



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number: 05 - 2012
Applicant: Ms Rosemary Ahearn
Assessment Manager: Reliable Certification Services
Concurrence Agency: Brisbane City Council
Site Address: 28 Sturt Street Kedron, and described as Lot 97 on RP53158 – the subject site

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against the Decision Notice issued by Reliable Certification Services to refuse a Development Application for a dwelling extension (bedroom extension complete with ensuite) on the subject site. The refusal was based on advice from the Brisbane City Council (Council) as the concurrence agency. Council has directed that the proposed design and siting variation does not comply with the *Queensland Development Code* (QDC) performance criteria for the following reasons :-

- **P1 (a) the bulk of the building or structure**
The site has a carport already built in the road boundary setbacks to Sturt Street and the proposed additions overdevelop the road setback and takes away from the general streetscape and area. The proposal also reduces the area that can be landscaped.
 - **P1 (d) nuisance and safety to the public**
There is a possible safety risk as the proposed additions will be erected in the 9m x 9m corner truncation.
-

Date of hearing: 9.30am Tuesday 29 May 2012
Place of hearing: The subject site
Committee: Mr Leo Blumkie - Chairperson
Present: Ms Rosemary Ahearn - Applicant
Mr Peter Bird - Brisbane City Council representative
Mr Duncan Kirk – Brisbane City Council representative
Mr Andrew Everett – Reliable Certification Services
Mr Leo Blumkie – Chairperson

Decision:

The Building and Development Dispute Resolution Committee (Committee), in accordance with Section 564 of the SPA, **changes** the decision of the Brisbane City Council (Concurrence Agency) and approves the application for a bedroom extension subject to the following conditions:-

- The extension is moved north approximately 600mm so that no part is located within the 9m x 9m corner truncation of the site;
- The outermost projection of the extension at the northern end is a minimum of 2.2 metres from Sturt Street;
- The extension is lowered so that the gutter line is the same as that of the existing house;
- The gable roof is changed from a gable to a hip roof at both ends of the extension;
- The existing trees and shrubs to Sturt Street are maintained;
- No additional vehicles are parked between the extension and the existing carport;
- The materials used in the extension match the existing house as far as possible;
- The colour scheme matches the existing house.

Background

The site is a 582m² rectangular shaped allotment on the corner of Sturt Street and Eighth Avenue Kedron, Brisbane.

The site is developed with a lowset single storey Class 1a dwelling and a double carport within the Sturt Street setback. The carport has Council building approval.

The site is the last allotment on the north/eastern end of Eighth Avenue and has extensive views over Kedron Brook.

The site is within the Development Control Plan for the Lutwyche Road corridor Neighbourhood Plan and is within the Low Density Residential area LR.

A Development Approval has been obtained under the planning scheme for the bedroom extension. Approval No DA A003255455. This included a "colorbond" roof even though the existing house has a terracotta tile roof.

Application was made to Council for a siting relaxation to allow a reduced boundary setback to Sturt Street.

Council refused the application for the reasons as outlined in correspondence sent to Reliable Certification Services on the 31 January 2012.

Reliable Certification Services advised the owner of the refusal on the 11 February 2012.

An appeal was lodged with the Committee Registrar on the 8 February 2012.

The Registrar advised Council and Reliable Certification Services on 23 May 2012 that an appeal had been lodged in relation to the refusal. The time between when the appeal was lodged, and could be accepted and commenced, was held up as a result of Machinery of Government changes after the Queensland State Election.

On 23 May 2012 the Building and Development Dispute Resolution Committee Chairperson advised Council, Reliable Certification Services, and the Applicant of the date, time and place for the hearing.

Material Considered

The material considered in arriving at this decision comprises:-

1. Form 10 – Notice of Appeal, drawings, extracts and correspondence (Council's refusal) accompanying the appeal lodged with the Registrar on 8 February 2012.
2. Verbal submissions from the Applicant at the hearing.
3. Verbal submissions from the Council representatives at the hearing.
4. Verbal submissions from the Assessment Manager at the hearing.
5. Inspection of the neighbourhood.
6. QDC MP 1.2 Design and Siting Standard for single detached housing - on lots 450m2 and over.
7. *Building Act 1975*.
8. *Building Regulation 2006*.
9. *Sustainable Planning Act 2009*
10. Building Code of Australia.

Findings of Fact

The Committee makes the following findings of fact:-

- The allotment is approximately 582 m² in area, located on the corner of Sturt Street and Eighth Avenue, Kedron.
- The allotment is the last allotment on the north/eastern end of Eighth Avenue and has extensive views to the east over Kedron Brook.
- The site is developed with a low set single storey class 1 dwelling and carport. The class 1 dwelling has 2 bedrooms.
- The site has approximately a 1.50 metre fall from the Sturt Street frontage to the rear.
- The allotment has a large 10m truncated corner to Sturt Street and Eight Avenue
- The Applicant wishes to add a third bedroom to cater for family members.

