



Building and Development Dispute Resolution Committees – Decision

Sustainable Planning Act 2009

Appeal Number: 60 - 11

Applicant: Robert Smiley

Assessment Manager: Hycert Building Services

Concurrence Agency: Western Downs Regional Council (Council)
(if applicable)

Site Address: Maranda Court, Dalby, described as Lot 6 on SP 172509 (the subject site)

Appeal

Appeal under section 527 of the *Sustainable Planning Act 2009* (SPA) against a decision notice issued by Hycert Building Services, as the Assessment Manager, to refuse an application for the relocation of a removable dwelling onto the subject site.

Date of hearing: 11:00am, 1 September 2011

Place of hearing: Western Downs Regional Council offices, Dalby

Committee: Liz Woollard - Chairperson
Mike Harris - General Referee

Present: Gerard Irwin - Council
Robert Smiley - Applicant
Stephen Groth - Hycert Building Services

Decision:

The Building and Development Dispute Resolution Committee (the Committee), in accordance with section 564 of the SPA, directs the Assessment Manager to set aside the decision to refuse Development Application for the relocation of a removal dwelling and orders the Assessment Manager to replace the decision with the following:-

Approve the Building Development Application for the relocation of the removal dwelling, subject to the following conditions, together with any reasonable conditions imposed under the relevant legislation by the Assessment Manager:

1. Undertake the work as identified by the inspection report carried out by Western Downs Regional Council;
2. An application to transport a dwelling in its constructed form is made by the house removalist on the prescribed form. Approval to transport the building in the town area will not be granted unless a development approval (building work) has been issued;
3. The performance bond to be held by Council of \$27,000.00 is lodged to ensure completion of all work is carried out to the satisfaction of Council. This bond will be refunded upon the satisfactory completion of work and a final inspection certificate being issued;
4. The building is to be made secure and weather proof; and be provided with a rainwater storage system to comply with water saving requirements and a rainwater drainage system to convey rainwater to the street drainage in accordance with Council's requirements. Guttering is to be uniform in appearance;
5. The building is to be bird and vermin proof;
6. All glazing is to provide a barrier to wind and stormwater and have any missing putty replaced and painted;
7. Damaged and decayed chamfer boards are to be repaired or replaced to the satisfaction of Council;
8. Any broken sheeting is to be replaced. Any sheeting containing asbestos is to be handled by an appropriately qualified person in accordance with the Division of Workplace Health and Safety and disposal of asbestos materials are to be in accordance with Council's Environmental Health requirements;
9. The exterior of the building is to be repainted using colours which complement the existing buildings at Lot 4 and Lot 5 Maranda Court;
10. The awning shall be removed or replaced to provide a modern appearance to the satisfaction of Council;
11. Install slats around the sub floor area at the front and sides of the building;
12. Carry out the work as identified in the performance bond;
13. All work detailed in this approval is commenced within two (2) months and completed within six (6) months after the giving of the building approval as required by the *Building Act 1975*, section 71.

Background

On 10th May 2011 the Assessment Manager made an application to Council for approval to relocate a dwelling to the subject site. As the Assessment Manager had not received a response by 19th July, 2011, the Building Development application was refused.

The Assessment Manager's application was for a "Removal Dwelling Bond Assessment (Amenity and Aesthetics)" under the Sustainable Planning Regulation 2009 (SPR) Schedule 7 - Table 1. There were two issues for Council to determine in relation to the application, one being the setting of a bond & the second being the amenity and aesthetics of the proposal.

On 1st June 2011 a report was prepared by Council's Building Services Coordinator for consideration at Council's meeting on 16th June 2011. The report recommended refusal of the application. On 3rd June 2011, Council received letters of objection to the proposal from individuals residing within the area.

Council considered the report, as scheduled, on 16 June 2011 and resolved "that this report be brought back

to Council with recommendations with appropriate conditions for further consideration ...” Council met again on the 6 July, at which it was noted that a further report was being prepared. The further report was considered at Council’s meeting dated 20 July 2011, and it was resolved that “...the report “lay on the table” pending further discussion.

Both reports prepared by Council’s Building Services Coordinator recommended refusal on the grounds that the proposal did not comply with Council’s Policy PAL 5.3.8 – Removal Homes. The policy requires removal homes to be constructed in an area “with houses of similar age and condition”.

