



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number: 49 - 11

Applicant: Darren and Therese McCloud

Assessment Manager: DBR Building certification Pty Ltd

Concurrence Agency: Brisbane City Council (Council)

Site Address: 21 Prenzler Street, Upper Mt Gravatt - the subject site.

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the Decision Notice issued by DBR Building Certification Group as the Assessment Manager to refuse a building development application for a roofed deck and patio on the subject site. The refusal was based on advice from the Brisbane City Council (Council) as the concurrence agency.

Council reasonably believes the application has not demonstrated compliance with the Queensland Development Code – Part 1.2 as the location would not facilitate an acceptable streetscape for the bulk and scale for the building (structure) and would be considered to be in conflict with community standards for the area.

Date of hearing: 2.30pm – Monday 8 August 2011

Place of hearing: The subject site – 21 Prenzler Street, Upper Mt Gravatt.

Committee: Mr Leo Blumkie – Chairperson

Present: Mr Darren McCloud - Applicant
Mrs Therese McCloud - Applicant
Mr Angus McKinnon - Brisbane City Council representative
Mr Ricky Hedrick – Brisbane City Council Observer
Mr Leo Blumkie – Chairperson

Decision:

The Committee, in accordance with section 564 of the SPA **changes** the decision of the Brisbane City Council and directs Council to approve the application for a siting variation for a class 10a carport and roofed deck (patio), subject to the following conditions:-

- The carport measures 7500mm wide and is 6000mm deep.
- The carport is setback 1550mm from the street alignment and has a side boundary clearance of 2300mm.
- The clearance height of the carport is approximately 2200mm when measured at the outer corner of the existing landing from the existing concrete floor of the driveway to the underside of steel framing.
- The carport has a gable roof with the top of the ridge aligning with the top of the railing to the new roofed patio.
- The outer edge of the floor of the roofed patio aligns with the outer edge of the existing entrance landing, i.e, has a width of approximately 2600mm and has a setback of 4925mm from the street boundary.
- The roofed patio has a ceiling height of approximately 2150mm.
- The roof of the patio has a 400mm overhang i.e, has a 4525 setback to the street boundary.
- The roofed patio is open on all 3 sides except for the railings and the carport gable roof.
- All generally as shown on drawings titled, "McCloud 21 Prenzler Street Upper Mt Gravatt sheets 1 to 3 dated 23 August 2011".
- The roofed patio and carport complies in all other respects with the BCA for a Class 10a structure and a class 1 Building.

Background

The site is approximately 850m² rectangular shaped block developed with a Class 1 dwelling located at 21 Prenzler Street Upper Mt Gravatt.

The dwelling is set back 4925mm from the street frontage when measured to the entrance patio.

The site falls sharply away from the street frontage to the rear and also from the left side boundary (West) to the East.

The dwelling currently has no covered car accommodation as the garage door at ground floor level has been replaced with a sliding aluminium glazed door.

All properties in the neighbourhood have excellent views to the East.

Application was made to the BCC by DBR Building Certification for a variation of the siting requirements for a roofed deck and patio.

BCC refused to grant the variation on the 8 April 2011 and stated the reason for the refusal was that:-

"the location would not facilitate an acceptable streetscape appropriate for the bulk and scale for the building (Structure) and would be considered to be in conflict with the community standards for the area".

The Assessment Manager advised the applicant of the refusal on the 27 May 2011; however the decision incorrectly referred to the "Integrated Planning Act".

An appeal was lodged with the Registrar on the 10 June 2011.

The Registrar advised Council and DBR Building Certification Pty Ltd on the 23 June 2011 that an appeal had been lodged in relation to the refusal.

On the 2 August 2011 the Registrar advised Council, DBR Building Certification and the applicant that a Building and development Resolution Committee had been established to decide the appeal.

On the 2 August 2011 the Building and Development Dispute Resolution Committee Chairperson advised Council, DBR Building Certification and the Applicant of the date, time and place for the hearing.

