



Building and Development Dispute Resolution Committees-Decision

Sustainable Planning Act 2009

Appeal Number: 58-11
Appellant: Tracey Cowan
Assessment Manager: Brisbane City Council (Council)
Site Address: 6 Comus Ave, Ascot, Queensland – described as Lot 4, RP 72422 (the subject site).

Appeal

Appeal under section 533 of the *Sustainable Planning Act 2009* (SPA) against the decision of Brisbane City Council to issue an Enforcement Notice requiring that a Development Approval for Building Works be obtained for the construction of an unroofed deck.

Date of hearing: 10 am – Wednesday, 10 August 2011
Place of hearing: Meeting room 20, level 2, 63 George Street, Brisbane, Queensland
Committee: Mr Don Grehan – Chairperson
Mr Greg Rust – General Referee
Present: Mr Trevor Gerhardt – Appellant's representative
Mr Richard Thorne – Council
Mr Paul Robinson – Council

Decision:

The Committee, in accordance with s564 of the SPA, confirms the decision of Council to give the Enforcement Notice dated 24 July 2011 (Ref No. 223/60-00180/6) and directs the Appellant to comply with the requirements of the Enforcement Notice by no later than 4.00pm on 1 December 2011.

Background

An unroofed deck of approximately 25m² has been constructed on the subject site.

Council believes that the size of the deck is such that its construction constitutes assessable development and that a Development Approval for Building Work is required to authorise the structure.

Council's records indicate that no such approvals are in place and, accordingly, an Enforcement Notice

requiring a Development Approval for Building Works has been issued to the Appellant.

The Appellant, holding the belief that the deck constitutes exempt development, is dissatisfied with Council's enforcement action and appeals the giving of the notice.

Material Considered

The material considered in arriving at this decision comprises:

- Form 10 -Appeal Notice and Appellant's correspondence accompanying the appeal lodged with the Registrar on 25 July 2011.
- Council's Enforcement Notice (Ref No. 223/60-QQ180/6) dated 24 June 2011.
- Verbal submissions from the Appellant's representative at the hearing.
- Written submissions from the Appellant's representative presented at the hearing.
- Verbal submissions from Council's representatives at the hearing.
- Written submissions from by Council's representative presented at the hearing.
- The *Sustainable Planning Act 2009* (SPA).
- The *Building Act 1975* (BA).
- The Building Regulation 2006 (BR).
- The Building Code of Australia, 2011 (BCA).

Findings of Fact

The Committee makes the following findings of fact:

An isolated, freestanding unroofed deck of approximately 25m² has been constructed on the subject site.

Council's records indicate that while a Development Approval for alterations and additions to the existing dwelling on the subject site was in place, this approval did not extend to the unroofed deck in question.

On 23 November 2010 Council issued a Show Cause Notice to the Appellant for the carrying out of assessable development without a Development Approval in relation to the construction of the unroofed deck.

On 30 November 2010 Council received email correspondence addressing the Show Cause Notice from Mr Murray Cowan, on behalf of the appellant. This correspondence indicated the Appellants belief that the matter had been resolved following discussion between Mr Trevor Gerhardt, as the Building Certifier engaged for the approval of alterations and additions to the existing dwelling, and Council.

On 24 July 2011 Council, dissatisfied with the response to the Show Cause Notice and following periodic discussions with the Appellant and her representatives, issued an Enforcement Notice (Ref No. 223/60-QQ180/6) requiring the Appellant to:

1. Immediately upon receipt of the Enforcement Notice, cease all building work on the structure; and
2. Within five (5) days of receipt of the Enforcement Notice, formerly engage a Private Building Certifier with a view to obtaining a Building Development Permit for the structure; and
3. Within five (5) days of engaging that Private Building Certifier provide to Council details of the Private Building Certifier engaged; and

4. Within twenty (20) days of engaging a Private Building Certifier, obtain a Building Development Permit for the structure.

In response to the Enforcement Notice and in support of this appeal, the Appellant, on the advice of Mr Gerhardt, contends that the unroofed deck constitutes exempt development and therefore does not require a Development Approval for Building Work. They contend that the deck is "garden furniture" and falls within the ambit of Schedule 2(1) of the BR, which provides garden furniture as an example of exempt development.

To support this claim, Mr Gerhardt made the following observations about the deck:

1. It could reasonably be classified as a Class 1Ob structure being a fence, mast, antenna, retaining or free-standing wall, swimming pool, or the like;
2. It is a free standing structure with no physical connection to the dwelling;
3. It is located within the garden.

Additionally, Mr Gerhardt cites the deck's similarity to concrete or paved areas which could have been formed and constructed in the same position without the need for a Development Approval for Building Works.

The key terms "deck" and "garden furniture" are not defined in the SPA, the BA, the BR or the BCA. In the absence of specific definitions, these key terms are taken in the context of their common use or meaning and to this end the Macquarie Dictionary provides the following definitions:

Deck- an unenclosed, elevated platform or verandah, usually of wood.

Garden- a piece of ground, or other space, commonly with ornamental plants, trees, etc., used as a place of recreation;

Furniture- the movable articles, as tables, chairs, beds, desks, cabinets, etc., required for use or ornament in a house, office, or the like.

The BA section 5 provides that the Appellant's proposal constitutes Building Work by definition.

The BA section 20 provides that all Building Work is assessable development, unless it constitutes self-assessable or exempt development.

The SPA section 238 provides that a Development Permit is necessary for all assessable development.

Schedule 1 of the BR defines work that may be considered self-assessable building work for the purposes of the BA. This definition provides that decks may be considered self-assessable where they are less than 10 m² in plan area, less than 1 m above ground level and where no one side exceeds 5 m in length .

Schedule 2 of the BR defines work that may be considered exempt building work for the purposes of the SPA. This definition includes Class 1Ob and special structures such as playground and sporting equipment, garden furniture, temporary market stalls, minor plant and equipment covers that are no more than 3m above their natural ground surface, sunhoods, tents and certain class 10 buildings and structures on land used for agricultural, floricultural, horticultural or pastoral purposes.

Reasons for the Decision

The Committee, having considered both the definitions provided by the Macquarie Dictionary and Schedule 2 of the BR, is satisfied that the structure, while located within a garden area, is not consistent with the definition of furniture. Nor is it consistent with any other element contained within Schedule 2 to constitute exempt development.

The Committee, having considered both the definitions provided by the Macquarie Dictionary and Schedule 1 of the BR, is satisfied that the structure is a deck. However, the structure does not constitute self-assessable building work because it is both greater than 10 m² in area and exceeds 5 m in length on at least one side.

The Committee is satisfied that the deck constitutes assessable building work in accordance with section 20 of the BA and that a Development Approval for Building Works is required as per section 238 of the SPA.

While the Committee acknowledges the similarities between the deck and a concrete or paved area used for comparable purposes, the legislation does not include a specific reference to such alternatives. Thus, any commentary as to this apparent inconsistency would be speculative.

Don Grehan
Building and Development Committee Chair
Date: 24 October 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
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