



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

Integrated Planning Act 1997

File No. 3/04/009

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Brisbane City Council

Site Address: 24 Eleventh Avenue, Brighton.

Nature of Appeal

Appeal under Section 21 of the Standard Building Regulation 1993 against the decision of the Brisbane City Council to refuse an application for siting concessions for two carports and a patio forming part of a dwelling to be constructed to within 1.286 metres of the road boundary of land described as Lot 20 on plan SP 111833, situated at 24 Eleventh Avenue, Brighton.

Date and Place of Hearing: 10.00am Wednesday, 25 February 2004
at 41 George Street, Brisbane.

Tribunal: Geoff Cornish

Present: Applicant's representative
Grant Johnsen – Brisbane City Council

Decision

In accordance with Section 4.2.34 (2) of the Integrated Planning Act 1997, I hereby set aside the decision of Brisbane City Council to refuse to grant siting concessions for two carports and a patio to be erected within 6 metres of the road boundary of the property and decide that the siting of the carports and patio should be approved subject to the following conditions:

1. Each carport shall be reduced to a maximum size of 6 metres by 3 metres, and the outermost projection of the carports shall be no closer than 2.286 metres from the road boundary.
2. The carports shall remain open on both sides within six metres of the road boundary.
3. The width of each carport shall be reduced to a maximum of 3.0 metres, and the maximum aggregate width of the two carports shall not exceed 6.0 metres.
4. The gable roofs to the two carports shall extend from the front of the carports to 4.0 metres from the road boundary.

5. The proposed patio may be constructed above the carports and across the front of the dwelling to a position no closer than 4.0 metres from the road boundary of the property.
6. The patio shall remain uncovered.

Background

The matter concerns a decision by Brisbane City Council to refuse to approve siting concessions for two carports to be erected to within 1.286 metres of the road boundary of the property and for a patio to be erected above the proposed carports and extending to within 2.286 metres of the road boundary. The basis of refusal was that the proposal would have an overpowering effect upon the street.

Material Considered

1. Letter of Brisbane City Council, dated 15 January 2004, refusing the siting concessions sought by the applicant.
2. Building and Development Tribunal Appeal Notice, dated 21 January 2004, appealing the Council's decision, together with attached documents setting out reasons for the appeal.
3. Plans of the proposed development, submitted under separate cover by the applicant.
4. Verbal submission by the applicant on 25 February 2004 setting out why the appeal should be allowed.
5. Verbal submission by Grant Johnsen of Brisbane City Council on 25 February 2004 setting out Council's reasons for refusing the application.
6. Standard Building Regulation 1993.
7. Building Act 1975.
8. Integrated Planning Act 1997.

Findings of Fact

I made the following findings of fact:

1. The dwelling was an existing low set dwelling erected on the land in the same position as it currently occupies.
2. The dwelling was raised to enable it to be built in underneath and to be extended.
3. The raising of the dwelling was undertaken without the prior approval of Council.
4. The prior approval of Council should have been obtained due to the dwelling being located within 6 metres of the road boundary of the property.
5. A "Stop Work" notice was issued by Council and is currently still effective.

6. There is adequate distance between the outer walls of the dwelling and the two side boundaries of the allotment for covered car parking to be provided on the allotment in compliance with the siting provisions of Part 12 of the Queensland Development Code nominated by the Standard Building Regulation as being the standard siting provisions for buildings on such properties.
7. The proposed covered car spaces are greater in size than those provided for in the siting provisions of the Standard Building Regulation.
8. Planning and siting provisions applicable to this property, set out in the Planning Scheme and the Standard Building Regulation, have changed since the approval of other development applications in the local area.
9. Council received objections to the proposal from a number of owners of property in the vicinity of the applicant's property.

Reasons for the Decision

After assessing the facts and the submissions of the parties, I have reached the following conclusions:

- The carports, as originally proposed, were of a length in excess of the standard prescribed under the Standard Building Regulation and Part 12 of the Queensland Development Code, and were also in excess of the length generally accepted for covered car spaces in most dwellings.
- The reduction in length of the carports to a maximum of 6 metres, measured from the front wall of the raised dwelling, would still provide adequate covered length for most standard passenger cars.
- The carports, as originally proposed, were of a width in excess of the standard prescribed under the Standard Building Regulation and Part 12 of the Queensland Development Code, and were also in excess of the width generally accepted for single covered car spaces in most dwellings.
- The reduction in width of each of the carports to a maximum of 3 metres would still provide adequate covered width for most standard passenger cars.
- The reduction in length of the carports will result in achieving an increased setback from the road boundary to the gable fascia of the roof and lessen the overall impact of the structures on the streetscape.
- The reduction in total combined width of the carports will also lessen the overall impact of the structures on the streetscape.
- Maintenance of the gable fascias to the two carports will achieve the same appearance for the front of the dwelling as in the original proposal.

- The proposed patio across the front of the dwelling, shown situated between the two carports, is set back 4.0 metres from the road boundary. Limitation of those sections of the patio that are to be positioned above the two carports, to the same alignment of 4.0 metres from the road boundary of the property, would still provide substantial useable areas at both sides of the dwelling.
- At a setback of 4.0 metres from the road boundary, the patio will still enable views to be obtained along the street towards the waterfront.
- Requiring the gable fronts to the two carports to extend towards the rear to 4.0 metres from the road boundary would be consistent with the outermost alignment of the patio.
- The combined appearance of the patio and carports in these locations will be consistent with that of the original design for the dwelling, while at the same time achieving a reduction in the overall impact of the development on the streetscape more in keeping with the requirements of current development standards.

G.S.Cornish
Building and Development
Tribunal Referee
Date: 2 March 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:

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) 32371248