

JOHN KOUMI
v
CITY OF UNLEY

(ERDC NO 454 of 2003)

[2004] SAERDC 25

THE COURT DELIVERED THE FOLLOWING JUDGMENT:

1 In this matter, an applicant appeal against the refusal of the Council to Development Application 090/0685/03/DX, for a change of use of the first floor of premises at 86 Glen Osmond Road, Parkside from dwelling to offices and to demolish a carport, I hand down this ex tempore decision.

2 I have heard the evidence of Mr Koumi, the proponent, and certainly you have made some very good points; of Mr Litchfield, a qualified town-planner and officer of the Council, and of Mr Dorrestyn, an experienced qualified traffic engineer. I have had the benefit of viewing the site and locality as defined by Mr Litchfield with which I generally agree, although I think, and he agreed as well, that it could well be extended further along Young Street, further to the south along Kenilworth Road and a little further along Glen Osmond Road.

3 The proposal is to obtain approval for some 150 square metres “*total floor area*”, as defined, to become offices with one car space, that is, a carport to be demolished for such use, to be available specifically for it and there being some three other individually accessible spaces on the land for some 247 square metres shop floor area at ground floor level.

4 I note and generally agree with the locality land use, traffic and parking characteristics described by Mr Litchfield and Mr Dorrestyn and with the supplementary information from other reports such as Mr Siow’s. I am familiar with the locality from my prior extensive, professional experience, including within the Burnside Council area opposite, for a number of years.

5 The subject land is a corner site and access to the small parking area is from Kenilworth Road. I note the background to development and approvals on the site and near sites tendered by Mr Koumi and, particularly, Exhibits A1, A2, A4 and A5. I have had regard to all of that material.

6 The relevant provisions of the Development Plan of 12 June 2003 set out by Mr Litchfield are noted and I generally agree that these are the most relevant provisions for assessment and, though not within a Centre designated zone on the Unley Structure Plan, the Office Zone, in my view, is a business zone, a business area and therefore Principle 153 and particularly clauses (f) and (h) and the various sub-clauses to (h) are of some guidance and use in this matter.

7 Turning to the issues; the change of use and land use issue of offices in the Office 1 Zone at the small floor area of some 150 square metres proposed, is entirely appropriate and consistent with the Plan, as is, I note, continued residential use in that Zone, given Objective 1. It is also a relatively low traffic generating use and does not create a new access to Glen Osmond Road, which is an arterial road, of course.

8 The only issue of substance in this matter relates to the provision and adequacy of parking, both off-street or on-street for the intensifying land use. I have considered all of the evidence; I concur with the conclusions of the experts called, namely Mr Litchfield in Exhibit R3 and Mr Dorrestyn in Exhibit R2. Nothing that was presented to the Court by Mr Koumi invalidates these opinions and conclusions and I have no other expert evidence to the contrary.

- 9 The degree of off-street parking shortfall, whether it be five spaces based on the Table Un/4, or three on a net floor area basis, and the exacerbation to on-street demand and with impact spreading into the residential area quite evident along Kenilworth Road, Robsart and Young Streets, these are sufficiently significant, particularly in this arterial road/intersection context.
- 10 Whilst an off-street parking fund is said, on the evidence, to be formally established by the Unley Council (it is not referred to in the Development Plan and I have had no advice as to the actual designated area specifically), and a contribution to it for the shortfall, whether it be five spaces or otherwise, might be appropriate, that is for the Council and the appellant to agree upon and not for this Court to mandate. I understand that that has at least been considered in the past by the parties.
- 11 The proposal does not sufficiently meet the Development Plan, in my view, particularly Council Wide Transportation Objectives 23(d) and 29 and Council Wide Principles of Development Control 55 and 56 or with Table Un/4 and, also, having regard and taking into account Principle 153(h) and particularly (i) and (vii). In my view, the carpark shortfall is too severe in the instance of this site and locality.
- 12 Accordingly, the decision of this Court is to dismiss the appeal and uphold the decision of the Council to refuse the application.
- 13 There will be an order to that effect.