



APPEAL

File No. 3/03/015

Integrated Planning Act 1997

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Caboolture Shire Council

Site Address: 313 Uhlmann Road Burpengary

Nature of Appeal

The appeal is against the decision of the Caboolture Shire Council to refuse an application for the relocation of a removal dwelling on amenity and aesthetics grounds.

Date and Place of Hearing: 10.00 am Friday 4 April 2003

An inspection of the dwelling located at 313 Uhlmann Road Burpengary, was followed by a hearing at the Caboolture Shire Council, Shire Administration Centre, 2 Hasking Street, Caboolture.

Tribunal:

Phil Breeze	-	Aesthetics Referee
John Rauber	-	Aesthetics Referee
L F Blumkie	-	Aesthetics Referee (Chairperson)

Present:

Owner		
Observer		
Mr Chris Harris	-	Caboolture Shire Council
Mr L Blumkie	-	Tribunal Chairperson
Mr Phil Breeze	-	Tribunal Member
Mr John Rauber	-	Tribunal Member

Decision

In accordance with section 4.2.34(2) of the Integrated Planning Act the Tribunal **confirms** the decision of the Caboolture Shire Council.

Background

- Additional accommodation was needed on site for the owner's elderly mother.
- In response to a newspaper advertisement (granny flat) the owner purchased 3 relocatable units for relocation onto the subject property as a granny flat.
- The owner advised they received verbal advice from the Caboolture Shire Council that no approval was required to locate the units on the subject property.
- The owner advised that the seller of the units arranged for an Engineer (Mr Mark King - RPEQ 2878) to prepare drawings of the units.
- The drawings consisted of a floor plan, elevations and photographs.
- No site plan was included.
- The owner prepared a rough (not to scale) site plan on the back of one the sheets.
- These drawings and photographs were used to obtain lending authority approval for an increase of the house loan.
- The owner received an extension to the loan and arranged to have the units relocated to the site without any approval. This occurred in mid January 2003.
- The site was excavated to obtain a somewhat level area to place the units.
- Towards the end of January Caboolture Shire Council received numerous complaints from local residences.
- As a result of the complaints a Caboolture Shire Council officer inspected the property on 21 January 2003.
- A Show Cause notice was issued on the 24 January 2003.
- The owner made application on the 24 January 2003 to the Caboolture Shire Council for an amenity and aesthetics assessment.
- On the 31 January 2003 Caboolture Shire Council refused the application for relocation of the units on amenity and aesthetic grounds.
- An appeal was lodged with the Registrar of Building and Development Tribunals on the 5 March 2003.
- It is noted the plans accompanying the application were different to the buildings located on site in that the plans show:-
 - (a) the building raised approximately 1000mm above ground, whereas they are currently located directly on the ground; and
 - (b) four units but only three units are currently located on site.
- The owner was not sure what was included in the application lodged with Council.

Material Considered

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

1. Copy of Caboolture Shire Council Tax Invoice for the Amenity & Aesthetics Impact Report.
2. Copy of the application form to Caboolture Shire Council for Amenity & Aesthetics assessment.

- 3 Copy of the site plan, plans, elevations and photographs accompanying the application.
- 4 Copy of the Caboolture Shire Council checklist in relation to the application, confirming the application was for an amenity & aesthetics assessment.
- 5 A written statement from the applicant dated 6 February 2003.
- 6 Copy of correspondence from Caboolture Shire Council dated 31 January 2003 signed on behalf of Mr Chris Harris.
- 7 Copy of correspondence from Caboolture Shire Council dated 31 January 2003 signed by Mr Chris Harris.
- 8 Copy of the appeal received by the Registrar on the 5 March 2003.
- 9 Copy of the Caboolture Shire Council Policy Procedure dated 19 February 2002 in relation to the Caboolture Shire Council's resolution on Amenity and Aesthetics
- 10 Complaints from concerned residences in the neighbourhood dated 20 January 2003, 21 January 2003, 5 February 2003 and 18 February 2003.
- 11 Verbal submissions by the owner on 4 April 2003.
- 12 Verbal submissions from the Mother of the owner on 4 April 2003.
- 13 Verbal submissions by Mr Chris Harris.
- 14 The Standard Building Regulation.
- 15 The Building Act.
- 16 The Integrated Planning Act.

Findings of Fact

Section 50 of the Standard Building Regulation grants power to Local Government to establish an amenity and aesthetics policy.

Caboolture Shire Council adopted an amenity and aesthetics policy under Section 50 of the Standard Building Regulation on 5 September 2000 and amended the policy procedure on the 19 February 2002, which amongst other things required class 1 removal buildings to be assessed by Council on the amenity and aesthetics aspects of the proposed building work.

The policy under section 4 "Guidelines" stipulated specific conditions in relation to the style of the building.

The site was a corner allotment and the units had been located between the existing house and the side street clearly visible from Uhlmann Road.

An inspection of the buildings on site indicated considerable difference to that shown in the application to Council namely:-

- The application indicated 4 units to be relocated, only 3 were on site.
- The application elevations indicated the units would be approximately 1m above ground level on columns; the units were located directly on the ground.

The site had been excavated to form a rough level platform to locate the units. The units were not level and one had obviously sunk due to settlement caused by recent rain.

The owner explained that they had a number of additional proposals in mind that were not shown in the application namely:-

- A roofed veranda was proposed for the side facing the side street.
- The units were to be connected to the existing house via an enclosed link.
- Imitation brick was being considered for the external walls to match the brick walls of the existing house.
- A shower, toilet and sink were to be included.
- The perimeter of the house at ground level was to be enclosed and a path added to shed water.
- The roof would be painted green to match the house.

The Council representative advised at the hearing that:-

- The application also contravened the planning scheme.

An inspection of the neighbourhood revealed no other similar style buildings. The majority of residential developments in the neighbourhood were class 1 dwellings mostly brick slab on ground construction with a pitched colorbond or tile roof. Some also had class 10 buildings with colorbond external sheeting and colorbond pitched roof.

Reasons for the Decision

The Caboolture Shire Council's amenity and aesthetics policy appears to have been correctly established and is applicable to the site.

In the opinion of the Tribunal-

- The proposed building as shown in the application with
 - external metal sheeting
 - flat roof with no overhang
 - the units located between the existing house and the street corner
 - various types and size of windows
 - external air conditioning units attached to the walls etc,

will have an extremely adverse effect on the amenity or likely amenity of the building's neighbourhood and the aesthetics of the building will be in extreme conflict with the character of the building's neighbourhood.

The Tribunal considered the application was not a properly prepared application and did not clearly indicate the intentions of the owner in that the owners were:-

- not sure what had been proposed in the application
- unaware that 4 units were shown on the application and 3 were located on site
- not aware of the problems created by locating the units directly on the ground

- not aware of the need to protect against white ant infestation
- not aware of the amount of bond money required by Council as part of the approval for removal buildings
- not aware of the problems created by ponding water under the units
- not aware of Caboolture Shire Council planning requirements etc.

As a result of the above facts and circumstances and in accordance with section 4.2.34(2) of the Integrated Planning Act the Tribunal confirms the decision of the Caboolture Shire Council.

RECOMMENDATION

It is recommended the owner discuss the need for the additional accommodation (granny flat) with the Caboolture Shire Council and obtain a clear understanding of all the issues involved and approvals required in relation to the proposal, including planning requirements and contractor/owner builder registration.

Leo F Blumkie
Building and Development
Tribunal Chairperson
Date: 15 April 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