



Building and Development Tribunals

Queensland Government

Department of **Local Government and Planning**

APPEAL

File No. 3/07/005

Integrated Planning Act 1997

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Toowoomba City Council

Site Address: *withheld*-“the subject site”

Applicant: *withheld*

Nature of Appeal

The appeal is against the decision of the Toowoomba City to issue an enforcement notice in relation to a carport on land described as “the subject site”.

Council considers that the building work contravenes the development approval, because the perimeter of the carport, located within 6m of the street boundary, is enclosed more than the maximum 15% permitted under acceptable solutions of the Queensland Development Code (QDC).

Date and Place of Hearing: 10.30 am Monday 5 February 2007
At “the subject site”

Tribunal: Mr L F Blumkie Tribunal

Present: Applicant / Owner
Mr L Ross Ford Toowoomba City Council representative
Mr L Blumkie Tribunal

Decision

The Tribunal, in accordance with Section 4.2.34 (2) (b) of the *Integrated Planning Act 1997*, changes the conditions of the Toowoomba City Council "Enforcement Notice", dated 13 December 2006 by deleting the words "*.....removal of the brick wall and battens from the carport. You are required to do this by 4pm on Tuesday 16 January 2007.*" and replacing them with the following:

- ".....removing every second batten from both bays of battens (approximately 8 battens in each bay) above both existing brick walls to the carport, so that voids of approximately 91mm x the width of each opening are created between each remaining batten.
- The work to be completed within 30 days of the date of this decision unless otherwise extended by the Toowoomba City Council before the expiry date.
- Submitting an amended Building Application indicating the existing brick piers, brick walls (approximately 1m high) to both bays and the horizontal 55mm wide battens spaced 91mm apart to both bays
- Obtaining a final inspection certificate from the Toowoomba City Council on completion of the rectification work."

Background

The site is a corner allotment located on the corner of *withheld* and *withheld*, Toowoomba.

A variation approval was given by Toowoomba City Council on 4 November 2003 to locate portion of a carport (approximately a 1.2m truncation) within the required setback of corner truncation requirements of the QDC.

A development approval was given to a BSA licensed builder on 24 November 2003 for a 6m x 6m open carport with a flat roof supported on five - 75mm square steel posts in conjunction with the above variation approval.

The carport is located 6m from *withheld* and 3.1m from *withheld*. That is, it is located within the 6m *withheld* setback. It was approved as an open carport. The 75mm square steel posts satisfied the 15% open for the total perimeter of the carport located within the *withheld* setback.

The work was completed however no final inspection has yet been requested.

Subsequent to completion of the carport, the owner claims to have had problems with people in the neighbourhood trespassing on his property by cutting the corner and walking through the carport.

In order to stop the trespassing, he decided to enclose one side of the carport with a 1m high brick wall to both bays and enclosing above the brick walls with horizontal battens. In carrying out the brick walls he also decided to (enhance the appearance of the carport) by encasing the steel columns with approximately 350mm square brick piers.

No advice or approval was sought for this work.

The perimeter of the carport located within the *withheld* setback is approximately 11.8m (15% of this perimeter is 1.77m).

The 3 brick piers located within the required setback (i.e. 5 elevations at 350mm wide) total 1.75m. Hence the brick piers themselves make up the 15% allowed under QDC Part 12.

The brick walls to each bay are approximately 1m high. The horizontal battens are 55mm wide and are spaced approximately 18mm apart.

The non-complying bay of brick wall and battens, together with the brick piers, add up to an enclosure well above the allowed 15%.

Council received a verbal complaint about the carport being enclosed and after a site inspection on the 5 October 2006, issued a show cause notice to the owner on 6 November 2006.

The owner had verbal discussions with a Council officer, however he was unable to satisfy Council. Hence Council issued an "Enforcement Notice" to the owner on 13 December 2006.

An appeal was lodged with the Registrar on the 10 January 2007.

Material Considered

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

1. Twelve photographs of the existing carport.
2. Copy of the Council Decisions dated 6 October 2006 and 13 December 2006.
3. Copy of the Appeal Notice dated 10 January 2007.
4. Verbal submissions from the applicant.
5. Verbal submissions from the Toowoomba City Council representative.
6. The Building Regulation 2006.
7. The *Integrated Planning Act 1997*.
8. The Queensland Development Code (QDC).
9. Copy of the variation approval for the carport.
10. Copy of the development approval for the carport.

