



## **SUMMARY**

**Case:** Speirs & Anor as Trustees of the Speirs Family Trust

**File No:** DBH 05928

**Court:** WHT

**Adjudicator:** Chair of the Weathertight Homes Tribunal, PA McConnell

**Date of Decision:** 8 July 2009

---

### **Background**

The Speirs Family Trust filed applied for a reconsideration of the Chief Executive's decision under s 49 of the Act for a review of a decision that their claim does not comply with the eligibility criteria. This review was based on the Chief Executive's decision that the dwelling was not built within ten years immediately before the day on which the claim was brought – that ten year period beginning 30 March 1999

### **Decision**

For the following reasons the Chair found that the information indicated that the house was built before 30 March 1999 and therefore the house was not built within the ten years prior to the claims being filed under the Act:

- Generally, the definition of “built” applied to claims under the Act is when the dwelling was completed and first occupied or fit for occupation. In determining this the date of issuing a code compliance certificate is relevant but not necessarily definitive, particularly with claims where none was issued, as in the present case
- It should not be accepted that a house should not be considered to have been built if it had not been constructed without crucial weathertight components as most, if not all, leaky homes would not be considered as “built”
- The intention of the Act was that there would be general consistency between the ten-year long-stop provision in s393 of the Building Act 2004 (or s91 of the Building Act 1991) and the ten-year “built by” date. But this did not necessarily mean that it was intended that these provisions be synonymous for if this had been intended the same provision or wording from the Building Act would have been adopted. One of the reasons for the built by date criteria is to ensure that claims are not found to be eligible if they will be ultimately unsuccessful because of the limitation provisions within either the Building Act 2004 or 1991 or the Limitation Act 1950. If this particular claim were found to be eligible the claims against most, if not all, potential respondents would be likely limitation barred under the Building Act 1991 or 2004.

This claim was filed in March 2009 and the information before the Chair suggested that the majority of the construction work was completed by the end of 1993 with a few small areas still outstanding as noted in a further field visit on 20 October 1997. No further inspections were recorded on the field memorandum but it does record that telephone advice was received on 18 December 1997 that the steeple window had been sealed. In addition, there was a letter in the Council file to the previous owners dated 23 October 1997 whereby the building inspector noted “All above outstanding work now completed – Final” then a signature and the date of 16 July 1999. It was unclear when the additional work was done and also when the house was first occupied. The Chair accepted the assessor's conclusion that the house was occupied

at least by 4 September 1997 when a building inspector visited and noted that the owners were not at home so he left a letter at the property. It was further accepted that the construction of the house was completed by September 1997 at the latest.

The Chair was satisfied from the information before her that the house was built before 30 March 1999. The time limits for filing a claim in eligibility are finite. They cannot have the degree of flexibility suggested by the applicants. If lack of watertight components resulted in concluding a dwelling was not built, no leaky homes could be considered built and this would mean the first eligibility criteria would be redundant.

### **Result**

The Chair of the Tribunal concluded that the claim does not meet the eligibility criteria as set out in the Act for the house was not built within the ten years prior to the claim being filed under the Act.