



APPEAL
Integrated Planning Act 1997

File No. 3-02-036

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Brisbane City Council
Site Address: 12 St Andrews Place, Wishart

Nature of Appeal

Appeal under Section 21 of the *Standard Building Regulation 1993*, against the decision of the Brisbane City Council in varying the application of Division 2 – Boundary clearances, as provided for under Section 48 of the *Standard Building Regulation 1993* (SBR) for a detached house on land described as Lot 3 SP 142716 and situated at 12 St Andrews Place, Wishart

Date and Place of Hearing: 10.30 am, Monday August 26, 2002
12 St Andrews Place, Wishart

Tribunal: Dennis Leadbetter

Present: Owner
Mark Dawson Brisbane City Council
Greg Schonfielder Brisbane City Council

Decision

The decision of the Brisbane City Council as contained in its letter dated 9 August, 2002, reference DRS/BLD/A02-1180501, not to grant approval to permit the erection of a detached house within the road alignment setback to one street is **set aside**. The detached house may be erected with a road boundary clearance of 4.0 metres to western St Andrews Place road alignment.

Background

The application was for permission to erect a detached dwelling to within 3.42 metres of the western St Andrews Place road boundary. The detached dwelling elevation to this road alignment is part single and part two storey. The site is a corner site and the standard road boundary setback of 6.0

metres has been complied with to the northern street boundary. The site has a depth of 22.7 metres from the western alignment.

The Brisbane City Council had refused the application on the grounds it would overcrowd the allotment, having cognisance of the dwelling's mass and its proximity to and effect on the streetscape. Also, reducing the setback would reduce the scope for landscaping to the western facade for potential sun screening of living areas.

The St Andrews Place carriageway width is approximately 14.5 metres wide.

Material Considered

- 1 Appeal notice and grounds of appeal contained therein;
- 2 Drawings submitted to Brisbane City Council;
- 3 Letter from Brisbane City Council not to approve the application;
- 4 Verbal and written submission by the owner, explaining the consultative process he had undertaken prior to the purchase of the property and the reasons why the relaxation should be granted;
- 5 Verbal submission by Messrs Mark Dawson and Greg Schonfielder, Brisbane City Council, explaining the reasons for refusal of the application;
- 6 The Standard Building Regulation 1993; and
- 7 The neighbouring developments in this estate.

Findings of Fact

1. It is a new release to the estate;
2. It is a corner site, with the street to the northern and western boundaries;
3. The site has a fall in the north-westerly direction of approximately 1.5 metres;
4. The proposed development indicates a cut and fill which will raise the ground level to the north western road corner by approximately 0.75 metres;
5. The adjoining site to the east has been cut in preparation for building and will be approximately 1 metre above the building platform of this dwelling;
6. The carriageway is approximately 14.5 metres wide and services approximately 6 parcels of land to the south of this property;
7. The neighbouring detached houses are of a similar nature in size and bulk mostly two storey with some single storey.

8. Section 47 of the SBR provides special requirements for corner allotments. While Section 47 (2) indicates that *A building or structure on a corner allotment must be constructed in accordance with the distances stated in Division 2*, which requires at least a 6.0 metre road alignment clearance, Section 47 (3) (a) provides relaxation of that requirement *if the average depth of the allotment measured at right angles to any alignment is not greater than 24 metres, the distances may be reduced, in accordance with the scale shown in schedule 11, for one road frontage nominated by the local government*. Section 47 (3) (b) limits the application of sub section (a), but the proposal under appeal complies with subsection (b) in not having any structure in the 12 metre x 12 metre truncation to the road alignment corner. The property has a depth from the western road alignment of 22.7 metres and from schedule 11, the boundary clearance to one road boundary, nominated by the local government, would be 5.5 metres. The proposed detached dwelling dimensions cannot be accommodated with a 5.5 metre road alignment set back and the required side alignment set back to the eastern alignment.
9. Under Section 48 of the SBR, a local government may vary how Division 2 applies to the application after considering under Section 48(3), the following points:-
- a. *The level, depth, shape or condition of the allotment and adjoining allotments.*
The allotment and the adjoining allotments have a moderate fall. There are no buildings on the immediately adjoining allotments, and those in the surrounding estate generally appear to comply with the siting requirements under Division 2 of the SBR.
 - b. *The nature of any proposed building or structure on the allotment.*
The proposed detached dwelling is of part single and part two storey construction, with the two storey section set back approximately 12 metres from the northern road boundary, and the road corner is clear in excess of the 12 metre truncation required under Section 47 (3) (b), giving an open street vista at the road corner.
 - c. *The nature of any existing or proposed building or structure on the adjoining allotments.*
The immediate adjoining allotments are vacant, with a dwelling about to commence construction to the east, and dwellings in the surrounding area are of a similar nature, size and character to that proposed.
 - d. *Whether the allotment is a corner allotment.*
The allotment is a corner allotment.
 - e. *Whether the allotment has 2 road frontage.*
The allotment, being a corner allotment, has two road frontages.
 - f. *Any other matter considered relevant.*
The proposed detached dwelling is sited to provide a significant open space to the road boundary corner, thus providing an open street vista. The elevation fronting the western road boundary, where the boundary clearance relaxation is being sought is of both single and two storey massing, with the two storey section representing approximately the central half of the elevation. The length of this portion is approximately 7 metres, a relatively small element. The major elevation to the north is set back approximately 12 metres and again is given relief by a mixture of single and two storey massing.
Reducing the eastern alignment, having cognisance of the adjoining dwelling's platform elevation above this property could result in an over dominating presence. For this reason it is desirable to maintain the eastern alignment clearance at its maximum possible.

11. In varying the siting requirements, the local government must be satisfied that a building or structure, built on the allotment in the way proposed, would not **unduly** –

a. *Obstruct the natural light and ventilation of an adjoining allotment.*

The proposed detached dwelling would not obstruct the natural light and ventilation to any adjoining property.

b. *Interfere with the privacy of an adjoining owner.*

The proposed detached dwelling would not impact on the privacy of adjoining owners, because of its siting, design and orientation.

c. *Restrict the areas of the allotment suitable for landscaping.*

The area of the site to the streetscape for landscaping is extensive and there is reasonable area for suitable planting to the west to provide sun screening.

d. *Obstruct the outlook from the adjoining property.*

The proposed detached dwelling, because of its siting, would not unduly obstruct the outlook from the adjoining properties.

e. *Overcrowd the allotment.*

The detached dwelling, and its siting, provide significant open space, particularly to the road corner, and do not overcrowd the site, nor impact unduly on the overall streetscape.

f. *Restrict off-street parking for the allotment.*

The proposal will provide for adequate off street parking.

g. *Obstruct access for normal building maintenance.*

There is adequate access and space for maintenance operations.

Reasons for the Decision

Sections 48 (3) and (4) of the SBR allows for local government to vary the application of siting requirements of division 2. In assessing the criteria from this part of the legislation and considering the nature and use of the proposed structure and its siting and any potential impact on the adjoining allotments, and the amenity and streetscape, the Tribunal found that there was reasonable grounds to vary the road alignment setback to allow the detached dwelling to be constructed with a road boundary clearance to the western alignment of 4.0 metres.

Dennis Leadbetter

Dip. Arch. QUT; Grad. Dip Proj. Man. QUT; METM UQ

Building and Development

Tribunal Referee

Date: 28 August 2002

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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