



Building and Development Tribunals

Queensland Government

Department of Local Government and Planning

APPEAL

Integrated Planning Act 1997

File No. 3/03/063

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Brisbane City Council

Site Address: 1 Enderley Road, Clayfield

Nature of Appeal

Appeal under section 21 of the Standard Building Regulation 1993, against the decision of the Brisbane City Council not to grant a relaxation of the road setback requirements for the erection of a deck and wall to a dwelling on land described as Lot 1 on RP No. 78040 and situated at 1 Enderley Road, Clayfield.

Date and Place of Hearing: 9.00 am on Wednesday, 12 November, 2003
at 1 Enderley Road, Clayfield.

Tribunal: Georgina J Rogers

Present: Mr & Mrs Peter Craig – Owners
Mr John Wood – Applicant and Private Certifier
Mr Grant Johnsen – Brisbane City Council representative
Designer

Decision

The decision of the Brisbane City Council as contained in its letter dated 8 October 2003 (Reference: DRS/BLD/A03-1211717) refusing the relaxation of the road boundary clearance to 0.0m sought for the construction of a deck to the Enderley Road frontage of the dwelling in lieu of the prescribed 4.000m road boundary clearance and height of wall to Enderley Road of 4.2m is set aside and the following decision replaces the decision set aside:-

The application is **approved subject to the following:**

1. The wall on the north-eastern alignment and fronting Enderley Road is to be a maximum 4.2m above the natural ground level for a maximum distance of 1.500m in each direction. These facades are to be broken with decorative features to reduce the dominating impact of the wall.

2. The balustrading of the first floor deck to be setback 1.500m from the front boundary alignment to Enderley Road. The deck is to be unroofed. A privacy screen is to be provided to the northern balustrading of the deck to a height of 1.8m of a nature approved by the Local Authority and in accordance with their guidelines.
3. The garage fronting Crombie Street is to be fitted with a visual warning system to alert pedestrians and road vehicles when the garage is being accessed.
4. Survey to be undertaken to ensure the dwelling has less than 50% site cover and setback to the first floor deck balustrading is greater than 1.500m.

Background

The site is located on the corner of Enderley Road to the north and Crombie Street to the west. The site rises steeply from the northern frontage, Enderley Road, to the south. There is an existing dwelling on site, which is being extensively renovated both internally and externally. The plans, which were supplied on site and with the application, inadequately demonstrated the extent of renovation making assessment extremely difficult. At the time of the site visit the bulk of the building work had been completed and assessment was made on that basis.

The items under discussion at the Tribunal hearing included a proposed unroofed deck being constructed over the top of an existing approved entry. This entry is flat roofed and tiled as a patio and connects the fence on the Enderley Road alignment to the dwelling. An open deck and roofed verandah are attached to the dwelling. The applicant wished to take the opportunity of extending this unroofed deck across the top of the existing entry at ground level.

The site has been cut substantially to accommodate the dwelling renovations and give level access to Enderley Road and Crombie Street. An imposing solid fence has been constructed around the site and reaches in excess of 4.2m at the north-east corner adjacent to Enderley Road. Within 1.0m of the boundary, on the eastern alignment, this fence reduces in height by more than 1.0m.

A garage has been constructed adjacent to the Crombie Street alignment. While raised in the letter from the Brisbane City Council as an issue to be addressed the parties agreed it had been resolved. There remain however significant safety issues concerning its location for pedestrians, road vehicles and the occupants and a safety warning device needs to be installed to alert all parties when vehicles are using the site. In addition no other off street parking has been accommodated on site.

Associated with the above garage is a wall in excess of 3.0 in Crombie Street. The parties agreed it had been resolved.

Material Considered

1. Appeal documentation included inadequate drawings indicating the proposed northern deck within the Enderley Road boundary setback and height of external fence along the Enderley Road alignment.
2. Verbal submission by the applicant and reasons for construction of the deck within the Enderley Road boundary setback area and height of the fence fronting Enderley Road.
3. Correspondence from the Council dated 22 October 2003, refusing the request to permit construction in lieu of the required road boundary clearance of 4.000m.

4. Verbal submissions by the representative of the Brisbane City Council outlining the Council's assessment of the application and giving its reasons for refusal of the construction permit sought.
5. Verbal submission by the owner and reasons for construction of the deck and wall height within Enderley Road boundary setback area.
6. Discussion with the adjacent neighbour who gave reasons for concern if the deck was to be constructed overlooking Enderley Road.

