

Maandag 28 November 2004

Dear members of the court.

Our defence will comprise a number of broad areas. We will combine our technical, legal defence, which I know the court is eager to hear, with personal and political arguments. We have never made any secret of the fact that personal and political motivations have been of the utmost importance to us. We began our time living in Borneostraat 72hs and 72.I with a political letter of explanation to our new neighbours. Our first personal communication with the Dageraad was fiercely political. And we stand today by those convictions. The fact that we did not reply to the Dageraad's 'oprotbrief' of February 15th does not, as is implied by page 6 of their dagvaarding, indicate an absence of interest. Rather, that was based on a communication mix-up on our behalf; we have (on multiple occasions) more than adequately demonstrated our willingness to engage and co-operate with the Dageraad. At any rate, we are here today, and we have plenty to say.

In fact, let us begin with the personal and political motivations, before we move onto the technical/legal aspects. Now, we understand that you ultimately want to know why an owner with a samenvoegingsvergunning, a bouwvergunning, and an agreement with an aanneemer should *not* be allowed to legally proceed with their building work. We'll get to that. But first, let us describe the personal and political convictions, which are themselves somewhat intertwined with the technical/legal justifications discussed later.

The background: a long history of neglect by the Dageraad

We squatted these two woningen on Sunday 28th November 2004. At this time, both 72hs and 72.I had stood at least a year empty, a fact supported by the Officier van Justitie's letter of 20 Januari 2005 which states that the owner of the property (the Dageraad) had made no attempt to claim a "Section 429" against us. (A Section 429 squat is one that occurs before a property has been empty a year.) Indeed, as the Dageraad itself admits, werkzaamheden – which began shortly after the eviction of previous squatters in Juni 2003 – quickly stopped, a suspension that the Dageraad says was due to a disagreement with the contractor Onrust. And, when we squatted the woningen on Sunday 28th November, more than a year had passed since that disagreement, a year in which those woningen had stood silent and unused. So, when the Dageraad says that it wishes to resume work urgently, you should remember that essentially the only thing they did with these woningen during that year is seal them off with heavy duty metal shielding ("Sitex"), an indication (in most cases) that long-term abandonment is likely.

Further, one should note that the Dageraad's failure to act quickly with Borneostraat 72hs and 72.I during 2003 and 2004 was not unprecedented. In fact, the Dageraad has had a history of inactivity with especially 72hs, reaching back to at least 2001. (We note that neither woning has had a huurvergunning in many years; according to Dienst Wonen 72.I has had no huurvergunning since February 2000!) Prior to us, the last occupants of 72hs

were also squatters, who squatted 72hs in 2002 because it had then – *in 2002* – already stood empty for at least a year. So, in other words, 72hs has – since it was acquired by the Dageraad in 1999 – spent years and years empty, and the Dageraad has already forfeited several chances to bring the property back into use. This leads us to place the greatest emphasis on the fact that the case before you today is a kort geding, a type of court case that is only supposed to be used in the context of *genuine urgency*. To the best of our knowledge, the Dageraad used a kort geding against the previous squatters, yet – as we show in due course by referring to paragraph 4 of their dagvaarding – the Dageraad itself has admitted that working on Borneostraat 72hs and 72.I has been a low priority for them. We question, in this context, whether – given this history of lethargy on behalf of the Dageraad – it is realistic for them to claim, once again, that the situation is urgent and thus warrants a kort geding.

Please hold that at the forefront of your thoughts as we proceed.

So, we squatted on November 28th 2004. For the sake of accuracy, let me stress that date, because the Dageraad's evidence wrongly suggests that we squatted the woning on approximately 7th November, three weeks earlier. That's worth mentioning because, if Onrust did indeed send the Dageraad a new budget calculation on 2nd November, then the fact that they had not performed their subsequent inspection by the time we had squatted – *almost a month after the new calculation had been received* – indicates again the striking lack of urgency with which the Dageraad performs its tasks.

Personal, political motivation

Now, our personal story is probably not so unusual, but we feel it is important to mention, to highlight the human dimension of this case. As we told our neighbours on the day we squatted the houses, we would love it if we didn't have to go squatting! We would love it if we had a secure, affordable rental contract. We would love it, if both our Woningnet inschrijvingen were not stuck somewhere in the middle of a seemingly unending waiting list. But, as you and I know, the 7+ year wait for an affordable, secure huurwoning in Amsterdam ensures that an enormous number of Amsterdam residents have no other option but to seek accommodation through less official methods. And we have both experienced what that means. That means a procession of insecure, expensive, and often exploitative periods in (for example) onderhuur. As I'm sure most of you know, this is a deeply unpleasant, essentially humiliating experience, made worse by the bizarre assumption by bureaucrats that everybody has a permanent contract, and that onderhuurders are enemies of the system rather than victims of it. If we are evicted we will once again be forced to rely on desperate means to put a roof over our head.

