



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

Integrated Planning Act 1997

File No. 03-06-079

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Brisbane City Council

Site Address: *Withheld* – “the subject site”

Applicant: *Withheld*

Nature of Appeal

Appeal under Section 4.2.9 of the *Integrated Planning Act 1997* against the decision of the Brisbane City Council to refuse part of an application for Variation of Part 12 of the Queensland Development Code on land at “the subject site”.

Date and Place of Hearing: 10:30am on Tuesday 15th August 2006
at level 17, Mineral House, 41 George St, Brisbane

Tribunal: Mr Chris Schomburgk

Present: the applicant;
Mr Joe McCormack – Brisbane City Council

Decision:

The decision of the Brisbane City Council as contained in its written Decision Notice dated 18th July 2006 to refuse part of an application for Variation of Part 12 of the Queensland Development Code is **confirmed** and **the application is refused in part**, as per the Decision Notice.

Material Considered

The material considered in arriving at this decision comprises:

- Form 10 – Building and Development Tribunal Appeal Notice and supporting plans and documentation;
- A written statement from the applicant;
- Council’s Decision Notice dated 18th July 2006;
- The relevant provisions of the Queensland Development Code; and
- The *Integrated Planning Act 1997*.

Findings of Fact

I make the following findings of fact:

- The “subject site” has a land area of 450m². The subject site is part of a relatively new estate with many “smaller” lots with land areas down to 450m². The site backs onto open parkland.
- The application seeks a relaxation of the front boundary setback to 4.0m (as opposed to the usual 6.0m) and, while not expressly sought in the application, a relaxation of the requirement for a maximum site coverage of 50%. The Council, in its Decision Notice of 18th July 2006, approved the front boundary relaxation, but refused the relaxation of the site coverage limit.
- The proposed dwelling house is intended to comprise an area of 246.5m², which equates to a site coverage of 54.78%. The site coverage includes an open-sided “alfresco” area under the main roof of approximately 21.7m². Part 12 of the Queensland Development Code (“QDC”), defines “area” for the purposes of site coverage as, for unenclosed spaces such as the alfresco area here, being measured 0.6m inside the perimeter of the roof. The proposal plans show the roof overhang to be approximately 0.5m such that the “area” for the purposes of the QDC is lightly less than the 21.7m² shown on the plans. However, that difference is negligible in this assessment. The proposal exceeds the 50% criterion by approximately 20m².
- The proposed home is a relatively large, 4-bedroom home with a double garage built to within 0.2m of the western boundary, and 1.9m from the rear boundary, as well as 4.0m from the front (street) boundary. The home is proposed as all single storey.
- Photographs provided as part of the application material show that other new homes in the estate include two-storey homes built close to the front and side boundaries.
- If the proposed “alfresco” area was deleted, the house would comply with the site coverage requirements. This area could become an uncovered patio area for outdoor entertaining. The only other alternatives to achieve compliance would be to reduce at least one bedroom and/or part of the living area.
- The relevant provision of the QDC is Performance Criterion P3, which requires that “*adequate open space is provided for recreation, service facilities and landscaping*”, and the related A3, which provides that “*the maximum area covered by all buildings and structures roofed with impervious materials does not exceed 50% of the lot area*”. A3 is an Acceptable Solution, and as such it is open to a proponent to demonstrate that the Performance Criterion (in this case it is P3) can still be satisfied.

Based on my assessment of these facts, it is my decision that **the appeal is dismissed**. **Council’s decision** to approve the Application for Variation of Part 12 of the Queensland Development Code - is **confirmed** and **the application is refused in part**, as per the Council’s Decision Notice of 18th July 2006.

Reasons for the Decision

- The proposed house is relatively large and contained within a single storey. The allotment is relatively small (450m²).
- In my opinion, the proposal is, in simple terms, too big for the allotment, leaving little space around the house for open space, recreation, and maintenance. The Council's decision has allowed a relaxation of the front boundary setback, and the house is proposed to be built very close to the side and rear boundaries.
- It is a matter of choice as to whether a proponent chooses to build a single storey or double storey house. It is also a matter of choice as to whether a proponent chooses to build on a conventional sized allotment (600m² or thereabouts) or on a smaller allotment. However, the provisions of the QDC are intended, amongst other matters, to ensure that buildings are appropriate to the size of the allotment.
- The subject house would be appropriate on an allotment with an area in the order of 600m² or larger.
- The purpose of the relevant provision of the QDC (P3) is to ensure there are sufficient open spaces between adjoining buildings, and around a building/s on any individual allotment. I am not satisfied that the proposal as sought will achieve this objective.

Chris Schomburgk
Building and Development Tribunal General Referee
Date: 21st August 2006

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
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