Findings of Fact

I made the following findings of fact:

1. The site at 1 Enderley Road has two road frontages being Enderley Road to the north and Crombie Street to the west. Vehicle access has been allowed only from Crombie Street to the west of the site. This vehicle access is on a busy road between two schools and has poor visibility to and from the garage. No visitor carparking is allowed around the site either on or off site. It was advised that an arrangement had been made with the Brisbane City Council to widen the road slightly at the corner of Enderley Road and Crombie Street. The pedestrian footpath is narrow and used by students going to and from the schools. For the safety of pedestrians and vehicles using the streets and the on site garage an access warning system needs to be provided to the on site garage.
2. The Brisbane City Council advised that a submission has been received to subdivide the site after the building work had been approved for the renovation of the existing dwelling. This subdivision needs to take into account site cover and on site vehicle parking.
3. The site is on the north-western corner of the Enderley Road and Crombie Street. The site rises several metres from the northern alignment of Enderley Road to the south, however the site has been cut previously and is level with the streets on both sides. The site is rectangular in shape and has a current application in to subdivide the land.
4. There are substantial cross-city views to the north-east of the site. This site is on the high side of Enderley Road and overlooks the neighbours on the northern side of the road. This is an existing outlook and the affected neighbours have screened for privacy.
5. The provision of the deck over the top of the existing entry will increase the intrusion into the privacy of the adjoining neighbours. It would also allow items to be inadvertently dropped onto the narrow footpath and Enderley Road. With such a narrow footpath this risk needs to be reduced.
6. The dwellings constructed within the neighbourhood are an extensive mixture of older and new homes, unit developments and schools. There appears to be an extensive degree of new dwelling and renovations being undertaken and subdivision of land. The existing dwellings are generally setback in accordance with the 6.000m road boundary requirements while the new developments have been granted varying amounts in setback and fence height relaxations, including decks to road boundary alignments where the sites are steep.
7. The neighbourhood consists of a mix of one and two-plus storey dwellings.

8. Under section 48 of the Standard Building Regulation 1993, the local government may vary the application of Division 2 – boundary clearances.
9. 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 similar, regular shape. The size of these allotments vary with the dominant tendency being to subdivision to small lot proportions within the neighbourhood. The allotment is rectangular in shape and is accessed directly from Crombie Street. A subdivision application has been lodged to reduce the size of the dwelling lot being assessed.

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

The structure to which the application is relevant is an unroofed deck attached to the existing dwelling. The deck is proposed to extend over the top of the existing entry, which adjoins the front alignment of Enderley Road. The setback from the northern alignment is proposed to be 0.0m.

At the Enderley Road first level the deck will provide additional outdoor recreation area. There is currently a significant amount of external decking being provided both on the first and second levels of the dwelling. This decking has northern and easterly aspect and takes advantage of views and orientation to the north-east. To increase the deck over the front entry area provides minimal additional benefit to the outdoor recreation space of the dwelling. It does however reduce the potential safety of external pedestrians and the privacy of the adjacent allotments. The setbacks to the building appear to have been significantly relaxed throughout, however in this case in the interests of the neighbourhood the setback to the deck from the Enderley Road alignment is to be reduced to a minimum 1.5m as determined by a surveyor. Furthermore privacy screening is to be provided to the northern balustrading to the deck to a height of 1.8m of a nature approved by the Local Authority and in accordance with their guidelines.

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

The neighbourhood consists of a mix of one, two-plus storey dwellings. The adjoining neighbours to the south will not be significantly affected by the proposed deck and wall. The adjacent neighbour to the north could be impacted by the provision of the deck closer to the northern alignment, although the current dwelling has privacy screening already in place.

(d) whether the allotment is a corner allotment.

The allotment is a corner allotment, which fronts Enderley Road and Crombie Street. These streets have a constant traffic flow, which is significantly increased during school peak times.

(e) whether the allotment has 2 road frontages.

The allotment has two (2) road frontages being Enderley Road and Crombie Street. Vehicle access has been provided from Crombie Street. With the known traffic issues in the area, access and safety could be an issue. An access warning system needs to be put in place to forewarn pedestrians and traffic using the street and accessing the site. No

provision has been shown for visitor carparking on or around the site.

(f) any other matter considered relevant

Discussions with adjoining and adjacent owners for the proposed structure were considered.