In November 2004, we said “*enough!*”. No more exploitation, no more hiding from the Zoeklicht. We squatted the unused apartments Borneostraat 72hs and 72.I and, in doing so, we made the list of woningzoekenden in Amsterdam a little smaller that day. This city has an absurd housing problem, which politicians seem incapable of fixing, and in this

context the abandonment of living space (as in this case) for more than year is *utterly unjustifiable*. As you may or may not know, squatting is about tackling that injustice head-on. It is about elevating the right of people to have secure, affordable accommodation above the right of building-owners to leave their property empty, whether through neglect or – even worse – for reasons of speculation. So, whenever squatters see a potential living space being unused, it *will* be squatted, whether it is a never-used office complex (of which there is much in Amsterdam!), an old shop, or a Dageraad woning. Squatting will keep on happening, and squatters will resist firmly and come to court time and time and time again, because it is in our politics to stand up for what we believe in.

Beyond the leegstand status of our two woningen, we also have some major political problems with the Dageraad's wider plans for our block. The samenvoeging of 72hs and 72.I will function, apparently, as a 'pilot' project for the rest of our block, itself a contribution to the 355 samenvoegings projects that will ultimately be undertaken. That is: many other begane-gronden and 1-hoogs in our block will ultimately be samengevoegd, a renovation which – according to several sources, including the Dageraad's Voorraadbeheerplan itself (p.45) - will not take place until (at the earliest) 2007¹. In addition to technical/legal objections, which we will address in due course, we have a strong political objection to this wider, whole-block samenvoeging project.

We elaborate. In a letter to us, dated 14 januari (included as evidence), the Dageraad explained that about 15% of the 'new', larger apartments will have a free-market rent, and that the rest will remain in the regulated rent system. So, in the “best” case, these new, larger woningen will have a higher rent than it 'social' in name only; in the worst case, these woningen will have a vogel-vrij free-market rent. Before considering the wider ramifications of such a policy, we note with considerable concern that – as far as Borneostraat 72hs and 72.I are concerned - the Dageraad appears in this context to be running the risk of violating the conditions of its samenvoegingsvergunning. The samenvoegingsvergunning states that the new apartment must be “een grotere en *betaalbare* woning”, and remain so for 10 years. (Emphasis added.) As far as we understand, and can ascertain from the Dageraad's own Voorraadbeheerplan, *betaalbaar* in this context is a technical term which applies to rent-controlled (i.e. not free-market) huurwoningen. Yet, in the aforementioned letter of 14 januari, the Dageraad's advocaat states, “*Of de onderhavige samen te voegen woning in de vrije markt en wel de sociale markt zal komen is thans nog niet bekend.*” We point this out both because of our concerns about the afbraak of affordable, controlled-rent housing, and also as a further indication that the Dageraad's ability to stick to its promises is perhaps not quite so strong as they would have us believe.

But let's return to the wider context of samenvoeging projects occurring throughout the

¹ Of course, we acknowledge that this 2007 date may have been adjusted since 2001. As mentioned later in this letter, a recent query at the official *Informatiecentrum Stedelijke Vernieuwing Indische Buurt*, Borneostraat 80) suggested that 2008-10 is the next date for renovations in our block.

whole block. If you consider that these fewer, less affordable apartments will be created by destroying smaller, more affordable apartments, the effect will be doubly-negative for those who either cannot afford, or (reasonably enough) do not *want* to have to afford, ludicrously high rents. (Not to mention, of course, the distinct possibility that these woningen will one day be sold – something the Dageraad would, I'm sure, love to do under different circumstances - and be effectively lost from any meaningful form of social control.)

In its Voorraadbeheerplan, the formerly socialist Dageraad has put forward a detailed justification for this policy of removing affordable apartments at the expense of more expensive ones. Indeed, like many other advocates of this policy, the Dageraad (and, of course, many politicians) has somehow managed to decorate this damaging afbraak with a sophisticated pseudo-socialist justification, in which concepts such *doorstromen*, *scheefwonen* and an *excess of inexpensive affordable rental apartments* assume central importance. The Dageraad and its colleagues may genuinely have good intentions, and may genuinely want to rejuvenate the Indische Buurt, but that in itself means nothing; often the most damaging and inhuman policies are carried out precisely by those people who believe intensely that their activities are just and correct. The Dageraad's repeated stress on the need to *diversify* the woning composition of the Indische Buurt is essentially based on the idea that the Indische Buurt can be rejuvenated by creating islands of personal wealth (i.e. more expensive woningen) inside this largely low-income neighborhood.

