

APPEAL

Integrated Planning Act 1997

File No. 3-01-043

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Brisbane City Council

Site Address: 85 Meemar Street, Chermside

Nature of Appeal

Appeal under section 4.2.9 of the Integrated Planning Act 1997, against the decision of Brisbane City Council not to grant approval for the erection of a dwelling within the minimum road boundary setback requirement of 6m.

Date and Place of Hearing: 85 Meemar Street, Chermside
9am on Tuesday 2 October 2001

Tribunal: Mr Chris Harris

Present: Applicant
Mr Ian Chaplain, building designer
Mr Trevor Anger, Brisbane City Council

Decision

The decision of the Brisbane City Council as contained in its written notice dated 8 August 2001, not to permit the erection of the dwelling within the 6m setback to Meemar Street be confirmed.

Material Considered

The matter was heard on the basis of the written submission made to the registrar and verbal submissions on the day of the hearing.

Findings of Fact

The vacant allotment previously had a dwelling on the property similar in design to the other properties in the street.

The original dwelling was built on concrete stumps and was owned by a relative of the appellant and his wife.

The appellant bought the property and subsequently sold the building to a `company' who removed the original dwelling from the site.

The appellant did not carry out a search on the property prior to purchase, which would have revealed the sewer traversing the middle portion of the allotment.

The original dwelling was constructed 'over' the sewer line.

Part of the new dwelling will be built over Council's sewer for which approval would need to be sought. Council has no objections to the new dwelling traversing their sewer.

The Standard Building Regulation 1993

Section 36 – Road boundary clearance

Stipulates all buildings and structures to which this part applies (being class 1 and 10) must have at least a 6m road boundary clearance. See reference to **Section 48** below.

Section 48 – Local government may vary the provisions of division 2

(3) The local government may consider the following:-

a) the levels, depth, shape or conditions of the allotment and adjoining allotments

The allotment is close to rectangular in shape and a sewer traverses the site near the middle of the property.

b) the nature of any proposed building or structure on the allotment

The proposal relates to a dwelling which will protrude beyond the building line of the neighbouring properties.

c) the nature of any existing or proposed buildings or structures on the adjoining allotments

The adjoining allotments have single storey dwellings.

d) whether the allotment is a corner allotment

Not applicable.

e) whether the allotment has two road frontages

Not applicable.

f) any other matter considered relevant.

Council wishes to maintain the street alignment.

(4) The local government must be satisfied that the building or structure when built on the allotment in the way proposed would not unduly-

a) obstruct the natural light or ventilation of an adjoining allotment

The structure being proposed would not obstruct the natural light or ventilation of the neighbouring residence.

b) interfere with the privacy of an adjoining allotment

The structure being proposed would not interfere with the privacy of the neighbouring residence.

c) restrict the areas of the allotment suitable for landscaping

The proposed dwelling is of a significant size, however the proposal would not restrict the areas on the allotment suitable for landscaping.

d) obstruct the outlook from adjoining allotments

The proposed position of the dwelling would project significantly forward of the street alignment and may obstruct the outlook from the adjoining property.

e) overcrowd the allotment

The width of the proposed dwelling would cover the majority of the frontage although the total site coverage is less than 50%.

f) restrict off-street parking for the allotment

The proposal would not restrict the off-street parking availability on the allotment.

g) obstruct access for normal building maintenance

There is no reason to determine that normal building maintenance would be affected.

Reasons for the Decision

Section 48 (3) and 48 (4) of the Standard Building Regulation allows for the local government to vary the application of siting requirements. In assessing the criteria from this part of the legislation and in consideration that the proposed dwelling could be located on the property to meet the minimum road setback requirement of 6m, the Tribunal found that there was not reasonable grounds to vary the street setback requirement to Meemar Street in this instance.

CHRIS HARRIS
Building and Development
Tribunal Referee
Date: 18 October 2001

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 Local Government and Planning
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