



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number: 45 - 11

Applicant: Trevor and Tenille Olm

Assessment Manager: GMA Certification Group

Concurrence Agency: Western Downs Regional Council

Site Address: 32 Pilkington Street, Chinchilla described as Lot 20 on SP196493 the subject site.

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the Decision Notice issued by GMA Certification Group to refuse a development application for a new class 10a shed on the subject site. The refusal was based on advice from the Western Downs Regional Council (Council) as the concurrence agency. Council has not approved the siting variation for a shed closer to the road boundary on the subject site for the following reasons :-

1. *the proposed building work does not conform to the QDC; and*
2. *the neighbouring allotments have built structures with a greater boundary clearance to maintain the amenity and aesthetics of the sub division; and*
3. *the allotment has adequate space to allow the shed to fit within the guideline of the QDC*

Date of hearing: 10:30am – Monday 29 August 2011

Place of hearing: The subject site - Chinchilla

Committee: Mr Leo Blumkie – Chairperson
Mr Bryan Payne – Committee Member

Present:

Mr Trevor Elm –	Applicant
Mr Gerard Irwin –	Western Downs Regional Council representative
Mr Kevin Mizen –	Western Downs Regional Council representative
Mr Daniel Hegemann –	GMA Certification Group
Mr Leo Blumkie –	Committee Chairperson
Mr Bryan Payne –	Committee Member and General Referee

Decision:

The Committee, in accordance with section 564 of the SPA **changes** the decision of the Western Downs Regional Council (Concurrence Agency) and directs Council to approve the application for a siting variation for a Class 10a building (shed) to allow the following options:-

A 4300mm setback from Lewis Street to the outermost projection of the shed subject to the following conditions:-

- The Applicant first obtains an approval under the Planning Scheme for a second crossover to the property.
- The shed is rotated 90 degrees so as to have the gable end facing Pilkington Street, and the gutter side facing Lewis Street.
- The shed is positioned a minimum of 900 mm away from the existing wall line of the house.
- The shed in height measures 2700 mm to the nominal gutter line and 3450mm to the nominal ridge line when measured from the shed floor level.
- The rear gable end of the shed is in line with the rear wall line of the house, such that the front gable end of the shed is behind the line of the window to the bed room.
- The shed floor is a maximum of 100mm above the existing ground line at the wall line of the shed facing the house .
- The building complies in all other respects with the Building Codes of Australia (BCA) for a Class 10a building.

OR

B 3500mm setback from Lewis Street to the outermost projection of the shed subject to the following conditions:-

- The Applicant first obtains an approval under the Planning Scheme for a second crossover to the property.
- The shed is positioned a minimum of 900 mm away from the existing wall line of the house.
- The gable end is facing Lewis Street.
- The rear wall of the shed is in line with the rear wall line of the house, i.e. the wall facing the side boundary neighbour to Lewis Street.
- The shed in height measures **2400mm** to the nominal gutter line and **3150mm** to the nominal ridge line when measured from the floor line.
- The shed floor is a maximum of 100mm above the existing ground line when measured at the Lewis Street boundary line.
- The building complies in all other respects with the BCA for a Class 10a building.

Background

The site is an 860m² corner allotment located on the corner of Pilkington Street and Lewis Street Chinchilla. The site is developed with a single storey Class 1a dwelling.

The existing house was constructed as a “spec” house and was purchased by the applicant approximately three and a half years ago.

The site also has a small lawn locker approximately 3m² in size adjacent to the house and facing the Pilkington Street Boundary.

The dwelling has a double garage as part of the house and the applicant wants to construct a double bay shed to house his boat and provide some extra storage area.

The site is generally level and is approximately 450mm above street level.

The site has a 1.8m high colorbond fence on the Pilkington Street Boundary (except for the corner truncation) and a similar fence on the Southern neighbouring side boundary.

