



APPEAL

File No. 3/02/001

Integrated Planning Act 1997

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Caboolture Shire Council

Site Address: 131 The Esplanade Ningi

Nature of Appeal

The appeal is against the decision of the Caboolture Shire Council to refuse an application for a boundary relaxation for the erection of a carport.

Date and Place of Hearing: 10.15 am Thursday 21 February 2002
131 The Esplanade Ningi

Tribunal:

L F Blumkie	-	Chairperson
Phil Locke	-	Tribunal Member
Geoff Cornish	-	Tribunal Member

Present:

Applicant / Owner		
Mr Chris Harris	-	Caboolture Shire Council
Mr L Blumkie	-	Tribunal Chairperson
Mr G Cornish	-	Tribunal
Mr P Locke	-	Tribunal

Decision

In accordance with section 4.2.34 of the Integrated Planning Act 1997, the Tribunal changes the decision of Caboolture Shire Council and varies the application with the consent of the appellant to allow the carport to be erected within the minimum boundary clearances subject to the following conditions:-

1. The setback to the street frontage is in line with the roof line of the existing veranda;

2. The height of the roof is in line with the existing veranda roof at the fascia line to the street frontage;
3. The side boundary clearance is a minimum of 500 mm;
4. A complete stormwater drainage system to Council satisfaction is provided;
5. The maximum depth of the roof structure is no greater than the depth of the existing adjoining veranda roofs;
6. The detailing of the roof including beams, fascia and gutter is similar to the adjoining existing veranda roofs;
7. The carport is open 100% on the side boundary i.e. no enclosing lattice or similar material;
8. The finished colours match the existing colour scheme of the residence.

All subject to the appellant submitting a satisfactory amended application to the Tribunal within 6 weeks from the date of this decision, unless the time is otherwise extended by the Tribunal before the expiry date.

Background

The matter concerns an application for a concession to enable the construction of covered car accommodation on a property where no car accommodation currently exists and the only available area lies within the front boundary setback of the property.

The property was redeveloped in 1991 involving the demolition of previous car accommodation including a garage within the front setback and a carport attached to the residence behind the 6-metre front boundary setback line.

It is noted the site plan forming part of the approval in 1991 incorrectly indicated a future carport between the existing residence and the southwest side boundary. In actual fact there was insufficient space to erect a carport in this position. The appellant verbally advised that Council approved an amended site plan showing the correct distance to the side boundary and agreed to forward a copy of the confirming Council correspondence to the Tribunal.

The neighbours on the eastern side raised objections with the Council with respect to the proposed carport, leading to Council's refusal of the application.

The applicant lodged an appeal on 20 December 2001 to Building Codes Queensland. Mr Geoff Cornish was appointed as referee and he determined that the application was assessed against the provisions of a duly resolved Amenity and Aesthetics Policy of Council, adopted under the provisions of section 50 of the Standard Building Regulation. He therefore did not have jurisdiction to determine the appeal.

This Tribunal was then established under the Amenity and Aesthetics provisions of the Integrated Planning Act.

Material Considered

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

1. Letter from the applicants, dated 7 September 2001, to Caboolture Shire Council requesting the required relaxation.

2. A further letter from the applicants, dated 15 October 2002, to Caboolture Shire Council providing additional information required by Council, including detailed reasons, the written consent of one neighbour, a copy of the redevelopment plans approved in 1991 and sketch plans of the current proposal.
3. Council's letter dated 25 October 2001 to the eastern neighbour advising of the application and requesting advice as to any objections.
4. Facsimile from the eastern neighbour dated 1 November 2001 requesting further information from Council.
5. Letter from the eastern neighbour to the Mayor of Caboolture Shire Council, dated 9 November 2001, requesting action and advice.
6. Report of the investigating building surveyor to the principal building surveyor, dated 22 November 2001, pursuant to the provisions of Section 48 of the Standard Building Regulation and recommending that the application be refused.
7. Letter from the Council to the applicants, dated 23 November 2001, advising of the refusal of the application and that an avenue of appeal was available to the applicants.
8. Letter from the applicants, dated 26 November 2001, to Council requesting the release of Council's records relating to the application.
9. Letter from the applicant, dated 27 November 2001, to Council requesting advice as to the reasons for refusal and possible alternative solutions.
10. E-mail from the applicants to Council, dated 5 December 2001, again requesting advice on their letters of 26 and 27 November 2001.
11. Letter from Council to the applicants, dated 7 December 2001, regarding a freedom of information application.
12. Freedom of information request form dated 10 December 2001.
13. Letter and appeal form from the applicants to Building Codes Queensland, dated 20 December 2001, submitting the appeal.
14. Letter from the applicants to Building Codes Queensland, dated 21 December 2001, submitting further information relating to the appeal.
15. Council's Amenity and Aesthetics Policy.
16. Council's resolution of 5 September 2000 adopting the Amenity and Aesthetics Policy.
17. Photographs of the existing car/boat accommodation existing on the site at the time of the approved redevelopment in 1991.
18. Verbal submissions by the eastern neighbours on 21 February 2002.
19. Verbal submissions by the applicants on 21 February 2002.
20. Verbal submissions by Chris Harris of Caboolture Shire Council setting out Council's reasons for refusal.
21. The Standard Building Regulation 1993.
22. The Building Act 1975.
23. The Integrated Planning Act 1997.

Findings of Fact

Division 2 *Boundary clearances* of the Standard Building Regulation 1993 establishes concessions for open carports in relation to road and side boundary clearances provided specific conditions are satisfied.

