



Building and Development Tribunals

Queensland Government

Department of Local Government and Planning

APPEAL

Integrated Planning Act 1997

File No. 3/05/058

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Logan City Council

Site Address: *withheld* – “the subject site”

Applicant: *withheld*

Nature of Appeal

Appeal under Section 4.2.9 of the Integrated Planning Act 1997 against the decision of the Logan City Council in relation to not granting an approval for the siting of an existing garage located within the prescribed boundary setback from the side boundary, on land described as Lot *withheld*, and situated at “the subject site”.

Date and Place of Hearing: 2.30 pm on Friday, 21 October, 2005
At the office of the Department of Local Government, Planning Sport and Recreation, Level 25, 41 George Street, Brisbane.

Tribunal: Georgina J Rogers

Present: *withheld* – (Executor of Will of E. Cobacoglo)
Mr W Rose – Logan City Council representative

Decision

The decision of the Logan City Council as contained in its letter dated 23 August 2005 (Reference: 412084(P1) 3012556/RoseW:Buckle) refusing the application to allow for the retention of the existing garages within the prescribed side boundary setback of the site is **set aside** for the following reason:

1. The garages have been constructed in line with the existing dwelling’s outermost projection and therefore do not appear to be any closer to the side boundary alignment than the existing dwelling.

Background

The meeting was not commissioned to allow for an on site visit, however photographic evidence was provided by the applicant. Further photographic evidence was provided by the Logan City Council representative confirming that provided by the applicant.

From the photographic and verbal reports it would appear that there is an existing dwelling on site which has these garages attached to the rear of the dwelling. The garages appear to have been constructed in two stages with the longer, 9.150 m, one constructed first and then the second garage being built between the garage and the dwelling, abutting both buildings.

The site appears to be regular in shape. Contours have not been shown however from the photographic evidence and verbal discussions there appears to be a small retaining wall constructed around the subject garages.

The photographs indicate that the garage walls adjacent to the side boundary are in line with the gutter of the existing dwelling.

No detailed survey has been undertaken to accurately identify the side boundary setback to the garages and dwelling. All measurements appear to have been taken from the existing dividing neighbourhood fence, which show the setback of garages and dwelling to the fence to be 1300mm.

Material Considered

1. Appeal documentation including drawings indicating the location of the existing garages and dwelling in relation to the side boundary alignment;
2. Site plan, plans and elevations of the existing garages;
3. Photographic submission by applicant showing location of existing garages;
4. Photographic submission by Logan City Council representative showing location of existing garages in relation to existing dwelling and side boundary alignment;
5. Verbal submission by the applicant and reasons for retention of the garages in their current location, and setback from the side boundary alignment;
6. Correspondence from the Logan City Council dated 23 August 2005, not granting approval for the siting of the existing garages within the required side boundary setback;
7. Copy of the adjoining owner statement expressing concern with a relaxation being given to the location of the existing garages in their current location adjacent to their side boundary. The garages are adjacent to this neighbour's existing dwelling and they feel it is 'unsightly', has a 'negative impact on the value of their property', and will affect their plans for future extension of their dwelling;
8. Verbal submissions by the representative of the Logan City Council outlining the Council's assessment of the application;
9. The Standard Building Regulation 1993; and

10. The Queensland Development Code, Part 12.

Findings of Fact

I made the following findings of fact:

1. The Logan City Council wrote to the applicant on 23 August 2005 (Reference: 412084(P1) 3012556/RoseW:Buckle) not allowing the relaxation for the existing garages constructed within 1500mm to the side boundary alignment.
2. No site visit was undertaken, however from the plans provide the following was able to be determined. The site appears from documentation to be regular in shape and has a site area of approximately 782sq.m. The site faces *withheld* Street to the east and has a frontage of approximately 17m. The site consists of one lot and the existing dwelling has been constructed parallel to the southern side alignment.
3. The plans indicate that the garages have been constructed in line with the existing dwelling and from photographic evidence it appears that the external walls of the garages are located directly in line with the fascia of the overhang on the existing dwelling. As no survey has been undertaken it is arguable therefore whether the dwelling has been constructed with a 1.5m setback from the side boundary alignment to the outermost projection, or whether the existing dividing fence between the sites has been located accurately on the side boundary alignment. The evidence provided however indicates that the intention was to locate the garages to have the same side boundary setback as the existing dwelling.
4. *withheld* Street was advised by the Local Authority and applicant to be located within an older, established neighbourhood with the existing neighbour dwellings appearing to be of similar age and character.