The existing dwelling is in the process of being renovated and has substantial scope to optimise the views through the provision of additional openable glazing on the second floor level. This is in the process of being demonstrated by the plans submitted.

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

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

The 1.5m road boundary clearance to the outermost projection of the proposed unroofed deck fronting Enderley Road will have no impact on the existing natural light and ventilation of the adjoining allotments.

The 4.2m high fence on the Enderley north-eastern road alignment for a distance of 1.5m will have no impact on the existing natural light and ventilation of the adjoining properties.

The deck and fence are in locations where the natural light will impact internally in the property as they are on the northern side of the property. In addition any affect on the natural ventilation caused by these structures will only impact on the applicant's property. Therefore these aspects are not relevant to the application as they have no impact on the adjoining properties.

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

The 1.5m road boundary clearance to the outermost projection of the proposed unroofed deck fronting Enderley Road will have reduced impact upon the privacy of the adjoining allotments, in lieu of the original 0.0m proposed setback, particularly to the northern properties over which the greater views are achieved from this property.

The 4.2m high fence on the Enderley north-eastern road alignment for a distance of 1.5m will have no impact on the privacy of the adjoining allotment.

The proposed deck would overlook the adjoining northern property, however by setting back the deck alignment by as little as 1.5m, the impact on the privacy of the adjacent property is reduced. Further reduction to the impact on the privacy of these properties is achieved by providing a 1.8m high privacy screen to the northern balustrade of the deck, where it is 1.5m from the northern, Enderley Road alignment.

The section of fence proposed to be 4.2m is away from the adjoining neighbours and will enhance rather than reduce any privacy of adjoining allotments.

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

The 1.5m road boundary clearance to the outermost projection of the proposed unroofed deck fronting Enderley Road will not restrict the areas of the allotment suitable for landscaping.

The 4.2m high fence on the Enderley north-eastern road alignment for a distance of 1.5m will

have no impact on the areas of the allotment suitable for landscaping.

An area for landscaping and outdoor recreation has been allowed for on site, with a substantial amount of this being used for pool and associated spaces. A survey plans requires to be provided to ensure that the site cover by the building area does not exceed 50%, therefore ensuring that a reasonable area is provided for landscape purposes.

The landscaping on site is not affected by the height of the fence as it is directly adjacent to the pool on site.

- *Obstruct the outlook from adjoining allotments.*

The 1.5m road boundary clearance to the outermost projection of the unroofed deck fronting Enderley Road will not impact upon the outlook from adjoining allotments as this area is minimal relative to the overall site development.

The 4.2m high fence on the Enderley north-eastern road alignment for a distance of 1.5m will have some impact on the outlook from adjoining allotments due to its overall height. The fence is located to have minimal impact on the adjoining allotments.

The views and outlook from the properties surrounding the site will not be reduced by the provision of this proposed deck as they do not overlook this part of the site.

- *Overcrowd the allotment.*

The 1.5m road boundary setback to the proposed unroofed deck fronting Enderley Road will not overcrowd the allotment.

The 4.2m high fence on the Enderley north-eastern road alignment for a distance of 1.5m will have minimal impact in overcrowding the allotment. The wall does vary in height around the site and is broken by recesses in the wall. Additional recesses are required in the area where the increased height to 4.2m is proposed.

The proposed deck is on top of the existing entry to the dwelling. Therefore there is no substantial increase in the footprint of the dwelling. Providing a 1.5m setback to the deck reduces the mass of the building from Enderley Road.

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

Off-street parking will not be affected by the proposed 1.5m road boundary clearance.

The 4.2m high fence on the Enderley north-eastern road alignment for a distance of 1.5m will have no impact on the off-street parking for the allotment.

The area available for carparking off-street has not been addressed in this application and will not be affected by the proposed deck over the entry. However it does appear that there is no provision for visitor carparking either on site or adjacent to the site on the street frontage. The proposed garage accesses Crombie Street, adjacent to the busy corner with Enderley Road. This could cause traffic issues. A vehicle access warning system needs to be provided to the garage for the safety of pedestrians and vehicles using the street and accessing the site.

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

Reasons for the Decision

An assessment of Section 48.(3) and (4), did not identify any valid reason for supporting the proposed construction application for an unroofed deck and 4.2m high solid fence fronting Enderley Road.

GEORGINA J ROGERS
Building and Development
Tribunal Referee
Date: 5 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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