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**JURISDICTION** : TOWN PLANNING APPEAL TRIBUNAL

**CITATION** : REGENCY NOMINEES PTY LTD and TOWN OF  
EAST FREMANTLE [2003] WATPAT 41

**CORAM** : MR J JORDAN

**HEARD** : 2 JULY 2003

**DELIVERED** : 23 JULY 2003

**FILE NO/S** : APP 109 of 2003

**BETWEEN** : REGENCY NOMINEES PTY LTD  
Appellant

AND

TOWN OF EAST FREMANTLE  
Respondent

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*Catchwords:*

Refusal - Roof - Replacement of tiles with zincalume - Streetscape

*Legislation:*

Nil

*Result:*

Appeal allowed subject to conditions.

*Category:* B

**Representation:**

*Counsel:*

Appellant	:	Mr R W Warden
Respondent	:	Mr K J Oliver

*Solicitors:*

Appellant	:	As Agent
Respondent	:	As Agent

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

Jeffrey David McDonald v Town of East Fremantle [2002] WATPAT 26

**MR J JORDAN:**

1 This is an appeal against the Council's refusal to grant planning consent for the replacement of a tiled roof with a zincalume roof for the house at No. 58, Lot 324, Oakover Street, East Fremantle ("**No.58**").

2 No. 58 is a single-storey single dwelling built about 80 years ago by the War Service Homes Commission. No.58 has been subdivided by survey strata. No. 58 sits on Lot 1 of Survey Strata Plan 40953. Lot 2 is a battleaxe lot at the rear of No.58.

3 In February 2002 Council granted planning consent for alterations and additions to No.58. The approved plans include the addition of a garage and verandahs, additions to the rear and conversion of a sleep out to rooms with an extension of the main roof. The roof approved at the rear is a skillion roof. The approved plan showed the roof material to be tiles.

4 The Appellant then wrote to the Council for approval to replace the approved tile roof with a zincalume roof. The Appellant was advised:

"Council ... resolved to refuse your application to replace the tiled roof of the existing residence at No.58 Oakover Street on the grounds that the proposal does not meet the objectives of Clause 3.8 of its Town Planning Scheme No. 2."

5 *Town of East Fremantle Town Planning Scheme No.2* ("**TPS 2**") clause 3.8 'General Appearance of Buildings' states:

"A person shall not without the written approval of the Council erect a building which by virtue of colour or type of materials, architectural style, height or bulk, ornamental or general appearance has an exterior design which in the opinion of the Council is out of harmony with existing buildings or the landscape character of the area."

6 Mr Warden is a Director of the Appellant company, Regency Nominees Pty Ltd. Mr Warden said a zincalume roof was applied for because the weight of the tiles had bowed the existing roof timbers, the skillion at the rear had insufficient fall to prevent water leaking through tiles and it was difficult to obtain additional tiles for the extensions that would match the original tiles on the existing roof. He was of the opinion that a zincalume roof would improve the appearance of the house, which he considers to now be obsolete and shabby.

- 7 Mr Warden argued that a zincalume roof would not be out of character with other developments and provided selected photographs of metal roofs in Oakover Street to illustrate his point. Mr Warden produced an aerial photograph to support his claim that in Oakover Street between Canning Highway and Marmion Street 26 houses had 'old' tiled roofs, 26 had 'new' tiled roofs of different colours, 29 had 'corrugated iron' roofs and three had aluminium 'tile' roofs. This evidence was used by Mr Warden to support his argument that the proposed change of roof material for No.58 would not alter the streetscape significantly.
- 8 Mr Oliver is the Town Planner for the Council and is a Town Planner of many years experience. In his initial response to this appeal, on behalf of the Council, dated 14 November 2002, Mr Oliver concluded:
- “Council’s general intention for this group of simple porch houses is to retain, protect and enhance its cultural significance, as such, regard is given to materials used, design elements and setting (streetscape) that contribute to the distinctive character of these dwellings. The retention of all the tiled roofs in this group of simple porch houses constructed by the War Service Homes Commission is therefore fundamental to this objective.”
- 9 The exact number of 'simple porch houses' was not made clear. The 'cultural significance' of the houses was explained only to the extent that they were built by the War Service Homes Commission.
- 10 Mr Oliver's analysis of the streetscape concentrated on the particular group of seven houses, of which No.58 is the middle house, extending south from the corner of Fletcher Street with Oakover Street. Photographs were provided of these houses. Mr Oliver described this group of houses as a 'cohesive' streetscape. Council is of the view that approval of this zincalume roof would break down this cohesive group.
- 11 In response to a question from Mr Warden, Mr Oliver said the house approved for construction on the battleaxe lot at the rear of No.58 had been granted approval for a metal roof. This was explained as being done to avoid the house being a 'mimic' of the existing older houses.
- 12 Mr Oliver accepted that a number of elements make up the streetscape, including width of lot frontage, open front gardens and uniform setbacks. Mr Oliver was of the view that the distinguishing feature that 'held this group together' is the tiled roofs.