Caboolture Shire Council adopted an Amenity and Aesthetics Policy under section 50 of the Standard Building Regulation on 5 September 2000, which amongst other things established conditions for carports located in residential zones within the Caboolture Shire Council area.

The conditions included height restrictions in relation to the side and rear boundary clearances. The heights must not exceed the heights as set out in Figure 1 of the Policy.

The proposal exceeded the heights required by Figure 1 of the Policy.

Both the subject property and the eastern adjoining property have a front boundary line, which is at approximately 30 degrees to the side boundaries.

This situation means that any relaxation to the road boundary clearance on the reduced side has a greater effect on the amenity of the adjoining property.

A detailed inspection of the adjoining property, on the reduced site indicated that the proposed carport with a pitched roof would have an **extreme** detrimental effect on the outlook from the property, particularly from within the existing residence.

The applicant was of the opinion that a pitched roof closely matching the pitch of the existing house was necessary to maintain the architectural character of the overall development of the site thereby maintaining the property value.

The Tribunal was of the opinion this could be achieved by locating the carport in another position within the front boundary clearance. However this would require an amended submission to Council to enable comments from the adjoining owner on the southern side (opposite side).

The Tribunal was of the opinion that if the roof to the carport was kept in line with the roof of the existing verandas, similar in design (flat roof) and was totally open it would not have an extreme effect on the outlook of the eastern neighbour.

It was noted that the drive way and hard standing for vehicles is complete and is located approximately 700mm from the eastern side boundary.

Figure 1 as contained in the Council Amenity and Aesthetics Policy was difficult to interpret and the Council representative was unable to assist in this regard, but advised that Council had recently amended the policy and Figure 1 was no longer applicable.

Reasons for the Decision

The Caboolture Shire Council's Amenity and Aesthetics Policy, which the Department of Local Government and Planning confirmed was correctly established, is applicable to the site. The height of the proposed carport would appear to exceed the height required by Figure 1 as contained in the Policy.

In the opinion of the Tribunal the height of the pitched roof in the proposal, particularly when only 1 metre from the front alignment and 200mm from the eastern side boundary, would have an **extreme** detrimental effect on the outlook of the eastern neighbour.

The Tribunal considered that it was possible to amend the application and meet the needs of both the applicant and adjoining eastern neighbour. Key issues considered by the Tribunal were: -

- Side boundary setback. In this regard the existing driveway was some 700mm from the boundary, hence it was not considered detrimental if the carport was located 500mm from the side boundary. This would allow the support posts to be located outside the driveway without any cutting of concrete.
- Front boundary setback. The carport located in line with the existing veranda roof would be approximately 1 metre from the front alignment at its nearest point. This provides adequate protection for two normal sized vehicles parked side by side.
- Height of the carport. The height and shape of the carport roof in order to maintain the views of the eastern neighbour needs to be as least obtrusive as possible. This can be achieved with a minimum pitched roof similar to the existing veranda roofs. Architecturally, if the roof were to align in height with the existing veranda roof, it would be in keeping with the character of the existing house and would allow the parking of a four-wheel drive vehicle.
- Architectural character. The detailed design of the roof needs to be similar to the existing veranda roofs complete with ornamental treatments and finished colours.
- Views from the eastern neighbour. Due to the splayed frontage and the carport located 1 metre from the front boundary at its nearest point the proposal has a greater effect on the adjoining neighbour than that on a normal rectangular shaped block. Hence in this regard the carport should be 100% open on the side boundary side. This would allow continued views above the fence through the carport and above the flat roof.
- Stormwater drainage. The proposal should include a complete stormwater drainage system designed and installed to the satisfaction of the Caboolture Shire Council.
- Detailed design. The connection of the carport with the existing veranda roofs is a complex matter with regard to flashings, falls and structural design. It requires the input of a design professional.

The above considerations were discussed in detail with the appellants and agreed that if they decided to continue with the carport in the proposed location they would amend the application to include all the above conditions.

Because of the complex nature of the overall new design, the Tribunal decided it would be necessary to view and confirm the amended application before finalising the appeal. The appellant agreed to decide the matter and if proceeding, provide amended drawings to the Tribunal within 6 weeks from the date of this decision. If required the Tribunal would extend the date, provided the reasons were satisfactory to the Tribunal and the request for extension was received before the expiry date.

Hence, in accordance with section 4.2.34 of the Integrated Planning Act the Tribunal decided to change the decision of Caboolture Shire Council and vary the application with the consent of the appellant to allow the carport to be erected within the minimum boundary clearances subject to the following conditions: -

1. The setback to the street frontage is in line with the roof line of the existing veranda;
2. The height of the roof is in line with the existing veranda roof at the fascia line to the street frontage;

3. The side boundary clearance is a minimum of 500 mm;
4. A complete stormwater drainage system to Council satisfaction is provided;
5. The maximum depth of the roof structure is no greater than the depth of the existing adjoining veranda roofs;
6. The detailing of the roof including beams, fascia and gutter is similar to the adjoining existing veranda roofs;
7. The carport is open 100% on the side boundary i.e. no enclosing lattice or similar material;
8. The finished colours match the existing colour scheme of the residence.

All subject to the appellant submitting a satisfactory amended application to the Tribunal within 6 weeks from the date of this decision, unless the time is otherwise extended by the Tribunal before the expiry date.

Leo F Blumkie
Building and Development
Tribunal Chairperson
Date: 5 March 2002

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
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