



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number: 52 - 2018

Appellant: Suzanne Blain and Hugh Paterson

**Respondent
(Assessment Manager):** Joanna Lee, Icon Building Certification

**Co- Respondent
(Concurrence Agency):** Brisbane City Council

Site Address: 54 Gregory Street Taringa and described as Lot 8 on SP 234245 – known as the subject site

Appeal

Appeal under *Planning Act 2016*, Section 229(1)(a)(i) and of Schedule 1, section 1, Table 1, Item 1(a) against the decision of the respondent assessment manager who decided (as directed by the co-respondent Brisbane City Council, as the concurrence agency) to refuse the application to build a domestic garage on the basis that it does not comply with P1 (a), (b), (c), (d), P2, P3, P6 of the *Queensland Development Code, MP 1.2 - Design and Siting Standard for Single Detached Housing - On Lots 450M² and Over*.

Date and time of hearing: 10am 29 March 2019

Place of hearing: The subject site.

Tribunal: Markus Pye– Chair
Chris Robertson – Member
Luke Neller – Member

Present: Suzanne Blain– Appellant
Ricky Hendrik – Council representative
Christine Sutherland – Council representative
Joanna Lee – Icon Building Certification - Assessment Manager

Decision:

The Development Tribunal (Tribunal) in accordance with section 254(2)(d) of the *Planning Act 2016* (PA) replaces the decision of the assessment manager with another decision, namely, that the development application be approved 'as constructed' with the existing enclosed wall and garage door.

Background

1. The subject property is located at 54 Gregory St Taringa, being Lot 8 on Registered Plan 234245, designated Low Density Residential and is 538m² in size. The subject property is located on the south-western corner of the Gregory Street and Bide Street intersection.
2. The subject property is located within the "Toowong-Indooroopilly District Neighbourhood Plan", *Brisbane City Plan 2014*. It is not identified as being within any specific precincts within the neighbourhood plan.
3. Both Gregory and Bide Streets are designated as a Neighbourhood Road; Neighbourhood Street Minor. The subject site is approximately midway along Bide Street. The topography of the street has the northern aspect in a higher position than the southern end of the street. The subject site has a number of contours following the topography of Gregory and Bide Streets.
4. While there is a dwelling house character overlay over subject property and surrounding properties, the subject property's dwelling is of post 1946 construction. *Brisbane City Plan 2014* identifies only the dwellings on the eastern side of Bide Street, between Gregory Street and Goldsbrough Road as being of "Traditional Building Character: Neighbourhood Character."
5. The appellant has renovated and extended their home to accommodate the family's needs in recent times. However, the home was without a suitable double carport or garage to house and protect the family vehicles on site noting character houses of this era were typically designed without need for vehicle accommodation.
6. The appellant engaged a building designer to prepare plans for a double carport to be erected on the site's street boundary and one side boundary.
7. The appellant contacted a private building certifier to obtain a development approval for the proposed building works.
8. Approval was granted for a double carport that is open to one side and has no garage vehicle entry door fitted.
9. The appellant constructed a garage with 3 closed sides and added a garage door.
10. The subject property has a Gregory Street address, but the garage frontage presents to Bide Street and access and egress occurs from this street.
11. On 28 November 2018 the BCC issued a *Siting Variation* Refusal notice to the Private Certifier as the application was assessed against the QDC MP 1.2 and found it did not comply with Performance Outcomes; P1 (a), (b), (c), (d) and P6 due to the new inclusion of another wall and installation of a vehicle entry door.
12. In summary, the primary elements of the refusal were issued on the basis that it was now considered a garage due to that it:
 - (a) had subsequently been enclosed to a portion of the open side wall contained within the subject property; and
 - (b) that a vehicle entry door had been installed to the front façade.

Jurisdiction

The tribunal has jurisdiction for this appeal under *Planning Act 2016* (PA), Section 229(1)(a)(i) and of Schedule 1, sections 1(1) and 1 (2)(g) and Table 1, Item 1(a).

