



APPEAL
Integrated Planning Act 1997

File No. 3/04/016

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Gladstone City Council

Site Address: 3 Ouston Place, South Gladstone

Applicant:

Nature of Appeal

The appeal is against the decision of the Gladstone City Council not to give permission for an existing dwelling to be resited at 3 Ouston Place, South Gladstone for the following reasons:-

- 1 Council considers that the proposed re-siting of a dwelling will have an extremely adverse effect on the amenity or likely amenity of the area.
- 2 Council considers the aesthetics of the re-sited dwelling to be in extreme conflict with the character of the neighbourhood, which cannot be overcome by conditions of an approval.
- 3 Council received 17 submissions against the proposal during the notification stage and believes the grounds contained in the submission are generally applicable.

The dwelling is to be located on land described as Lot 7 on RP 895856 and situated at 3 Ouston Place, South Gladstone.

Date and Place of Hearing: 9 am Tuesday 6 April 2004.

Inspection of the site at 3 Ouston Place South Gladstone.
Hearing at the Offices of the Gladstone City Council, Civic Centre
101 Goondoon Street Gladstone.

NOTE: The Chairperson carried out an inspection of the dwelling at Rosewood Road Amberley on Saturday 27 March 2004 at approximately 10.00am

Tribunal:

Mr Ray Andrews	Tribunal member
Mr Trevor Mc Cubbin	Tribunal member
Mr L F Blumkie	Tribunal Chairperson

Present: Applicant / Owner
Applicant/Owner
Gladstone City Council representative
Gladstone City Council
Tribunal Chairperson
Tribunal
Tribunal
Observer

NOTE:- The Tribunal met with representatives of the Objectors to the proposal at the Council Chambers prior to the hearing.

Decision

The Tribunal, in accordance with section 4.2.34(2)(a) of the Integrated Planning Act **confirms** the decision appealed against.

Background

The appellant made a request to the Gladstone City Council on the 21 January 2004 seeking an amenity and aesthetics assessment for the relocation of a removal house to 3 Ouston Place, South Gladstone.

After an inspection of the site, Council, with the agreement of the applicant, erected a sign on the site seeking submissions on the proposal. A total of seventeen submissions were received.

After consideration of the application, submissions from objectors and a presentation by the applicant, Council refused the application on 10 February 2004.

On the 10 February 2004 the applicant wrote to Council and requested the decision be reconsidered.

On the 16 March 2004 Council reaffirmed the original decision to refuse the application.

The applicant lodged an appeal with the Department of Local Government and Planning on 25 March 2004.

Material Considered

In coming to a decision, consideration was given to the following material: -

1. Application dated 21 January 2004 including photographs and plans.
2. Copy of correspondence from Council dated 28 January 2004 to the applicant regarding the erection of a sign on the site.
2. Copy of written submissions from objectors (17 off)
3. Copy of Council correspondence dated 2 March 2004 to the applicant advising of time for his presentation to Council meeting.
4. Copy of the Council Decision dated 10 February 2004.

5. Copy of the applicant's correspondence dated 10 February 2004 to Council requesting reconsideration of the decision.
6. Copy of Council decision dated 16 March 2004.
7. Copy of the Appeal Notice dated 25 March 2004.
8. Photographs of the existing house taken by the Chairperson on the 25 March 2004.
9. Verbal submissions from the applicants.
10. Verbal submissions from Gladstone City Council.
11. Verbal submissions from Objectors.
12. Copy of Council Resolution on Amenity and Aesthetics dated 13 February 2002.
13. Correspondence from the Tribunal dated 14 April 2004 requesting further detailed information on the application.
14. Email dated 21 April 2004 from the applicant requesting an extension of time to enable additional information to be finalized and presented.
15. Written advice from the Tribunal dated 28 April allowing an extension of time for the additional information to be submitted.
16. Further Email dated 25 May 2004 from the applicant requesting a further extension of time to enable other options to be furthered considered.
17. Written advice from the Tribunal dated 27 May 2004 allowing a further extension of time for the additional information to be submitted by the 30 June 2004.
18. The Standard Building Regulation.
19. The Integrated Planning Act.

Findings of Fact

A Standard Building Regulation - Division 4 - Amenity and aesthetics

Gladstone City Council, by resolution adopted an Amenity and Aesthetics policy under Section 50(1) of the Standard Building Regulation on the 13 February 2002.

The resolution, amongst other thing, declared that the following categories of building must be assessed by Council for amenity and aesthetics impact of the building work:-

- *The relocation of any Class 1 or 10a building from an area outside the Gladstone City Council area to within the Gladstone City Council area;*

Section 50 (2) of the Standard Building Regulation 1993 states that applications mentioned in Section 50 (1) must be assessed by the local government for the amenity and aesthetics impact of the proposed building work.

Section 50 (3) states that the local government may refuse an application to which subsection (2) applies if the building when built would have an **extremely** adverse effect on the amenity or likely amenity of the building's neighbourhood etc.

B Integrated Planning Act – Division 6 Tribunal process for appeals - Appeal Decision

Section 4.2.34(2)(e) of the Integrated Planning Act grants power to an Amenity and Aesthetics Tribunal to vary applications with the consent of the appellant.

