

PLANNING AND ENVIRONMENT COURT OF QUEENSLAND

CITATION: *Glasson Properties Pty Ltd v Brisbane City Council* [2021]
QPEC 71

PARTIES: **GLASSON PROPERTIES PTY LTD**
(appellant)

v

BRISBANE CITY COUNCIL
(respondent)

FILE NO/S: 458 of 2021

DIVISION: Planning and Environment

PROCEEDING: Appeal

ORIGINATING
COURT: Planning and Environment Court, Brisbane

DELIVERED ON: 20 October 2021, *ex tempore*

DELIVERED AT: Brisbane

HEARING DATE: 20 October 2021

JUDGE: Rackemann DCJ

ORDER: **Order as per amended draft**

CATCHWORDS: PLANNING AND ENVIRONMENT – APPEAL – where the parties have agreed to resolve the matter subject to the change to the application being minor – where the application sought approval for a dwelling unit on the upper floor and a health service on the lower floor of an existing house – where there is deletion of a component of the application, namely the dwelling unit – whether the change to the development application is minor

LEGISLATION: *Planning Act 2016* (Qld) sch 2

COUNSEL: I Neil (*sol*) for the appellant
C Stockall (*sol*) for the respondent

SOLICITORS: McCarthy Durie Lawyers for the appellant
City Legal – Brisbane City Council for the respondent

- [1] This is a case in which the parties have reached a resolution subject to the Court being satisfied that a change to the development application is minor within the meaning of the Act. The proposal involves a health care service in an existing house. The approval was sought to legitimise the existing use being operated by an ophthalmologist. The change proposal involves some change to the carpark and access arrangements; the details of which I do not need to go into. Those changes are, in my view, minor.
- [2] The matter which emerged for greater consideration by reason of the court's attention being drawn to it, to some extent, by the solicitor for the appellant, but to a greater degree, by the solicitor for the respondent, is the deletion of what would appear to have been a component of the application. On the face of the development application forms, the application sought approval for a dwelling unit on the upper floor of the dwelling house in addition to the health service on the lower floor. The proposal which is the subject of the proposed judgment is for there to be no use made of the other level of the premises at all. This calls for consideration of the importance of that now deleted component.
- [3] It must be acknowledged that the application was somewhat equivocal in relation to that component, when regard is had to a town planning report that was lodged in support of the application. That town planning report proceeded, it would seem, on the basis that there was no application for approval of any dwelling unit at all. The town planning report was focused on the health care service. In the course of dealing with the compliance of the application with the applicable codes, it expressly stated that:

The proposal is not for a dwelling unit.

And in three other places, expressly stated:

The proposal is not for a residential use.

- [4] There is no suggestion that the dwelling unit component was ever advanced in a substantial way by the appellant. The council, in its decision notice, refused both components of the application, but its reasons for refusal were focused on the health care service. I note that the notice of appeal itself describes the development application by reference only to the health care service that has clearly been the focus of attention.
- [5] There is no suggestion that the dwelling unit component was ever advanced in a substantial way by the appellant. The council, in its decision notice, refused both components of the application, but its reasons for refusal were focused on the health care service. I note that the notice of appeal itself describes the development application by reference only to the health care service that has clearly been the focus of attention.

- [6] The development application was subject to impact assessment, but attracted no submissions.
- [7] The affidavit from the town planner, Mr Brown, filed in order to deal with the issue of whether the changes were minor changes did not deal with the issue of the deletion of the dwelling unit component. A further affidavit was filed by him which explained that that had been on the basis that his instructions that it was the health care service which his client had sought.
- [8] Ultimately, the matter was stood down so that Mr Brown could give some oral evidence. In the course of his evidence, which I accept, he gave his reasons for concluding that the exclusion of any residential use, or indeed, any use at all, from the upper level of the premises would have no material adverse amenity impact in the circumstances. He acknowledged that it may result in a lesser level of onsite activity when the health care service is not operational, but he described the location of the subject premises as being one in which there is a reasonable amount of activity otherwise.
- [9] He also gave evidence to the effect that the proposed dwelling unit component, to the extent that it was ever sought, was not something that was necessary or important insofar as the other component of the application was concerned. And indeed, he identified that maintaining the dwelling unit component would simply complicate and add difficulty with respect to the onsite carparking and access arrangements, which had been a key area of concern in relation to the resolution of the acceptability of the health care service component of the application.
- [10] Accordingly, it would appear that, to the extent that the application sought a material change of use for a dwelling unit on the upper level, that was not an important part or component of the application, and its deletion is only likely to have positive effects; in particular, in helping to resolve the carparking and access issue, whilst being unlikely to have any adverse effects, such as would have been likely to have generated a submission had any submitter had the opportunity to do so. I am, on balance, satisfied that the change to the proposal does not result in substantially different development and is minor, notwithstanding that it results in the deletion of one of the proposed uses applied for in the development application.