

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P285/2023
PERMIT APPLICATION NO.TPA/53788

CATCHWORDS

Application under section 77 of the *Planning and Environment Act 1987* (Vic) to review the refusal to grant a permit; Monash Planning Scheme; General Residential Zone; two side by side double storey dwellings; residential development categories; neighbourhood character; streetscape design and integration and landscaping

APPLICANT	Bala Pedagandham
RESPONSIBLE AUTHORITY	Monash City Council
SUBJECT LAND	16 Clapham Road HUGHESDALE VIC 3166
HEARING TYPE	Hearing
DATE OF HEARING	25 August 2023
DATE OF ORDER	25 August 2023
CITATION	Pedagandham v Monash CC [2023] VCAT 996

ORDER

- 1 In application P285/2023 the decision of the responsible authority is affirmed.
- 2 In planning permit application TPA/53788 no permit is granted.

Christopher Harty
Member

APPEARANCES

For applicant

Mark Stanojevic, town planner from Ask
Planning Services Pty Ltd



For responsible authority Gareth Gale, town planner from Gareth Gale Consulting – Town Planning and Advocacy

INFORMATION

Description of proposal Construction of two (2) double storey dwellings in a side-by-side typology.

Nature of proceeding Application under section 77 of the *Planning and Environment Act 1987* (Vic) – to review the refusal to grant a permit.

Planning scheme Monash Planning Scheme

Zone and overlays General Residential Zone Schedule 2 – ‘Monash Residential Areas’ (‘GRZ2’)
No overlays

Permit requirements Clause 32.08-6 to construct two or more dwellings on a lot.

Relevant scheme policies and provisions Clauses 11, 15, 16, 32.08, 55, 65 and 71.02.

Land description The subject land is located on the eastern side of Clapham Road in Hughesdale. It is rectangular in shape, relatively flat with a frontage width of 20.2 metres, depth of 45.6 metres with an overall area of 921 square metres. The subject land is currently vacant with the previous dwelling and vegetation cleared.

The surrounding area comprises original housing stock from the interwar period as well the 1950s and 1960s with some newer infill development. Residential development predominantly comprises single storey detached dwellings with some single storey tandem villa units and double storey walk up flats.

REASONS

- 1 I delivered reasons for my decision orally following the conclusion of the hearing. The submissions and supporting material circulated and made by the parties and the statements of grounds filed have all been considered in the determination of the proceeding. Not all of this material will be cited or referred to in these reasons. I have also had the benefit of sufficient imagery and photographic material of the subject land and surrounds. These are the reasons for the decision.
- 2 This is an application by Bala Pedagandham ('applicant') to review the decision of the Monash City Council ('Council') to refuse permission in relation to permit application TPA/53788 on 24 February 2023 for the construction of two (2) double storey dwellings in a side-by-side typology at 16 Clapham Road, Hughesdale ('site').
- 3 Council's grounds of refusal generally relate to the proposal being inconsistent with the residential development and preferred character policy of the Monash Planning Scheme ('planning scheme') and at odds with neighbourhood and streetscape character, integration with the street, site layout, massing, landscaping, setbacks, and open space provisions. Generally, Council considers the proposal is a poor design outcome.
- 4 The applicant's position was that the proposal has been designed to achieve a respectful response and acceptable outcome to the larger width of the site and the requirements and policy of the planning scheme and the physical context of the site and surrounds.
- 5 I have been provided with a detailed description of the review site and its environs, the proposal, the planning scheme provisions and applicable policies. It is not necessary for me to repeat that material other than to record that:
 - The site is located on the eastern side of Clapham Road in Hughesdale. It is rectangular in shape, relatively flat with a frontage width of 20.2 metres, depth of 45.6 metres with an overall area of 921 square metres. The site is currently vacant with the previous dwelling and vegetation having been cleared from the site.
 - The surrounding area comprises brick and weatherboard housing stock from the interwar period as well from the 1950s and 1960s with some newer infill development. Residential development predominantly comprises single storey detached dwellings with some single storey tandem villa units and double storey walk up flats.
 - The site is in the General Residential Zone Schedule 2 relating to the 'Monash Residential Areas' ('GRZ2'). No overlays affect the site.
 - The GRZ2 seeks to encourage a diversity of housing types and growth particularly in locations offering good access to services and transport while respecting the neighbourhood character of the area. Clause 55



Rescode provisions are required to be considered. I note the site is located approximately 750 metres from the Oakleigh Activity Centre, 570 metres to the Hughesdale Neighbourhood Activity Centre, 700 metres to the Hughesdale Train Station and 1 kilometre to the Oakleigh Train Station.

