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IN THE PLANNING AND ENVIRONMENT P & E Appeal No 3358 of COURT 1996

HELD AT BRISBANE

QUEENSLAND

BETWEEN:

UNAGOLD PTY LTD AND ARGENTGATE PTY LTD Appellant

AND

BRISBANE CITY COUNCIL Respondent

REASONS FOR JUDGEMENT - QUIRK D.C.J.

Delivered this 5th day of Dec. 1996

This appeal is against the "deemed refusal" of an application for the rezoning of land at Enoggera from the Residential A zone to the Business zone. The subject land is located on the western side of Wardell Street, running from the Audrey Street intersection to its boundary with an allotment at the Samford Road intersection. This last mentioned land is the site of a group of shops which form part of the long established centre at the former Enoggera tram terminus. The nature and extent of this area of shopping is described in the reports of the town planning consultants.

The subject land has a total area of approximately 5,000 square metres and comprises nine subdivided allotments upon which stand six dwellings facing Wardell Street and one facing Audrey Street. It has a frontage of 102 metres towards Wardell Street and 57 metres to Audrey Street. The rear boundary length of 90 metres is shared with residential properties which face Ardentallen Street.

The rezoning is to allow the development of the subject land as a medical centre and associated local convenience shopping. Premises are to provide a gross floor area of 116 square metres in two separate buildings with appropriate on-site car parking and landscaping. For the purpose of providing access to and from the site, the parking area of the proposal is to be integrated with that of the shopping centre adjoining to the north. Access will thereby be gained to Audrey, Wardell (entry only) at Ardentallen Street.

As can be seen from an examination of the material placed before the Court, the proposal presents as an attractively designed and landscaped shopping centre which (in terms of its building form) is not markedly out of character in appearance with that of the adjoining residential areas.

The appellant's case was that the proposed rezoning could be seen to be in the community's interests in that;

- (1) the residential amenity of the subject land and other residential land in Wardell Street near its intersection with Samford Road has been substantially degraded by traffic and associated noise.
- (2) the proposal, because of its careful design, will not cause a substantial detriment to the amenity of other residences in Wardell Street and will, for the residences of Ardentallen Street, because of the buffering effects of the development (in respect of noise from Wardell Street) and the attractively landscape boundary that will present to them, result in an improvement in residential amenity.
- (3) the now substantially strained traffic conditions in the area will be improved by the dedication of part of the subject land to allow substantial road widening in Wardell Street and the improvement in the opportunity to make turns from Wardell Street into Samford Road and Audrey Street. The

integration of the proposal with the shopping centre to the north will also assist.

- (4) the intended provision of a medical centre and further opportunities for local convenient shopping will be to the advantage of Enoggera residents, and particularly those of the immediate area where there are indications in the Town of likely increases in intensity of residential use.

The respondents principal concerns in respect of the proposed rezoning were that it would be likely to intrude upon and detract from the amenity of an established residential area and result in the loss of valuable housing stock. It was also feared that the size of the development was such that it might attract a higher order of shopping than was intended for this location by the respondent's planning strategies. Some concerns were also expressed regarding the landscaping intended and internal traffic arrangements.

Town planning matters were addressed in the careful and helpful reports of the consultants, Mr Kumskov (called by the appellant) and Mr Brown (called by the respondent). There were objectors to the proposal and these are summarised in Mr Brown's report. None of the objectors gave evidence. The main difference in the approaches of these consultants appeared to be that Mr Kumskov made his assessment on the basis of the proposed plan of development and the anticipated tenancy make up, while Mr Brown took into account the permitted and permissible uses of the land that could follow its rezoning to the business zone and anticipated that uses of a higher order would be attracted to this location. His view of the existing residential amenity of the area was more positive than that of Mr Kumskov.

Ordinarily one would have to say that Mr Brown's approach is a valid one and that the professed intentions of a particular developer are not of great moment unless some condition that might adequately and satisfactorily narrow the range of possible development could be put in place. However Mr Kumskov's favourable assessment was premised on development's being generally in accordance

with the plan of development put before the Court and for that reason the appellant was prepared to accept that any approval should be conditioned accordingly.

It is not, of course, appropriate or feasible to attempt to ensure, by way of condition, a particular tenancy mix, but I accept that the building form and development layout here proposed is unlikely to lead to most of the undesirable forms of a development (at this location) to which Mr Brown drew attention.

