



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal number:	23-032
Appellant:	Martyn Grimes
Respondent: (Assessment manager)	Troy Ellerman
Co-respondent: (Concurrence agency)	Moreton Bay Regional Council
Site address:	31 Folkstone Avenue, Albany Creek Qld 4035 described as lot 319 on RP 146273 – the subject site

Appeal

Appeal under section 229(1)(a)(i) and schedule 1, table 1, item 1(a) of the *Planning Act 2016* against the assessment manager's refusal, at the direction of the concurrence agency, of a development application for a development permit for building work for the construction of a garage and extension to the dwelling.

Date and time of hearing:	Tuesday 8 August 2023 at 1.30 pm
Place of hearing:	The subject site
Tribunal:	Derek Kemp – Chair Amanda Bertoldi-Ward – Member
Present:	Martyn Grimes (Appellant, Property Owner) Louise Grimes (Property Owner) Dan Staley (Moreton Bay Regional Council, Co-Respondent) Jo Pendergast (Moreton Bay Regional Council, Co-Respondent)

Decision:

The Development Tribunal, in accordance with section 254(2)(a) of the *Planning Act 2016* **confirms** the decision of the assessment manager to refuse the application.

Background

The subject site

1. The subject site is a rectangular block with a site area of 610m² that slopes up from Folkstone Avenue to form a level block developed with a two-storey dwelling.
2. The subject site has a 19m frontage to Folkstone Avenue and a depth of 32m.

The proposal

3. The proposal is for:
 - a. construction of an attached garage
 - b. construction of an attached extension to a dwelling

Assessment of the application

4. On 17 April 2023, Moreton Bay Regional Council advised the proposal is not supported by Council and directed that the application be refused.
5. Council's stated reasons for refusal were:
 - Non-compliance with Requirements for Accepted Development - RAD3 of the Moreton Bay Regional Council Planning Scheme (v6) Dwelling House Code and the corresponding Performance Outcomes - PO3.
 - Non-compliance with particular Performance Criteria and Acceptable Solutions of the Queensland Development Code MP1.2.
6. Council's refusal was issued on the stated basis that the proposed building works were considered to:
 - adversely impact on the amenity and privacy of residents on the adjoining allotment, whilst also impeding future development on the adjoining site
 - not be consistent with the intended character of the streetscape, precinct and zone
 - result in construction that compromises privacy and amenity of residents on the adjoining property
 - create unusable or inaccessible space adjacent the property boundary
 - result in development inconsistent with the expected amenity of residents on adjoining properties
 - produce built form across the width of the site that negatively impacts the streetscape character of the Suburban Neighbourhood precinct allotment and is inconsistent with existing development within the immediate neighbourhood.
7. On 5 June 2023, the assessment manager issued a decision notice to the effect that the development application was refused.

Findings of fact

8. The subject property is situated on the upper side of the outer curve of Folkstone Avenue.
9. The subject property and other properties within the subject property's streetscape all have significant separation of their dwellings from both side property boundaries.
10. The adjacent dwelling at 27 Folkstone Avenue is a single storey dwelling with a side boundary setback of 3m from the subject property, with a garage with a setback of 1.5m to a walkway to its west.
11. Nearby properties further to the west also have substantial side boundary setbacks, 25 Folkstone Avenue having 6m and 3m side boundary setbacks, and 23 Folkstone Avenue a 6m side boundary setback nearest to the subject property.
12. The adjacent property to the east at 31 Folkstone Avenue has a 4.5m setback from its side boundary to the subject property and a 4m side boundary setback to its east.

Material considered

13. The material considered in arriving at this decision comprises:
 - (1) 'Form 10 – Notice of appeal/ Application for declaration', accompanied by:
 - a. the grounds for appeal.

- b. a copy of the application and the accompanying plans
- c. the concurrence advice response from the Moreton Bay Regional Council
- d. the decision notice of refusal.

Jurisdiction

- 14. Section 229(1) of the PA provides that schedule 1 (the schedule) of the PA states the matters that may be appealed to a tribunal.
- 15. Section 1(1)(b) of the schedule provides that the matters stated in table 1 of the schedule ('table 1') are the matters that may be appealed to a tribunal. However, subsection 1(2) of the schedule provides that table 1 only applies to a tribunal if the matter involves one of the matters set out in section 1(2).
- 16. Section 1(2)(g) provides that table 1 applies to a tribunal if the matter involves a matter under the PA, to the extent the matter relates to the *Building Act 1975*, other than a matter under that Act that may or must be decided by the Queensland Building and Construction Commission.
- 17. Table 1 thus applies to the tribunal in this appeal. Accordingly, the tribunal is satisfied that it has jurisdiction to hear and decide this appeal.

Decision framework

- 18. Generally, the onus rests on an appellant to establish that an appeal should be upheld (section 253(2) of the PA).
- 19. The tribunal is required to hear and decide an appeal by way of a reconsideration of the evidence that was before the person who made the decision appealed against (section 253(4) of PA); however, the tribunal may nevertheless (but need not) consider other evidence presented by a party with leave of the tribunal, or any information provided under section 246 of PA.
- 20. The tribunal is required to decide an appeal in one of the ways mentioned in section 254(2) of the PA, and the tribunal's decision takes the place of the decision appealed against (section 254(4)).
- 21. The tribunal must not make a change, other than a minor change, to a development application (section 254(3))

Reasons for the decision

- 22. The Tribunal concurs with Council's view at the time of the hearing that the only relevant grounds for refusal was the proposal will produce a built form across the width of the site that negatively impacts the streetscape character of the 'Suburban Neighbourhood Precinct' allotment and is inconsistent with development within the immediate neighbourhood.
- 23. The Tribunal finds the proposal is inconsistent with the Moreton Bay Regional Council Planning Scheme Dwelling House Code RAD3 and the corresponding Performance Outcome PO3.

Derek Craven Kemp
Development Tribunal Chair

Date: 15 August 2023

Appeal rights

Schedule 1, Table 2, item 1 of the *Planning Act 2016* provides that an appeal may be made against a decision of a Tribunal to the Planning and Environment Court, other than a decision under section 252, on the ground of -

- (a) an error or mistake in law on the part of the Tribunal; or
- (b) jurisdictional error.

The appeal must be started within 20 business days after the day notice of the Tribunal decision is given to the party.

The following link outlines the steps required to lodge an appeal with the Court.

<http://www.courts.qld.gov.au/courts/planning-and-environment-court/going-to-planning-and-environment-court/starting-proceedings-in-the-court>

Enquiries:

All correspondence should be addressed to:

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