Interesting idea. The idea is that the Indische Buurt can become hip and trendy, a sort of replication of the *Pijp's* success, by limiting the amount of space that less desirable, poorer people have to live in, and increasing the amount of space for more economically desirable and dynamic people. Now, the Dageraad can claim that this will make the area more economically attractive, that it will facilitate intra-Indische Buurt mobility, that it will facilitate *doorstromen*, and so on. But is housing, after all, really so different from other rights-based public services such as health and education? The parallel with *doorstromen* in those sectors would be the dubious idea that it is better for everyone if the wealthier are allowed to privately buy their own health or education; “*it frees up the social system for the poor,*” some might say, just as *doorstromen* now is about making more expensive accommodation for *scheefwoners* to move into. But then the companies and institutions providing those services will “cream skim”:- they will focus on the wealthiest clients, the most low-risk clients, because it is not in their interest to damage (or 'pollute') their profits or income streams by 'cross-subsidising' poor, high-risk and otherwise undesirable clients. In other words: in the current political climate, more expensive woningen will ultimately only serve the wealthy and lead to the further afbraak of economic solidarity between different wealth classes.

Rather than samenvoeging the whole block, we maintain that the Dageraad should maintain the present affordable structure of the block, and renovate it well, but *soberly*. Just like they should have done, and should still do, with our woningen.

Technical/legal motivation

Now, that is probably enough politics for now. You may be asking yourself what the technical and legal justification is for our case. Without prejudice to the arguments above, we want to convince you that it is neither necessary nor likely that the Dageraad speedily begins with renovations after removing us. (Recall that a kort geding should only be used in urgent cases.)

Firstly, we described, at the beginning of this defence, the fact that – over the last four years – the Dageraad has repeatedly neglected Borneostraat 72; it has left it empty, shown little concern for it, has been happy to sit back and let its bouwvergunning – originally issued at the beginning of 2003 - sleep through the years.

Indeed, even if some kind of building work does begin on March 14th, what are the chances that the work, sometime in the near future, suddenly gets suspended again, and that the whole woning again gets covered in Sitex? Indeed, given the history of this pand, it sometimes looks as though the Dageraad has, at times, been sorely tempted to let it stand empty until the next scheduled renovations at the end of the decade. The Dageraad explicitly demonstrates in paragraph 4 of the Dagvaarding that such indifference, motivated by the relative financial insignificance of the project relative to larger projects, has indeed been a direct factor in their decision to let the apartment stand empty for so long:

“Omdat het hier bovendien ging om een relatief klein project (zeker in vergelijking met de overige projecten die staan gepland om te worden uitgevoerd of al zijn of worden uitgevoerd en waarbij het dikwijls gaat om tientallen woningen), heeft de Dageraad haar aandacht en mankracht meer aan laatstgenomede projected moeten besteden en verliepen de onderhandelingen over de uit te voeren werkzaamheden en de aanneemsom traag.”

Furthermore, it is not definite that the next scheduled renovations on this block – perhaps 2007 or 2008-10 depending on which source is cited – will either happen on time, or actually happen at all. (We spoke to the *Informatiecentrum Stedelijke Vernieuwing Indische Buurt* on februari 21st, 2005 to determine when the next renovations on our block are due. This centre, which serves as the principle source of renovation information for people in our neighbourhood, gave us the 2008-10 figure.)

Having recently (eind-februari 2005) spoken to the Afdeling Woon- en Bouwen Toezicht (Zeeburg) we know that there have been no relevant samenvoeging or bouwvergunning requests submitted, something which would obviously have to be done to allow the wider samenvoegingsproject to go ahead. Are we going to be evicted to make way for a pilot for a project which is still technically uncertain?

Further, what exactly will happen with the pilot project once it is completed? We can

imagine two principle scenarios, both of which give us cause for concern.

