

APPEAL

File No. 3-03-013

Integrated Planning Act 1997

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Gold Coast City Council

Site Address: 24 Balfour Crescent, Nerang

Nature of Appeal

Appeal under Section 21 of the Standard Building Regulation 1993, against the decision of the Gold Coast City Council to refuse an application for preliminary building work (Preliminary Application No. 23/01857: Development Application No. 23/00410) to permit a minimum building setback of 3.000 metres for the proposed construction of a carport within the Balfour Crescent road property boundary setback on land described as Lot 78 on RP No. 192910 and situated at 24 Balfour Crescent, Nerang.

Date and Place of Hearing: The hearing was held at 2.30 PM on Friday 14th March 2003 at the Gold Coast City Council chambers at Nerang.

Tribunal: Bert Dean

Present: Bert Dean

Owners

Jeremy Wagner

David Hood

Bob Clowes

Gold Coast City Council

Gold Coast City Council

Gold Coast City Council

Background

The applicants have applied for approval to construct an additional carport attached to the Eastern end of their existing dwelling. The application proposed a reduced setback distance from the road boundary. The applicants consider the new location will improve their view of oncoming traffic when exiting their property. A matter of considerable importance to them. Council refused the proposed

siting relaxation.

Although not detailed on the application drawings, an additional driveway to the property boundary and footpath crossover is required to provide vehicular access to the carport from the roadway. Gold Coast City Council also refused approval for this crossover.

Drawings submitted with their application contain a site plan only, and did not include any detail of the proposed new crossover necessary to provide access across the footpath to the road. Detail of the carport was not provided, nor was any explanation of their reasons for requiring the additional carport given with the application.

There was no separate application approval to construct a new vehicular crossover. Had the application been complete, properly prepared and accompanied by explanation of the applicant's reasons, its chances of gaining approval are likely to have been considerably improved.

Decision

Councils' decision to refuse the application for Preliminary Building Work is varied insofar as it relates to the principle of a proposed minimum setback of 3.000 metres for a carport within the Balfour Crescent road boundary setback.

The decision of the Gold Coast City Council to refuse the siting of the proposed carport at a minimum setback of 3.000 metres is **changed**. In lieu of that decision the proposed location of the carport at a minimum road boundary setback of 3.000 metres, with the distance increasing as the angle of the dwelling to the front boundary dictates is approved in principle.

This decision is not a permit to commence construction and relates only to the "in-principle" siting of the carport in the event that a development approval is obtained from the Council.

Material Considered

1. Appeal documentation including the site plan submitted with the application to the Council showing the plan outline and siting of the proposed carport in relation to the existing dwelling and property boundaries.
2. Correspondence from the Council dated 10 February 2003 refusing the request for relaxation, giving reasons and advising the applicants of appeal provisions.
3. Written submission from the owners dated 3 March 2003 addressing the six reasons for refusal contained in Councils' letter of refusal. The submission is accompanied by a further copy of the site plan, a locality plan and a section through the roadway adjacent to the site, and various photographs of the development site and roadway outside the site
4. Verbal submissions from the applicants.
5. Verbal submissions from the representatives of Gold Coast City Council outlining

the Councils' assessment of the application and giving reasons for refusal of the application.

6. Inspection of the development site and adjoining roadway, noting the facts and circumstances of other existing development in the area.

Findings of Fact

I made the following findings of fact.

1. With regard to the footpath cross-over the Tribunal has no jurisdiction in relation to matters not contained in the Building Act and Standard Building Regulation; i.e. Local Law No. 11 & Council crossover policy. It is the owner's responsibility to liaise with Council concerning the location and construction of the additional crossover. No development approval or development permit can be issued until the matter of the additional footpath crossover has been finally resolved. Council indicated at the hearing that it is prepared to consider a properly prepared application for variation of standard requirements of Local Law No. 11 and Councils' crossover policy.
2. Siting of the proposed carport at a setback of 3.000 metres as shown on the site plan submitted is a matter within the jurisdiction of the Tribunal.
3. The dwelling at 24 Balfour Crescent is constructed with a road boundary clearance at its Eastern end of approximately 6.0 metres. The dwelling is set at an angle of approximately 10 to 15 degrees away from the general line of the road boundary. This increases the road boundary set back distance at the Western end of the dwelling to approximately 10.0 metres.

Other dwellings in the area are constructed with front boundary setback distances less than those required by the building regulations. There also appears to be significant variations to the Council's policy on vehicle crossover location & construction.