The report of 1st June 2011 considered by Council on 20th July 2011 contained a list of 14 conditions, should Council decide to approve the Development Application.

Material Considered

The material considered in arriving at this decision comprises:

1. ‘Form 10 – Appeal Notice’, grounds for appeal and correspondence accompanying the appeal lodged with the Registrar on 20th July 2011.
2. An inspection of the site and the locality, undertaken by the Chairperson and the General Referee.
3. Photos taken by the General Referee.
4. Report prepared by Council’s Building Services Coordinator dated 1st June 2011.
5. Letters of objection dated 3rd June 2011 from individuals residing within the area.
6. Extract of minutes, Action Item – Council Meeting of Wednesday 15th June 2011.
7. Ordinary Meeting of Council Action Item List, dated 15th June 2011.
8. Ordinary Meeting of Council Action Item List, dated 6th July 2011.
9. Report to Council dated 13th July 2011.
10. Ordinary Meeting of Council Action Item List, dated 20th July 2011.
11. Verbal submissions made by the applicant and Assessment Manager at the hearing.
12. Verbal submissions made by the owner at the hearing.
13. Verbal submissions made by Council at the hearing.
14. Site plan of subdivision and surrounds showing the development of adjacent lots.
15. Photoshop image of proposed house on lot.
16. Information sheet – “8 Things You Must Know Before You Buy A Removal Home” from Dalby Removal Homes.
17. The *Sustainable Planning Act (SPA) 2009* and regulations.

Findings of Fact

The Committee makes the following findings of fact:

As the referral agency, Council has ten days to consider an application and to set an appropriate bond for removal houses. This period can be extended by an Information Request or by obtaining agreement from the applicant. In this instance, there was no request for either.

Where a Concurrence Agency does not provide a response within a specified time, an application is deemed to be refused by that agency, and the Assessment Manager must issue a refusal notice. Where the application relates to the amenity and aesthetic impact of a building or structure, the Assessment Manager must decide the application as if the agency had no requirements. In this case, the bond had not been set, so the Assessment Manager refused the application.

On 28th May 1985, Council resolved to adopt a policy in relation to removal houses (PAL 5.3.8 – Removal Houses). Item (a) of the policy requires the house to be located “with houses of similar age and condition”. It is likely the intent of this requirement is to preserve the amenity of the locality. Council, as the referral agency, assesses such applications against the applied policies.

The subject site is a subdivision of a lot fronting Hayden St, and was made possible by the subdivision of another parcel of land which now fronts Maranda Court. There are a total of eight lots fronting Maranda Court.

Of those eight lots, two contain houses, constructed in 2009 and 2010 respectively, and two contain houses that are more than 50 years old. The subject site is one of four vacant lots. The lots directly adjacent and to the rear of the two new houses contain older houses, and the lots adjacent to these also contain older houses.

Schedule 7 – Table 1 (Amenity and aesthetic impact of particular building work) of the Sustainable Planning Regulation 2009 requires a Concurrence Agency application to be made where a project involves:

Building work for a building or structure if it is -

- (b). in a locality and of a form for which the local government has, by resolution or in its planning scheme, declared that the form may -
 - (i) have an extremely adverse effect on the amenity, or likely amenity, of the locality; or
 - (ii) be in extreme conflict with the character of the locality.

The report of 1 June 2011, prepared by Council’s Building Services Coordinator, recommended fourteen conditions be applied if Council approved the application. The Committee agreed with these conditions and required these to be applied with the exception of Conditions 2 (irrelevant to a Building Development Permit) and 10. Condition 10 has been replaced with “The exterior of the building is to be repainted using colours which complement the existing buildings at Lot 4 and Lot 5 Maranda Court

Reasons for the Decision

The Committee determined that the proposed relocation of the house will not have an extremely adverse effect on the amenity of the locality and will not be in extreme conflict with the character of the locality. Further, the Committee concluded that the proposal is compatible with the age and condition of houses in the area.

Liz Woollard

Building and Development Committee Chair
Date: 16 September 2011
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 Local Government and Planning
PO Box 15009
CITY EAST QLD 4002
Telephone (07) 3237 0403 Facsimile (07) 3237 1248