Decision framework

It is noted that:

- the onus rests on the appellant to establish that the appeal should be upheld (s. 253(2) of the PA),

- the tribunal is required to hear and decide the appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against (s. 253(4) of the PA),
- the tribunal may nevertheless (but need not) consider other evidence presented by a party with leave of the tribunal or any information provided under s.246 of the PA (pursuant to which the registrar may require information for tribunal proceedings), and
- the tribunal is required to decide the appeal in one of the ways mentioned in s.254(2) of the PA.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar on 17 December 2018.
2. Drawings by Robert Eyres Design & Drafting noted as Project No. 8413, Sheets No. 6,12,13 dated 5-5-17
3. Queensland Development Code (QDC) MP 1.2 (the applicable Design and Siting Standard section) - P1, P2, P3 & P6.
4. Notification of *Refusal* to the Appellant by the certifier Icon Building Certification dated 29 November 2018
5. BCC Referral Agency Siting Variation Refusal Notice dated 28 November 2018. Note that the letter contains errors in its description of the assessment where it includes P2 & P3 which are not relevant to the proposed development.

P1. The Location of a building or a structure facilities or structure facilitates an acceptable streetscape for:

(a) - The Building or Structure; and

The garage is not considered to meet the above performance criteria, owing to the unacceptable bulk of the structure. The garage, which is completely enclosed, is built to the front boundary of the Bide Street frontage of the site, with an approximate width of 6.3m along this frontage, a maximum height of 3.9m and an approximate length of 7m. The garage is considered to present as an unnecessary bulk to the streetscape, which does not facilitate an acceptable streetscape outcome. The bulk of the garage is further intensified by the horizontal linea board cladding, a roller door, the lack of setback to the Bide Street frontage, the eaves and the absence of contrasting materials.

The subject site has land contours which fall from the northern side to the southern side of the site (with the garage located on the southern boundary of the site), which further exacerbates the bulk of the built form when viewed from the southern side boundary, and when travelling north along Bide Street. Further, when viewing the garage from this aspect, being an enclosed building with colour bond custom orb cladding provides no articulation or relief to the streetscape.

(b) - The road boundary setbacks of neighbours building or structures; and

An assessment of the existing streetscape on the Bide Street demonstrated that there are no existing buildings and/or structures with reduced boundary setbacks on both the western and eastern side of Bide Street (between Gregory and Goldsbrough Road). As such, the garage is not consistent with the existing road boundary setbacks of the neighbours building and/or structures, and further demonstrates how the garage does not facilitate an acceptable street outcome.

(c) - The outlooks and views of neighbouring residents; and

The location of the garage on the southern boundary is not appropriate in regards to the outlook and views of the neighbouring residents, as the large solid structure located on the front and southern side boundary of the subject site is considered to negatively affect the outlooks and views of neighbouring residents. The location and solidity of the garage are considered to be detrimental to the views of the street and additionally affecting occupant security.

(d) – Nuisance and safety to the public

The location of the garage on the road boundary to the Bide Street frontage is considered to be a nuisance and to negatively affect safety to the public, with views to Bide Street being blocked by garage to the adjoining driveway.

P2 – Noting that the refusal notice did not outline the basis of this inclusion.

P3 – Noting that the refusal notice did not outline the basis of this inclusion.

P6 – The location of the building or structures facilitates normal building maintenance.

The painted external linea board cladding is not considered to be maintenance free in accordance with a wall setback closer than 750mm, and maintenance free examples depicted within the acceptable solutions of the Queensland Development Code MP1.2A6 (b).

6. The on-site inspection of the subject site at the hearing.
7. A written submissions by neighbours:
 - Russell Willcocks & Christia Willcocks dated 24th March 2019;
 - Bruce Hoare & Helen Banks dated 23/3/2019;
 - Carmel Searle dated 25/3/2019
8. Further submission regarding numbers of local enclosed on boundary garages in the area from Sue Blain and Hugh Paterson dated 28 March 2019.
9. Email correspondence relating to the proposed garage door in an attempt to reduce BCC perceived bulk dated:
 - a. 11.49am 5 December 2018 from Hugh Paterson to Joanna Lee
 - b. 11.54am 5 December 2018 from Joanna Lee to Ricky Hedrick
 - c. 12.40 pm 5 December 2018 from Ricky Hedrick to Joanna Lee
 - d. 1.14pm 5 December 2018 from Joanna lee to Ricky Hedrick
 - e. 8.23am 10 December 2018 from BCC, to Certifier and Appellant regarding a new design of a garage door being inadequate to gain compliance and believes “more can be done to reduce the bulk of this garage”.
10. *Planning Act 2016.*
11. *Brisbane City Plan 2014.*

Findings of Fact

The Tribunal makes the following finding of fact:

1. The ‘garage’ history dates from 27 September 2018 for the modified design which proposed enclosing it to a garage from a carport by way of Fast Track Application. Previous approved building was minus the proposed roller door and side wall.
2. Appellant constructed the building by 28 November 2018 generally in accordance with the approved design documents, but also included the construction of the additional wall enclosure and fitting of a garage door without approval, which were then considered the specific items of the refusal.