There were other features of this rather difficult case that made it somewhat out of the ordinary. Intrusion (by development of a normally incompatible kind) into an established residential area is rarely seen as being acceptable in planning terms. However, notwithstanding Mr Brown's observation that housing in the area is generally well kept, it has to be accepted that the residential amenity has suffered greatly as a consequence of the traffic volumes in Wardell Street and the considerable congestion that occurs at its intersection with Samford Road. At busy times, traffic queues extend for long distances and tests conducted by Mr Rumble (the appellant's acoustic consultant) indicate that noise levels for Wardell Street residents in this area substantially exceed those regarded as being acceptable.

The plan of development has given particular attention to landscaping and screening along the rear boundary of the subject land. Apart from some relatively minor reservations expressed by Mr Kumskov (the respondent's acoustic consultant) it appears to be accepted that the residents of Ardentallen Street will be well protected from noise emanating from the site. These measures, together with the proposed structures will provide substantial buffering for the Ardentallen Street residents from traffic noise from Wardell Street. As a result there will be, if anything, an improvement in their residential amenity.

It may be that the provision of the amount of floor space here intended might be a little more than is consistent with any augmentation of the existing shopping centre that the town plan would appear to contemplate,

but if some augmentation of the centre would be in the community's interests, then a redevelopment of the length of the western frontage of Wardell Street as far as Audrey Street would seem to be the logical and sensible thing to do. It is in this way that the integration with the existing centre and the provision for its patrons of access to Audrey Street can be obtained.

There was some discussion regarding the need to provide a medical centre of the size proposed. The evidence did not go a long way into this matter and it is not easy to say that the intended floor space would be likely to draw patients from a wider than local area. On figures that were provided however, the proposal would not appear to lead to a provision for Enoggera residents which is greatly disproportionate to that available to residents of other suburbs.

In relation to landscaping, there were some differences in opinion in the views expressed by Mr King (called by the respondent) and Mr Deverson (called by the appellant). I did not regard these areas of dispute as being determinative, but rather matters of preferred approach and detail. Mr King is, no doubt, correct in his view that the proposal will "significantly alter the landscape as seen by the public walking or driving along Wardell Street". Notwithstanding its careful landscaping, the development will clearly not be residential development. However, I accept that Mr Deverson's landscaping design represents a thorough and careful approach which is appropriate in the circumstances of this application.

In relation to traffic matters, I had the benefit of evidence from two very experienced traffic engineering consultants, Mr Holland (called by the appellant) and Mr Brameld (called by the respondent). Again, there was some differences of opinion but there appeared to be agreement that the intersection of Wardell Street and Samford Road presents serious traffic engineering difficulties at the present time. The intersection is under the control of the Main Roads Department which has considered and not opposed this proposal.

In my view of the evidence, the following points made by Mr Holland are of importance:

"The roadworks proposed in Wardell Street in association with the development (and the resultant road widening) represent an improvement in general traffic conditions:

- (1) the proposed raised median and associated right turn lane in Wardell Street will improve general operating conditions in Wardell Street
- (2) the existing sub-standard right turn lane at Samford Road intersection will be lengthened and more fully delineated.
- (3) north-bound drivers will be prevented by the raised median island from driving on the incorrect side of the road to reach the existing right turn lane as frequently occurs at present
- (4) the option for Queensland Department of Main Roads to extend the existing left turn lane in the southern Wardell Street approach to the Samford Road intersection is facilitated.

The joint access arrangements with the adjoining property will reduce current access difficulties to that site and the degree to which traffic associated with that development will intrude into the residential street system will be significantly reduced since entry to the site from both Audrey, and in particular, Wardell Street, will be provided and exit from the site via Audrey Street will be possible."

Mr Brameld, in his (also very carefully considered) assessment, drew attention to some problems that might arise in relation to arrangements internal to the site, but in the main, they appeared to result from inadequacies in the existing development. He was, however, prepared to accept that to integrate the proposal with the existing centre was preferable to not doing so and that, notwithstanding the concerns to which he drew attention, would lead to some overall improvement. I find on the evidence given in respect of the benefits to traffic conditions in this difficult area, the proposal would be in the community's interests.

The case was an intriguing one in that there was force in the arguments very capably presented by both parties. In the end result I have decided, on the evidence given, that the provision of some expansion of the local convenience shopping facilities at this location would be of benefit to the community and would not be inconsistent with the relevant provisions of the town plan.

That it will result in the provision of somewhat more floor area than might have been called for in the absence of circumstances peculiar to this case, is, on my view of the evidence, counterbalanced by the desirability (in planning terms) of rezoning all of the land fronting Wardell Street to Audrey Street and achieving the traffic engineering advantages that go with that.

I find that the applicant has made out a case for the land's rezoning but that it should be conditional upon development occurring generally in accordance with the plan of development which is Exhibit 4. I find that the onus of showing that the application should be approved has been discharged. The appeal is accordingly allowed.