



APPEAL

File No. 3-01-055

Integrated Planning Act 1997

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Brisbane City Council

Site Address: 76 Barokee Street Stafford

Nature of Appeal

Appeal under Section 4.2.9 of the Integrated Planning Act 1997 against the decision of the Brisbane City Council in varying the application of Division 2 – Boundary clearances, as provided for under Section 48 of the *Standard Building Regulation 1993* (SBR) for an extension to a detached house on land described as Lot 191 RP 77992 and situated at 76 Barokee Street Stafford.

Date and Place of Hearing: 10.30 am Friday December 7, 2001
At 76 Barokee Street, Stafford

Tribunal: Dennis Leadbetter

Present: Applicant
Mr Luke Gilliland - Brisbane City Council
Mr Grant Johnsen - Brisbane City Council
Adjoining allotment owner

Decision

The decision of the Brisbane City Council by letter dated 16 November 2001, reference DRS/BLD/A01-1154899, not to grant approval to permit the erection of an extension and deck in a position observing a clearance of 0.9 metres from the northern side boundary, but approving a set back from the northern alignment of 1.2 metres **is confirmed**.

Material Considered

- 1 Appeal notice and grounds of appeal contained therein;
- 2 Drawings submitted to Brisbane City Council;

- 3 Letter from the adjoining neighbour;
- 4 Letter from Brisbane City Council refusing the application but granting an alternative side boundary clearance;
- 5 Verbal submission by the applicant and owner's representative, explaining the reasons why the relaxation should be granted;
- 6 Verbal submission by Messrs Luke Gilliland and Grant Johnsen Brisbane City Council clarifying the reasons why the alternative side boundary clearance granted was applied;
- 7 Verbal submission by the adjoining neighbour advising her non objection to the proposal;
- 8 The Standard Building Regulation 1993.

Findings of Fact

I made the following findings of fact:

- 1 The proposed building is a two storey structure, containing car accommodation to the lower level and a deck and kitchen to the upper level.
- 2 The overall height of the structure is approximately 4.8 metres above ground level, based on the dimensions on the drawing and allowing nominal dimension for structure.
- 3 The allotment road frontage is approximately 20 metres.
- 4 The land slopes from south west to north east.
- 5 The adjoining dwelling has roofed recreational areas to the common boundary.
- 6 The side boundary clearance nominated under the SBR Section 38(b) for the maximum height of the outermost projection of structures *greater than 4.5 m but not exceeding 7.5 m, the side and rear boundary clearance must be not less than 2 m.*
- 7 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 allotment are on a continuing slope towards the north east. Buildings on both allotments generally comply with the siting requirements under Division 2 of the SBR.
 - b. *The nature of any proposed building or structure on the allotment.*
A two storey weather board detached dwelling is constructed on the allotment.
 - c. *The nature of any existing or proposed building or structure on the adjoining allotments.*
A single storey weather board detached dwelling is constructed on the adjoining allotment.

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

The allotment is not a corner allotment.

e. *Whether the allotment has 2 road frontage.*

The allotment had only one road frontage.

f. *Any other matter considered relevant.*

The Brisbane City Council has varied the siting requirements after consideration of the matters listed under section 48 (3) and (4), and approved a boundary clearance of 1.2 metres in lieu of the 2 metres required under Section 38 (b).

8 In varying the siting requirements, the local government 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 extension is on the north eastern side of the house, and thus will have no impact on natural light to the adjoining allotment. The proposed positioning within 0.9 m from the alignment may impede prevailing summer breezes from the south easterly direction.

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

The proposed deck is immediately adjacent outdoor living areas on the adjoining allotment. While these areas are roofed and this will provide visual privacy, the close proximity of the proposed structure will result in an impairment of audio privacy.

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

The area of the site is currently concreted and the area remaining on the site suitable for landscape purposes is not restricted.

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

The proposed structure would not unduly obstruct the outlook from the adjoining property. The outlook from the adjoining property is principally to the north and east.

e. *Overcrowd the allotment.*

The existing dwelling and extension are within the allowable site coverage provisions and generally comply with the siting provisions of the SBR. However the position of the extension, being on the lower side of the dwelling and the proposed siting would tend to increase any visual effect of overcrowding to that portion of the allotment.

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

The proposal is to include off street parking.

g. *Obstruct access for normal building maintenance.*

The dwelling and proposed extension are of timber and require normal building maintenance. The proposed siting at 0.9 m to the wall, would restrict safe maintenance access.

Reasons for the Decision

Sections 48 (3) and (4) of the SBR allows for local government to vary the application of siting requirements. In assessing the criteria from this part of the legislation and considering the use of the proposed structure and those structures existing on the adjoining allotment, the limited impact the approved siting relaxation would have on the proposed extension and its use, the Tribunal found that there was not reasonable grounds to further vary the side alignment setback to that already granted.

Dennis Leadbetter

Dip Arch QUT, Grad Dip Proj Man QUT, METM UQ.

Building and Development

Tribunal Referee

Date: 11 December 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
BRISBANE ALBERT STREET QLD 4002
Telephone (07) 3237 0403: Facsimile (07) 32371248