
JURISDICTION : TOWN PLANNING APPEAL TRIBUNAL

CITATION : JENNER and TOWN OF EAST FREMANTLE
[2003] WATPAT 25

CORAM : MR E A MCKINNON

HEARD : 5 JUNE 2003

DELIVERED : 5 JUNE 2003

FILE NO/S : APP 118 of 2003

BETWEEN : B E JENNER
Appellant

AND

TOWN OF EAST FREMANTLE
Respondent

Catchwords:

Building set backs - Carport - Residential landscape

Legislation:

Nil

Result:

Allowed appeal subject to conditions.

Category: B

Representation:

Counsel:

Appellant	:	Mr B E Jenner
Respondent	:	Ms B Foster

Solicitors:

Appellant	:	In person
Respondent	:	As Agent

Case(s) referred to in decision(s):

Nil

MR E A MCKINNON:

- 1 This appeal is against the decision of the Town of East Fremantle to refuse planning consent for the construction of a carport in the front set back of a property at 40 (Lot No 4979) Locke Crescent, East Fremantle (“**subject site**”).
- 2 The appeal was listed as a case management conference, however, both the Appellant and Respondent were ready and willing for the hearing to proceed.
- 3 The appeal therefore, proceeded in accordance with Town Planning Appeals Tribunal Rules 2003, Part 3. Conduct of the appeal followed the traditional lines of a mediation with the intention of proceeding to a more formal hearing if needed.
- 4 The Respondent, in refusing the application to construct the carport cited the “Council’s intent to preserve a residential landscape and considered that the design of the structure was out of keeping with the character of the residence”.
- 5 In doing so the Council relied upon Clause 3.1.2 and 5.9.1 (a) of its Town Planning Scheme No 2.
- 6 Clause 3.1.2 refers to structures not being supported on the land between the front setback and the street but considered on merit.
- 7 Clause 5.9.1 (a) refers to Council being satisfied that “the proposed development would be consistent with the orderly and proper planning of the locality and the preservation of the amenities of the locality”.
- 8 The applicant’s grounds of appeal cited:
 - (a) the many non-conforming examples of carports within 300-400 metres of the subject site. The examples were supported by photographs;
 - (b) that the carport, once constructed, would be virtually non-visible from the street due to existing screen brick walls (front and side) and a large tree on the verge of the road pavement;
 - (c) the design of the carport being in keeping with the existing house; and

- (d) the increased amenity for access to the existing house by aging owners.

- 9 In reviewing the photographs, discussing the requirements of the Appellant and of the Respondent, agreement was reached on amendments which could be made to the proposal which would satisfy both parties.
- 10 Rather than refer the proposals back to the Council both parties sought the decision of the Tribunal.
- 11 The appeal is therefore upheld subject to:
 - (a) The Appellant lodging with the Council an amended set of drawings for the carport.
 - (b) That conditions for the construction of the carport be reasonably set and agreed to by the Appellant. If agreement cannot be reached as to the conditions imposed, the parties will have liberty to apply to the Tribunal for determination of the conditions.