- Schedule 2 to the zone does not contain specific neighbourhood character objectives but does vary relevant Rescode standards relating to Standard B6 with a front setback of 7.6 metres, Standard B28 with private open space consisting of an area of 75 square metres, with one part of the private open space at the side or the rear of the dwelling, a minimum width of 5 metres and convenient access from a living room and Standard B32 with a front fence within 3 metres of a street not exceeding 1.2 metres. I note that the proposal satisfies these variations.
- The proposed dwellings each include two-storey form with four bedrooms. Each dwelling has a double garage which is the only wall built to the side boundaries at a length of 6.4 metres. The dwellings are separated by a central break ranging from 2 metres to 3.4 metres. Building heights are around 7.5 metres for Dwelling 1 and 7.6 metres for Dwelling 2.
- Street setbacks at ground floor level are 7.6 metres for Dwelling 1 and 8.6 metres for Dwelling 2 and rear setbacks are around 12 metres for Dwelling 1 and 11 metres for Dwelling 2. Upper-level street setbacks are 9.1 metres for Dwelling 1 and 10.6 metres for Dwelling 2 while rear setbacks are around 12.3 metres.
- Private open space areas are provided to the rear of each dwelling with a swimming pool for Dwelling 2.
- Both dwellings at ground floor level are setback from their respective northern and southern side boundaries by 1.13 metres while upper floor levels are setback 1.8 metres.
- Building lengths are around 26.01 metres.
- Site coverage is 44.7%, site permeability is 46.4% and garden area is 45.4%. All satisfying the requirements of the planning scheme.
- The garages have 'feature windows' facing the street while the dwellings will have hipped, tiled, roofing. Materials include brickwork at ground floor and weatherboard cladding to the upper levels.
- Under the residential development framework at Clause 21.04, the site is within 'Category 2 - Accessible areas' identified as areas with future development potential as well as within 'Category 8 - Garden city suburbs' identified as areas suitable for incremental change.

- Under the residential character types at Clause 22.01, the site is within the residential character type for ‘Garden City Suburbs Southern Areas’.
- 6 I have had the benefit of submissions from Mr Gale for Council and Mr Stanojevic for the applicant and have given consideration to them.
 - 7 With this matter, I must decide whether the proposal will produce an acceptable outcome having regard to the relevant policies and provisions in the planning scheme. Net community benefit is central in reaching a conclusion. Clause 71.02 – ‘Integrated Decision Making’ of the planning scheme requires the decision-maker to integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations.
 - 8 With this proposed development I must decide whether a permit should be granted and, if so, what conditions should be applied.
 - 9 Having considered the submissions presented with regards to the applicable policies and provisions of the planning scheme, I find I am generally in agreeance with Council. I find the proposal represents an unacceptable outcome.
 - 10 I have considered whether to look at conditions to overcome the shortcomings of the proposal but have found the changes potentially too significant. A review of the design response is needed.
 - 11 I find a proposal for a side-by-side townhouse development on a generous site such as this, and in a location such as Hughesdale, a generally appropriate response.
 - 12 As Mr Stanojevic summed up in his written submission, the policy framework of the planning scheme encourages well designed, site responsive development in areas which are well located in terms of existing services and transport, and where new development respects the neighbourhood character and protects the amenity of existing residents.
 - 13 The site is in the accessible areas residential development category and also in the garden city suburbs residential development category. In many situations this may be a contradiction because one category promotes development whilst the other seeks incremental or a more modest extent of change.
 - 14 However, in this case the site experiences very good locational benefits in that it is within a 20-minute walk to shops, community facilities and public transport options. This is supported by policy such as Clause 16.01-1R. Hence, the type of proposal is one that would be supported.
 - 15 I note the prevailing character of built form in the neighbourhood is older housing stock predominantly at single storey with generous setbacks and

rear garaging. Despite this predominant character, I also see that walk up flat and tandem villa unit development has occurred in the neighbourhood. It is clear, some change has occurred. I do not consider that a double storey side-by-side built form design approach is at odds with the extent of change that the planning scheme anticipates for this area. But design detail is relevant and important with respect to neighbourhood and streetscape character.

