



APPEAL
Integrated Planning Act 1997

File No. 3/02/030

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Brisbane City Council

Site Address: 16 Grass Tree Close, Bridgeman Downs

Nature of Appeal

Appeal under section 4.2.9 of the Integrated Planning Act, 1997, against the decision of the Brisbane City Council not to grant a relaxation to the height of the fencing on top of the retaining walls to the side boundaries on land described as Lot 37 on SP No. 124011, and situated at 16 Grass Tree Close, Bridgeman Downs.

Date and Place of Hearing: 10.30 am on Wednesday, 31 July 2002
at the Department of Local Government and Planning, Level 25
Mineral House, 41 George Street, Brisbane.

Tribunal: Georgina J Rogers

Present: Mr Luke Gilliland – Building Officer, Brisbane City Council
Applicant
Daughter of applicant

Decision

The decision of the Brisbane City Council as contained in its letter dated 17 June 2002 (Reference: DRS/BLD/A02-1171315) refusing the relaxation for a fence height greater than 1.2 m on top of the approved retaining walls is set aside and the following replaces the decision set aside:-

An increased height of fencing along the side boundaries, on top of approved retaining walls, to be increased to a maximum of 1.5 m, is **approved**.

Background

The site has a two storey dwelling construction over it, and the existing site has been substantially filled to form the platform for the dwelling. It is proposed to fill the remainder of the site, and construct retaining walls to the side boundaries. The Brisbane City Council has approved these retaining walls. On top of the retaining walls it is proposed to construct a new fence to create privacy and safety, both internally and externally.

Material Considered

1. Appeal documentation including drawings detailing the proposed retaining walls and associated fencing and the siting requirements sought by the applicant.
2. Correspondence from the Council dated 17 June 2002 granting conditional approval to construct the retaining walls, but limiting the height and type of construction of the associated perimeter fencing.
3. Correspondence from the applicant dated 16 July 2002 appealing the Council's decision to grant a conditional approval.
4. Verbal submission by the representative of the Brisbane City Council outlining the Council's assessment of the application and giving its reasons for the height conditions of the construction permit sought. The Council also confirmed its agreement to the amended fence height in view of the site constraints.
5. Verbal submission from the applicants and confirmation of their agreement to the amended fence height in view of the site constraints.

Findings of Fact

I made the following findings of fact:

1. The vacant site at 16 Grass Tree Close, Bridgeman Downs is on the higher side of a cul-de-sac road, with minimal fall across the site due to the site being predominantly filled for the construction of the dwelling. The site has four side boundaries. Three of these are significantly higher than the adjoining lots, which appear to have been excavated and retained to allow them easier access to their street frontages.
2. The adjoining neighbourhood is significantly hilly and has been substantially terraced to accommodate the construction of housing in relation to the subdivision road layouts.
3. The dwellings constructed within the neighbourhood appear to have varying degrees of fill and excavation over their sites and therefore various height retaining walls and fencing have been constructed to provide privacy and safety internal and external to these sites.
4. The neighbourhood consists of a mix of lot sizes and one and two storey dwellings.
5. Under section 48 of the Standard Building Regulation 1993, the local government may vary the application of **Division 2 – boundary clearances**.

6. In assessing the application of section 48.(3) of the Standard Building Regulation 1993, the local government was required by that regulation to consider the following points:

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

The allotment and adjoining allotments are of varying size and shape. The neighbourhood is significantly hilly and has been substantially terraced to accommodate the construction of housing in relation to the subdivision road layouts.

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

The structure to which the application is relevant is the construction of fencing on top of the approved retaining walls. This fence is required to provide safety to the top of the perimeter retaining walls, which is generally greater than 1.2 m in height.

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

There are a variety of new dwellings constructed within the immediate neighbourhood, with the majority of these being at a lower level than the applicant's site as it is situated on the higher side of the hill development.

(d) whether the allotment is a corner allotment.

The allotment is not a corner allotment.

(e) whether the allotment has 2 road frontages.

The allotment has only one (1) road frontage.

(f) any other matter considered relevant

Letters of approval from the adjoining owners and the Council's representative that one of the adjoining owners was not in favour of the proposed fence height were considered.

7. In assessing the application of Section 48.(4) of the Standard Building Regulation 1993, the local government must be satisfied that the amended proposed fence height on the allotment would not unduly –

- *Obstruct the natural light or ventilation of any adjoining allotment.*

The 1.5m high fences on top of the retaining walls will not unduly obstruct the natural light or ventilation of the adjoining allotments.

- *Interfere with the privacy of an adjoining allotment.*

The 1.5m high fences will increase the privacy of the adjoining allotments.

- *Restrict the areas of the allotment suitable for landscaping.*

The 1.5m high fences will not restrict the areas of the allotment suitable for landscaping.

- *Obstruct the outlook from adjoining allotments.*

The 1.5m high fences will not unduly obstruct the outlook from adjoining allotments.

- *Overcrowd the allotment.*

The 1.5m high fences will not overcrowd the allotment.

- *Restrict off-street parking for the allotment.*

Off-street parking will not be affected by the proposed 1.5m high fences.

8. Based on the above facts it is considered the appeal is proven.

Reasons for the Decision

1. The proposed location of the fence is constrained by the additional conditions over the site, and therefore subject to the consideration for construction to a maximum height of 1.5 m.
2. An assessment of Section 48.(3) and (4), did not identify any valid reason for refusing the amended construction application.

GEORGINA J ROGERS
Building and Development
Tribunal Referee
Date: 19 August 2002

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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