An application (signed on 1 March 2011) was lodged with the Western Downs Regional Council (Council) on 25 March 2011 for a siting relaxation for a 7.31m x 5.91m shed to be sited 3m from the Lewis Street Boundary.

Western Downs Regional Council refused the application on 28 April 2011 and advised the reasons for the refusal as follows:-

1. *“ the proposed building work does not conform to the QDC; and*
2. *the neighbouring allotments have built structures with a greater boundary clearance to maintain the amenity and aesthetics of the sub division; and*
3. *the allotment has adequate space to allow the shed to fit within the guideline of the QDC”.*

GMA Certification Group refused the Development Application in their Decision Notice to the owner dated 27 May 2011.

An appeal was lodged with the Building and Development Committee Registry on 8 June 2011.

The Registrar advised Council and GMA Certification Group on 17 June 2011 that an appeal had been lodged in relation to the refusal.

On 22 August 2011 the Building and Development Dispute Resolution Committee Chairperson advised Council, GMA Certification Group and the Applicant of the date, time and place for the hearing.

On 25 and 26 August 2011 photos of the subject site were submitted via email to the Registry.

Material Considered

The material considered in arriving at this decision comprises:-

1. Form 10 – Notice of Appeal, drawings, extracts and correspondence accompanying the appeal lodged with the Registrar on 8 June 2011.
2. Verbal submissions from the applicant at the hearing.
3. Verbal submissions from the Council representatives at the hearing.
4. Verbal submissions from the Assessment Manager at the hearing.
5. Photographs taken by the Committee Member (Mr Payne) and emailed to the Registry.
6. Evidence provided by Council on relaxations granted for lots identified by the Committee in the neighbourhood.
7. Copies of extracts from the Planning Scheme in relation to crossovers to properties.
8. Copies of plans showing sewer lines in the neighbourhood.

9. QDC MP 1.2 Design and Siting Standard for single detached housing - on lots 450m² and over.
10. *Building Act 1975*.
11. *Building Regulation 2006*.
12. SPA.
13. BCA.

Findings of Fact

The Committee makes the following findings of fact:-

- The allotment is 860 m² in area.
- The allotment is a corner block fronting Pilkington Street and Lewis Street Chinchilla
- The site is developed with a single storey class 1a dwelling and small 3m² (lawn locker type) shed.
- The site is level and is approximately 450mm above street level.
- The Council nominated Pilkington Street as the nominated road frontage and Lewis Street therefore being the secondary Street.
- The Council representative stated that under the Table A1 in QDC MP 1.2 the setback required to Lewis Street would be approximately 5.5 metres.
- Both neighbouring allotments have a 6000mm setback to the outer most projection (OMP).
- Council granted a relaxation to a property on the Corner of Pilkington Street and Hurse Streets on the 23 January 2009. This relaxation allowed a setback of 3m (OMP) to Pilkington Street for a single storey dwelling. Taking into account the width/depth of the site, the QDC would require a setback of 4000mm. The measurements taken on site indicated an as constructed height of 2.74m to the top of the gutter line above the existing ground level and with a fall of approximately 400mm to the Pilkington Street Boundary line - the gutter line would therefore be 3100mm above the ground line measured at the boundary This height would increase to approximately 3.5m at the 3500mm setback due to the pitch of the roof.
- Council granted a relaxation to a property on the Corner of Pilkington Street and Barnsley Streets on the 1 May 2009. This relaxation allowed a setback of 3m (OMP) to Pilkington Street for a single storey dwelling. Taking into account the width/depth of the site, the QDC would require a setback of 4000mm. The measurements taken on site indicated an as constructed height of 3100mm to the top of the gutter line above the existing ground level and with a fall of approximately 300mm to the Pilkington Street Boundary line – the gutter would therefore be approximately 3400mm above the existing ground line when measured at the boundary. Similar to the above this height would increase to approximately 3.8m at the 3500mm setback due to the pitch of the roof.
- Council granted a relaxation to a property on the Corner of Pilkington Street and Price Streets on the 9 July 2008. This relaxation allowed a setback of 4.5m (OMP) to Price Street for a gable roof shed facing Price Street. The measurements taken on site indicated an as constructed height of 2850mm to the top of the gutter line above the existing ground level and a 3650mm ridge line above ground level at the Price Street Boundary line.
- The height of the top of the gutter facing Lewis Street of the existing dwelling on the subject site is 2600mm above existing ground line at that point. The ground line falls away from the house and is approximately 300mm lower when measured 1500mm away from the wall line, however there is only a small amount of fall (approx. 100mm) from that line to the Lewis

Street property boundary.