Reasons for the Decision

1. Part 12 of the QDC, sets out Performance Criteria (P1-P8) in relation to siting requirements which a local government must consider and be satisfied that the application meets the intent of each criteria for that application, and that the development does not unduly conflict with the intent of each of the Performance Criteria:

P1 The Location of a building or structure facilitates an acceptable streetscape, appropriate for –

(a) the bulk of the building or structure

From the plans and photographic evidence provided the total length of the garages, 13.15m, are parallel to the side boundary alignment and they have a depth of 6.05m. The garages abut the existing dwelling which appears to have a length of 9.0m parallel to the side boundary alignment. The overall height of the garages at the wall/roof junction appears to be similar to the ceiling height of the existing dwelling.

The garages do not appear from the evidence provided, to present a dominant building bulk to the existing neighbourhood.

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

The garages are not adjacent to the road boundary setback and no evidence has been required to be provided as to their impact on the neighbourhood in this regard.

(c) the outlook and view of neighbouring residents

The adjoining neighbours have advised they feel the garages appear unsightly from their outlook. It is noted that there currently exists a high (between 1.5-1.8m) solid timber fence between the two dwellings. Where the garages have been constructed the fence is approx. 900mm high open chain wire. A 1.8m high timber screen fence on the alignment, consistent with the first, could be constructed for the length of the garages, thereby minimizing any impact of the garages on the adjoining neighbour.

(d) nuisance and safety of public

The existing garages would not appear to cause any nuisance or increased safety issues to the public as they are located within the existing property, to the rear of the existing dwelling.

P2 Buildings and structures–

(a) provide adequate daylight and ventilation to habitable rooms

The location of the garages appears to have minimal impact on the extent of daylight and ventilation to habitable rooms within the existing dwelling, based on the evidence provided.

(b) allow adequate light and ventilation to habitable rooms of buildings on adjoining lots

The location of the garages would appear to have minimal impact on the extent of daylight and ventilation to habitable rooms of neighbourhood dwellings, based on the evidence provided.

P3 Adequate open space is provided for recreation, service facilities and landscaping–

The location of the garages does not appear to have any significant impact on the extent of open space provided for recreation, service facilities and landscaping for the dwelling as these appear to have been allowed for throughout the site.

P4 The height of a building is not to unduly–

(a) overshadow adjoining houses

The garages do not appear to unduly overshadow the adjoining houses, as it is located at the rear of the existing dwelling and there does not appear to be any adjoining dwelling adjacent to it, at this point in time. The shadows from the garages will predominantly fall to the south across the adjoining side boundary alignment, however the garages are of a lesser height than the existing dwellings.

(b) obstruct the outlook from adjoining lots

The garages do not appear to significantly impact upon the outlook of the adjoining allotments as it has been setback from the side boundary alignment in line with the existing dwelling.

The adjoining neighbour has advised they feel that it does reduce their outlook. The length and height of the garages is consistent with construction of a single storey nature.

P5 Buildings are sited and designed to provide adequate visual privacy for neighbours–

The garages do not overlook the adjoining neighbour and therefore do not significantly affect the privacy of the neighbourhood. A 1.8m high timber screen fence could be constructed on the side boundary alignment, for the length of the garages, would stop this being an issue.

P6 The location of a building or structure facilitates normal building maintenance–

The garages do not impact on the access for normal building maintenance onto the site as access is able to be achieved between the garages and the side boundary.

P7 The size and location of structures on corner sites provide for adequate sight lines–

This site is located away from the street corner and therefore will not impact upon sight lines of others. The location of the garages to the rear of the dwelling would not impact on site traffic vision.

P8 Sufficient space for on-site carparking to satisfy the projected needs of residents and visitors, appropriate for–

(a) the availability of public transport

The availability of public transport is not relevant to this hearing, as provision has been made for significant on-site carparking.

(b) the availability of on-street parking

The availability of on-street parking is not relevant to this hearing.

(c) the desirability of on-street parking in respect to the streetscape

On-street car parking will not be affected by the proposed development.

(d) the residents likelihood to have or need a vehicle

The proposed development includes the provision for two on-site carparks.

2. Based on the above facts it is considered the appeal is proven.
3. QDC provides Performance Criteria and some Acceptable Solutions. The Acceptable Solutions are guidelines to provide reasonable and achievable outcomes. The local government is in a position to vary the Acceptable Solutions in relation to an application for siting requirements and to assess the application based on its merits.
4. In assessing the criteria from this part of the Code in relation to the existing garages advised to be setback 1300mm from the side boundary alignment, the Tribunal found that there were grounds to allow for the retention of the existing garages in the location shown.
5. An assessment of Part 12 of the QDC did not identify any valid reason for refusing the application for the existing garages to remain as advised setback 1300mm from the on the side boundary alignment.

GEORGINA J ROGERS
Building and Development
Tribunal Referee
Date: 22 November 2005

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:

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