4. The terrain in the area is undulating, with the subject dwelling set considerably lower on its site than the dwelling on the Eastern side.
5. The drawings and specification of work submitted with the application to the Council were totally inadequate and did not contain sufficient information to explain the owners needs and detailed intentions.
6. In assessing the application of Section 48 of the Standard Building Regulation 1993, the Local Government is 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 size and are set in an area of undulating terrain. The general surface level of the subject allotment is set below the level of the adjoining allotment on the eastern side. The dwelling on this adjoining allotment is higher and overlooks the subject site. The subject allotment is a corner allotment with the buildings set back from the secondary frontage approximately 7.0 metres.

(b) the nature of any proposed buildings or structures on the allotment

There are precedents for relaxed front boundary setbacks in the area. The proposed carport has a relatively small area (about 12.00M2) within the 6.000 metre setback, and complies with requirements for setback from the side boundaries. The nature of the proposed building is such that it will have almost no negative impact in the area.

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

There are existing buildings and structures on allotments in the area, providing precedents, which support approval of the proposed, reduced setback. Approval of the development at the setback proposed would not result in the finished structure being in extreme conflict with the nature of similar development in the area.

(d) whether the allotment is a corner allotment

The allotment is a corner allotment. The steeply sloping terrain on the secondary frontage means that Construction of vehicle access to this frontage would involve significant additional costs, which make such a proposal impracticable.

(e) whether the allotment has two road frontages

The allotment has two road frontages. The terrain on the secondary road frontage is steep and provision of vehicle access would involve the owner in undue expense.

(f) any other matters it considers relevant

Matters of safety, and compliance with Councils' Local Law No. 11 and policy relating to footpath vehicle crossovers are relevant under this criteria. The Tribunal supports the Councils' refusal under this heading. The original application was incomplete and contained no information dealing with the crossover. The applicant is required to liaise with Council to clearly explain their reasons for requiring the additional crossover and to ensure that additional drawings meeting Councils' standards are presented to support the proposal.

7. Under Section 48 (4), the Local Government must also be satisfied that a relaxation would not unduly: -

(a) obstruct natural light or ventilation of an adjoining allotment

The dwelling and proposed carport are lower than the adjoining allotment. The building is single storey with side boundary clearance exceeding minimum permitted. The subject site is lower than the adjoining site. The proposed structure would not unduly obstruct light or ventilation of any adjoining allotment.

(b) interfere with the privacy of an adjoining allotment

The proposed structure would not interfere with the privacy of any adjoining allotment. The relaxation sought is not large. Existing side boundary clearance exceeds minimum requirements, and the difference in allotment levels, and large separation between the two adjoining buildings ensures privacy will not be interfered with.

(c) restrict the areas of the allotment suitable for landscaping

The allotment has a length of frontage to Balfour Crescent in the vicinity of 40.000 metres. The area of the proposed building within the 6.000 metres is relatively small. The remainder of the frontage of the dwelling has a gradual increase in setback due to its angled siting. There are large areas between the building and the two road frontages, available for landscaping. It is therefore concluded that approval of the proposed siting at the reduced front boundary setback will not unduly restrict areas of the allotment suitable for landscaping.

(d) obstruct the outlook from adjoining allotments

The dwelling is set at a level sufficiently lower than the adjoining dwelling. This ensures the outlook from the adjoining property will not be unduly obstructed. Even in the event the proposed carport is to have a pitched roof at or below the height of the roof of the existing dwelling, these features of the allotments mean that a carport sited as proposed, i.e. setback 3.00 metres from the front boundary at its closest point and following the line of the front of the dwelling will not unduly obstruct outlook from adjoining allotments.

(e) overcrowd the allotment

The proposal provides for a relatively small amount of floor area within the 6.000 metres. The closest point of the proposed carport is setback 3.000 metres, which increases to 5.000 metres or more due to angled siting. This would not unduly overcrowd the allotment.

(f) restrict off street parking for the allotment

The proposed development would not restrict off street parking. The proposal provides an additional covered off street car park.

(g) *obstruct access for normal building maintenance*

The proposed development would not restrict access for normal building maintenance

Reasons for the Decision

- The Tribunal has no jurisdiction in the matter of Councils' Local Law No. 11.
- It is reasonable for Council to refer to the matter of the crossover under Section 48 (3) (f) of the Standard Building Regulation.
- Council has agreed to further consider the matter of the crossover following presentation of detailed drawings, specifications and material supporting the application for the second crossover. Properly detailed drawings of the proposed structure are also required.
- The proposed relaxed siting sought by the applicants meets all other requirements of Section 48 of the Standard Building Regulation.

It is therefore the decision of the Tribunal that the proposed variation of the application of Division 2 Of Part 3 of the Standard Building Regulation is approved in principle and the relaxed setback from the front property boundary as proposed may be used by the applicant in the event that a development approval and development permit for the proposed carport is issued by Gold Coast City Council.

Bert Dean
Building and Development
Tribunal Referee
Date: 25 March 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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