3. On 28 November 2018 the BCC issued a *Siting Variation* Refusal notice to the Certifier. The application was assessed against the QDC MP1.2 and the Council found it did not comply with Performance Outcomes P1 (a), (b), (c), (d), and P6.
4. On 29 November 2018 the Certifier notified the Appellant of the BCC Siting Variation Refusal decision.
5. Email correspondence between the applicant and Private Certifier and BCC representatives and dated between 5th and 10th December 2018 resulted in BCC rejecting a proposal to replace the roller door with a 33% open (ventilation) slated door.
6. The Development Tribunal Hearing was held on 29 March 2019 and resulted in BCC representatives withdrawing issues regarding QDC MP1.2 Performance Criteria P1 (b), (c), (d) and P6. Based upon the following rationale:
 - a) QDC MP1.2 P1(b). The road boundary setbacks of neighbours building or structures. It was noted that changing the carport to an enclosed garage would not alter the existing setbacks. It was also noted that there were several other structures, built similarly, including a carport on the eastern side of Bide Street, a garage further north on Bide Street, and several other structures on surrounding streets. It was agreed by the parties that P1(b) was not a suitable ground for refusal by the Concurrence Agency.
 - b) QDC MP1.2 P1(c). The observation was made that the parties that only party with an impeded outlook would be the southern side boundary neighbour. However the impeded view was unaltered by the change of carport to garage given the changes to the structure could not be seen when viewed from the neighbour's property. BCC representatives agreed the proposal satisfied the performance solutions and therefore P1(c) could be removed from the grounds for refusal.
 - c) QDC MP1.2 P1(d) Nuisance and safety to the public. BCC representatives raised concern regarding risk to pedestrians. It was noted that the carport was already lawfully approved and constructed, the side walls would not increase risk to pedestrians, as this view was already obstructed by the boundary fences, and the garage door would have to be in an open position for vehicle movements and hence not obstruct the drivers view. It was agreed by the parties that the garage would not cause nuisance or impede safety for the public and P1(d) could be removed from the grounds for refusal.
 - d) QDC MP1.2 P2 and P3 were considered not relevant and BCC representatives agreed with P2 and P3 being removed from grounds for refusal.
 - e) QDC MP1.2 P6. The location of a building or structures facilitates normal building maintenance. The garage drawings showed that the finish was maintenance free, with the side boundary cladding being COLORBOND® which is a pre-finished factory no maintenance coating. BCC representatives agreed with the P6 being removed from grounds for refusal.
7. The issue of QDC MP1.2 P1 (a) was left unresolved at the hearing. A discussion with all parties agreed that the Appellant was to present an alternative colour scheme to the front gable which included the addition of a gable vent to BCC for consideration by the Council as soon as practical after the hearing. This alternative presentation was rejected via email by BCC representative on 5 April 2019 at 1:54pm citing:

It is however considered that changing the color of the garage does not adequately address the impact of the building bulk on the streetscape and is therefore still considered unacceptable. Furthermore, the proposed change does not satisfy the requirements of the Queensland Development Code (QDC) and it is considered that the garage does not comply with the Performance Criteria of the MP1.2 – Design and Siting Standard for Single Detached Housing – on Lots 450m² and Over Code.

