

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Brisbane City Council

Site Address: 266 Appleby Road, Stafford Heights

Appeal Details: The appeal is against the decision of the Brisbane City Council under Section 48 of the Standard Building Regulation not to permit the erection of a garage in a position having a clearance of 2.000m from the Tasman Street road boundary and a clearance of 0.000m from the southern side boundary and a total length on the boundary of 11.300m in lieu of the maximum of 9.0m

Date of Hearing: 10:00 am on Thursday, 19 April, 2001 at 266 Appleby Road, Stafford Heights.

Tribunal: David Kay

Present: The Applicants
Grant Johnsen (Brisbane C.C.)
Errol George (Brisbane C.C.)
Cory Roza (Brisbane C.C.-observer)

Decision

The decision of Brisbane City Council dated 28 February, 2001 to refuse the application for a variation under Section 48 of the Standard Building Regulation 1993 is set aside and is replaced by the following decision –

“The conversion of an existing carport having a length of 11.3 metres along the southern side boundary of 266 Appleby Road and 2.0 metres from Tasman Street with a height of approximately 2.6 metres to an enclosed garage of the same dimensions is approved subject to the following conditions –

- (1) The roof structure of the garage is to be supported with suitable columns (e.g. steel) fixed to the top plate such that the structure will remain standing if the existing boundary wall is removed.
- (2) The external leaf (skin) of the brick wall on the boundary is to be reduced to a maximum height of 2.0 metres on the side of 264 Appleby Road, no longer supporting the garage structure on 266 Appleby Road and reverting the brick wall to a brick dividing fence.
- (3) The internal leaf (skin) of brick wall on the boundary wall of 266 Appleby Road is to have the existing window openings protected by -
 - (a) closing up with brick work or
 - (b) providing non openable fire windows having a FRL of -/60/- or
 - (c) compliance with a performance solution to achieve the required level of protection specified in the Building Code of Australia.”

Material Considered

Relaxation from Brisbane City Council dated 10 January, 1980.

Letter from the applicant dated 16 April, 2001

Site Survey plan (part) showing extent of encroachment.

Application and plans submitted to B.C.C for variation.

B.C.C. decision dated 28 February, 2001

Applicants Submission

The applicant outlined the history of development on the site with particular reference to the side boundary fence and structure in dispute. The details are contained in a letter submitted at this hearing.

The original fence with brick piers was constructed in December, 1971. A carport was constructed in 1972 and was supported by steel posts fixed to brick piers of the fence. The brick piers began to "lean" and in 1995 the leaning piers were replaced with a full brick fence including the "wall" which now forms part of the carport.

The neighbour died in 1999 and new owners purchased the property in 2000.

As a result of a shed being built on adjacent land and surveys of boundaries, the owner of 264 Appleby Road questioned the location of the wall supporting the "carport" and claimed it constitutes an encroachment on his land.

As a result of the dispute, the applicant made an application to Brisbane City Council to allow a "garage with a length of 11.3m" along the side boundary as a variation of Section 48 of the Standard Building Regulation. The application was subsequently refused by Brisbane City Council.

Brisbane City Council Submission

The Council became aware of the encroachment and erection of a garage greater than 9.0 metres in length along the side boundary as a result of complaints arising from a "non complying" building on 264 Appleby Road.

The Council requested the owner of 266 to make application for an approval and during the course of the application, it became aware of the building "encroachment". For this reason the Council could not approve the variation under Section 48 of the Standard Building Regulation.

As a result of questions from the referee, the following response was given by Council representatives.

The carport having a length of 11.3 metres along the southern side boundary of 266 Appleby Road adjacent to 264 Appleby Road is taken as having been approved. The 2.0 metres set back from Tasman Street is taken as having been approved.

The premises are predominantly for residential purposes with a Home Occupation and Part 3 "Siting Requirements" of the Standard Building Regulation would be applicable to this site.

The site cover for the site has not been altered by the erection of the wall/fence along the side boundary and is accepted as complying with approvals.

The only work that has not been approved is the conversion of the carport to a garage by the removal of steel support posts and extending a full height wall along the side boundary forming part of a dividing fence.

The Brisbane City Council would prefer to see the height of the wall on 264 Appleby Road be that for a self assessable fence i.e. less than 2.0 metres.

Submission by Neighbour – 264 Appleby Road

The wall (fence) now forms part of the garage structure and constitutes an encroachment on his land. The wall is 11.3 metres long and exceeds the 9.0 metre length allowed under the Standard Building Regulation.

There are 3 windows in the wall and the wall does not have the required fire rating or fire separation.

The area of development on the adjacent site would be in the order of 75% site cover and this plus the small balcony added out and enclosed at the upper level “overpowers” the site and “bears down” on his land.

He noted that the Class 10 building on his site was approved by a private certifier in the wrong location is to be relocated to comply in the near future.

The proposal to reduce the wall to 2.0 metres high on his side and return the brickwork on his side to a fence and not part of the supporting structure was raised by the referee.

Findings of Fact

The development on the site complied with Council’s requirements for site cover, boundary clearances and road boundary set backs when the carport of 11.3 metres in length was constructed.

The conversion of the carport (open side walls) to a garage with the removal of steel post supports and use of the side boundary fence/wall to support the garage roof structure was not approved and required a variation under Section 48 of the Standard Building Regulation.

The external skin of the cavity brick wall is located on the adjacent lot by 60 – 85mm.

Reasoning

- Site cover would exceed 60% of the site but this was not increased by the erection of the wall.
- The garage existed previously as a carport.
- The 2.0 metre Tasman Street road boundary setback was approved in 1980 and the carport was constructed with a length of 11.3 metres.
- The height of the carport along the boundary of approximately 2.6 metres has not been altered by the construction of the brick wall (fence).

It is considered that the erection of a wall 11.3 metres long and 2.6 metres high converting an existing carport to a garage along the southern side boundary of 266 Appleby Road would not unduly:-

- (a) obstruct the natural light or ventilation of the adjoining Lot 264 Appleby Road any more than the existing carport

- (b) interfere with the privacy of adjoining lot and in the case of 264 Appleby Road increase the privacy to both applicant and neighbour
- (c) restrict the landscaped area of 266 Appleby Road
- (d) obstruct the outlook from adjoining allotments
- (e) overcrowd the allotment as there is no extra site cover proposed
- (f) restrict off street parking for the allotment as it is already set aside for carparking
- (g) obstruct access for normal building maintenance no more than is required for a 9.0 metre wall or a boundary dividing fence.

The only issue is the use of a cavity wall and fence to support the roof structure of the “garage” on 266 Appleby Road.

The garage should be supported on posts independent of the cavity brick “wall”. The removal of the wall or fence would then not affect the garage structure.

The external leaf of the cavity wall/fence on 264 Appleby Road should be reduced to 2.0 metre in height to make this portion a self assessable fence. This will no longer be part of the building and wall and will revert to a non loadbearing leaf of brickwork forming part of a dividing fence. A dividing fence on a boundary does not constitute an encroachment.

The building will not be dependant upon the brick wall for support and will no longer encroach.

The leaf of the brickwork on the side of 266 Appleby Road may be used to provide the required fire separation.

Compliance with the B.C.A. will require the leaf to extend to the underside of the roof and have no openings. The existing windows will need to be removed and replaced with either brickwork or non-openable fire windows having a FRL of -/60/-.

Relevant Legislation

Integrated Planning Act, 1997

Building Act, 1975

David Kay

Building and Development

Tribunal Referee

Date: 10 May 2001

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