Findings of Fact

A Queensland Development Code (QDC) Part 12.

Part 12 Clause A1 (c) requires, as a acceptable solution, "*the aggregate perimeter dimension of walls, solid screens, and supports located within the setback not to exceed 15% of the total perimeter dimension (along the line of supports) of that portion of the carport within the same setback.*"

B Site

The site is a corner allotment developed with an existing class 1 building, carport and swimming pool. The existing carport is located within the 6m *withheld* setback.

The site, from the photographs presented, is relatively level.

C Development in the neighbourhood.

Photographs of the immediate neighbourhood indicate other class 10 buildings (garages) located within the street setback. Council was aware of one having an approval and explained that there were specific reasons for this approval.

D Existing Car accommodation

At the time of receiving approval for the carport, the then existing car accommodation was converted, with Council approval, to habitable space.

G Council representative advice

The Council representative explained as follows:

- the existing battens were not considered 'open' as the voids (18mm wide) were less than 50% of the in-fill (battens 55mm).
- Lattice or battens with voids 50% or more were considered open and would not be counted in the 15% as nominated in Part 12.

Reasons for the Decision

The existing enclosure of the carport with:

- encasing of the steel columns with 350mm square brick columns; and
- solid brick walls between the brick piers to a height of 1m; and
- 55mm battens spaced 18mm apart above the brick walls (not considered open),

totals approximately 33% of the perimeter, within the setback, being enclosed.

Applying the acceptable solutions of Part 12 it would be possible to locate a 1m high brick wall adjacent to the existing carport running from the house to the *withheld* boundary. If this were to be done the existing brick walls to the carport would not be easily seen. Hence, removing the brick walls to the carport would not change the appearance if such a wall were to be built.

In my opinion the carport, with its current enclosures, does not appear to be an open carport, which I believe is the intention of Part 12 Performance Criteria. However, if the horizontal battens to both bays were to be spaced further apart, it would help create a more open appearance.

Removing every second batten to both bays would provide voids 91mm high compared to battens 55mm i.e. 60% opening to each battened section. It would also more than satisfy Council's policy of battens/lattice having at least 50% opening.

The Council representative agreed that leaving the brick walls to both bays, the brick piers and removing every second batten to both openings, would be acceptable solution to Council.

The owner acknowledged that, under the circumstances, this was an acceptable approach.

The proposal was also considered under the performance criteria of Part 12 as follows:

The structure:

- facilitates an acceptable streetscape from a bulk point of view.
- has no impact on setbacks of neighbouring buildings or structures.
- does not unduly interfere with the outlook and views of neighbouring residents.
- does not create a nuisance nor is it a safety hazard for the public. Traffic sight visibility lines are not affected.
- allows adequate daylight and ventilation to habital rooms on the subject property.
- has no effect to light and ventilation to habital rooms of buildings on adjoining lots.
- allows for more than adequate space for recreation, service facilities and landscaping.

- does not overshadow adjoining houses.
- does not unduly obstruct the outlook from adjoining lots.
- provides adequate visual privacy for neighbours.
- allows for normal building maintenance.
- allows for adequate sight lines.
- allows for adequate parking on site.

In the opinion of the Tribunal, the existing structure, with the changes agreed satisfies the performance criteria established under Part 12 of the Queensland Development Code.

Hence, The Tribunal, in accordance with Section 4.2.34 (2) (b) of the *Integrated Planning Act 1997*, changes the conditions of the Toowoomba City Council "Enforcement Notice", dated 13 December 2006 by deleting the words "*.....removal of the brick wall and battens from the carport. You are required to do this by 4pm on Tuesday 16 January 2007.*" and replacing them with the following:

- "*.....removing every second batten from both bays of battens (approximately 8 battens in each bay) above both existing brick walls to the carport, so that voids of approximately 91mm x the width of each opening are created between each remaining batten.*
- *The work to be completed within 30 days of the date of this decision unless otherwise extended by the Toowoomba City Council before the expiry date.*
- *Submitting an amended Building Application indicating the existing brick piers, brick walls (approximately 1 m high) to both bays and horizontal 55mm wide battens spaced 91mm apart to both bays.*
- *Obtaining a final inspection certificate from the Toowoomba City Council on completion of the rectification work."*

Leo F Blumkie
Building and Development
Tribunal
Date: 9 February 2007

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:

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