March 1996 meeting with the applicant. There is no further information in relation to this matter on Brisbane City Council files and no evidence of further action.
 8. Based on information available and since the Council took no action from April 1996 until now, the applicants believed that they had done all that was required of them. However, in spite of what should have occurred in the past, the situation now is that all relevant approvals need to be obtained to comply with the laws and protect all parties involved.
 9. Brisbane City Council in their email dated 7.09.04 indicated that the Council is willing to work with the owners to resolve this issue provided the whole building is classified as a Class 3 building.

Reasons for the Decision:

1. The approvals required by law for the project do not exist and therefore action should be initiated to obtain these approvals.
2. Because of concern about the fire separation of the self-contained compartments or units, the whole building is to be classified as a Class 3 building and approval of the Brisbane City Council or a Private Certifier has to be obtained before any future change can occur in the classification of the building from Class 3 to Class 2. For this to occur, the building would require a fire engineering investigation and recommendations to overcome any fire deficiencies found.
3. To avoid a repeat of the previous events, the applicants are to keep the Brisbane City Council informed of all steps taken to resolve the outstanding issues.

B J Williamson
Building and Development
Tribunal Referee
Date:

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
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