- 16 Despite the proposal achieving relatively good compliance with various numerical requirements of the planning scheme, the design fails to respect streetscape and neighbourhood character through poor integration with the street. This is due to a failure to provide habitable rooms with windows at the ground floor level facing the street that can also offer passive surveillance of the street.
- 17 Despite the applicant's argument that the garages do not project forward of the street setback of either dwelling, with a one 1 metre recess from the front entry, and the wide glazed dwelling entries and foyers at 2.2 metres providing a sense of safety to the public realm, I am not convinced. I find the proposal is inconsistent with what Clause 15.01-2S relating to 'Building design' seeks by ensuring buildings and their interface with the public realm support personal safety, perceptions of safety and property security.
- 18 Council says the prevailing character includes one building per block fronting the streetscape with a high level of activation, limited front garaging and a relatively modest built form scale with front yards available for landscaping.
- 19 I find, looking at the photographic material and aerial mapping provided by the parties, this to be the case in this instance.
- 20 A side-by-side built form typology creates a narrow rhythm of built form appearance which Council says is at odds with what prevails in the street. Although the dwellings are separated by a break, Council is critical that this is 'gun barrel' straight with no landscaping within and along it.
- 21 Council is also concerned with the single linear plane view along the side elevations and the lack of articulation at first floor level which adds visual bulk.
- 22 Council says the streetscape rhythm is also broken by the two separated driveways that fan out to the double garages leaving a small area available within the front setback for landscaping and planting for canopy trees to contribute and enhance the garden city character.
- 23 The planning scheme goes to great lengths to emphasise this garden city character and there is a strong reliance on landscaping outcomes to contribute to this aspiration.
- 24 Contributing to a departure from streetscape character are the two garages and single entries to the dwellings with no ground floor habitable room

windows. Council says these features will dominate the ground level appearance and is at odds with the streetscape and neighbourhood character of the area.

- 25 The applicant says Council's concerns relate to a preference to a tandem form of medium density development. The applicant says the proposal demonstrates an acceptable design response with generous private open space, setbacks of the dwellings from each other and from front and side boundaries, with the exception, of the two garage walls on boundary.
- 26 The applicant says the wide frontage of the site buffers against the dominance of two crossovers with commensurate widths to what exists across the road.
- 27 I accept the two crossovers are reasonable given the larger width of the site. However, I find the proposal for a double garage and an entry doorway to each dwelling will dominate the street and be at odds with the prevailing streetscape character in this area of Clapham Road.
- 28 I also accept the break between dwellings meritorious.
- 29 However, a proposal with no habitable room interaction to the street level is not an acceptable outcome in my view, particularly when good planning principles look for interactive street presentation. There are no habitable room windows at ground floor level that have an outlook to the street. Ground level surveillance is simply not available. This fails to provide a positive level of interaction and integration with the street and is a poor design outcome. I do not consider it is enough to rely on windows at first floor level associated with a bedroom for an equivalent level of interaction or for a widening of the foyer or windows in the garage doors to overcome this issue. They are simply not sufficient.
- 30 As a result, I find the proposal inconsistent with the 'Garden City Suburbs Southern Areas' character statement with respect to new dwellings addressing the street and articulated upper levels to minimise building scale. I do find the double storey scale or side-by-side typology respectful in regard to the use of eaves, pitched tiled roofing and complimentary brick and weatherboard cladding materials.
- 31 Regarding private open space, I consider the proposal misses the opportunity to better achieve a northern orientation of the private open space and habitable rooms at the rear by having the alfresco areas in the south-east corners rather than a more direct north-eastern orientation. In other words, these rear room layouts would benefit from being flipped in my view.
- 32 As I have determined to affirm Council's decision, I make the following remarks to assist any future proposal going forward:
 - Regarding landscaping, I consider that with deletion of some of the front paving, the front setback areas provide sufficient scope for

canopy tree planting. Species selection is required to ensure sufficiently large trees are planted. Space in the rear setbacks also affords reasonable opportunity for canopy tree planting. Landscaping along the side boundary setbacks would also be an improvement to the garden city aspirations of the planning scheme.

- I am also not so concerned with the extent of habitable room screening to prevent overlooking. The application of a screening to 1.7 metres height of windows still allows daylight and a sky view to be obtained and does not represent a complete opaque living environment.
- Finally, I consider building length reasonable given the front and rear setbacks and separation between the dwellings. However, visual bulk along the side elevations could be better managed through the combination of recessed upper-levels and increased articulation to provide greater built form relief.

33 For the reasons given above, the decision of the responsible authority is affirmed. No permit is granted.

Christopher Harty
Member