



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

Integrated Planning Act 1997

File No. 3 – 03 - 068

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Brisbane City Council

Site Address: 31 Glindemann Drive, Holland Park

Nature of Appeal

An appeal under Section 4.2.9 of the Integrated Planning Act 1997 against the decision of Brisbane City Council to refuse an application for a siting variation under the Standard Building Regulation 1993 – Reprint Number 3A to enable the construction of a patio at a setback of 0.5 metres from the rear property boundary, and an open carport at 0.0 metre road boundary clearance on land described as Lot 46 on RP 47672, situated at 31 Glindemann Drive, Holland Park.

Date and Place of Hearing: 1.00 pm on Thursday 27 November, 2003
at 31 Glindemann Drive, Holland Park

Tribunal: E K George

Present: Applicants
Chris Diggles – Brisbane City Council

Decision

In accordance with Section 4.2.34.(2) of the Integrated Planning Act 1997, I set aside the decision appealed against and grant a siting concession to enable a double carport to be erected 0.0 metres from the front property boundary, as indicated on the attached Drawing P2272/SK2, and for the siting of a patio within the prescribed distance, subject to the following conditions:-

- 1.0 The carport shall be constructed of timber framing and metal roof.
- 2.0 Any gates constructed for security of the carport shall be installed not to open onto the footpath.
- 3.0 The patio shall be set back from the rear property boundary a distance of 0.9 metres, to meet the prescriptive requirements of Part 3.7.1 of the Building Code of Australia, without the need for installation of a wall with a 60/60/60 fire resistance level.

Background

An application was made to Council under section 48 of the SBR for siting of an open double carport located at 0.0 metres setback at the western end of the front property boundary; together with an application to construct a patio at a setback of 0.5 metres from the rear property boundary.

The proposed open carport is intended to replace an existing single carport located at an approximate 1.0 metre setback from the front property boundary.

The application to Council was refused on the grounds that the proposed patio would interfere with the privacy, amenity and aesthetics of the adjoining allotment, and for the carport, that it is not necessary nor expedient to locate the structure as requested, as there are other complying locations on the site.

Material Considered

- 1.0 Application submitted to Brisbane City Council requesting variation of the siting provisions of division 2 of the SBR to allow construction of the proposed carport at zero setback from the front property alignment, and siting of the proposed patio at a setback of 0.5 metres from the rear property boundary.
- 2.0 Letter from Brisbane City Council to the applicants, dated 21 October, 2003, refusing the application and setting out the reasons for the refusal.
- 3.0 Appeal form and attachments dated 16 November 2003.
- 4.0 Verbal submissions by the applicant to the Tribunal dated 27 November 2003.
- 5.0 Verbal submission by Brisbane City Council to the Tribunal dated 27 November 2003.
- 6.0 Integrated Planning Act 1997
- 7.0 Standard Building Regulation 1993, Reprint No 3A (as at 1 October 2003)
- 8.0 Part 3.7.1 Building Code of Australia
- 9.0 Building Newsflash issued 28 March 2002 – Classification of Patio Roofs.

Findings of Fact

- 1.0 The Tribunal has jurisdiction to hear this appeal.
- 2.0 The proposed double carport is to replace an existing single carport located approximately 1.0 metres from the front property boundary.
- 3.0 There is an alternative location within the subject property, located to the east of the existing dwelling.

Reasons for the Decision

- 1.0 Whilst there is an alternative location within the subject property for the proposed double carport, the existing site is the best location in terms of traffic visibility.
- 2.0 The proposed carport will not interfere with any aspects of subsections (3) and (4) of section 48 of the Standard Building Regulation 1993 – Reprint 3A.
- 3.0 Condition 2 of the above Decision reflects Council's concern for safety considerations of gates opening onto a public footpath.
- 4.0 At the Tribunal Hearing, the requirements of Part 3.7.1 of the Building Code of Australia, as described in Building Newsflash – Classification of Patio Roofs, were discussed. It was agreed that a setback of 0.9 metres would meet the prescriptive requirements of Part 3.7.1 of the Building Code of Australia, without the provision of a wall with fire resistance level of

60/60/60, whereas the setback of 0.5 metres applied for would require either an alternative solution, or, the construction of a fire resisting wall.

- 5.0 As the rear of the adjoining property is heavily vegetated, it is determined that the construction of a patio at a setback of 0.9 metres from the rear property boundary would not affect the adjoining property in regard to any aspect of subsections (3) and (4) of section 48 of the Standard Building Regulation 1993 – Reprint 3A.

Errol K George
Building and Development
Tribunal Referee
Date: 2 December 2003

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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