

3. APPEAL AGAINST SENTENCE - M J KNOWLES BUILDING



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The purpose of this report is to advise the Council of the outcome of prosecutions filed by the Council in the District Court in respect to the M J Knowles building situated at 227-231 Tuam Street and to recommend that the Council appeal to the High Court against the level of fines imposed by the District Court.

1997 INSPECTION

In August 1997 following the receipt of a complaint officers from the Council's Environmental Services Unit and the New Zealand Fire Service carried out an inspection of the above building. It is an extensive building with three street frontages and is approximately 60 years old.

The inspection revealed that the first floor of the building was being used for residential accommodation. In particular a number of young people were found to be permanently residing on various parts of that floor. It also revealed that the lack of fire safety features together with the residential use rendered the building dangerous in terms of Section 64(1)(b) of the Building Act.

Section 64(1)(b) provides that a building is deemed to be dangerous if, by reason of fire hazard and occupancy, it would be likely to give rise to an almost certain loss of life in a fire. In particular the building had inadequate means of escape from fire, insufficient fire separations around each of the residential occupancies and insufficient fire detection and alarm systems. The inspection also revealed that building work was being carried out inside the building without a building consent.

Enquiries revealed that the first floor was being let for residential purposes by both the building owner, Mr Murray John Knowles, and by a commercial lessee of part of the building, Murrays Furniture Limited.

As a result of the findings all of the occupants were required to vacate the building immediately. Both Mr Knowles and Murrays Furniture Limited were then issued with warnings that they were committing serious offences under the Building Act by permitting the use of the building for residential purposes. Mr Knowles was also issued with a warning that he was committing an offence for carrying out building work without a consent. Both were warned of the penalties under the Act and that they both faced prosecution if they were found committing those offences in future.

2002 INSPECTION

In February 2002 the Council received a complaint from the New Zealand Fire Service that the building was again being used for residential accommodation and that by reason of this use and its lack of fire safety features, in particular its means of escape from fire, it was dangerous.

An inspection carried out on 13 February 2002 by Fire Safety Officers from the New Zealand Fire Service and Council Building Control staff confirmed this. Enquiries revealed that once again both Mr Knowles and Murrays Furniture Limited were permitting the building to be used for residential purposes. The inspection also revealed that again Mr Knowles was carrying out building work without a building consent in contravention of the Building Act. It was also found that no warrant of fitness, as required by the Act, had been issued for the building.

DISTRICT COURT PROSECUTIONS

As a result prosecutions were authorized by the Environment Services Manager acting under delegated authority in the District Court against both Mr Knowles and Murrays Furniture Limited. Both were charged with permitting the building to be used for an unsafe use. That is an offence against section 80(1)(b) of the Act which carries a maximum penalty of \$200,000.

Mr Knowles was also charged with an offence against section 80(1)(a) for doing building work without a consent which carries a maximum fine of \$100,000.

Mr Knowles was also charged with an offence under section 80(1)(d) for failing to display a warrant of fitness in the building which carries a maximum penalty of \$5,000.

Each of the prosecutions was heard by way of a defended hearing in the District Court on Tuesday 20 May 2003 and Wednesday 21 May 2003. On Wednesday 21 May 2003 the Court found all of the charges proved. The following penalties were imposed by the Court:

1. Murray John Knowles:

- (a) Permitting the building to be used for a use for which it was not safe contrary to section 80(1)(b): Convicted and fined \$7,500.
- (b) Carrying out building work without a building consent contrary to section 80(1)(a): Convicted and fined \$1,000.
- (c) Failing to display a current warrant of fitness in the building: Convicted and fined \$1,000.

2. Murrays Furniture Limited:

Permitting the building to be used for a use for which the building was not safe contrary to section 80(1)(b): Convicted and fined \$7,500.

APPEAL AGAINST SENTENCE

The Council has sought advice from the Council's barrister, Mr Raoul Neave, who presented the case in Court as to the level of fines. His advice is that the fines imposed in respect of the charges under section 80(1)(a) and 80(1)(b) are manifestly too low and do not fall within the sentencing guidelines set by the High Court for offences of this type.

A copy of his advice is attached. This advice relates to the offence of permitting the building to be used for a use for which the building was not safe and carrying out building work without a current building consent. No appeal is being sought for the offence of failing to display a current warrant of fitness.

The circumstances giving rise to these charges were very serious. Officers of the Fire Service and the Council gave evidence that in their opinion having regard to the lack of fire safety features in the building there would have been an almost certain loss of life had a fire occurred in the building at a time when the occupants were sleeping. This involved a serious issue of public safety. It was a commercial enterprise which involved financial gain to both defendants and both defendants had ignored an earlier warning.

In his brief of evidence the Fire Safety Officer of the New Zealand Fire Services stated:

"In my opinion in terms of section 64(1)(b) of the Building Act this building is one which by reason of fire hazard, and its occupancy for residential purposes would be likely to give rise to an almost certain loss of life in a fire. Fire safety features of this building are such that the building is dangerous if used for residential occupation."

It is important that sentences be imposed which will act as a deterrent to others. The fine imposed for the offence against section 80(1)(a) was only 1% of the maximum prescribed (\$1,000; \$100,000) while the fines under section 80(1)(b) were just under 4% of the maximum prescribed (\$7,500; \$200,000). It is considered that fines at these levels will not act as a deterrent to other commercial operators who may be tempted to flout the law in similar circumstances.

The decision whether or not to appeal the sentence is one for the Council to make.

In considering this matter it is important for Councillors to appreciate that they are acting as regulators and administrators of the Building Act and any decisions regarding an appeal should be made within the framework of that Act.

Section 6 of the Building Act provides in part:

- "(1) The purposes of this Act are to provide for—
 - (a) Necessary controls relating to building work and the use of buildings, and for ensuring that buildings are safe and sanitary and have means of escape from fire.*
- (2) To achieve the purposes of this Act, particular regard shall be had to the need to—
 - (a) Safeguard people from possible injury, illness, or loss of amenity in the course of the use of any building..."*

Section 24 of the Act provides that every territorial authority shall have as one of its functions under the Act the administration of the Act, and the enforcement of the provisions of the Building Code and Regulations.

It is considered in this particular case important for the Council to send a clear deterrent signal to other building owners or lessees who from time to time permit the use of their buildings for residential accommodation in non-compliance with the Building Code. Information provided to the Court in this particular case clearly indicated that if fire had occurred and death had resulted, then the building owner and lessee could well have been facing manslaughter charges as a result of their actions.

Recommendation: That the Council appeal to the High Court against the fines imposed by the District Court in respect of the offences against section 80(1)(a) and 80(1)(b) of the Building Act.