



Building and Development Tribunals

Queensland Government

Department of Local Government and Planning

APPEAL

Integrated Planning Act 1997

File No. 3/04/007

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Brisbane City Council

Site Address: 71 Cremorne Road, Kedron

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 a garage and extension to a dwelling on land described as Lot 2 on RP No. 42189 and situated at 71 Cremorne Road, Kedron.

Date and Place of Hearing: 9.30 am on Wednesday, 28 January, 2004
at 71 Cremorne Road, Kedron.

Tribunal: Georgina J Rogers

Present: Owner
Mr Peter Chamberlain – Brisbane City Council representative

Decision

The decision of the Brisbane City Council as contained in its letter dated 30 December 2003 (Reference: DRS/BLD/A03-1250642) refusing the relaxation of the road boundary clearance to 0.175m sought for the construction of a new garage to the Turner Street frontage of the dwelling in lieu of the prescribed 3.550m and 0.980m for the proposed two storey extension in lieu of the required 4.15m to the Turner Street frontage of the site, is set aside and the decision is **replaced with conditions:-**

1. A new fully enclosed and secure garage may be constructed 4.500m clear of the western alignment and fronting Turner Street; or alternately
2. A new open carport be constructed 0.175m clear of the western alignment and fronting Turner Street;

3. The proposed two-storey extension is to be setback minimum 2.500m to the wall with the allowance of a verandah to be provided in line with the setback of the existing dwelling.

Background

The site is located in Kedron on the corner of Cremorne Road to the south and Turner Street to the west. The site falls gently from the south-west (street) corner to the north. There is an existing dwelling on site, which has been raised and is being extensively renovated internally and extended substantially externally.

The items under discussion at this Tribunal included a proposed new garage to the Turner Street frontage and the location of the proposed two-storey extension in line with the existing dwelling, which connects the existing dwelling to the proposed garage. The owner advised that the existing dwelling would not be raised above the existing floor level.

To the north of the site is an easement to a rear site.

Material Considered

1. Appeal documentation included drawings indicating the proposed garage within the Turner Street boundary setback and two-storey extension in line with the existing dwelling fronting Turner Street, both within the required boundary setbacks from Turner Street;
2. Verbal submission by the owner and reasons for construction of the garage and extension within the Turner Street boundary setback area;
3. Correspondence from the Council dated 30 December 2003, refusing the request to permit construction in lieu of the required road boundary clearances of 3.55m for the garage and 4.15m for the two-storey extension;
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. The Standard Building Regulation 1993; and
6. The Queensland Development Code, Part 12.

Findings of Fact

I made the following findings of fact:

1. The original application was lodged with the Brisbane City Council on 5 December and was assessed under the SBR. The correspondence from the Brisbane City Council dated 30 December 2003 (Reference: DRS/BLD/A03-1250642) was headed "Request For Assessment Under Section 48 Standard Building Regulation (1993)". The SBR was amended to the Queensland Development Code on 14 November 2003 and this application has been reassessed under the QDC, Part 12.
2. The site at 71 Cremorne Road has two road frontages being Cremorne Road to the south and

Turner Street to the west. Vehicle access has been nominated from Turner Street to the west of the site. This vehicle access is on a road perpendicular to a school and is subject to peak hour traffic and parking. There is ample room for visitor carparking on the site.

3. The site is on the south-western corner of the Cremorne Road and Turner Street. The site falls gently from the southern alignment to the rear of the site. The site is rectangular in shape.
4. The provision of a secure garage to the front alignment of Turner Street would reduce visibility of students and pedestrians using the street and would reduce the opportunity for visitor carparking on site, particularly as during peak school times street parking would be minimal.
5. 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 and renovations being undertaken. The existing dwellings are generally setback in accordance with the 6.000m road boundary requirements.
6. The neighbourhood consists of a mix of one and two storey dwellings.
7. The QDC, Part 12 sets out Performance Criteria P1 - P8 in relation to siting requirements which a local government must consider and be satisfied that the application meets the intent of each criteria for that application and that the development does not **unduly** conflict with the intent of each of the Performance Criteria:

P1 The Location of a building or structure facilitates an acceptable streetscape, appropriate for –

(a) the bulk of the building or structure

The proposed structure is a two-storey extension located to the rear of the site fronting Turner Street and a single storey garage, which will zero lot line on the northern alignment of the adjoining road easement.

Turner Street to the west would be dominated by the proposed mass of the building along this alignment. While the existing dwelling is located approximately 0.980m from the Turner Street alignment it does not appear to continue for more than 50% of the length of the site. To further construct the building in this alignment along the street frontage would reduce the amenity of the neighbourhood.

In accordance with the negotiations and discussions on site the provision of a verandah along the length of the Turner Street frontage with minimum setback from Turner Street to be in line with the existing dwelling would help break the mass and dominance of the building structure fronting Turner Street.

The neighbourhood consists of a mix of one, two storey dwellings. The adjoining neighbours to the east and north will not be significantly affected by the garage and extension.