- Will it be a purely 'technical pilot' in the sense that it will be examined to assess technical and structural feasibility, but will not in the near future be used as living space? (For example, the Dageraad may decide to only start renting it out after the wider renovations in the block are completed.) If the samengevoegd property will only be used for technical analysis, and will not function even as a public showroom, then this strikes us as a somewhat dubious strategy. If the pilot project is purely technical, would it not be better to perform such an analysis nearer the time of the (already scheduled) wider block renovations, and in doing so keep the space as a living space for longer? The other scenario we can imagine, should the samengevoegd property not be rented out, is that it will function as a public showroom. The desirability and urgency of such a showroom is questionable, given that:- the decision to samenvoegen in the blok has clearly already been taken; that the building will spend 99% of its time empty; and that visitors to the showroom will be looking at an experimental model of woningen that may only become available at the end of the decade, in a potentially very different rental market.
- Alternatively: Working on the assumption that there falls a period of time between the finishing of this 'pilot' and the beginning of the wider samenvoegingsproject, and referring to the Dageraad's statement that it does not plan to sell our woning (see the februari 14 letter), is the Dageraad going to rent it out the property, assuming that it will not be a leegstand showroom? Is not clear to us that the Dageraad will immediately want to put a high-rent paying, permanent huurder in a house that will soon be disturbed by radical samenvoegings renovations along the whole block. For this reason we suspect that, in the event that the Dageraad does rent out the new woning, it will use tijdelijke huurders to fill the space, for an extended length of time. Should this be so, we highlight once again that we, the present bewoners of Borneostraat 72hs and 72.I, have on multiple occasions offered to enter into a formal renting relationship with the Dageraad, and that such offers have always been ignored. To evict us, and then (after renovation) to insert tijdelijke huurders, will be (in light of our repeated offer) faintly ridiculous, and indicate that the Dageraad would rather remove strong (but reasonable!) bewoners such as us for more easy-to-manipulate tijdelijke huurders.

Thus, we suspect that, whether the samengevoegd 72hs and 72.I are used as living space or not, the chance is high that their use in the coming years - at least until 2007 - will be a weak justification for our eviction.

In conclusion

We would like to now summarise our main arguments.

A recent history of neglect which undermines the Dageraad's credibility about the urgency of the current renovations.

- Borneostraat 72hs has now been squatted (at least) twice since 2001, on each occasion because the place has been left empty by the Dageraad for at least a year. In other words: the Dageraad has already wasted several chances to renovate these apartments.
- The Dageraad's own admission that the 2003-2004 leegstand of the house was because the house did not figure highly in their current plans.
- A kort geding was used to evict the previous squatters, but clearly (see previous point) the project was not quite so urgent as perhaps claimed. Given this fact, and considerations about the role of the 'pilot' once it is finished (see below), it is highly questionable whether a kort geding is the appropriate legal device in this case.
- The fact that, when we squatted the apartments, they were sealed with heavy metal plating (“Sitex”), a common sign of abandonment.
- The fact that, throughout the whole of November 2004, the Dageraad had failed to perform a technical inspection of Borneostraat 72hs and 72.I, despite having (apparently) received new documents from Onrust at the beginning of November. It is of course difficult to say for certain, but the Dageraad only seemed to become interested in performing this inspection once we had squatted the woningen.
- Given that whole-block renovations are scheduled for several years in the future (2007 at the earliest, we believe, perhaps 2008-10), and the recent history of de-prioritising the renovation of these houses, there is a chance that – as the Dageraad has probably intended on earlier occasions – the woningen will again be neglected until the next block-wide renovation.
- Inconsistencies in the Dageraad's arguments and positions. Whether accidental or not, the false claim that the woningen were squatted on or around November 7th hides the important point (mentioned above) that the Dageraad failed to perform a technical inspection throughout the whole of November 2004. Also, the new possibility, in potential violation of the samenvoegingsvergunning, that – once samengevoegd – Borneostraat 72hs and 72.I do not remain in the regulated rent system.

Lack of clarity about what will happen to the 'pilot' project once finished, and – indeed – whether the block-wide samenvoeging project will actually go ahead.

- The absence, to date, of any requests for bouw/samenvoegingsvergunningen for the rest of the block. (And the chance that, in the future, such permits will not be granted.)
- Given that the block-wide samenvoegings project is scheduled for some years in the future, there are doubts about the immediate necessity of the 'pilot' project, and also fears that the pilot project will stand (essentially) unused for several years.
- If the Dageraad plans to use tijdelijke huurders to fill the pilot after it is completed, why does the Dageraad need to evict us so forcefully? We have made, on several occasions, a very reasonable offer to enter into a formal renting agreement (under the appropriate conditions.) But we have always been ignored.

Personal reasons.

- We need a place to live. We are tired of being exploited on the unofficial Amsterdam woning market. If evicted, we will once again have to resort to desperate measures to find space. A rapid eviction will be particularly damaging because there is no guarantee that we will have enough time to find new accommodation.

Political reasons.

- A protest against the absurd nature of the Amsterdam housing situation. A protest that, in this situation, properties can be left empty for more than a year. A protest that the housing policies of the Dageraad (and others) will ultimately only serve the wealthy at the expense of the poor.