



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

File No. 3-03-071

Integrated Planning Act 1997

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Brisbane City Council

Site Address: 24 Westminster Road, Indooroopilly

Nature of Appeal: Appeal under Section 21 *Standard Building Regulation 1993* (SBR) against the decision of the Brisbane City Council to refuse an application for the erection of a two storey detached dwelling positioned on site not observing the prescribed road and side and rear boundary clearances as prescribed in the *Standard Building Regulation 1993*, and a 2.4 metre high fence to the road boundaries.

Date and Place of Hearing: 10 am on Friday, December 12, 2003
24 Westminster Road, Indooroopilly

Present:

Owner	
Mr Peter Torrensen	Owner's representative
Mr Rob Dix	Brisbane City Council
Mr Dennis Leadbetter	Referee

Decision:

The decisions of the Brisbane City Council, as contained in its letter dated 6 November, 2003, reference DRS/BLD/A03-1244248, not to grant approvals to permit the erection of a two storey detached house with reduced alignment setbacks and fences on the alignment greater than 2 metres as shown on drawings numbered 20903-9A, 20903-9B 20903-7A, 20903-6A, 20903-4 and 20903-3 are **set aside**.

The structures may be built with the following alignment setbacks and to the following heights:

1. The detached dwelling to be constructed having the following alignment setbacks, measured to the outer most projection:-

a. Westminster Road

A combination of a minimum setback of 4 metres with an average setback of 5 metres if the façade is stepped and/or not parallel to the street alignment or if straight and parallel to the street alignment a minimum of 5 metres.

b. Railway Avenue

A minimum setback of 3 metres for the detached dwelling and for the carparking accommodation 1.5 metres if a carport or 3 metres for an enclosed garage.

c. Side and rear alignments

1.5 metres up to 4.5 metres in height or 2 metres where the building exceeds 4.5 metres in height.

The maximum height of 8.5 metres above natural ground level shall apply to the detached dwelling.

2. A fence to a maximum of 2 metres high above natural ground level may be built on the alignment, except for the 6 metres to each alignment from the intersection of the alignments at the corner of Westminster Road and Railway Avenue, which shall not be greater than 1 metre.

Alternatively a fence to 2.4 metres high above natural ground level may be erected, setback a minimum 1 metre from the alignment, except to the intersection for the 6 metres to each alignment from the intersection of the alignments of Westminster Road and Railway Avenue, where a 2.4 metre high fence may be erected on the line of a 6 metre 3 chord truncation, up to the line of the 1 metre setback from the street alignments and the areas between the 2.4 metre high fence and the alignment shall be suitably landscaped.

(refer explanatory sketches at end of decision)

Background:

The application relates to the construction of a proposed new detached dwelling on the land, which does not adhere to the alignment setbacks as provided for in Section 36 and 38 of the *Standard Building Regulation* (SBR) 1993, and also the erection of a fence on the alignment which does not comply with Section 42 SBR.

The application was refused by Brisbane City Council on the grounds that there were alternative locations on site for the dwelling.

The applicant requested the reduced alignment clearance of 3000 mm (to the building wall) to the properties southern road boundary to Westminster Road to maximise the available northern area of the site and the western road boundary to Railway Avenue to 1500 mm (to the building wall). Also the fence to be 2400 high to prevent the depositing of rubbish from local entertainment venues in the gardens and for the safety of his children. The owner showed photographs of the problem rubbish.

Material Considered

In reaching the determination, consideration was given to the following material:-

1. Appeal Notice and grounds of appeal contained therein dated 26 November, 2003;

2. Drawings submitted to the Building Tribunal with the appeal, numbered 20903 – 3, 20904 – 4, 20903 – 6A, 20903 – 7A, 20903 – 9A and 20903 – 9B;
3. Letter from the Brisbane City Council not to approve the development dated 6 November, 2003, reference DRS/bld/a03-1244248;
4. Verbal submissions from the owner and Mr Peter Torrensen supporting the proposal and Mr Rob Dix supporting Council's refusal;
5. The SBR, in particular sections 36 and 38, related to building alignment setbacks, sections 42 and 47 in relation to fences, together with Schedule 10, 11 and 12

Findings of Fact

I made the following findings of fact:

2. The site is a corner site, with a depth and frontage to Railway Avenue of approximately 34.3 metres and a width and frontage to Westminster Road of approximately 22.5 metres.
3. Westminster Road is a four lane, major road artery, servicing the Indooroopilly/St Lucia peninsular from the south and west.
4. Railway Avenue is a narrow one way road, servicing only local minor traffic. Council's representative indicated that it was proposed to place an island within Westminster Road to prevent a right hand turn from Railway Avenue westward onto Westminster Road thus limiting traffic exiting Railway Avenue to a left turn into Westminster Road.
5. There was no property truncation to the corner of Railway Avenue and Westminster Road.
6. The land has a fall from the western side to the eastern side of approximately 1500 mm.
7. The proposed dwellings had a total height of 8500 mm above natural ground level.
8. Boundary clearances shown on the drawing were to walls, not the outer most projection, and no dimension of the overhangs is noted, and the dimension appears to vary on differing drawings.
9. The required setbacks, to the outer most projection, in compliance with the requirements of the SBR are as follows:-
 - a. Road boundary under section 36 SBR is 6 metres
 - b. Potential reduction for the second road frontage to a corner site, as provided for under section 47 SBR under Schedule 11 SBR provides no relief as the proposed building is over 3.5 metres in height and the allotment is over 22 metres in width, thus prescribing a 6 metre setback to Railway Avenue.
 - c. Side and rear boundary setbacks under section 38 SBR for a height less than 4.5 metres is 1.5 metres and over 7.5 metres is 2.5 metres.
10. Height of fences on alignments are limited to no higher than 2 metres under section 42, except for corner allotments, where the height can not exceed:
 - a. 1 metre high to the 6 metre x 6 metre 3 chord truncation, as provided for by Section 47

- (1) SBR. This site does not have a three chord truncation, or
- b. 1 metre high to the 12 metre x 12 metre corner truncation, as provided for by Section 47 (3) (b) SBR as illustrated in Schedule 12 SBR.
This has been reduced to 9 metres x 9 metres under the Queensland Development Code, and this reduction in requirement has been taken into account in determining this appeal.