Material Considered

The material considered in arriving at this decision comprises:-

1. Form 10 – Notice of Appeal, drawings and correspondence accompanying the appeal lodged with the Registrar on 10 June 2011.
2. The decision notice issued by Council as the concurrence agency dated 8 April 2011
3. The decision notice issued by the Assessment Manager dated 27 May 2011
4. Verbal submissions from the applicant at the hearing.
5. Verbal submissions from the Council representatives at the hearing.
6. Amended design submitted to Council on approximately 12 August 2011.
7. Response from Council dated 16 August 2011.
8. Updated design dated 23 August 2011 submitted to the Committee on 23 August 2011.
9. QDC MP 1.2 Design and Siting Standard for single detached housing - on lots 450m2 and over.
10. BCC document "Siting Variation Express".
11. Correspondence from the Tribunal dated 8 August 2011.
12. Verbal comments from the applicant dated 22 August 2011.
13. Site meeting with the Committee, Applicant and Council held on 23 August 2011.
14. *Building Act 1975*.
15. *Building Regulation 2006*.
16. SPA.
17. Building Code of Australia.

Findings of Fact

The Committee makes the following findings of fact:-

- The allotment is 850m² in area.
- The site is developed with a two-storey class 1 building and swimming pool.
- The allotment falls sharply from the street to rear and falls from the left side to the right.
- Most sites in the neighbourhood have substantial views to the East.
- The Class 1a is sited 4925mm from the street boundary when measured to the entrance patio.
- MP 1.2 of the QDC is the applicable code for siting of single detached housing on lots over 450m².
- The BCC document "Siting Variation Express" assists applicants on the siting relaxation approval process.

Reasons for the Decision

At the commencement of the hearing the Council representative pointed out that the decision notice issued by the Assessment Manager was not in accordance with the law as it had been issued under the Integrated Planning Act which has for some time been replaced by the *Sustainable Planning Act 2009* (SPA).

The Committee acknowledged this fact (the error was explained to the applicants) and decided to continue with the appeal as the real issue was the concurrence agency decision to refuse to vary the siting requirements for a roofed deck and patio.

The BCC "Siting Variation Express" document was tabled at the hearing and the Council representative explained what would be permitted for a carport and roofed patio under the document.

The documents (Plans) submitted were found to be inaccurate in a number of areas and did not provide accurate dimensions nor sufficient detail in relation to choice of materials, type of railings etc.

The reasons for the refusal were discussed and the applicant decided to consider other options, which may satisfy their specific requirements.

The Council representative was not prepared to take part in this discussion and decided to depart the hearing. At this point the hearing was adjourned and dates were established for the following:-

- The applicant to prepare a detailed revised submission.
- BCC to consider and respond to the new proposal.

These timelines are set out in correspondence from the Committee dated 8 August 2011.

The amended proposal was submitted to Council on approximately 12 August 2011.

In correspondence dated 16 August 2011, Council approved the reduced setback for the carport with the understanding that the roofed patio was beyond the 6000mm setback and hence did not consider a variation for the reduced setback for the roofed patio.

Following this anomaly being pointed out to the applicant by the Committee on the 22 August 2011, it was decided to refer the anomaly back to Council.

The Chairperson arranged a further meeting with the Council representative and the applicant at 2.00 pm on 23 August 2011.

Present were the Committee, Darren McCloud and Mr Ricky Hedrick representing Council.

New amended documents were tabled at the meeting clearly showing the amended proposal.

After discussion the Council representative verbally agreed to support the variation for the reduced setback of 4525mm to the OMP for the roofed patio.

The latest proposal is acceptable to Council and the decision includes the conditions which the Committee believes makes the proposal satisfy the performance criteria of the QDC.

NOTE: The Committee has only considered the variation for the reduced setback for the carport and roofed patio. All other matters need to comply with Qld building Law.

Leo Blumkie
Building and Development Dispute Resolution Committee Chairperson
Date: 29 August 2011.

Appeal Rights

Section 479 of the *Sustainable Planning Act 2009* provides that a party to a proceeding decided by a Committee may appeal to the Planning and Environment Court against the Committee's decision, but only on the ground:

- (a) of error or mistake in law on the part of the Committee or
- (b) that the Committee had no jurisdiction to make the decision or exceeded its jurisdiction in making the decision.

The appeal must be started within 20 business days after the day notice of the Committee's decision is given to the party.

Enquiries

All correspondence should be addressed to:

The Registrar of Building and Development Dispute Resolution Committees
Building Codes Queensland
Department of Infrastructure and Planning
PO Box 15009
CITY EAST QLD 4002
Telephone (07) 3237 0403 Facsimile (07) 3237 1248