

Local Authority issues non-notified resource consent for vacant site

Legislation	Ombudsmen Act 1975, Resource Management Act 1991
Agency	Local authority
Ombudsman	Anand Satyanand
Case number(s)	A6073
Date	1997

Non-notified resource consent application granted for vacant site – neighbours claimed damage resulted from excavations and complained about the height of the building erected—Ombudsman investigated and found no apparent breach of s 94 of the Resource Management Act or District Plan rules and concluded the Local Authority was not unreasonable to issue a non-notified consent in this case—complaint not sustained—question of liability for damage allegedly incurred by complainants was a civil matter to be pursued in the courts

This investigation involved complaints about the actions of a local authority in treating an application by the complainants' neighbour for a resource consent to excavate on the boundary between the two properties as a non-notifiable application, thereby denying the complainants the opportunity to object to the application.

The complainants contended that the local authority should have required the neighbour to obtain their consent to the construction of a retaining wall on the boundary between the two properties. They said that the excavation on their boundary had clearly created an adverse effect having caused extensive damage to their land, plants, deck and house. An engineers' report confirmed that as a result of the excavation the complainants' land had developed a stability problem.

Further complaints concerned the height of the neighbours' house and the failure of the local authority to ensure that remedial works were carried out. In respect of the height, the complainants believed the house did not comply with the requirements of the District Plan, and that the method used for measuring heights had not been applied correctly, resulting in the house being higher than it should have been. They also considered that the local authority's inspections staff did not ensure compliance with the conditions of the resource

consent, necessitating legal costs on their part to obtain an injunction in the District Court to prevent further damage to their property.

In reporting on these complaints, the local authority advised although the proposal was non-complying in some respects with the District Plan, the application was considered to be a discretionary activity. The reporting planner was of the opinion that the only person who might be adversely affected by the granting of the consent was the owner of one neighbouring property, but not the complainants. However, that property owner had given written approval to the proposal. Accordingly, as the only potentially affected party had provided written consent, the application was processed on a non-notified basis.

The retaining wall construction was controlled by the rules on excavation contained in the District Plan and did not require the consent of adjoining owners, although they did require that such owners be notified in writing of the intention to excavate. The applicant had given such notice in writing to the complainants.

In respect of the height of the house, before the resource consent was issued, a Certificate from a Registered Surveyor was required, verifying that the building would comply with the maximum height controls. The dwelling's footings and slab location were set out by a Registered Surveyor, and the local authority received professional advice that the house, when built in accordance with the approved plans, would comply with the maximum height controls.

Construction commenced on the site during early December 1996 and between mid-December 1996 and 30 January 1997 there were five inspections of the site by building inspectors and two visits by enforcement officers arising from complaints. In addition there were seven other inspections (not complaint-related) which were undertaken by building inspectors relating to the general construction of the building.

A letter was sent to the property owner requiring remedial work to be done on the boundary excavations and he advised the local authority that he had contracted a Registered Engineer to design and supervise the excavation, temporary works and construction of retaining walls on the boundary. However, there was a 2-3 week delay between excavation and the installation of the temporary retaining works indicating a breach of the conditions of the resource consent, but after investigation, the local authority decided not to take further action.

After considering the material provided by the local authority with respect to the complaint about the decision to treat the application as non-notified, it did not appear unreasonable for the local authority to form the view that the adverse effect on the environment of the activities for which consent was sought would be minor. The local authority's report canvassed the relevant criteria to be considered under both the Operative and Proposed Plans in relation to the site. Its assessment was that the application was an efficient use of a vacant site.

In looking at the question of whether the local authority was entitled to form the view that the only person likely to be adversely affected by the granting of the consent was the neighbour to the west of the subject site, it appeared that the procedures set out in the District Plan rules had been followed. In terms of those rules, the local authority was entitled to decide that the application did not require notification, because the applicant had submitted a statement from a firm of registered engineers, confirming that they had been engaged by the applicant 'to

design and supervise the excavation, temporary works and construction of retaining walls on the south boundary'. In addition, he had provided evidence that the complainants had been notified of his intention to excavate on the boundary.

In the light of the foregoing it was concluded that the local authority had reasonable grounds for concluding that the requirements of section 94(2) of the Resource Management Act had been met. It was accepted that the Council did not act unreasonably by proceeding to consider the application on a non-notified basis. Furthermore, it appeared that the local authority had reasonable grounds for concluding that the house would comply with the height requirements for the site. It was also clear that reasonable steps had been taken to ensure compliance with the conditions of the consent. Accordingly, the complaint was not sustained. The question of liability for damage to the complainants' property was a civil matter which could be pursued through Court action.

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