



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

File No. 3/03/069

Integrated Planning Act 1997

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Brisbane City Council

Site Address: 160 Wynnum Road Norman Park

Nature of Appeal

The appeal is against the decision of the Brisbane City Council to refuse an application to vary the siting provisions of the Standard Building Regulation for the proposed construction of a deck on land described as Lot 1 on RP No 211802 situated at 160 Wynnum Road Norman Park.

Date and Place of Hearing: 9.00 am Tuesday 25 November 2003
160 Wynnum Road Norman Park
Brisbane

Tribunal: L F Blumkie

Present:

Mr C Leonard	- Applicant representative
Owners	
Mr M Liussi	- Architect adviser
Mr C Diggles	- Brisbane City Council representative
Mr L Blumkie	- Tribunal Referee

Decision

In accordance with Section 4.2.34 (2) (b) of the Integrated Planning Act **I change** the decision by the Brisbane City Council and grant a relaxation of the siting requirements to allow the proposed deck extension to be built with a clearance of 900mm to the rear boundary subject to the following conditions:-

- it is not roofed
- and is to the size and heights as shown on the submitted drawings

Background

A Proposed development.

The property has an existing house. The application is for a small deck extension (approx 4.5m x 1.7m) and external stair to an existing deck at the rear of the existing house. The proposal extends into the 1500mm minimum rear boundary clearance.

B Adjoining development

The neighbouring property to the rear is owned by the owner of the subject property. A new residence is currently being planned for the property. Plans of the proposal were tabled at the hearing.

The property to the left hand side has an existing house and swimming pool to the rear. The existing deck to the subject property overlooks this pool. The owner advised that the adjoining pool was constructed after the construction of their existing house.

C General Topography

The subject property has been excavated to the rear and is approximately 1m below the rear property. A retaining wall runs parallel to the rear boundary and is approximately 900mm in from the boundary.

D Information submitted to Council.

The application was submitted to Council as a fast track application. With fast track applications the Council relies on photographs in the application and their own records to decide the application. No inspection is carried out on the site for fast track applications.

In this case Council records and aerial photography (approximately 2 years old) indicated an adjoining house and courtyard to the rear. This house was removed and the application did not indicate this fact.

The Council representative advised at the hearing that had Council been aware the house to the rear adjoining property had since been removed and also been advised of the design and location of the proposed new house, Council most likely would have approved the relaxation.

Material Considered

In coming to a decision, consideration was given to the following material: -

- (1) Application to Brisbane City Council for relaxation of boundary clearance;
- (2) Brisbane City Council Cadastre subdivision plan dated 21 August 2003;
- (3) Plans numbered 02151A sheets 1 – 5;
- (4) Brisbane City Council decision notice dated 6 October 2003;
- (5) Correspondence from the owner of the property to the rear dated 2 August 2003;
- (6) Appeal Notice dated 11 November 2003;
- (7) Verbal submissions from Applicant, owner, owner's adviser and Council representative;
- (8) Copy of the Siting Variation (Relaxation) Application;
- (9) Copy of the proposed house plans for the adjoining property to the rear;

- (10) The Building Act 1975;
- (11) The Standard Building Regulation 1993;
- (12) The Integrated Planning Act 1997;

Findings of Fact

The siting requirements for Class 1 and 10a buildings are contained in Part 3 of the Standard Building Regulation.

Part 3 Siting requirements in particular Division 2 Boundary Clearances under Section 38, establishes amongst other things minimum boundary clearances for single detached class 1 buildings.

Under Section 38 the proposal being less than 4.5 metres in height would require a minimum boundary clearance of 1.5 metres.

The Local Government has the power to vary these requirements under both Sections 45 and 48 of the Regulation.

1. Part 3 - Siting requirements of the Standard Building Regulation

A Section 45

The Local Government has the right to prescribe alternative siting requirements under Section 45 of the Standard Building Regulation for Class 1 and 10 buildings or structures.

The Brisbane City Council has not prescribed alternative siting requirements.

B Section 48

Section 48 of the Standard Building Regulation provides power for the Local Government to vary the requirements of Division 2. In considering the variations to the requirements the Local Government must consider the criteria as set out in sections 48(3) and 48(4).

Reasons for the Decision

Consideration of this criteria is as follows: -

1 Section 48(3) from (a) to (f)

(a) the levels, depth, shape or conditions of the allotment and adjoining allotments.

The subject allotment has been excavated to the rear and is some 900mm below the adjoining rear allotment. This fact reduces the impact of the proposed deck extension.

(b) the nature of any proposed building or structure on the allotment.

The existing deck is small and is cramped for more than 2 people. The enlarged deck will eliminate this problem and will also provide better views.

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

The adjoining allotment to the left has an existing residence and swimming pool.

The owner of the subject property also owns the property to the rear. They are currently finalising plans for the construction of a new residence. The drawings were tabled at the hearing.

The new residence is proposed as a two-storey building and currently has a proposed side boundary clearance of 2650mm to the subject property rear boundary.

(d) whether the allotment is a corner allotment.

It is **not** a corner allotment.

(e) whether the allotment has two road frontages.

The allotment does **not** have two road frontages.

(f) any other matter it considers relevant.

It is noted the existing deck overlooks the left hand neighbours swimming pool. The proposed extension has no impact on the left hand neighbouring property including swimming pool.

2 Section 48(4) from (a) to (g).

In considering this legislation it is important to note that the proposal would not **unduly** affect the following criteria.

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

Taking into account the use and location of the existing and proposed adjoining developments, the proposal, in my opinion, will not unduly obstruct natural light or ventilation of the adjoining allotments.

(b) interfere with the privacy of an adjoining allotment.

The proposal would not unduly interfere with the privacy of the adjoining allotments. The proposed deck extension is further back from the left hand side boundary than the existing deck and therefore does not reduce the privacy.

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

The proposal would not unduly restrict the areas of the allotment suitable for landscaping.

(d) obstruct the outlook from adjoining allotments.

The proposal not unduly obstruct the outlook from adjoining allotments.

(e) overcrowd the allotment.

In my opinion, the proposal does not unduly overcrowd the allotment. Any development to the rear adjoining property will require the minimum boundary clearance as set out in the Standard Building Regulation.

If the proposal for the rear property proceeds as planned with a 2650mm side boundary clearance and taking into account the relaxation to 900mm for the proposed deck than this will achieve a total separation distance of 3550mm between buildings.

The proposed relaxation in my opinion would not indicate overcrowding of the subject property.

The site cover of the subject is nominated in the application as approximately 50%.

(f) restrict off-street parking for the allotment.

The proposal does **not** restrict off-street parking. It has no impact on parking.

(g) obstruct access for normal building maintenance.

The proposal would not obstruct access for normal building maintenance.

Taking into account the proposal and all the criteria referred to under Section 48 of the Standard Building Regulation, I am of the opinion it would be reasonable to grant a relaxation and allow the proposal to be built with a clearance of 900mm to the rear boundary subject to the following conditions:-

- it is not roofed, and
- is to the size and heights as shown on the submitted drawings.

Leo F Blumkie
Building and Development
Tribunal Referee
Date: 26 November 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:

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