



APPEAL
Integrated Planning Act 1997

File No. 3/03/026

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Brisbane City Council

Site Address: 1 Sandon Street, Graceville

Nature of Appeal

Appeal under section 21 of the Standard Building Regulation 1993, against the decision of the Brisbane City Council not to grant a relaxation of the road boundary setback requirements for the erection of an open carport on land described as Lot 1 on RP No. 89218 and situated at 1 Sandon Street, Graceville.

Date and Place of Hearing: 10.00 am on Tuesday, 13 May, 2003
at 1 Sandon Street, Graceville.

Tribunal: Georgina J Rogers

Present: Applicant
Mr Rob Dix – Brisbane City Council representative

Decision

The decision of the Brisbane City Council as contained in its letter dated 4 April 2003 (Reference: DRS/BLD/A03-1214858) not granting approval to vary the siting requirements of a carport which is proposed to be erected within the restricted building zone adjacent to the road boundaries of the corner of the site is set aside and the following decision replaces the decision set aside:-

The setback distance to the outermost projections of the carport is to be minimum 6.0m from the corner of the site adjacent to the road frontages being the corner of Sandon Street and Park Road. The carport is to have a maximum height of 2.1m at the outermost projection and to have a maximum roof pitch of 10 degrees and is not to be enclosed as this may impede the view of oncoming traffic.

Background

The site has an existing lowset dwelling and it is proposed to erect a new carport near the entry of the dwelling. It is proposed to erect the open carport where a portion of it falls within the 12m restricted building zone adjacent to the road boundary setbacks adjacent to the corner of Sandon Street and Park Road.

Material Considered

1. Appeal documentation including drawings detailing the proposed carport and existing dwelling.
2. Verbal submission by the applicant and reasons for construction of the open carport staircase within the restricted road boundary setback area.
3. Correspondence from the Council dated 4 April 2003 refusing the request to permit construction in lieu of the required road boundary clearance from the corner of 12.000m.
4. Verbal submission by the representative of the Brisbane City Council outlining the Council's assessment of the application and giving its reasons for refusal of the construction permit sought.
5. Verbal submission from the applicant.
6. Assessment of the neighbourhood and traffic visibility in relation to the construction of the proposed open carport.

Findings of Fact

I made the following findings of fact:

1. The site at 1 Sandon Street, Graceville is within a relatively flat neighbourhood and the site is consistently level. The site is irregular in shape, having an acute angle to the corner of the site adjacent to the road junction of Sandon Street and Park Road.
2. The site is located on a corner lot and has a frontage to Sandon Street and Park Road. Sandon Street is a T-junction to Park Road. It is proposed to erect the carport to face Sandon Street, which appears to be the quieter of the two streets.
3. The dwellings constructed within the immediate vicinity appear to be a mix of mid-1900s construction, however there appears to be significant reconfiguration of sites within the neighbourhood and the infilling of these sites with homes of similar design.
4. The neighbourhood consists of a mix of one and two storey dwellings.
5. Under section 48 of the Standard Building Regulation 1993, the local government may vary the application of Division 2 – boundary clearances.
6. In assessing the application of section 48.(3) of the Standard Building Regulation 1993, the local government was 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. The allotment is irregular in shape and is currently accessed directly from Sandon Street with the existing approved driveway being where the proposed carport is to be erected.

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

The structure to which the application is relevant is proposed to be an open carport adjacent to the existing lowset dwelling. The proposed carport is to be setback 1.5m from the Sandon Street boundary alignment and 2.0m from the Park Road boundary alignment and 6.0m from the corner alignment.

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

The neighbourhood consists of similar single and two-storey dwellings. The adjoining neighbours would not be affected by the location of the proposed open carport.

(d) whether the allotment is a corner allotment.

The allotment is a corner allotment fronting both Sandon Street and Park Road. Sandon Street forms a T-junction with Park Road. The proposed open carport does not impact upon the road frontage setbacks. The proposed setback from Sandon Street is to be 1.5m and is parallel to the Street. The proposed setback from Park Road is to be 2.0m at the outermost projection and the open walls will be at an angle to Park Road.

(e) whether the allotment has 2 road frontages.

The allotment has two (2) road frontages. Vehicle access is from Sandon Street where it is proposed to construct the open carport.

(f) any other matter considered relevant

The proposed open carport in the restricted building zone of the corner of the allotment raises the issue of restricting traffic visibility at the intersection of Sandon Street and Park Road. The Brisbane City Council allows 2.0m high fencing to be constructed around the boundary of a site and does not discourage the planting of dense foliage within a site. This practice is evident within the neighbourhood. The construction of the open carport will not further reduce the traffic visibility.

It is proposed to limit the height of construction at the outermost projection to 2.1m, the roof pitch to 10 degree and to impose the condition that the carport is not to be enclosed at any time.

7. In assessing the application of Section 48.(4) of the Standard Building Regulation 1993, the local government must be satisfied that the amended proposed road boundary clearance on the allotment would not unduly –

- *Obstruct the natural light or ventilation of any adjoining allotment.*

The 6.0m corner road boundary clearances of the site at the point of the road intersection, being the corner of Sandon Street and Park Road, to the outermost projection of the proposed open carport will have nil impact on the existing natural light and ventilation of the adjoining allotments.

The 1.5m and 2.0m road boundary clearances from Sandon Street and Park Road, respectively to

the outermost projection of the open carport will have nil impact on the natural light or ventilation of the adjoining allotments.

- *Interfere with the privacy of an adjoining allotment.*

The 6.0m corner road boundary clearances of the site at the point of the road intersection, being the corner of Sandon Street and Park Road, to the outermost projection of the proposed open carport will have nil impact on the privacy of the adjoining allotments.

The 1.5m and 2.0m road boundary clearances from Sandon Street and Park Road, respectively to the outermost projection of the open carport will have nil impact on the privacy of the adjoining allotments.

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

The 6.0m corner road boundary clearances of the site at the point of the road intersection, being the corner of Sandon Street and Park Road, to the outermost projection of the proposed open carport will have nil impact on the area of the allotment suitable for landscaping.

The 1.5m and 2.0m road boundary clearances from Sandon Street and Park Road, respectively to the outermost projection of the open carport will have nil impact on the area of the allotment suitable for landscaping.

A substantial area will remain landscaped adjacent to the street frontages and the outdoor recreation areas will remain.

- *Obstruct the outlook from adjoining allotments.*

The 6.0m corner road boundary clearances of the site at the point of the road intersection, being the corner of Sandon Street and Park Road, to the outermost projection of the proposed open carport will not unduly obstruct the outlook from adjoining allotments, as the adjoining dwellings are located away from the proposed structure.

The existing dwelling is single two-storey. With the proposed open carport the outlook from the adjoining allotments should not change significantly and therefore not unduly obstruct their outlook.

- *Overcrowd the allotment.*

The 6.0m corner road boundary clearances of the site at the point of the road intersection, being the corner of Sandon Street and Park Road, to the outermost projection of the proposed open carport will not overcrowd the allotment.

With the increased building works site cover will remain below 50%.

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

The proposed open carport will not affect off-street parking. This structure provides cover to the existing off-street parking.

The area available for carparking off-street will not change with the proposed construction.

8. Based on the above facts it is considered the appeal is proven.

Reasons for the Decision

An assessment of Section 48.(3) and (4), did not identify any valid reason for refusing the construction application.

GEORGINA J ROGERS
Building and Development
Tribunal Referee
Date: 28 May 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
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