

BEFORE THE ENVIRONMENT COURT
I MUA I TE KŌTI TAIAO O AOTEAROA

Decision No. [2020] NZEnvC 173

IN THE MATTER of the Resource Management Act 1991
AND
IN THE MATTER of an appeal against an abatement
notice under s 325 of the Act

BETWEEN HUILAN WANG
(ENV-2020-AKL-000162)
Appellant
AND AUCKLAND COUNCIL
Respondent

Court: Environment Judge D A Kirkpatrick
sitting alone under s 309(1)(a) of the Act

Hearing: On the papers

Date of Decision: 13 October 2020

Date of Issue: 13 October 2020

**DECISION OF THE ENVIRONMENT COURT
ON APPLICATION FOR STAY OF ABATEMENT NOTICE PENDING APPEAL**

- A. The application for a stay of the abatement notice pending the hearing of this appeal is granted.
- B. The parties are directed to confer and report to the Court by 16 November 2020 about a timetable and other arrangements for the hearing of the appeal.
- C. Leave is reserved to apply if circumstances change.
- D. Costs are reserved.



REASONS

[1] On 11 September 2020 Mr Benjamin Moodley, an enforcement officer of the Auckland Council, issued an abatement notice to Ms Huilan Wang in respect of certain works at Ms Wang's property at 14 Mona Avenue, Mangere Bridge, Auckland, which allegedly do not comply with the relevant development controls under the Auckland Unitary Plan (Operative in part) (**AUP**), in particular in terms of the height of two boundary fences which exceed the limit in Rule H3.6.12(1) and require consent as a restricted discretionary activity under Rule C1.9(2). The abatement notice stated that compliance was required by 7 November 2020. It appears that the notice may not have been served on Ms Wang until 25 September 2020.

[2] Ms Wang lodged an appeal against the notice on 29 September 2020 together with an application for a stay of the abatement notice pending her appeal, and an affidavit in support of that application on 6 October 2020. In her affidavit Ms Wang sets out her reasons why compliance with the development control is not practicable, including the temporary nature of the fences around a site where building renovations are occurring which may mean that resource consent is not required, needing to protect the building site, attempts to address the concerns of neighbours and financial constraints including problems arising in the COVID-19 pandemic. There appear at first impression (but without reaching any conclusions) to be arguable reasons in support of the appeal.

[3] By a memorandum of its counsel dated 12 October 2020, the Council advises that it has no opposition to the application for a stay. Counsel for the Council also advises that this appeal is suitable for mediation as the issues are narrow and may be capable of resolution without a hearing.

[4] Before granting a stay of an abatement notice, under s 325(3D) of the Act I must consider:

- (a) what the likely effect of granting a stay would be on the environment; and
- (b) whether it is unreasonable for the person to comply with the abatement notice pending the decision on the appeal; and
- (c) whether to hear—
 - (i) the applicant;
 - (ii) the local authority or consent authority whose abatement notice is appealed against; and



(d) such other matters as the Judge thinks fit.

[5] In the circumstances as they presently stand, I consider that the likely effect on the environment of granting a stay will be relatively minor and acceptable on a temporary basis. In such circumstances it would be unreasonable to require Ms Wang to comply with the abatement notice pending her appeal and, in particular, the outcome of any mediation. In my view, it would be preferable to allow Ms Wang the opportunity to see if the compliance issues can be resolved before requiring any works to be demolished. If the issues cannot be resolved, then that may be a matter that would warrant reconsideration of the stay.

[6] I do not consider there is any need to hear further from Ms Wang or the Council. The documents filed are sufficient to inform me of the relevant circumstances.

[7] I will accordingly grant a stay of the abatement notice pending the appeal. I reserve to both parties the right to apply for reconsideration of the stay should circumstances change.

[8] I will direct the parties to confer about a timetable for mediating the appeal..

Decision

[9] For the foregoing reasons, the application for a stay of the abatement notice pending the hearing of this appeal is granted.

[10] The parties are directed to confer and report to the Court by 16 November 2020 about a timetable and other arrangements for the hearing of the appeal.

[11] Leave is reserved to apply if circumstances change.

[12] Costs are reserved.




D.A Kirkpatrick
Environment Judge