



Building and Development Tribunals—Decision

Integrated Planning Act 1997

Appeal Number: 03-09-018

Applicant: Neil Murray

Assessment Manger: Approvals and Advice Pty Ltd

Concurrence Agency: Brisbane City Council
(if applicable)

Site Address: 10 Foxhill Street, Aspley

Appeal

Appeal under Section 4.2.9 of the *Integrated Planning Act* against the decision of Approvals and Advice Pty Ltd, based on a concurrency agency response from Brisbane City Council, to refuse an application for a carport within the Foxhill Street road alignment setback.

Date of hearing: Tuesday April 7, 2009 at 10.00 am

Place of hearing: 15 Foxhill Street, Aspley

Tribunal: Dennis Leadbetter - Chair
Liz Woollard - Member

Present: Neil Murray - Owner
Peter Bird - Brisbane City Council

Decision:

The Tribunal, in accordance with Section 4.2.34 (2)(c) of the IPA, **sets aside** the decision of Approvals and Advice Pty Ltd dated February 20, 2009, to refuse the building development application based on a concurrent agency refusal dated February 4, 2009, and replaces it with the following decision:-

The Assessment Manager, in accordance with Section 4.2.34 (1), is **directed** to decide the development application for building works if the application complies with the following:-

1. Conforms with the drawing submitted to the Tribunal on June 15, 2009, copy attached to this decision notice;

2. The maximum height of the roof shall not exceed 3.3 metres above natural ground level;
3. The building shall be a maximum width of 9.5 metres, with a maximum width of 4.0 metres projecting to within 0.2 metres of the road alignment. The remainder of the structure to be set back approximately 1.7 metres from the street alignment.
4. The east and west walls, and the area above the heads to the vehicle entry to the carport may be enclosed with battens, spaced at not less than 50% of the width of the batten;
5. Any doors fitted to the carport facing the street may be solid up to a height of 2 metres above natural ground level (as allowed for a fence under MP1.2 of the Queensland Development Code), and any area above must be substantially open or of a grille nature for security only;
6. The Tribunal recognizes that the development will necessitate the removal of some trees and shrubs within the subject site, and also a tree located on the footpath in the path of entry to the carport. This tree may be removed, but a replacement tree of minimum height of 1.5 metres and of a species nominated by Brisbane City Council is to be planted by the appellant in a suitable area as a replacement. The cost of such tree and planting shall be born by the applicant;
7. Suitable landscaping to be included within the subject site to the area to the western side of the carport extending to the western alignment.

Background

The existing detached dwelling is approximately 50 years old and has an existing carport located in the area to be redeveloped into a more suitable structure to accommodate the appellant's current needs to accommodate 2 motor vehicles and a boat.

The original proposal submitted to Council was for a structure presenting a façade to Foxhill Street 3.6 metres high and 11.5 metres long. Such a structure would, as Council indicated, result in a significant and deleterious impact on the streetscape and neighbourhood. The Tribunal supports council in its original decision that such a structure would have a significant and deleterious impact on the streetscape.

The revised proposal, submitted at the request of the Tribunal, post the hearing, will have a significantly lesser impact because of the substantially reduced roof height, especially to the western side, together with an approximate 1.7 metre setback to over half of the structure to Foxhill Street alignment. The revised design also allows for easier access for towed vehicles and the avoidance of tandem parking for motor vehicles.

Material Considered

1. *Form 10 – Notice of Appeal* and grounds of appeal contained therein;
2. *Form 8 – Notice of Election* provided to the Registrar by the BCC;
3. Drawings submitted with the appeal;
4. Verbal submissions from those attending the appeal;
5. *The Integrated Planning Act 1997*;
6. *The Integrated Planning Regulation 1998*;
7. *The Queensland Development Code (QDC) Part MP 1.2*;
8. An inspection of the site, including existing buildings on the site and adjoining sites and consideration of traffic sight lines and other matters; and
9. Amended drawings requested at the hearing and supplied by the appellant to the Tribunal after the hearing.

Findings of Fact

The Tribunal makes the following findings of fact:

- The dwelling was a low set weather board home which the Tribunal would estimate to be around 50 years old;

- There is an existing carport in front of and attached to the house, which is too small to accommodate the appellant's motor vehicles and boat;
- The house is located on the top of a hill, and visibility to the west is restricted;
- There were some large trees and shrubs screening the existing carport from the street and the access to the existing carport was from the eastern side of the Foxhill Street frontage, turning on site to enter the carport;
- There was no other available space on site to accommodate suitable vehicle accommodation.

Reason for the Decision

Council's response dated February 4, 2009 was to refuse an application for a gable roof building presenting a façade to Foxhill Street with a width of 11.5 metres and an eaves height of 3.6 metres and a ridge height close to 5 metres above ground level and set back approximately 1 metre from the street alignment. Such a structure would have presented a very imposing presence to a residential street.

While it is permitted to build an open carport within the front 6 metre road alignment setback, the original proposal was outside the intent of that provision, in terms of size, both length and height of the elevation presented to the street and the fact it was fully enclosed.

The Tribunal recognizes the need for the appellant to be able to safely and securely house his vehicles, and that the house was built before multi vehicle ownership. The Tribunal also recognizes that there is no other space available on site to provide suitable safe vehicle accommodation.

In determining this appeal, the Tribunal believes that the Performance Criteria P1 of QDC MP 1.2 is relevant to this appeal.

The specific criteria of P1 are:

- (a) the bulk of the building or structure; and
- (b) the road boundary setbacks of neighbouring buildings or structures; and
- (c) the outlook and views of neighbouring residents; and
- (d) nuisance and safety to the public.

The Tribunal considers that the alternative solution, which has now been presented, is of a more relevant domestic scale, being similar in height to the existing carport structure, and is sympathetic to the existing dwelling. The direct entry from Foxhill Street also allows for easier articulated vehicle access and better visibility of oncoming traffic, and avoids tandem parking.

The provision of an approximate 1.7 metre setback to the Foxhill road alignment to over half the proposed carport also reduces the impact to the streetscape. The reduced width, resulting in an increased side boundary clearance to the west, will result in a similar impact on outlook and views to the western neighbour to that presented by the existing carport.

The provision of single parking will also reduce traffic caused by tandem parking improving safety in the use of the facility.

Dennis Leadbetter

Dip Arch QUT, Grad Dip Proj Man QUT, METM UQ

Building and Development Tribunal Chair

Date: 11 August 2009

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 grounds:

- (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:

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