

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Crows Nest Shire Council

Site Address: Lot 13 Ballantyne Court Highfields

Appeal Details:

The appeal is lodged against the decision of the Crows Nest Shire Council not to grant a Development Approval for building work to relocate a railway carriage to land described as Lot 13 on RP 897825 and situated at Lot 13 Ballantyne Court, Highfields. The application was not approved for the following reasons:

- 1 Council considers the railway carriage will be a relative's accommodation.
 - 2 The relocation of the railway carriage in Ballantyne Court would be in extreme conflict with the character of the area.
-

Date and Place of Hearing: 9 am Friday 25 August 2000 at
Crow's Nest Shire Council Chambers,
Emu Creek Road, Crow's Nest.

Tribunal Alan Finney - representative of the Local Government Association
Derick Pingel - representative of the Queensland Master Builders Association
Leo Blumkie - Chairperson of the Tribunal.

Present Applicant
Mr John Clancy - Crow's Nest Shire Council
Mr Russel Leight - Crow's Nest Shire Council
Tribunal

Tribunal Decision:

In accordance with the Sections 4.2.34 (2)(e) and 4.2.34 (1) of the Integrated Planning Act 1997, the Tribunal,

- with the consent of the appellant varies the application to be in accordance with the plans numbered 1 to 6 and identified as Job No 2000/36 and as submitted to the acting Registrar on Friday 20 October 2000, and

- directs the Crows Nest Shire Council to decide the application taking into account all other relevant matters of the Standard Building Regulation 1993 and the Integrated Planning Act 1997 on the basis that a Preliminary Development Approval for building work limited to amenity and aesthetics has been granted by the Tribunal. The Tribunal considers that the building when erected will-
 - (i) **not** have an extremely adverse affect on the amenity or likely amenity of the building's neighbourhood; and
 - (ii) **not** be in extreme conflict with the character of the building's neighbourhood.
-

Reasons:

The appeal as set out in the appeal notice is against,

- 1 Group A (a) the refusal of a development application and in particular,
- 2 Group D (a) the amenity and aesthetics of a class 10 building.

The decision of Council is a refusal on two grounds namely-

- use of the building; and
- amenity and aesthetics of the proposal.

The Tribunal has jurisdiction over the amenity and aesthetics aspects of the application only, as the use of the building is controlled by other legislation outside the control of the Tribunal.

Section 50.(1) of the Standard Building Regulation gives power to a local government to declare by resolution the localities and forms of buildings for class 1 and 10a buildings which they believe would have an extremely adverse effect on the amenity or likely amenity of a locality or which may be in extreme conflict with the character of a locality.

Crow's Nest Shire Council declared by resolution on the 21 May 1998 that:-

- (a) the whole of the Shire is a locality where houses for removal may have an extremely adverse effect on the amenity or likely amenity of the locality; and
- (b) Residential A and B, Rural Residential A and B, and Village Zones are localities where Council considers metal clad class 1 buildings (dwellings) may have an extremely adverse effect on the amenity or likely amenity of the locality.

The Tribunal inspected the carriage, the immediate neighbourhood and site and had detailed discussions on the proposal with the applicant. It was evident the proposal had not been given proper consideration with respect to a number of key elements including:-

- exact position on the site;
- levels, cut and/or fill;
- retaining walls;

- access;
- extent of veranda and type of roof;
- railings;

- elevations including finished ground lines and heights;
- materials;
- foundations and tie-down; and
- windows and doors etc

The Tribunal, at the hearing, advised the applicant verbally, that there was insufficient documented information in the application for the Tribunal to give proper consideration to the appeal.

These verbal directions were followed up in detailed correspondence dated 29 August 2000 to the applicant (copy attached) which, amongst other things, required the application to be documented by an appropriately licensed competent professional design person and be in accordance with the requirements of Guide 9 "*Building Work Documentation*".

The applicant was given until 8 September 2000 to decide whether to proceed with the preparation of the additional information and, if agreed to, this additional information was required to be submitted to the Tribunal by the 29 September 2000 unless extended by the Tribunal. On the 7 September the applicant advised in writing that he wished to proceed with the appeal to the Tribunal.

Upon request from the applicant the date for submission of additional information was subsequently extended to 27 October 2000. Additional information was received on Friday 20 October 2000.

A copy of the amended application was forwarded by the acting Registrar to the Crow's Nest Shire Council for comment on the 23 October 2000.

Council response was received by the Registrar on 27 October 2000 advising that it considers the:-

- (a) building, when built will have an extremely adverse effect on the amenity or likely amenity of the building's neighbourhood: and
- (b) aesthetics of the building, when built, will be in extreme conflict with the character of the building's neighbourhood.

The Tribunal has considered the Council's comments and has given careful consideration to the amended application, taking into account the guidelines set out in the former Local Government Department's Building Note 132, dated August 1990.

The legislation states that for the proposal to be refused on amenity and aesthetics grounds, it must be in **extreme** conflict.

In considering the **amenity** of the proposal, it is the opinion of the Tribunal that the overall shape, size and siting of the building would not be detrimental in an extreme way, to the amenity of adjoining sites as a result of the following:-

- overshadow or restrict natural light;

- restrict natural ventilation;
- obstruct outlook or view;
- compromise the visual and acoustic privacy; and
- reflecting glare.

In considering the **aesthetics** of the proposal, the Tribunal has considered the following:-

- building style and materials;
- type;
- setbacks and position on the site;
- roof style and overhangs;
- walls;
- fenestration; and
- overall colour scheme,

and is of the opinion that it will **not** be in **extreme** conflict with the existing or likely development of the neighbourhood after considering:-

- the degree of physical cohesiveness or diversity of the existing built environment;
- site coverage, setbacks and height of buildings;
- house type individuality or variation;
- continuity of matching or complementary architecture; and
- layout of landscaping.

Therefore after taking into account all matters presented at the hearing and in accordance with the Sections 4.2.34 (2)(e) and 4.2.34 (1) of the Integrated Planning Act 1997, the Tribunal,

- with the consent of the appellant varies the application to be in accordance with the plans numbered 1 to 6 and identified as Job No 2000/36 and as submitted to the acting Registrar on Friday 20 October 2000, and
- directs the Crows Nest Shire Council to decide the application taking into account all other relevant matters contained in the Standard Building Regulation 1993 and Integrated Planning Act 1997 on the basis that a Preliminary Development Approval for building work limited to amenity and aesthetics has been granted by the Tribunal. The Tribunal considers that the building when erected will **not**-
 - (iii) have an extremely adverse affect on the amenity or likely amenity of the building's neighbourhood; and
 - (iv) be in extreme conflict with the character of the building's neighbourhood.

L F Blumkie
Building and Development
Tribunal Referee
Date: 2 November 2000

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 Communication and Information, Local Government, Planning and Sport.
PO Box 187
BRISBANE ALBERT STREET QLD 4002
Telephone 3237 0403: Facsimile 32354586

