



Building and Development Dispute Resolution Committees—Decision

Sustainable Planning Act 2009

Appeal Number: 27 - 10
Applicant: Mr Alex Dougan
Assessment Manager: Sunshine Coast Regional Council

Site Address: 2 Winch Street, Wurtulla and described as Lot 202 on CG6341 — the subject site

Appeal

Appeal under section 532 of the *Sustainable Planning Act 2009* (SPA) against the issue of an enforcement notice by Council, dated 10 June 2010, relating to two alleged development offences, being:

- a) a carport constructed within the 6 metre front setback; and
 - b) a class 1a roofed patio constructed at the rear of the property.
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Date of hearing: 10.00am Monday 26 July 2010
Place of hearing: The subject site
Committee: Mr Chris Schomburgk – Chairperson
Present: Mr Richard Prout – Sunshine Coast Regional Council
Mr Gary Ingram – Sunshine Coast Regional Council
Alex Dougan – Applicant

Decision:

The Committee, in accordance with section 564 of the SPA, **confirms** the decision of Sunshine Coast Regional Council to issue an enforcement notice with respect to the two alleged development offences.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Application for Appeal', grounds for appeal and correspondence accompanying the appeal lodged with the Registrar on 5 July 2010.
2. An inspection of the site and the locality, undertaken by the Chairperson.

3. The development application and decision notice dated 7 October 2009 for the proposed carport.
4. Multiple pieces of correspondence between the Council and the Applicant lodged with the Registry.
5. The *Sustainable Planning Act 2009* and its regulations.

Background

The matters that are the subject of this appeal date back some years. In approximately March 2009, the Council, having become aware of the existence of the carport within the 6 metre front setback, wrote to the applicant regarding unauthorised building work (the carport).

The applicant subsequently lodged a development application on 17 September 2009 seeking approval for the works. That application was refused by decision notice of the Council dated 7 October 2009.

A notice of appeal was purported to have been lodged by the applicant against that decision, but it seems that no appeal was ever heard or decided.

An enforcement notice and infringement notice were sent by Council dated 3 March 2010, however the applicant says it was never received by him.

In April 2010, Council granted an extension of time to facilitate a resolution to the matter, inviting the applicant to either lodge an appeal against the giving of those notices, or remove the structure.

A notice of appeal was received by the Registrar on 4 May 2010. That appeal seems not to have been actioned.

By letter dated 10 June 2010, a further enforcement notice was issued by Council.

A notice of appeal against that enforcement notice was received by the Registrar on 5 July 2010. It is that appeal which is the subject of this decision by the Committee.

Findings of Fact

The Committee makes the following findings of fact:

- The subject site is located on the corner of Winch Street and an unnamed and unformed road reserve. The site comprises 672m².
- The site is currently occupied by a single-storey dwelling and outdoor swimming pool. It is located in an older estate occupied by predominantly single storey detached dwelling houses.
- The proposed carport exists and was apparently (from aerial photographs) constructed between 2005 and 2007. The roofed patio was constructed some time soon after.
- This part of Wurtulla is relatively homogenous in built form, and there are very few structures within the 6 metre front setback in the immediate locality. The lawfulness or otherwise of those that do exist in some of the surrounding streets has not been confirmed.
- The applicant advised at the hearing that a building application had been lodged with Council on 23 July 2010 for the roofed patio in the back yard. Council representatives in attendance advised that, subject to structural issues, that application was likely to be approved, although they had not seen it at the date of the hearing.

- This appeal is limited in jurisdiction to the matter of whether the enforcement notice dated 10 June 2010 is lawful.

Reasons for the Decision

The proposed roofed patio is currently the subject of a separate building application.

The proposed (existing) carport has been the subject of a separate development application which was refused. The opportunity to appeal against that decision has passed. While there is some evidence to suggest that an appeal against that decision was properly prepared at that time, it cannot be confirmed that it was ever lodged within the required time. While that is unfortunate for the applicant, it is not the role of this Committee to hear that appeal afresh.

Neither does the Committee, in this case, have jurisdiction to hear the merits of that development application. The Committee is limited in this appeal to matters about whether the enforcement notice was properly issued.

In all the circumstances, there is nothing to suggest that the enforcement notice that is the subject of this appeal was not properly issued. The enforcement notice should stand.

Chris Schomburgk
Building and Development Committee Chair
Date: 21 July 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 Infrastructure and Planning
PO Box 15009
CITY EAST QLD 4002

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