

BUILDING AND DEVELOPMENT TRIBUNAL – DECISION

Assessment Manager: Toowoomba City Council

Site Address: 4 Throwleigh Close, Toowoomba. Q. 4350.

Nature of Appeal: Appeal under Section 4.2.13 of the Integrated Planning Act 1997 against the decision of Toowoomba City Council to issue an enforcement notice requiring the following:

“Council believes that you have not complied with Part 2 Section 4(2) of the Building Act 1975 in that you have not provided a screen to the window of Bedroom 4 that obstructs direct viewing of the adjacent property as required by the conditions of Council’s Concession granted under Division 3 Section 48 of the Standard Building Regulations 1993 to Vary the Siting Requirements of Division 2 Section 38 of the Standard Building Regulations 1993 dated 9th. May, 2000.

Council requires you to provide the necessary screening by 5.00pm. on 3rd. April, 2001.”

The building is erected on land described as Lot 6 on RP No.909958 and situate at 4 Throwleigh Close, Toowoomba.

Date and Place of Hearing: 10.00am. on Monday 14th. May, 2001 in the conference room of the Dept. of Local Government and Planning, Level 12, 111 George St., Brisbane.

Present at Hearing

Tribunal: Peter J. Nelson

Toowoomba City Council: Alan Finney - Manager Development Assessment

Queensland Building Consulting Group: Peter Burchard - Toowoomba Branch
Mgr.
The owner of property

Material Considered:

- (a) Tribunal File 3-01-022 containing correspondence relating to this matter with photographs and approved Building Plans.
- (b) Register of Delegations by the Chief Executive Officer (Toowoomba City Council)...**E1**
- (c) VCR (From the owner)...**E2**
- (d) Sample of fibreglass screen mesh...**E3**.

Verbal evidence and argument by all parties to the hearing. I also rang the neighbours affected in this matter to obtain their point of view but they were over-seas and unavailable for comment. I do however have signed letters in evidence, putting their case.

Decision

In accordance with Section 4.2.34.(2) of the Integrated Planning Act 1997, I change the requirements of the enforcement notice as follows:-

- (1) a privacy screen similar to the design prepared by Henley Homes is to be erected on the external wall outside bedroom 4;
 - (2) the screen is to be erected within 30 days after receipt of the Tribunal's decision.
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Points raised in Argument

- 1 Tribunal Referee should not hear this appeal as the Act refers to an "Assessment Manager" and does not mention or refer to a Private Certifier. Therefore the Act does not cover appeals involving Private Certifiers.
- 2 The matter should not be heard as the person signing the Enforcement Notice did not have delegated authority of Council.
- 3 A siting error placed the residence 500mm. closer to the boundary than permitted. Toowoomba City Council (TCC) granted a concession provided 2 conditions were met –
 - (a) The window of bedroom 3 was relocated to the northern wall.
 - (b) The window of bedroom 4 was externally screened to obstruct direct viewing of the adjacent property.The owners made no objection to these conditions and the window of bedroom 3 was relocated to the northern wall.

The window to bedroom 4 was screened externally with a sliding, thick fibreglass mesh, insect type screen. The owner contends that this is in accordance with the conditions laid down by TCC.

The adjoining owners complained to TCC indicating that the screen does not comply with the conditions agreed to.

TCC officer inspected the screen externally only, and agreed with the neighbour's complaint. Correspondence was entered into and an enforcement notice was issued. The notice is appealed to this Tribunal.

4. Bedroom 4 now has a black venetian blind fitted internally as well as the screen externally.
5. An external fixed type screen as suggested by Henley Homes would encourage the children to climb out of the first floor window.
6. An external screen would create an ongoing maintenance problem.
7. If the siting was in the correct position TCC would not be able to enforce privacy screening under the Act and the concession granted was only for 500mm. and that does not alter the present position with viewing the neighbours. The argument being that screening should only compensate for 500mm. of viewing and the screen provided achieves a satisfactory solution based on % of vision reduction versus 500mm.
8. Council should have specified the exact type of screen they required when setting out the condition in the concession. The comments made by TCC Deputy Mayor when viewing the screen from inside the residence were that he was completely satisfied with the measures taken.

In summary the Queensland Building Consulting Group want –

- (a) The enforcement notice abandoned.
- (b) Full documentation of the decision so they can consider their options.
- (c) The existing screen approved.

