



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number:	42 - 2012
Applicant:	Hannah and Cameron Brown
Assessment Manager:	Brisbane City Council (Council)
Concurrence Agency: (if applicable)	Not Applicable
Site Address:	51 Gertrude Street HIGHGATE HILL 4101- Lot 2 on SP239409 (the subject site)

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the decision of the Brisbane City Council to refuse a development application relating to a Material Change of Use (Development Permit) for a House and Building Works (Preliminary Approval).

Date of hearing:	10:00AM on Monday 22 October 2012
Place of hearing:	Department of State Development, Infrastructure and Planning offices Level 5, 63 George St, Brisbane City 4000
Committee:	John Brannock – Chair
Present:	Hannah and Cameron Brown – Applicants Erhard Rathmayr – refresh*design Architects Ernie Harvey – Employer of Hannah Brown Steve Adams – Brisbane City Council Neal Charlton – Brisbane City Council Louis Botson – Observer, Brisbane City Council

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with Section 564 of the SPA, **confirms** Brisbane City Council's decision to refuse the development application, on the grounds that the application in its current form is contrary to the Brisbane City Plan.

Background

The Applicant appealed against the decision of the Brisbane City Council (BCC) to refuse an application relating to a Material Change of Use (Development Permit) for a House and Building Works (Preliminary Approval). The application was refused on the grounds that it was contrary to the Brisbane City Plan 2000 – namely in regards to the Demolition Code and the Residential Design – Character Code.

Material Considered

The material considered in arriving at this decision comprises:

1. Form 10 – Application for Appeal/Declaration, grounds for appeal and correspondence accompanying the appeal lodged with the Committee Registrar on 2 September 2012.
2. The *Sustainable Planning Act 2009* (SPA)
3. The Brisbane City Plan 2000
4. Decision Notice (Refusal) issued 28 August 2012
5. Information Reques issued on 28 June 2012
6. Information Request Response submitted 2 July 2012
7. IDAS Form 1 – Application details, IDAS Form 5 – Material Change of Use assessable against a planning scheme, and IDAS Form 6 – Building or operation work assessable against a planning scheme
8. Brisbane City Council Application Forms – Development Application Executive Summary and Erosion Hazard Assessment
9. Development Application for a Material Change of Use (Development Permit) for a House and Building Works (Preliminary Approval), lodged 12 June 2012.

Findings of Fact

The Committee makes the following findings of fact:

- H and C Brown lodged a Development Application for a Material Change of Use (Development Permit) for a House and Building Works (Preliminary Approval) with Brisbane City Council on 12 June 2012.
- The proposal constitutes *development*, as defined by the SPA.
- The Brisbane City Plan 2000 is the relevant local planning scheme for the assessment of the Development Application.
- The land-use classification for the subject site is Character Residential (CR).
- The subject site is located within a *Demolition Control Precinct*.
- The subject site is located within the *West End – Woolloongabba Local Plan* area.
- The proposed development is identified as code assessable under Section 5.2.3 of the Brisbane City Plan.
- The applicable codes are the House Code, Residential Design – Character Code, Residential Design – Small Lot Code, and the Demolition Code.

The Council refused the application on 28 August 2012 for the following reasons:

- a. Does not comply with the with Acceptable Solution A5.1 of the Demolition Code as partial demolition results in the loss of integral components of the pre-1946 dwelling which contribute to its streetscape character.

- a. Does not comply with Performance Criteria P5 of the Demolition Code as the proposed partial demolition results in the loss of integral components of the existing pre-1946 house and will diminish 'traditional building character'.
- b. Is inconsistent with the *'Purpose' statement of the Demolition Code which seeks to protect the residential buildings that give the Residential Areas in the Demolition Control Precinct their traditional character and amenity* and *'ensure the preservation of buildings where they form an important part of a streetscape where the buildings and streetscape were constructed and/or established in or prior to the end of 1946'*.
- c. Is inconsistent with Development Principle 2.5 of the West End/Woolloongabba District Local Plan as the proposed demolition does not *'complement the traditional 'timber and tin' character by respecting the character streetscapes and amenity of the area.*
- d. Does not comply with A4.4 of the Residential Design – Character Code in that the ground floor structure does not give the appearance of a lightweight support to the upper floor.
- e. Does not comply with Acceptable solution A6.1 of the Residential Design - Character Code in that the external elements proposed do not reflect external elements found elsewhere in the street.
- f. Does not comply with Performance Criteria P4 of the Residential Design - Character Code in that the built form does not *'complement elements of pre-1946 houses nearby in the street'*.
- g. Does not comply with Performance Criteria P6 of the Residential Design - Character Code as the proposed external elements, materials and detailing do not *'reflect pre-1946 architectural themes, reduce building bulk and form a transition with the external landscape'*.
- h. Is inconsistent with the 'Purpose' statement of the Residential Design – Character Code. The proposed extensions do not reflect, strengthen nor complement the pre-1946 housing character in the surrounding precinct through compatible form, scale, material and detailing.

