



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

Integrated Planning Act 1997

File No. 3-03-064

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Brisbane City Council

Site Address: 4 Crompton Street, Kenmore Hills.

Nature of Appeal

Appeal under Section 4.2.9 of The Integrated Planning Act 1997 against the decision of Brisbane City Council to refuse a ceiling height of 2.7 meters in the garage and requiring that the garage setback be reduced to 2.5 meters. on land described as Lot 46 on RP222646 and situated at 4 Crompton Street, Kenmore Hills.

Date and Place of Hearing: 10.00am. Wednesday 19th. November, 2003.
4 Crompton Street, Kenmore Hills.

Tribunal: Peter John Nelson

Present: Grant Arthur Billingham – Applicant
June Billingham – Applicant’s wife
Stewart Baker – owner of 88 Greentrees St., Kenmore Hills
(adjoining property on left-hand-side)
Gavin Edwards – PMM Group (representing Stewart Baker)
Rob Dix – representing Brisbane City Council

Decision

The decision of the Brisbane City Council as contained in its letter of refusal is **SET ASIDE**, and the following decision replaces the decision set aside :-

The position of the proposed garage will remain as shown on the plans submitted with a set back of 6.00 meters. and the ceiling height will remain as shown on the plans submitted at 2.7 meters, (as agreed by all parties) is **APPROVED** subject to the following conditions :-

a. The siting of the garage on the boundary will require suitable landscaping to be placed and

maintained to the wall facing the adjoining owner. This landscaping is to take the form of native planting (e.g. Grevillea spec. planted to form a hedge-like appearance to the lower section of the wall and a climbing plant with covering nature (e.g. an ivy or flowering evergreen spec.) is to complement the lower planting. The climbing plants should be spaced at 2 meters along the wall.

- b. An irrigation system is to be installed along this planting bed and the pipe is to be taken to the nearest tap on the property of Stewart Baker.
- c. This landscaping and irrigation work is to be carried out at the expense of the appellant.
- d. If a structural engineer requires that the existing bank be retained in order to provide a safe footing for the proposed garage, it will be the appellant's responsibility to construct this retaining wall at his own cost.

Background

The Council was concerned that the height and positioning of the proposed garage would infringe on the privacy of the adjoining neighbour and create an overpowering structure in the proposed siting position. Council suggested moving the garage forward to take it away from the rear yard of the neighbour. The adjoining residence is currently rented. The adjoining residence is much lower than the allotment on which Grant Billingham wants to construct his new home, and there is an unrestrained bank about 1.5 to 1.8 meters near to the boundary. The garage is designed with no windows to overlook the neighbouring property. The allotment to be developed slopes to the rear at a rate of about 1:6. Discussion was had about mirror reversing the design and constructing the garage on the opposite boundary.

Material Considered

1. Appeal documentation.
2. Plans No. 11/02/9/A1 and 11/02/9/A4 prepared by John Bergman Design and Drafting.
3. Verbal submission from Brisbane City Council officers.
4. Verbal submissions from the appellant.
5. Letters from Jensen Bowers Town Planners Pty. Ltd.
6. On site inspection.
7. Letter from PMM Group dated 24th. November, 2003.
8. Letter from G.A. & J.M. Billingham dated 2nd. December, 2003.

Findings of Fact

I made the following findings of fact:-

1. The design prepared did not address the adjoining residence in a sympathetic manner, but however, an as-of-right alternative would place a 2 storey residence with overlooking windows 2.1 meters away from this boundary. This would be a major impact on the neighbouring residence..
2. The Council and the adjoining owner as well as the Appellant agreed to a compromise involving landscaping to the wall facing the adjoining property
3. The neighbour's agreement to a compromise, later changed due to retail concerns.
4. The arguments in reply to the neighbour's concerns point out that they might be forced to take the alternative action of mirror reversing the plan, thus creating a much more intrusive building overlooking the neighbour's yard.
5. There are no windows in the proposed garage

Reasons for the Decision

1. The agreement on a compromise by all parties. During the course of the hearing all parties agreed on a compromise involving landscaping to the offending wall.
2. The neighbour, after taking advise from his Town Planner, and speaking with local real estate agents, asked for a change to the agreement reached at the meeting. The neighbour suggested that the value of his property would be diminished if the garage was constructed where proposed.
3. The appellant replied by pointing out that the alternative of mirror reversing would place a two storey building, with windows, only 2.1 meters from the boundary and this would look directly into the neighbouring property's yard.
4. I found that there was some merit in the neighbour's concerns if only a blank brick wall stood on the boundary of their rear yard. The difference between 2.4 meters and 2.7 meters in height is only 300mm. and I feel the slight extra height in this case would not unduly change the impact of the proposed garage.
5. The siting of the proposed garage in it's present location is a deliberate decision to try to create a noise and privacy barrier to the nearby corner. During peak hours this corner is quite busy, and as development of the area continues this busy period will also increase. Siting the garage where it is, is the logical place to place a noise and privacy barrier to enhance the livability of the proposed dwelling.
6. Moving the garage forward to 2.5 meters as proposed by Council would restrict the area needed for such activities as washing the car etc.
7. I do not agree that the proposed garage would have any effect on the saleability or retail price of the neighbouring property.

PETER JOHN NELSON
Building and Development Tribunal
Date: 5th. December, 2003.

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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