

**UNDER** the Weathertight Homes Resolution Services Act 2006

**IN THE MATTER** of a reconsideration of the Chief Executive's decision under section 49

**CLAIM NO.        6032: HELEN DODD – 62A  
                          GODDEN CRESCENT,  
                          MISSION BAY**

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**ELIGIBILITY DECISION OF THE CHAIR OF THE  
WEATHERTIGHT HOMES TRIBUNAL**

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**The Claim**

[1] Helen Dodd is the owner of a house in Godden Crescent, Mission Bay. Although accepting that the house is a leaky home, both the assessor and the chief executive of the Department of Building and Housing have concluded that the claim is not an eligible claim because the house was built more than ten years before the claim was filed. The claimant has applied for reconsideration of the chief executive's decision under section 49 of the Weathertight Homes Resolution Services Act 2006 (the Act).

**The Issues**

- [2] The key issues to be determined in this case are:
- What is meant by built?
  - Was the home at 62A Godden Crescent built within ten years before the day on which the claim was filed?

**Background**

[3] Section 49 of the Act provides that a claimant may apply to the Chair seeking a review of a decision that their claim does not comply with the eligibility criteria within 20 working days of receiving notice of the decision. On receiving such an application I must decide whether or not the claim meets the eligibility criteria.

[4] I have considered the following documents in conducting my review:

- The application for reconsideration dated 19 February 2010.
- Further particulars filed in support of the application for consideration received on 12 April 2010.
- The assessor's report dated 21 November 2009.
- The letter from Belinda Betham of the Department of Building and Housing to Ms Dodd dated 21 January 2010.

### **Chief Executive's Decision**

[5] The assessor's report concluded that the claim did not meet the eligibility criteria on the basis that the claim was filed more than ten years after the home was built. Section 48 of the Act provides that the chief executive must evaluate every assessor's report and decide whether the claim to which it relates meets the eligibility criteria. In evaluating the assessor's report, the chief executive also concluded that the claim was not eligible as she concluded that the dwelling was built by 24 May 1999 and was therefore built more than ten years before the claim was brought. In reaching this conclusion she noted that the final inspection took place on 24 March 1999 and did not pass. A recheck on 24 May 1999 however recorded no outstanding items. The chief executive accordingly concluded the dwelling was built by 24 May 1999.

### **Claimants' Case**

[6] Ms Dodd submits that the chief executive and assessor erred in deciding that the building was built by 24 May 1999. She submits that there are a number of dates and details that were not taken into account in determining when the dwelling was built. In particular she submits:

- The Mercury Energy Electricity supply was commenced on 18 September 1999.

- The first Contact Energy Gas Supplies reading at the property was August 2001 with the account being registered on the system on 19 September 2001.
- The first valuation to include the building by the Auckland City Council was 24 August 1999.
- At the time of purchase in April 2003 she was advised by the real estate agent that the house had taken much longer to build than anticipated due to engineering challenges on site.
- The Code Compliance Certificate was not issued until 18 March 2003.

[7] Ms Dodd further submits that the hand written note on the back of the original site drawings does not say that it is a final inspection undertaken by the Council and that there is no name or official stamp to indicate the status of the note. She suggests it is therefore unreliable to take this as a final inspection. She submits that there is in fact no evidence on the Council file which states when the final inspection took place.

[8] Ms Dodd further submits that the information now available suggests that it is likely the property was not occupied until September 1999 at the earliest and may not have been until 2001 when the gas was supplied. Ms Dodd also submits that the date the Department of Building and Housing advised her claim was accepted is incorrect as her claim was first received by the Department of Building and Housing on 21 July 2009 and not 3 August 2009. For the purposes of this review I am prepared to accept 21 July 2009 as the date on which the claim was lodged.

## Discussion

[9] In reaching a decision it is helpful to set out a chronology of events:

Date Building consent issued	13 October 1997
Date power connected	1 April 1999
Date of final inspection by territorial authority (failed)	24 March 1999
Date of further final inspection	24 May 1999

Date of first Contact Gas reading	19 September 2001
Date Code Compliance Certificate issued	18 March 2003
Date claim filed	21 July 2009

[10] The Act provides that in order for a claim to be eligible the dwelling house to which the claim relates must be:

- Built within the period of 10 years (or alterations giving rise to the claim being made within 10 years) immediately before the day on which the claim was filed;
- A leaky building, i.e. water must have penetrated it;
- Damaged as a result of the penetration of water.