- 13 In response to a further question from Mr Warden Mr Oliver agreed that in certain circumstances low pitch, tiled, skillion roofs might leak.

## Conclusion

- 14 The Council response makes reference to the dismissal of an appeal by the Minister for Planning and Infrastructure in 2001 seeking approval to demolish No.58. That decision referred to a preliminary Heritage Assessment made of No.58. The preliminary Heritage Assessment was not put into evidence and the Council has apparently not taken any steps that would further the assessment of any heritage value of No.58. Council has granted approval for alterations and additions to the house that the Tribunal considers compromise its origins as a particular house type. That earlier appeal decision is not considered to be sufficient to constrain the Tribunal in the determination of the appeal now before it.
- 15 Both parties used the term ‘heritage’ loosely in commenting on various houses in Oakover Street and in particular with reference to No.58. It was agreed between the parties that their general use of the word ‘heritage’ was more an indication of the age of a building, not its inherent worth as a heritage item and that No. 58 is not on any heritage list.
- 16 As a consequence of the approved additions and alterations No. 58 now bears less resemblance to the ‘simple porch houses’ identified at No.54, No.56 and No.60. It was also agreed between the parties that a skillion roof of the pitch approved by Council was less likely to leak with a zincalume roof.
- 17 Council response made reference to the judgment of the Tribunal in *Jeffrey David McDonald v Town of East Fremantle* [2002] WATPAT 26. It is submitted by Mr Oliver that because *McDonald* was concerned with one house it can be distinguished from this decision of Council because No.58 is one of a group of houses with the unifying feature of a tiled roof.
- 18 An examination of *McDonald* reveals the Tribunal identified that there is an absence of any planning constraint on the use of zincalume in TPS 2 and the Council used more general controls in TPS 2, including clause 3.8, as the basis for assessment of materials used in alteration and additions of buildings. The Tribunal’s finding proceeds by identifying, for the respective appeal site, the elements of exterior design that contribute to harmony in the existing buildings and streetscape, as required in clause 3.8.

- 19 The photographs provided by both the Appellant and Respondent, including the aerial photograph, show significant elements of the streetscape of Oakover Street to be large blocks, wide frontages, single storey dwellings, a consistent setback from the street and gardens in the front setback. The additions and alterations to No.58 approved by Council did not disturb these elements.
- 20 Examination of the aerial photograph also reveals a mixture of roof materials in Oakover Street, including opposite No.58. Occurrence of roof material varies between several metal roofs together and several tiled roofs together with, in some sections of the street, roofs of different materials alternating.
- 21 It is acknowledged that No.58 is one of a row of tiled roof houses. It is difficult, however, to conclude that this row of tiled roof houses is of sufficient significance in Oakover Street as a whole that to interrupt it with a zincalume roof would result in No.58 being 'out of harmony with existing buildings or the landscape of the area'.
- 22 Following consideration of the evidence presented, the Tribunal has determined that the appeal is allowed and planning approval is granted for the development of a zincalume roof at No.58 Oakover Street.
- 23 Should the Council consider it necessary to impose planning conditions on this approval, these are to be agreed with the Appellant. If the parties are not agreed they are at liberty to apply to the Tribunal on the conditions in contention.