11. Under Section 48 of the SBR, a local government may vary how Division 2 applies to the application after considering under Section 48(3), the following points:-

- a. *The levels, depth, shape or condition of the allotment and adjoining allotments.*

The allotment and the adjoining allotments have a primary fall from west to east, and a smaller fall from north to south. The allotments and the adjoining allotments are of above average size. Buildings to surrounding allotments generally comply with the siting requirements under Division 2 of the SBR. The site is currently excavated to a level platform to the south west corner, and the levels indicated on the drawings provided indicate minor extension to this excavation, such that the ground floor will be approximately 1 metre below natural ground level.

- b. *The nature of any proposed building or structure on the allotment.*

The allotment currently has a detached high set timber weatherboard dwelling, which it is proposed be removed or demolished. That dwelling generally complies with the set back requirements of the SBR to Westminster Road and a lesser set back of approximately 4 metres to Railway Avenue. The existing dwelling presents a much lower elevation height than the proposed because of its hip roof shape and overall design.

- c. *The nature of any existing or proposed buildings or structures on the adjoining allotments.*

The surrounding residences are detached, high set, timber dwellings, of varying but generally from 30's – 50's style, generally of similar proportion and siting, with complying front and side alignment setbacks. There are several multiple dwelling developments in the surrounding area, which also follow the prescribed set back provisions.

- d. *Whether the allotment is a corner allotment.*

The allotment is a corner allotment.

- e. *Whether the allotment has 2 road frontages.*

The allotment, being a corner allotment, has two road frontages.

- f. *Any other matter considered relevant.*

The proposed building, being two storey, with significantly greater than normal ceiling heights, is significantly higher than the surrounding high set residences, and its proposed location significantly less than required under Section 36, 38 and 47 of SBR, present a less than desirable environment and tends to overcrowd the street scape to Westminster Road, where the true setback to the outer most projection is in the order of 2400 mm and to Railway Avenue where the true setback is less than 1200 mm. The impact to the Railway Avenue alignment is further exacerbated by the narrow footpath to that street.

The owner had indicated that Westminster Road is a major road and carries a significant traffic flow, which will produce a considerable noise problem. The overall location and design of the proposed dwelling exacerbates the potential impact of that noise and pollution

on the occupants.

The minimal side alignment setback would also impact on access for maintenance works and severely limit the potential for suitable landscaping to provide sun protection to the western façade.

12. In varying the siting requirements, the local government, under Section 48(4), must be satisfied that a building or structure, built on the allotment in the way proposed, would not **unduly** –

a. *Obstruct the natural light and ventilation of an adjoining allotment.*

The proposed detached house will cast only shadow to the property to the east. The compliance with standard side alignment setbacks together with the topography of the site would result in minimal shading, which would be of benefit to the easterly property as it would provide some protection from the western afternoon sun. Shadows cast over other boundaries would be to road space only.

b. *Interfere with the privacy of an adjoining owner.*

The careful design of the detached residence and location of windows will minimise interference with privacy.

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

Maintenance of the alignment setbacks nominated will provide adequate and useful areas, suitable for landscaping that will provide both a noise buffer to Westminster Road and sun shading to the Railway Avenue façade.

d. *Obstruct the outlook from the adjoining property.*

The proposed development will not impact on the outlook from the adjoining property, and the side alignment setback will not alter this.

e. *Overcrowd the allotment.*

The dimension of the proposed detached dwelling, particularly its overall height and bulk, would present a significant dominant and overpowering structure to both the Westminster and Railway Avenue streetscapes at the reduced setbacks sought. The alternative setbacks will maintain some feeling of openness to the streetscape.

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

The proposed detached house has included minimal, but adequate, provision for off street parking.

g. *Obstruct access for normal building maintenance.*

The proposed development would impact on access for maintenance, particularly along the Railway Avenue façade, because of the minimal alignment setback sought coupled with the height of structure. The nominated setback will provide for safe and reasonable access.

Reasons for the Decision

Sections 48 (3) and (4) of the SBR allows for a local government to vary the application of siting requirements. In assessing the criteria from this part of the legislation and considering the nature and

use of the structure and other existing structures and their siting on the adjoining allotments, and the impact the proposed detached dwelling would have on the amenity of the area generally, having cognisance of Westminster Road as a main artery to the Indooroopilly and St Lucia peninsular, the Tribunal found that there was reasonable grounds to vary the prescribed alignment setback and allow

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Sketches to explain the intent of the decision.

Dennis Leadbetter

Dip Arch (QUT); Grad Dip Proj. Man. (QUT); METM (UQ)

Building and Development

Tribunal Referee

Date: 20 January 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:-

The Registrar of Building and Development Tribunals
Building Codes Queensland
Department of Local Government and Planning
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