

Stop That Builder! Neighbours Building Without Approved Building Plans - What are my options ?

As municipalities fail to enforce rules and regulations more often, it has become incumbent on neighbouring owners or governing bodies, in the case of community schemes like sectional title schemes or homeowners associations, to ensure that municipalities enforce them, and neighbours adhere to municipal by-laws and regulations.

We are often approached by owners or trustees of community schemes, requiring assistance in halting building activities of neighbouring property owners, where building plans have not been approved by local authorities.

In terms of section 4(1) of the Building Standards Act, Act 103 of 1977, a person may not erect any building for which plans are required to be drawn and submitted without written approval from the relevant local municipality prior to the building being commenced.

The relevant relief which may be obtained in such instances is an interdict prohibiting the owner from continuing with the building activities until the building plans have been approved by the local authority. There are however some requirements that will have to be met to be successful with an interdict, which are:

1. These applications will most likely be urgent due to the time constraints of normal court proceedings. One would then have to prove urgency, which will depend on the facts of each matter.
2. One would need to prove that you have the necessary *locus standi* and a clear right to the relief sought. Normally these proceedings will be instituted by the owner of an adjacent property or someone having the authority to act on behalf of them. In community schemes, the body corporate or homeowners association would also have the relevant authority to institute the proceedings.

3. You would also need to prove that you will suffer actual harm or that harm is reasonably apprehended. The 'harm' will differ in each matter depending on the circumstances.
4. You would also need to prove to the court that you have no other satisfactory remedy in law.

Bear in mind that it is costly to approach a high court for an interdict to this effect. One would most likely ask for a cost order against the neighbour refusing to cease building activities, but the same is not always guaranteed.

In the case of community schemes, one could also approach the Community Schemes Ombud Service (hereinafter referred to as CSOS) for a similar order, which would be a more cost-effective way of resolving the issue. Another option would be to approach CSOS to compel the governing body of the community scheme to take the necessary action against the owner.

In the recent matter of *Rudigor Kleyn N.O and Another v Boikanyo and the City of Tshwane*, [2024] ZAGPPHC 187 an interdict was sought to prevent a neighbour from continuing with building activities until an approved building plan is obtained from the local municipality.

In this matter, it was common cause that approval of the building plan was required but had not been obtained. In fact, the local municipality had written to the 1st Respondent requiring that she cease all building activities and remove all building materials from the sidewalk of the property. Despite this, the property owner persisted with the building activities which resulted in the institution of urgent interdictory proceedings.

Interestingly, the Applicants sought the order based on the security risk posed by the builders residing at the property whilst busy with the building activities. The Applicants alleged that the builders also slept at the property and that same poses a risk for their elderly mother residing in the adjacent property.

The Court granted the interdict, with costs, against the owner conducting the building activities.

One would be able to obtain the interdict based purely on the fact that the Respondent does not have approved building plans.

It is always important to consult with an architect and the managing agent or trustees of a community scheme to ascertain what necessary approvals need to be obtained for building activities and to adhere to such requirements. It is relatively easy for neighbouring owners or governing bodies of community schemes to halt building activities without same. If you are a neighbouring owner in a similar situation, you would need to approach an attorney to ascertain the best way forward.

One should caution against simply proceeding with building activities until the necessary approval has been obtained as there is a good chance that a neighbour, aggrieved by the unlawful activity, could secure an interdict preventing the continuation of building activities until the required municipal approval has been obtained.

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