Reasons for the Decision

MP 1.2 of the Queensland Development Code establishes amongst other things the design and siting standards for single detached housing on lots 450m2 and over.

The Purpose of MP 1.2 of the Code is defined in the Code as follows:-

“To provide good residential design that promotes the efficient use of a lot, an acceptable amenity to residents, and to facilitate off street parking”.

A Alternate locations for the bedroom were considered as follows:-

1 Rear of the property

The owner wished to maintain a large Queensland nut tree growing close to the rear boundary. In order to give the tree clearance, the bedroom would need to be positioned closer to the existing house.

This would result in loss of views to the Kedron Brook from the kitchen and sun room, also a loss of amenity including sunlight and breezes to the rooms on the north/eastern side of the existing house.

Positioning the bedroom to the rear southern side would reduce available outdoor area and also cut off views, breezes, and reduce off street parking etc.

B Assessment under MP 1.2 of the QDC.

The Council has refused the application based on the belief that the proposal is not in accordance with the acceptable solutions of performance criteria of Part 1 of the QDC.

P1 Acceptable streetscape

(a) The bulk of the building or structure

The Committee agrees the proposal with a gable roof, 3m ceiling height and within the 9m corner truncation unduly dominates the streetscape, particularly when approaching the site from Eighth Avenue.

After discussion of the various options the owner agreed :-

- the bedroom could be moved 600mm north and then would not be within the 9m corner truncation.
- The 3m ceiling height was not necessary and could be reduced to align with the ceiling height of the existing building. This would reduce the height, i.e. bulk of the building and allow the gutters to align.
- The gable roof at each end of the bedroom was not necessary and would be more in keeping with the roof of the existing house if it were changed to a hip roof at each end. This would also reduce the bulk of the proposal.

The Sturt Street frontage was already heavily landscaped with existing shrubs 4m to 6m high which already obscured the view of the existing house. The owner proposed to retain this landscaping.

In addition, because of the large 10m corner truncation, the available space for landscaping was reduced when compared with normal subdivisions of today, which generally have a 6m, 3-sided corner truncation.

Positioning the bedroom in the front setback would reduce the area available for landscaping by approximately 25%. The remaining space was considered adequate especially when no additional car parking was required in the front setback. Additional car parking was available to the rear of the property.

These changes to the overall design of the bedroom and retention of existing landscaping to Sturt Street, in the opinion of the Committee, would minimise impact on the streetscape to both Sturt Street and Eight Avenue Street. The Council representatives agreed.

(b) The road boundary setbacks of neighbouring buildings or structure

The modified proposal would be in keeping with neighbouring setbacks especially when the location of the approved carport is taken into account.

(c) outlook and views of neighbouring residents.

Council agreed the modified proposal did not unduly affect the outlook and views of neighbouring residents.

(d) Nuisance and safety to the public.

Moving the bedroom so that it is outside the 9m x9m truncation removes the possible safety risk to the public.

Conclusion

The Committee after taking into account the following:-

- dimensions, existing development and allotment position within the neighbourhood and levels of the block;
- existing streetscape of neighbouring streets;
- existing setbacks of neighbouring properties;
- submissions from Council and its hearing representatives,
- submissions from the Applicant and Assessment Manager;

believe the conditions in the decision make the modified design satisfy the Performance Criteria of MP 1.2 of the QDC.

These conditions take into account the design and character of the existing house, the desired needs of the owner and her family and the amenity and aesthetics of the overall design.

The proposal is required to satisfy all other requirements required by Queensland Building Law.

The Committee reminds the owner of the need to confirm with the Planning Section of Council so that the minor changes to the design and location of the bedroom are still in accordance with the general requirements of the Development Application.

Leo Blumkie
Building and Development Committee Chair
Date: 04 June 2012

Appeal Rights

Section 479 of the *Sustainable Planning Act 2009* provides that a party to a proceeding decided by a Committee may appeal to the Planning and Environment Court against the Committee's decision, but only on the ground:

- (a) of error or mistake in law on the part of the Committee or
- (b) that the Committee 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 Committee's decision is given to the party.

Enquiries

All correspondence should be addressed to:

The Registrar of Building and Development Dispute Resolution Committees
Building Codes Queensland
Department of Housing and Public Works
PO Box 15009
CITY EAST QLD 4002
Telephone (07) 3237 0403 Facsimile (07) 3237 1248