Consideration of relevant provisions

1. Google maps provides a street perspective of both Gregory and Bide Streets, dated as at November 2013. This perspective predates the construction of the adjacent dwelling property and discloses an existent cross over and driveway. The subject property had large gates *in situ* where the current garage is located. The presence of these gates was mitigated by vegetation then present in the adjacent property. Three points are noted from this source: access and egress at this point for the subject property is established prior to the construction of the garage; determination of bulk is influenced by the adjacent property's vegetation, street vegetation, fencing and/or structures positioned in the north-eastern corner of the site; that the property had been fully secured before the garage and an open side to the garage or an absent garage door would leave the property unsecured.
2. With regard to QDC MP1.2 P1, it was discussed at the hearing as what could be generally be accepted as 'buildings and structures' being appropriate for the street and the tribunal suggested that being a residential street, buildings such as houses, garages, sheds, carports, pools, fences and the like may be appropriate, while buildings such as 3 or 4 car garages, industrial sheds, shops, and the like may not be appropriate. No party objected to this assertion. Note: In the context of this particular 'subject' streetscape, and the locality in general, it is noted that the area is currently experiencing *redevelopment and densification* with various classes of buildings and types, including small lot housing and continues to do so progressively. Indeed the adjacent Bide Street lot had been redeveloped with a larger home.

Considering the current densification in the area, the tribunal then sought to better understand and define the words 'acceptable', and 'bulk'. A review of Merriam-Webster 2019 (MW) dictionary, Dictionary.Com 2019 (D.com) dictionary, Oxford Dictionary 2019 and The Free Dictionary 2019 (FD) generated definitions which finds several options the building might satisfy:

Some definitions for *acceptable* were defined as:

1. capable or worthy of being accepted – MW and D.Com
2. barely satisfactory or adequate – MW and D.Com.
3. capable of being endured; tolerable; bearable – D.Com
4. able to be agreed on; suitable- Oxford
5. able to be tolerated or allowed- Oxford

Similarly, several definitions for *bulk* were defined as:

6. an organized structure especially when viewed primarily as a mass- MW
 7. magnitude in 3 dimensions – MW and D.Com.
 8. the mass or size of something large – Oxford and D.Com.
 9. size, mass or volume especially when very large – FD.
3. QDC MP1.2 under Performance Criteria P1 (a) states:
The location of a building or structure facilitates an acceptable streetscape, appropriate for –
(a) the bulk of the building or structure; and...

The tribunal found that the garage satisfies the above definitions regarding 'acceptable' and 'bulk'.

Conclusions

The Tribunal considers that:

1. In reviewing the finished building the only difference from the original approval of a 2 sided carport is the inclusion of the side wall and garage door, with the expectation that at least one of these items would need to have been installed to re-secure the property. Had the Appellant installed a garage door, any enclosed side wall or indeed fence would have been largely obscured from any view. Had the Appellant installed the side wall only (or fence) it would also have been largely obscured from view, apart from looking at it through the garage. Therefore the enclosed side appears to have little to no impact, leaving the garage door as the only credible impacting item.
2. Based upon the definitions of *bulk* noted above, the garage when viewed with or without its door can remain viewed as 'a mass of material'. Thus, it is mass as a whole, not as an accumulation of parts. 'Bulk' is also defined by its magnitude in three dimensions of which both carport and subsequent garage are dimensionally the same. All four definitions appear to define bulk in its overall dimensions or volume.

The garage in its current form satisfies the performance outcome P1(a), as it facilitates an 'acceptable streetscape', given it is only a modestly sized residential garage. Also, it uses varied finishes and a traditional form, which offers an appropriate place in its setting. It also adds a variation to the streetscape, which at present is varied in age, character, building forms and scale.

Therefore the tribunal replaces the decision of the assessment manager to one which directs the garage as is to be approved.

Markus Pye
Development Tribunal Chair
Date: 10 June 2019

Appeal Rights

Schedule 1, Table 2 (1) of the *Planning Act 2016* provides that an appeal may be made against a decision of a Tribunal to the Planning and Environment Court, other than a decision under section 252, on the ground of -

- (a) an error or mistake in law on the part of the Tribunal; or
- (b) jurisdictional error.

The appeal must be started within 20 business days after the day notice of the Tribunal decision is given to the party.

The following link outlines the steps required to lodge an appeal with the Court.

<http://www.courts.qld.gov.au/courts/planning-and-environment-court/going-to-planning-and-environment-court/starting-proceedings-in-the-court>

Enquiries

All correspondence should be addressed to:

The Registrar of Development Tribunals
Department of Housing and Public Works
GPO Box 2457
Brisbane QLD 4001

Telephone (07) 1800 804 833 Facsimile (07) 3237 1248

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