(b) the road boundary setbacks of neighbouring buildings or structure

The adjoining properties are setback approximately 6.000m from Turner Street. This is a corner site and the existing dwelling has a 6.000m setback from Cremorne Road and

0.980m setbacks from Turner Street. The proposed extension would be in line with the existing dwelling.

(c) *the outlook and view of neighbouring residents*

The outlook from the adjoining neighbours will not be impeded because of the topography of the site and surrounding area.

(d) *nuisance and safety of public*

The development would not cause any nuisance or increased safety issues to the public.

P2 Buildings and structures–

(a) *provide adequate daylight and ventilation to habitable rooms*

The minimum 2.5m road boundary clearance to the wall of the proposed two storey extension fronting Turner Street will allow natural light and ventilation into the habitable rooms of the proposed development.

The minimum 0.175m road boundary clearance to an open carport or 4.500m to an enclosed garage will allow adequate natural light and ventilation for this non-habitable room.

(b) *allow adequate light and ventilation to habitable rooms of buildings on adjoining lots*

The minimum 2.5m road boundary clearance to the wall of the proposed two storey extension fronting Turner Street will have no impact on the existing natural light and ventilation of the adjoining allotments as the dwelling is located on a south-westerly corner site with neighbours only to the north and east. An easement road further separates the northern neighbour.

The minimum 0.175m road boundary clearance to an open carport or 4.500m to an enclosed garage will have no impact on the existing natural light and ventilation of the adjoining allotments.

P3 Adequate open space is provided for recreation, service facilities and landscaping–

The minimum 2.5m road boundary clearance to the wall of the proposed two storey extension fronting Turner Street will not significantly restrict the areas of the allotment suitable for landscaping. The 2.5m road boundary setback has been negotiated to permit the provision of landscaping within this area and adjacent to the Turner Street frontage.

The minimum 0.175m road boundary clearance to an open carport or 4.500m to an enclosed garage will not restrict the areas of the allotment suitable for landscaping.

An area for landscaping and outdoor recreation has been allowed for in the north-easterly area of the site. This provides an excellent private area for outdoor recreation, landscaping and buffer between the northern and eastern dwellings.

P4 The height of a building is not to unduly–

(a) *overshadow adjoining houses*

The proposed structure will not overshadow the adjoining lots. The site is located on the south-western corner with street frontages to the south and west.

(b) obstruct the outlook from adjoining lots

The minimum 2.5m road boundary clearance to the wall of the proposed two-storey extension fronting Turner Street will have minimal impact upon the outlook of the adjoining allotments.

The minimum 0.175m road boundary clearance to an open carport or 4.500m to an enclosed garage will have minimal impact upon the outlook of the adjoining allotments.

These extensions do not create any obvious visual obstructions to the neighbourhood, which would be over and above what is acceptable to this inner suburban allotment.

P5 Buildings are sited and designed to provide adequate visual privacy for neighbours–

The minimum 2.5m road boundary clearance to the wall of the proposed two storey extension fronting Turner Street will have minimal impact upon the privacy of the adjoining allotments to the north and east.

The minimum 0.175m road boundary clearance to an open carport or 4.500m to an enclosed garage will have minimal impact on the privacy of the adjoining allotments to the north and east.

P6 The location of a building or structure facilitates normal building maintenance–

The setbacks shown provide adequate access for normal building maintenance.

P7 The size and location of structures on corner sites provide for adequate sight lines–

The existing street corner sight lines would not be affected by the proposed extension.

P8 Sufficient space for on-site carparking to satisfy the projected needs of residents and visitors, appropriate for–

(a) the availability of public transport

The availability of public transport is not relevant to this hearing as provision is being made for on-site carparking.

(b) the availability of on-street parking

These setbacks to the garage and carport have been allowed to provide visible carparking on site for visitors, particularly at school peak hours when on street carparking would be at a premium demand

(c) the desirability of on-street parking in respect to the streetscape

On-street car parking is currently available and will not be affect by the proposed development.

(d) the residents likelihood to have or need a vehicle

The proposed development includes the provision for minimum two on-site carparks.

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

Reasons for the Decision

QDC provides Performance Criteria and some Acceptable Solutions. The Acceptable Solutions

are guidelines to provide reasonable and achievable outcomes. The local government is in a position to vary the Acceptable Solutions in relation to an application for siting requirements and to assess the application based on its merits.

In assessing the criteria from this part of the Code in relation to the proposed use of the structure, its relationship to the existing dwelling on site and the adjoining neighbourhood, the Tribunal found that there was grounds to vary the road boundary setbacks to allow the extension to be located within a minimum of the western alignment fronting Turner Street.

An assessment of QDC, Part 12, did not identify any valid reason for refusing the proposed amended construction application for a two storey extension with additional balcony in line with the existing dwelling; and carport to 0.175m setback, or alternately a garage setback 4.500m from Turner Street alignment.

GEORGINA J ROGERS
Building and Development
Tribunal Referee
Date: 16 February 2004

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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