

APPEAL

Integrated Planning Act 1997

File No. 3-01-0 25

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Brisbane City Council

Site Address: 53 Hecklemann Street, Carina Heights, 4152

Nature of Appeal Appeal under section 4.2.9 of the Integrated Planning Act 1997 against the decision of the Brisbane City Council not to grant approval for the construction of part of an open deck located within a 12m x 12m truncation of the corner allotment having two road frontages. The property is described as Lot 162 on RP 77574 Parish of Bulimba and situated at 53 Hecklemann Street, Carina Heights, Brisbane.

Date and Place of Hearing: 10.00 am on Thursday 24th May 2001 at 53 Hecklemann Street, Carina Heights

Tribunal: John William Rauber

Present: Applicant
Greg Kranz for Brisbane City Council

Decision

The decision of Brisbane City Council as contained in its written notice dated 22/3/01 and later confirmed by letter dated 26/4/01, not to permit the erection of an extension to a dwelling within a 12m x 12m truncation of the corner allotment is **set aside**. The extension as described on the drawings prepared by Davies Drafting and Design (Job No. 0401 dated 12/1/01) may be constructed within the 12m x 12m truncation and the development approval (building permit) be resubmitted to the Brisbane Certification Group for amendment to acknowledge the determination of this tribunal decision.

Material Considered

The matter was considered on the basis of the written submissions made to the Registrar and verbal submissions made on the day of the hearing. No further formal written submissions were made. The hearing was held at the subject site and the appellant had identified the extent of the proposed deck the subject of the appeal by marking the site with painted lines on the ground.

Reference was also made to the Standard Building Regulation 1993, the Integrated Planning Act 1997 and the Acts Interpretation Act 1954.

Findings of Fact

I made the following findings of fact:-

The site is a corner allotment with site access from the minor street (Teefey Street). The dwelling would have been constructed in the early 1950's and the current owner is undertaking a number of renovation projects, including the proposed open deck.

Section 36 Division 2 of the Standard Building Regulation 1993 prescribes a Road Boundary Clearance of 6.0m for all buildings and structures.

Section 47(3) Division 3 provides for reduced Road Boundary Clearances for corner allotments under certain conditions. Section 47(3)(b) Division 3 limits the height of buildings and structures to 2.0m above natural ground in the area of the site that comprises a 12m x 12m truncation of the corner of the allotment.

Section 48 Division 3 establishes criteria upon which a local government is to consider an application for reduced boundary clearances. In relation to this criteria I make the following findings:-

With respect to Section 48[3], the relevant matters are:-

(a) *the levels, depth, shape or conditions of the allotment and adjoining allotments*

The allotments in this locality are regular shaped and Lot 162 has an even grade generally towards Hecklemann Street. The footpath levels at the street corner and along Hecklemann Street are up to 600mm lower than the site.

(b) *the nature of any proposed building or structure on the allotment*

The proposed structure is part of an open deck. There is no material included in the submission that would indicate any proposal to roof the deck or enclose the underside of the deck.

(c) *the nature of any existing or proposed buildings or structures on adjoining allotments*

The location of the proposed deck is as removed from the adjoining properties as would be possible for this site.

(d) *whether the allotment is a corner allotment*

The site is a corner allotment, elevated above the Hecklemann Street roadway.

(e) *whether the allotment has two road frontages*

Refer to [d] above.

(f) *any other matter it considers relevant*

The locality consists of dwellings built around the 1950's. The dwelling on this property has undergone extensive renovation and the deck will provide an outdoor recreational area with a pleasant aspect.

Under Section 48[4], the local government must be satisfied that a relaxation would not unduly:

(a) *obstruct the natural light and ventilation of an adjoining allotment*

The proposed deck is adjacent to the street boundary and will not impact upon the adjoining development.

(b) *interfere with the privacy of an adjoining allotment*

The location of the proposed deck is well separated from the adjoining allotment.

(c) *restrict the areas of the allotment suitable for landscaping*

Ample areas remain on the site for landscaping.

(d) *obstruct the outlook from adjoining allotments*

The deck when constructed will not provide an obstruction to the outlook from any other allotments.

(e) *overcrowd the allotment*

No overcrowding would occur.

(f) *restrict off-street parking for the allotment*

Ample areas are available on the property for off-street parking.

(g) *obstruct access for normal building maintenance*

There is ample access around all buildings on the property to carry out maintenance.

The local government considered a request by the applicant to reduce the Road Boundary Clearance along the Teefey Street frontage from 6.0m to 2.450m. That application was approved by the local government (letter 22/3/01) subject to the deletion of a triangular section of the proposed deck that was within the 12m x 12m truncation of the corner of the allotment. The local government determined that it did not have the legislative power to relax the siting restrictions as contained in Part 47 (3)(b) of Division 3 of the Standard Building Regulation 1993.

The local government was of the view the Standard Building Regulation 1993 constrained a local government from applying its discretionary powers under Section 48 Division 3 to matters of Division 2 only.

Reasons for the Decision

The decision to set aside the determination of the local government is founded on the following grounds:-

I have had regard to the following matters:

1. I note that the matters a local government must consider under section 48(3) includes in (d) “whether the allotment is a corner allotment;
2. I note that under the Acts Interpretation Act section 14A(1) the interpretation that will best achieve the purpose of the Act is to be preferred to any other interpretation;
3. Where the interpretation of a provision of an Act leads to a result that is unreasonable then consideration may be given to extrinsic material capable of assisting in the interpretation to provide an interpretation that avoids an unreasonable result;
4. The fact that the proposal satisfies the criteria in section 48;
5. The Standard Building Law in place prior to the present regulation empowered a local government to consider all siting matters where compliance with deemed to satisfy criteria could not be met;
6. Building Codes Queensland (Department Local Government & Planning) confirms that the proposed ‘Queensland Development Code’ will provide flexibility to a local government when considering siting concessions;

In all the circumstances I am therefore satisfied that section 48 does empower a local authority to consider siting concessions provided in division 2 and I therefore set aside the decision of the Brisbane City Council.

John William Rauber
Building and Development
Tribunal Referee
Date: 15th June 2001

Appeal Rights

Section 4.1.37. of the Integrated Planning Act 1997 provides that a party to a proceeding decided by a Tribunal may appeal to the Planning and Environment Court against the Tribunal's decision, but only on the ground:

- (a) of error or mistake in law on the part of the Tribunal or
- (b) that the Tribunal 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 Tribunal's decision is given to the party.

Enquiries

All correspondence should be addressed to:

The Registrar of Building and Development Tribunals
Building Codes Queensland
Department of Local Government and Planning
PO Box 31
BRISBANE ALBERT STREET QLD 4002
Telephone (07) 3237 0403: Facsimile (07) 32354586