



SUMMARY

Case: Dixonlane Apartments – REVIEW OF ELIGIBILITY DECISION

File No: DBH 05554

Court: WHT

Adjudicator: Chair PA McConnell

Date of Decision: 11 August 2009

Background

Mr Taylor applied on behalf of the claimants for reconsideration of the Chief Executive's Decision under s49 of the 2006 Act. This decision therefore looks at whether or not the claim meets the eligibility criteria specifically in relation to whether the complex was built within the ten-year period before the date the claim was filed

Chief Executive Decision

The assessor's report concluded that the claim did not meet the eligibility criteria presumably on the basis that the complex was not built within the 10-year period immediately prior to the claim being filed. Pursuant to s48 of the Act, the Chief Executive evaluated the assessor's report and concluded that the claim was not eligible because the complex was built within the 10 years immediately before the day on which the claim was brought.

Chronology

- 27 Feb 1997 Building Consent issued
- Feb 1997-Sept 1997 Construction
- 5 Sept 1997 Final Inspection by Certifier
- 3 Sept 1997 Practical Completion Certificate
- 5 Sept 1997 Final Inspection diary note that "all units inspected and completed to code satisfaction"
- 8 Sept 1997 Code Compliance Certificate issued
- Sept 1997 Dwelling first inhabited
- 6 Sept 2007 Claim filed

Claimants' Case

- The claim was filed on 6 September 2007 and not 7 September 2007
- The "built" date must mean the date when construction was completed which is only after the Code Compliance Certificate (CCC) was issued and the maintenance period for all works completed. It was submitted that there was a significant amount of building work to be completed as late as March 1998
- The "built by" date in the Act was intended to be synonymous with the ten year long-stop provision in s393 of the Building Act 2004 and therefore in normal circumstances there should be a strong presumption in favour of the CCC date being the minimum "built" date

Decision

- The 2006 Act does not provide for a period of ten years from when the CCC was issued. Instead it refers to a period from when the house was "built". Accordingly

the Chair concluded that the date of the issuing of the CCC is relevant to determining the “built” date but is not synonymous with the “built” date. The definition of “built” that is applied to claims under the Act is when the dwelling was completed and first occupied or fit for occupation. In determining when a dwelling was completed and first occupied or fit for occupation the date of issuing a CCC is clearly relevant. This is frequently the last formal step that needs to be taken to determine that a dwelling has been completed, particularly where it has been developed for sale and the settlement of an agreement for sale and purchase is dependent on the issuing of a CCC.

- Where construction, final inspection and the issuing of the CCC proceed in a timely fashion, it should be assumed that the “built” date would be the date the CCC was issued. That assumption however could be negated by information establishing:
 - A delay between the completion of construction work and the issuing of the CCC
 - The property was occupied some time prior to the issuing of the CCC
 - There was significant construction work that continued after the CCC was issued
 - There was construction work after the CCC was issued that caused, or was a contributing factor to the dwelling leaking
- In this case the construction work, inspections, issuing of the interim CCC, final inspection, and issuing of the final CCC all proceeded in a relatively short timeframe. In these circumstances, the Chair held that the earliest built by date should be the date the CCC was issued. This was the date that the complex was deemed to be completed and ready for settlement of any sale and purchase agreement to a normally prudent purchaser
- The Chair concluded that the complex was built within the ten year immediately preceding the date that the claim was filed as in the circumstances of this case, the issuing of the CCC was the final substantive act required for the complex to be considered “built”. Accordingly, the “built” date should be no earlier than 8 September 1997.

Result

The Chair held that the claim meets the eligibility criteria set out in the 2006 Act as the complex was built within the ten years prior to the claim being filed under the Act.