

## Development monster is clawing at our fences

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By Elizabeth Farrelly

Isn't it funny how quickly things become their opposites? How sports stadiums reek of cigarette smoke outside and ageing chip fat within. How health food stores stuff their windows with synthetic hormones.

How "sports" drinks are mainly sugar, how motorways, meant to render life as free-flowing as iodised salt, actually leave it clogged. How a judge lies his way to jail, how laws to protect consumers mean banks get to charge you *twice* to withdraw your own money.

How telecoms - that's *telecommunications*, mind - focus on communicating nothing at all, except when they are about to charge you four bucks for the pleasure of receiving their incomprehensible bill. Funny too, in a sad way, how a planning labyrinth intended to protect people from scruple-free developers actually hangs us out to dry.

Architect Anna Bowen-James is educated, energetic and middle class. She spends her life designing houses, shepherding them through councils, dealing with builders and certifiers, doing the decent thing by the neighbours. So she knows her way round the planning system, or thought she did.

Yet even she now has a house next-door that enormously exceeds the approved drawings, glowers in from on high to the family bedrooms and has a rear retaining wall so jerry-built it could collapse any moment onto her three little girls. Be scared. This is Grendel at the door. If someone like Bowen-James can't defeat the monster created by council incompetence and private certification, what chance for you or me?

It started eight years ago, when a small-time developer applied for development consent to build two terrace houses beside the Bowen-James's terrace in Paddington. They objected, pointing out the overlooking; the way each house more than doubled the floor space limit; that what were described as "three storeyed" houses were in fact four-storeyed and, that the height dimensions given were not properly documented as required by law:

A 2001 file minute from South Sydney Council planner Nick Horiatopoulos noted that the proposal's footprint and scale, relative to the site and to adjacent buildings, were "not in compliance with the DCP [development control plan]". This should have sent it straight to the full council for decision.

But no. Three weeks later the development was approved by a staff planner under delegated authority. Then, under a private, developer-paid certifier, construction began.

The houses were always going to be hideous. There's no law against that. They are hideous because they are badly proportioned, but also because "they are mean and greedy, using tacky materials and cramming as much onto the site as is humanly possible. Indeed, rather more. In 2006, as completion approached, it became glaringly obvious the building was breaching the DCP. And in two ways.

The approved drawings included two elevations. One, of the houses in street context, showed their roofs aligning almost exactly with neighbouring ones, both sides. The other, of the proposal in isolation, showed the houses at their full, dimensioned height. The discrepancy was a couple of metres - almost a full storey - and the developer, natch, gave the taller drawing priority.

But that wasn't all. Each house has two pitched roofs, one at rear, one at front. The approved drawings showed the rear roof a metre or so lower than the front. But the written conditions accompanying the approval simply threw a height-maximum across the lot. So once again, it was a case of whichever's the higher.

In other words, the development application contained serious inconsistencies and should never

have been approved. By the time this was inescapably apparent, South Sydney no longer existed and the City of Sydney council, which inherited the problem, didn't want to know, citing "insufficient grounds" for action. For a full year, Bowen-James was told that the council "couldn't find" the approved drawings. As though that made it better, not worse.

The Building Professionals Bowl was similarly blasé. Noting the "significant discrepancies", it nevertheless dismissed the complaint. The certifier, it said, must ensure compliance with the Building Code of Australia, and with Development Approval. But he doesn't certify the approval itself is valid. He doesn't even have to do, where there is glaring incompetence. And he's entitled to decide on-site that the rear roof be raised to match the other.

So there was a significant, acknowledged error but no one to blame, no comeback. That might have been it, had not the property's two-metre garden wall - a retaining wall the developer wishfully describes as "over-engineered" - been built without reinforcing, brick-bonding or foundation. An engineer's report commissioned by Bowen-James finds it "'structurally unsound" – mate, you could blow it over - and advises a two-metre exclusion zone. This finally made the council promise to visit, three years on.

That sound like Grendel's claws at your fence? It's a monster all right. Be afraid.