[11] There is no dispute that the claim meets the second and third criteria bullet pointed above. What is in dispute is whether the dwelling was built within the ten year period before the claim was filed. In particular the question that needs to be asked is what is the date the house was built? In reaching a decision on this point I also need to consider whether, in the circumstances of this case, the Code Compliance Certificate date should be that date on which it could be considered the house was built.

[12] It is relevant to note that the Act does not provide for a ten year period for when the Code Compliance Certificate was issued. It refers to a period from when the house was built. "Built" is not defined in the Act nor does the Act define the point at which a house is regarded to have been built for the purposes of s14. That issue however has been the subject of judicial consideration by the High Court in *Auckland City Council v A-G sued as Department of Building and (Weathertight Services)* HC Auckland, CIV-2009-404-1761, 24 November 2009, Lang J (*Garlick*). In that case, Lang J concluded that the word "built" needs to be given its natural and ordinary meaning which he took to be the point at which the house was physically constructed.

[13] He accepted that in cases where a house passes its final inspection at the first attempt, the date upon which the owner sought the final inspection may validly

be regarded as the appropriate date upon which the house could be regarded as “built”. However that conclusion could only be reached where there is nothing to suggest that further construction work had been carried out between when the inspection was sought and the date on which it occurred.

[14] Lang J further noted that the date upon which the Council issued the Code Compliance Certificate can often provide little assistance. That was particularly the case where the Council did not issue the certificate until some months after the date of the final inspection. In such cases the reasons for the delay in issuing the Code Compliance Certificate is relevant. Ultimately however the Court concluded that a decision as to when a house was built was a matter of judgment based on all the information that is available to the decision maker.

[15] Lang J also considered the effect of s43(1) of the Building Act 1991 which provides as follows:

**43 Code compliance certificate**

- (1) An owner shall as soon as practicable advise the territorial authority, in the prescribed form, that the building work has been completed to the extent required by the building consent issued in respect of that building work.

[16] He concluded that if this reasoning is applied to the consideration of the built-by date under the Weathertight Homes Resolution Services Act, then it means that a dwelling house can be regarded as being built when the construction process has been completed to the extent required by the building consent issued in respect of that work. Accordingly where there are omissions or deviations from the plans and specifications or the Building Code which is sufficient to result in a house failing its final inspection by the Council, it is likely not to be considered as having been built.

[17] The assessor states in his report that the date of the failed final inspection was 24 March 1999 with the date of the recheck being 24 May 1999. There were no outstanding issues on the recheck on 24 May 1999 and that accordingly could be assumed to be the date that the final inspection was passed. Ms Dodd suggests that information is not reliable because it is only contained in a handwritten note and not properly authenticated. I am however satisfied that the

handwritten notes contained on the back of plans are generally a reliable record of when inspections took place. From this record I conclude that it is more likely than not that the property passed its final inspection on 24 May 1999.

[18] As already stated Lang J concluded that when a house passes its final inspection it can generally be considered to be built. The information before me establishes that the building work on the dwelling at 62A Godden Crescent had been completed to the extent required by the building consent issued in respect of that building work by 24 May 1999. There is no information to suggest any building work took place after 24 May 1999, nor is this alleged. While the gas supply may not have commenced until 2001 this does not on its own mean the dwelling was not built. It is also possible that there may have been a change of supplier at this date. There is also some dispute over when electricity was connected. It does however appear that the date of 18 September 1999 submitted by Ms Dodd is in fact the last date in Mercury Energy's electronic data storage. On further investigation the assessor was advised power was connected on 1 April 1999. As noted by Lang J in *Garlick*, the decision of the built by date is a judgement based on all the available information. As the final inspection passed on 24 May 1999 and there is no information to suggest any construction work took place after that date I conclude that it is more likely than not that the house was built by 24 May 1999. The claim is accordingly not eligible.

## **Conclusion**

[19] I have reconsidered the Chief Executive's decision pursuant to section 49 of the Act and, for the reasons set out above conclude that the house was not built within the ten years prior to the claim being filed under the Act. In particular there is no evidence of any construction work taking place after 24 May 1999. I accordingly conclude that claim 6032 does not meet the eligibility criteria as set out in the Weathertight Homes Resolution Services Act 2006.

**DATED** this 26th day of April 2010

**P A McConnell**  
Chair