



Building and Development Tribunals
Queensland Government

Department of **Local Government, Planning,**
Sport and Recreation

APPEAL
Integrated Planning Act 1997

File No. 03-04-036

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Gold Coast City Council

Site Address: 55 Brittany Drive, Oxenford

Applicant:

Nature of Appeal

Appeal under Section 21 of the Standard Building Regulation 1993 against the decision of the Gold Coast City Council to approve (for Preliminary Approval only) an application for relaxation of the front boundary setback on land described as Lot 27 on SP 146796 and situated at 55 Brittany Drive, Oxenford.

Date and Place of Hearing: 10.00am on Friday 25th June, 2004
at 55 Brittany Drive, Oxenford

Tribunal: Mr Chris Schomburgk

Present: Applicant
Gold Coast City Council Representative;

Decision

The decision of the Gold Coast City Council as contained in its written Decision Notice dated 26th May 2004, to approve an application for relaxation of the front boundary setback subject to conditions is **confirmed**.

Material Considered

The material considered in arriving at this decision comprises:

- The application and supporting plans;
- The relevant provisions of the Town Planning Scheme for Gold Coast City Council – in particular the Dwelling House Code;
- The Standard Building Regulation 1993;
- Verbal submissions from the Applicants and Council's Representative;
- Exhibits tabled at or before the hearing by the parties, being:
 1. Site plans
 2. Proposal plans
 3. Colour photographs from the applicant of other relaxations in the City

- Council's Decision Notice dated 13 January 2004; and
- The Integrated Planning Act 1997.

Findings of Fact

I make the following findings of fact:

- The site comprises Lot 27 on SP 146796, with frontage to Brittany Drive at Oxenford of approximately 20.00 metres.
- The site has, as its rear boundary, a water body or lake. A dwelling exists on the site's southern boundary and another is under construction on the site's northern boundary.
- The site is within a relatively new estate where most allotments are built on or have houses under construction.
- The standard of homes is quite high, especially for those allotments that have water frontage (including the subject site).
- The topography of the estate is such that many homes look down onto or across this site, exacerbating its visual prominence.
- The site contains a single detached dwelling, two storeys in height, currently nearing completion. Approved building plans show two separate double garages - one each side of, and in front of, the main house.
- The building plans were approved by the Council, but no approval for vehicle crossovers or pedestrian gateway (partially covered) has apparently been obtained (or sought). The pedestrian walkway has been constructed and is covered by an open timber pergola structure of high quality design. Posts for the proposed pergolas / carports have been installed.
- One crossover has been constructed of concrete while the second is "grasscrete" pavers. The footpath has been recently turfed.
- Council's policy is to not approve more than one vehicle crossover per 40 metres of road frontage. In the immediate vicinity, there is only one dwelling with two crossovers in less than this distance. I am not aware of the date of that approval (if it is indeed approved).
- The applicant sought approval for two open pergola/carports within the front setback, as well as a pedestrian "gatehouse" and walkway into the house. This application was made subsequent to the building approval for the house.
- While the primary building approval shows two separate garages, it would be possible to enter the northern-most garage via the southern crossover, although turning areas would be tight.
- Council's practice for boundary relaxation is to issue a Preliminary Approval for the building work (if approved). This then necessitates a subsequent building application for Development Permit, at which time the structural issues are assessed.
- In this case, the Council has approved the Preliminary Approval, albeit subject to deletion of the pergola/carport structures, and has noted that two vehicle crossovers are not approved.
- The applicant has appealed against that decision, and has argued that the application as lodged ought to have been approved.
- The applicant advised, on site at the hearing, that the northern garage is not to be used for vehicles but for a study or similar habitable room. There is no approval for that use of that part of the building (it is approved as a garage), but it seems clear that it is not intended as a garage, despite having the external appearance of a garage.
- The Council's Planning Scheme is a relatively new "IPA" scheme. It sets out a series of Codes, including the Detached Dwelling Code. That Code provides a series of Acceptable Solutions for car accommodation. The proposal does not satisfy those solutions, so it needs to rely on satisfying the Performance Criterion (PC3). That PC requires car spaces to be designed to:
 - a) *aesthetically complement the main dwelling;*
 - b) *not dominate the street frontage*
 - c) *have minimal adverse impact on the amenity, likely amenity and character of the neighbourhood.*

- The subject dwelling house is of a particularly high quality, even compared with some of the high quality homes in the immediate vicinity. There is no doubt that the main dwelling will enhance the amenity and character of the street and the locality in general.
- The timber exterior proposed, and existing over the pedestrian walkway, is of a high quality and provides a striking contemporary design.
- The nature of the timber is that it is large wide beams that, with the total extent proposed, will have an imposing visual effect on the streetscape. This effect, while architecturally striking for the subject dwelling, will be out of character with the existing and likely future streetscape in this locality.
- The width of the beams is such that it will appear from the street level as a solid façade, despite being open to the sky.
- Together with the high fence and the overall height of the proposed structures, the visual impact will be severe, and will effectively dominate the entire street frontage of the property.
- The applicants have considered a “sail” structure instead of a solid carport, but they believe a sail would “cheapen” the appearance of the street. There is only one other “sail” in the estate, although Council could not advise of its approval status.
- The applicant advised, at the hearing, that he would be prepared to consider a less dominant design, although he felt that architecturally it would not be as effective. Despite this, I encourage the applicant to liaise with Council to consider such alternatives.

Based on my assessment of these facts, it is my decision that the appeal is dismissed. Council’s decision to grant a Preliminary Approval subject to conditions deleting the two pergolas/carports and advising that only one vehicle crossover would be approved, is confirmed.

Reasons for the Decision

- The site is in an area of relatively “pristine” residential uses.
- There are few, if any, other approved front boundary relaxations in the immediate vicinity.
- The Council has recently introduced a new Planning Scheme, and has effectively changed the standards for boundary relaxations from the previous Planning Scheme.
- The existence of other relaxations in other parts of the City is not considered sufficient justification for an approval on this site, especially when most of those would have been approved under the previous Planning Scheme.
- The proposed structures, while no doubt of some architectural merit for the subject house, will be out of character with the surrounding streetscape, and will visually dominate this part of Brittany Drive.
- The Planning Scheme sets out a specific Performance Criterion for car accommodation (PC3). The subject proposal does not satisfy that criteria.

Chris Schomburgk
Building and Development Tribunal General Referee
Date: 28th June 2004

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:

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