The owner of the residence wants the existing screen approved.

Toowoomba City Council want –

- (a) The notice complied with.
- (b) Will accept the ruling of the Tribunal.

Answers to and Decisions made on Points raised in Argument

1. The Integrated Planning Act 1997 allows appeals against decisions on development applications and the giving of enforcement notices. The act does not distinguish whether a development approval or the issue of a notice is given by a local government (assessment manager) or a private certifier. I therefore find it appropriate for this Tribunal to hear the appeal.
2. TCC entered into evidence **E1** that clearly shows that Mr A A Finney has delegated authority to issue Enforcement Notices on behalf of TCC. (Refer page 3 Section 16). I have accepted this evidence and find that the Enforcement Notice was correctly issued.

3. This was a general observation of the steps taken and was noted by all present.
4. A venetian blind has been installed recently and is considered by the owners to lend weight to their argument that privacy is assured to the neighbours as it is impossible to see out of the window when the blind is closed. I viewed a video (E2) showing the steps taken by the owners to provide privacy and this video raises some concerns to me.

When the blind is drawn and the screen is closed this room is totally blacked out and is not a pleasant room to be in. I am told that the occupant of the room is a 13-year-old boy who uses the room to study and follow his hobby of looking at the night sky with his telescope. He would be able to do neither of these things shut up in a room with a window treated the way it is at the moment. The room needs fresh air and plenty of light. The only way to get this is to fully raise the venetians and slide open the screen.

The fibreglass mesh on the screen is indeed very thick and effectively makes the room very dark. It does little however to obstruct direct viewing of the adjacent premises. Fortunately the screen slides open to allow light to enter the room, but this entirely negates any privacy to the neighbours.

5. Henley Homes provided a sketch of a screen they considered appropriate for the Tuscan design of the residence. This sketch is taken directly from the Residential Design Guidelines Manual. This screen is angled from the sill of the window to a point perhaps 500mm. away from the wall at a point level with the top of the window opening. It is slatted to provide very narrow openings between the slats that, at an angle, could overlap visually. This would achieve the intent of the condition of concession to obstruct direct vision of the adjoining premises. But it would also solve the dilemma of providing light and ventilation to the room, because, the residence has no eaves to obstruct light from above, and the prevailing breezes can enter the room from each side as well as through the slats.

There would be no need for venetian blinds and the screen would be used only for insect protection when needed. In respect of the occupant's hobby of watching the night sky through his telescope it would have little more effect than the present screening. I believe the screen suggested would not be unsightly as claimed by the owners.

6. The screen would require the same attention to maintenance as the fascia and guttering of the house and would be maintained at the same time as the other elements.
7. This Tribunal is not the forum to debate the values of degree of effective screening. This Tribunal is to decide whether the existing screening obstructs direct viewing of the adjoining premises as required by the conditions of concession.

I accept the statement from TCC that they did not want to impose an exact screen specification on the owners, to give them the opportunity to select an appropriate

solution that best suited their taste, colouring and style. This selection opportunity is still available to the owners under the current enforcement order.

8. Regardless of comments alleged to have been made by the Deputy Mayor when viewing the screen I must take his written submission dated at a later date than his visit, to be his true position. This position was that the existing screening was not adequate and that the owners were required to conform to the conditions of the concession.

Conclusion:

I find that the Enforcement Notice was correctly issued and that the officer who signed the Notice was authorised to do so.

I find that the existing screen does not comply with the condition of concession in that it does not obstruct direct viewing of the adjacent residence.

I find that a privacy screen similar to the design prepared by Henley Homes is to be erected on the external wall outside the window of bedroom 4. The screen can be adapted and finished in a manner suitable to the style of the residence provided that it continues to maintain obstruction of direct viewing of the adjacent premises. Colours selected are to blend with the residence. This will provide the privacy so necessary to the neighbours as well as the 13-year-old boy who occupies the room. It will also enable the room to be kept open to light and ventilation.

I believe it will take about 14 days to have the screen made and arrangements for a tradesman to fit the screen could delay erection by another week. I therefore set a time for the screen to be erected at 30 days from the receipt of this decision.

PETER J. NELSON
Building & Development
Tribunal Referee
Dated: 29th. May, 2001.

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
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