- Council stated at the hearing that they would be prepared to grant a relaxation to allow a 4400mm to the Lewis Street boundary provided the shed was rotated to have the gable end facing Pilkington Street and the shed was located 1500mm from the existing house wall line and was no more than 100mm above the existing ground line when measured 1500 mm from the house wall line. This would indicate that if the shed was turned and located 1500 away from the house, the Gutter line of the shed would be approximately 100mm below the house gutter line. The Council would allow the gable end of the shed to be in line with the front wall line of the house.

Reasons for the Decision

The committee has noted that the applicant apparently undertook very little research regarding what they may wish to put on the site in the future before purchasing the property. The existing house was constructed prior to purchase and in hindsight could have been positioned closer to the Pilkington Street side neighbour. The proposed shed could then have been positioned to satisfy the required setbacks of the QDC i.e. 6m setback.

The Council has refused the application based on Performance Criteria P1 (a) (b) (c) (d).

P1 Acceptable streetscape

(a) The bulk of the building

The Committee agrees the proposal with a gable height of 3500mm at a setback of 3000m from Lewis Street may create an unacceptable streetscape, particularly when the immediate neighbour has a setback of 6000mm to the OMP.

Other options are available which satisfy the needs of the applicant. These include the option suggested by Council, however the committee believes that with this option, the shed should be aligned with the rear wall of the house not the front wall line of the house to limit impact of the shed on available ventilation and light to the bedroom.

The other option is to lower the shed to 2400mm to the gutter line from the floor and establish the floor level at 100mm above the existing ground line, when measured at the Lewis street boundary line. The applicant could position the door in the centre of the Gable end and achieve the same clearance as that in the proposal.

This change, in the opinion of the Committee, would create an acceptable streetscape to both Lewis and Pilkington Streets.

Also the shed could be positioned 900mm away from the house and still, in the opinion of the Committee allow sufficient space for maintenance etc.

The bulk of both options creates less bulk to that previously approved by Council in variations granted to sites identified in findings of fact. This can be clearly demonstrated by comparing the area above the allowed 2000mm fence line with a 3500mm setback for the gable end and a 4400mm setback to the gutter side with a maximum width of 5.91m for the gable or 7.31m length for the gutter side.

(b) The road boundary setback of neighbouring buildings.

The same principles considered above can be applied when considering the setback of neighbouring

buildings.

(c) *The outlook and views of neighbouring residents.*

Council had no issue with the outlook and views of neighbouring residents.

(d) *Nuisance and safety to the public.*

Council had no concerns regarding nuisance and safety to the public.

Conclusion

The Committee after taking into account the following:-

- dimensions of the block;
- existing streetscape of both Pilkington and Lewis Streets;
- previous variations granted by Council for setbacks to properties in the immediate neighbourhood including corner blocks in Pilkington Street;
- existing setbacks of neighbouring properties;
- submissions from Council;
- submissions from the Applicant and Assessment Manager;

believes the options nominated in the decision satisfy the Performance Criteria of MP 1.2 of the QDC.

NOTES

- 1 The committee draws the applicant's attention to the fact that both options would require Council Planning Approval for a second crossover, and therefore Council's view on both options should be obtained before a final decision is made on either option.
- 2 The proposal should satisfy all other requirements required by Queensland building law.

Leo Blumkie
Building and Development Committee Chair
Date: 5 September 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