The legislation appears not to grant power to a local government to vary applications by conditioning decision notices especially on amenity and aesthetics matters.

C Site

The site is vacant and the application is for a relocated class 1 building. The site has substantial fall (approximately 6 metres) from the right hand side boundary to the left hand side boundary, is approximately 1.5 metres above the street and is rectangular in shape.

D Development in the neighbourhood.

An inspection of the neighbourhood indicated various types of houses including high and low set, variety of materials, roof styles, shapes and sizes of buildings and varying age. It was noted the adjoining development to the right of the subject property was a two-storey class 1 building which received a recent design award.

E Council submission

Council considered:-

- The application lacked sufficient detail and to this end Council had to make a decision on the basis of the information provided and address the concerns raised in the submissions received.
- The main concerns being:-
 1. The age of the structure in comparison to the relatively new dwellings directly adjacent and the new dwellings to be constructed within the new estate.
 2. The applicant failed to demonstrate the ability of the removal dwelling to mould within the current character of street within a satisfactory timeframe.
 3. The applicant failed to demonstrate that the proposed new claddings work in terms of appearance, colour and overall form.
 4. The proposal failed to demonstrate the visual compatibility with the current neighbourhood fabric.
 5. The structure is of box type appearance and devoid of any architectural merit

F Applicants submission

The applicant submitted that:-

- The house is to be re-clad and re-roofed in new materials. The re-cladding is yet to be undertaken and any reasonable suggestions (render effect sheeting, rusticated weathertex boards etc) can be accommodated. After this, externally, the house will look brand new.
- The house is to be high set. A substantial deck will be constructed at the street end of the house, with french doors opening onto this deck from the formal living area.
- After relocation the home is to be built-in underneath.
- Full working drawings will be undertaken in conjunction with the civil engineering reports necessary for the relocation.
- They are prepared for Council to hold a bond until all the work is completed to the satisfaction of the Council Building Assessor. They requested the bond be reduced to \$10,000 in lieu of \$20,000 to allow for the capital requirements of the extensive work.

Reasons for the Decision

After considerable discussion at the hearing it appeared the main concern was:-

- lack of detailed information on the proposal being submitted with the application;
- concern about the time required to complete the development;
- possible box type appearance of the development;
- lack of professional architectural advice on the development.

After discussion of the applicant's requirements it was clear that they had not undertaken sufficient research to enable them to make decisions on the proposed development. No detailed plans had been prepared on the proposal.

With the consent of the applicant the Tribunal agreed to adjourn a decision on the appeal to enable the applicant to prepare detailed plans and submit detailed information on the proposal. The details required by the Tribunal in any further submissions (and agreed to by the applicant at the hearing) were documented in the Tribunals correspondence dated 14 April 2004 as follows:-

The additional information will consist of:-

1 Drawings to scale which will include:-

- (a) Site plan showing the location of the house, carport, car accommodation, retaining walls, driveway, levels, paths, landscaping etc;
- (b) Floor plans of both the ground and first floor. The first floor is to have a deck on the front for the full width of the house. The roof to the deck is to be a hip style with dutch gable. Railings are to be timber with "bread loaf" top rail and timber balusters.
- (c) A cross section through the building extending to both side boundaries with levels accurately shown for the floor levels and side boundaries etc.

(d) Four elevations showing fenestration and wall treatment etc

(e) A perspective view of the proposal (if possible);

- 2 A detailed estimate of all the work required to obtain building approval;
- 3 Confirmation that you have the necessary funds available to complete the project as determined by item 2 above;
- 4 A detailed work program (time line) indicating the time required to complete the project starting with the date the house is relocated on site to practical completion of the external elements of the project;
- 5 Confirmation that suitably licensed contractors are available to act as Principle Contractors and complete the work within the time frame established by the detailed work program under 4 above.

It was also agreed, at the hearing, the applicant would forward the above information to the Registrar of Building Tribunal (for distribution to Tribunal Members) and a copy to the Gladstone City Council by the 28 April 2004 unless otherwise extended by the Tribunal before that date.

It was further acknowledged, at the hearing, that the applicant was prepared to pay a bond of \$20,000 (or bank guarantee) to the Gladstone City Council, which would only be released when the external elements of the project have been completed to the satisfaction of the Gladstone City Council.

As a result of two subsequent requests of the applicant, two extensions of time were granted by the Tribunal to enable the applicant to submit the agreed detailed additional information.

The second extension of time expired on the 30 June 2004. The Tribunal received no additional information within the required time.

After consideration of all the facts available to the Tribunal, it was determined that there was insufficient information available to determine that the:-

- 1 proposed re-siting of the dwelling would **not** have an extremely adverse effect on the amenity or likely amenity of the area.
- 2 aesthetics of the re-sited dwelling would **not** be in extreme conflict with the character of the neighbourhood.

Hence, in accordance with section 4.2.34(2)(a) of the Integrated Planning Act, the Tribunal **confirms** the decision appealed against.

Leo F Blumkie
Building and Development
Tribunal Chairperson
Date: 1 July 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