The Applicant lodged an appeal with the Committee on 6 September 2012 in which they made the following keys representations in response to the grounds of refusal:

- The Application did not apply for partial demolition approval, and the refusal is therefore based on aspects of development which were not applied for.
- The Application was accepted as a 'Properly Made' application without reference to the Demolition Code and therefore cannot be refused or condition on the basis it does not comply with this code.
- The existing building will be maintained in the timber and tin materials and new extensions will be constructed with new lightweight material which seeks to complement rather than replicate the existing structure.
- Partial demolition work to the western elevation is not considered assessable development as the side elevation does not form an integral part of the streetscape. Additionally, City Plan 2000 does not stipulate a side elevation dimension that the demolition works must comply with.
- The proposed development complements the 'timber and tin' character of the area and is consistent with other development in the locality.
- Refusal on the ground that the proposed extensions do not comply with A4.4, A6.1, P4, and P6 of the Residential Design – Character Code are invalid as these aspects did not form part of the information request.

Reasons for the Decision

The subject of this appeal can broadly be divided into two key categories:

1. Whether the proposed development involves partial demolition work and therefore requires assessment against the Demolition Code; and
2. Whether the proposed development affects the existing pre-1946 house in such a way that it

adversely impacts on the traditional building character and streetscape character – therefore not complying with the Residential Design – Character Code.

While these issues are discussed separately below, it must be noted that they are intrinsically linked.

1. The Council advised the Applicant in the Information Request that the proposed development involved partial demolition and would require assessment against the Demolition Code (particularly P5), and that additional information regarding the demolition work was required.

In response, the Applicant submitted that the proposed demolition work was **minor demolition work**, citing it was exempt from assessment against the Residential Design – Character Code and Residential Design – Small Lot Code.

The Applicant submits that the Application did not apply for partial demolition approval, and the refusal is therefore based on aspects of development which were not applied for.

The Applicant also submits that the Application was accepted as a 'Properly Made' application without reference to the Demolition Code and therefore cannot be refused or condition on the basis it does not comply with this code.

The Committee **agrees** with the position provided by the Council and finds that the proposed development does involve partial demolition work and therefore requires assessment against the Demolition Code – as prescribed by Section 313 (2) (e) of the SPA.

Building works is defined under Section 10 (a) of the SPA as meaning:

*“Building, repairing, altering, underpinning (whether by vertical or lateral support), moving or **demolishing** a building or other structure”*

Therefore, in applying for a Preliminary Approval to undertake building work (of which demolition is an aspect), the Applicant has applied for partial demolition.

Furthermore, unless exempt under the **minor demolition work** definition of the Brisbane City Plan 2000, the Application must be assessed against the Demolition Code for compliance.

As the proposed building works (demolition) does not arise from an existing approval, nor is it exempt from assessment against the Residential Design – Character Code and Residential Design – Small Lot Code, the proposed demolition work cannot be classified as **minor demolition work**.

The Committee **agrees** that refusal of the Application based on the grounds that it does not comply with aspects of the Demolition Code is therefore justified.

The Committee finds that the 'Properly Made' notice was issued in error by the Council as the Application did not meet the requirements for being 'properly made' under the SPA – namely, the Application did not include all mandatory supporting information, nor was it accompanied by the relevant fee.

Nonetheless the issuance of a "Properly Made' Application in error does not provide sufficient grounds for the omission of the Demolition Code in the assessment of the Application.

To this end, the Committee agrees that the Council's decision to refuse the Application based on the grounds that it does not demonstrate compliance with the Demolition Code is justifiable.

2. The Council advised that the proposed development does not comply with the following aspects of the Residential Design – Character Code:
 - The proposed extensions do not comply with Acceptable Solution A4.4 in that the ground floor of the building, in particular, the proposed balcony / garage structure, does not give the appearance of a lightweight support to the upper floor
 - The proposed extensions do not comply with Acceptable Solution A6.1 in that the external elements proposed, including the proposed balcony, front stairs and extensions to the Western elevation; do not reflect external elements found elsewhere in the street
 - The proposed extensions do not comply with Performance Criteria P4 in that the built form does not 'complement elements of pre-1946 houses nearby in the street'

- The proposed extensions do not comply with Performance Criteria P6 as the proposed external elements, materials and detailing do not "reflect pre-1946 architectural themes, reduce building bulk and form a transition with the external landscape"
- The proposed extensions are considered to be inconsistent with the 'Purpose' statement as proposed extensions do not reflect, strengthen nor complement the pre-1946 housing character in the surrounding precinct through compatible form, scale, material and detailing.

The Applicant submits that the proposed development will be constructed out of light-weight material that reflect external elements found elsewhere in the street; is of a complementary appearance to the existing character streetscape; and upholds the general intent of the Residential Design – Character Code.

The Applicant further submits that, as the Council did not request additional information in the Information Request regarding A4.4, A6.1, P4 and P6, refusal based on issues pertaining to these Performance Criteria and Acceptable Solutions is not valid.

The Committee **agrees** with the position provided by the Council and finds that the proposed development will result in an external interface which does not represent external elements found elsewhere in the street, does not complement elements of pre-1946 houses nearby in the street, does not reflect pre-1946 architectural themes, reduce building bulk and form a transition with the external landscape', and does not strengthen pre-1946 housing character through compatible form, scale, materials and detailing.

However, demolition of the front stairs constitutes **minor demolition work** and is not deemed assessable.

Building and Development Committee Chair

Date: 29 October 2012

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 Housing and Public Works
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CITY EAST QLD 4002
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