

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Caboolture Shire Council

Site Address: 12 Maude Street Donnybrook on land described as Lot 5 on
RP No. 864998

Nature of Appeal

Appeal under section 4.2.13. of the Integrated Planning Act 1997 against the decision of the Caboolture Shire Council to issue an enforcement notice pursuant to section 4.3.11. of the Integrated Planning Act 1997 requiring the following work to be carried out:-

“To remove the plumbing installations from the garage, dismantle the carport and arrange for the shed to be located 1.5 metres from the rear boundary. This work shall be carried out within 5 days of receipt of this notice”.

Date and Place of Hearing: 9.00 am on Friday 6 July 2001 at the offices of the
Department of Local Government and Planning,
Level 25, 41 George Street, Brisbane

Tribunal: Leo F Blumkie

Present: Applicant
Mr Ben Vulker Applicant's Representative
Mr Chris Harris Caboolture Shire Council Representative

Decision

The Enforcement Notice issued by the Caboolture Shire Council dated 29 May 2001 (Ref: B-99-1975, B-99-1976, B-99-1413) (CH:JF) is **changed** by deleting the requirement listed in the Third Schedule of the notice and substituting the following requirement:

“The shed is allowed to remain as constructed 1.2 metres from the rear boundary, subject to the following conditions:-

- The owner obtaining a development approval for the carport, which may be located 1.2 metres from the rear boundary.
- Suitable arrangements being made with the Plumbing and Drainage Section of the Caboolture Shire Council for the plumbing installations in the shed to remain until the house is completed.

- The owner applying for an “extension of time” on Building Application No. 99-1976 i.e. the house.
- The construction of the house being commenced within one month and completed within twelve months from the date of approval renewal”.

Material Considered

- Appeal documentation including photographs and site plan.
- Correspondence from Council dated 10 April 2001 refusing request for relaxation.
- Owner’s correspondence dated 22 February 2001 requesting a boundary relaxation.
- Facsimile statement from the owner dated 6 July 2001.
- Facsimile response from Caboolture Shire Council dated 10 July 2001 granting an extension of time.
- Verbal submissions from the applicant, owner and Council representative.

Findings of Fact

I made the following findings of fact:

- Approval was granted by the Caboolture Shire Council on 19 August 1999 to construct a shed 15 metres long with a distance of 1.5 metres from the rear boundary.
- The approval required no foundation inspection.
- The owner hired concreter Peter Morgan of Bryce Street Caloundra to set out and pour the concrete slab for the shed.
- The shed was then erected by another subcontractor.
- The shed being greater than 9 metres in length adjacent to the rear boundary is required by Section 38 of the SBR to be a minimum of 1.5 metres from that boundary.
- The shed is constructed 1.2 metres from the rear boundary.
- It was not until the owner was erecting the fence to the rear boundary that he realised the shed was incorrectly located i.e. within 1.2 metres of the rear boundary.
- Approval for the house was obtained at the same time as the shed.
- Caboolture has a planning policy not to allow a class 10a building on a site unless there is an existing class 1 building or an approval to erect a class 1 building on the site.
- The site plan of the shed development approval was stamped “no fixtures permitted”.
- The shed contains plumbing fixtures namely a sink, shower and toilet.
- The carport was erected by the owner in line with the shed i.e. 1.2 metres from the rear boundary without a development approval.
- Because the shed is greater than 9 metres in length, under Section 38 of the SBR the carport is also required to be 1.5 metres from the rear boundary.
- The adjoining neighbours have no objection to the shed and carport as constructed i.e. located 1.2 metres from the rear boundary.
- Section 48 of the SBR grants local governments the power to approve reduced boundary clearances provided certain conditions are satisfied.
- The owner applied for a relaxation of the boundary clearance on 22 February 2001.
- Council refused the request on 10 April 2001.
- In advising of the refusal, Council failed to advise the owner of his appeal rights as required by Section 3.5.15.(j) and 3.5.15.(4) of the Integrated Planning Act 1997.
- Under Section 4.2.9.(1) of IPA the appeal time for the refusal expired 20 business days after

the decision was made.

- Both parties agreed the Tribunal should decide the boundary clearance even though the appeal time had expired.
- After discussion on the matters listed under Section 48(3) and (4) of the SBR both parties agreed there was no basis to justify a relaxation for the rear boundary clearance to the shed and carport.
- However both parties also agreed there was nothing to be gained by requiring the owner to move the shed and carport.
- It was recognised that 9 metres of the shed could be “as of right” on the boundary provided the remaining portion was 1.5 metres from the boundary.
- Council’s real concern was the erection of the shed without a class 1 building on the site and the precedence this would set.
- Council would support the relaxation of the shed and carport to 1.2 metres provided the owner gave an undertaking to construct the house within a prescribed time.
- The owner agreed to give this undertaking.
- The Council also agreed to allow the carport provided a development application was submitted for it.
- It was also agreed suitable arrangements may be able to be made for the plumbing fixtures in the shed to remain for a period of time. In this regard the owner should initiate discussion with the Plumbing and Drainage Section of Council.

Reasons for the Decision

Both parties agreed to provide written statements on the above undertakings. On that basis I change the Enforcement Notice by deleting the requirement listed in the Third Schedule and substituting the following requirement:

“The shed is allowed to remain as constructed 1.2 metres from the rear boundary, subject to the following conditions:-

- The owner obtaining a development approval for the carport, which may be located 1.2 metres from the rear boundary.
- Suitable arrangements being made with the Plumbing and Drainage Section of the Caboolture Shire Council for the plumbing installations in the shed to remain until the house is completed.
- The owner applying for an “extension of time” on Building Application No. 99-1976 i.e. the house.
- The construction of the house being commenced within one month and completed within twelve months from the date of approval renewal”.

L F Blumkie
Dip. Arch., Reg. Arch.
Building and Development
Tribunal Referee
Date: 17 July 2001

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:

The Registrar of Building and Development Tribunals
Building Codes Queensland
Department of Local Government and Planning
PO Box 31
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Telephone (07) 3237 0403: Facsimile (07) 32371248