

**APPROVED MINUTES OF THE MEETING OF
HERITAGE WESTERN CAPE,
APPEALS COMMITTEE**
**Held on Tuesday, 7th December 2021 via Microsoft Teams,
scheduled for 08:30**



Opening and Welcome

The Chairperson, Ms Katherine Dumbrell officially opened the meeting at 08:30 and welcomed everyone present.

Attendance

Committee Members:

Ms Katherine Dumbrell (KD)
Prof Andre van Graan (AvG)
Dr Antonia Malan (AM)
Dr Nicolas Baumann (NB)
Mr Stuart Hermansen (SH)

Members of Staff:

Ms Nosiphiwo Tafeni (NT)
Ms Waseefa Dhansay (AB)
Ms Penelope Meyer (PM)
Ms Khanyisile Bonile (KB)
Ms Muneerah Solomons (MS)
Ms Stephanie-Ann Barnardt (SB)
Mr Robin George (RG)
Ms Ayanda Mdludlu (AM)
Ms Chane Herman (CH)
Ms Corne Nortje (CN)
Ms Natalie Kendrick (NK)
Ms Sneha Jhupsee (SJ)

Visitors:

Item 9.1

Ms Tasneem Higgins
Mr Shuayb Schroeder
Ms Raneah Carr
Mr Ron Martin

Item 9.2

Mr Gordon Metz
Mr Ian Pretorius
Ms Sarah Winter
Mr Ashley Lillie
Mr Anthony Arvan

Item 10.1

Mr Johan Cornelius

Item 10.2

Mr Spider Clark
Dr Stephen Townsend
Mr Johan Cornelius

Apologies

none

3. Absent
None

4. Approval of Agenda

5.

4.1 Dated 7th December 2021

The Committee resolved to approve the Appeals Agenda dated 7th December 2021.

6. Approval of Minutes of Previous Meeting

5.1 Appeals Minutes dated 10 November 2021.

The Committee resolved to approve the minutes dated 10th November 2021.

6. Disclosure and Conflicts of Interest

None

7. Confidential Matters

None

Administrative Matters

8.1 Outcome of the Tribunal Committees and Recent Court Decisions

PM reported back on the Tribunal outcome in the case of the de-proclamation of a portion of a PHS located at Camps Bay – a decision taken by Council.

8.2 Report back from HWC Council

NB raised a query with regards to the report on the implementation of the NHRA by HWC, asking whether a covering report by the primary consultant, Vidamemoria, was also received as only Adv Kantor's specialist report had been uploaded for comment. KD requested that the Vidamemoria report be uploaded to the website.

8.3 Site Visits Conducted

ITEM 9.1: Erf 12563, 26 Coronation Road Walmer Estate

ITEM 9.2: Erf 353Re, 6 Kloof Street, Sea point

8.4 Potential Site Visits

none

8.5 Discussion of the Agenda

9 Matters Arising

**9.1 Proposed Additions and Alterations on Erf 12563, 26 Coronation Road, Walmer Estate
HM/CAPE TOWN METROPOLITAN/ WALMER ESTATE/ERF 12563**

Case No: 21081111MS0816E

The appeal pack was tabled.

A site inspection report was tabled.

Ms Muneerah Solomon introduced the case, which is an appeal against a decision of BELCom to refuse the application in its present form.

The following were present and participated in discussions:

- Ms Tasneem Higgins (owner)
- Mr Shuayb Schroeder (owner)
- Ms Raneah Carr (legal advisor)
- Mr Ron Martin (Heritage Consultant)

MS introduced the item

NB read the site inspection report into the record.

APPELLANT presented, amongst others, the following arguments:

- The application has a long history.
- The appellant feels that they had responded adequately to the previous requirements of BELCom.
- The further requirements were not clear.
- The scale and grain of the HPOZ has been eroded over the years. The building directly opposite is an example of this.
- The building is currently in a very bad state. The client purchased the property in this state.
- The structure needs to be made liveable for the appellants and their family.
- Due to the topography, the proposed house is not a true double storey.
- The alterations are substantial, but it is graded a III C.
- The scale and footprint are not being increased. The design responds to the evolving fabric of Walmer Estate. Chester Road has some fine examples, but the contextual analysis demonstrates that the immediate environment has become an eclectic mix.
- There is a lot of design precedent in the area.
- The client is very anxious to repair the building as it is a health and safety risk at the moment.

DISCUSSION

Amongst other things, the following was discussed by the Committee:

- The building is in poor repair.
- The context does have a degree of consistency and heritage character.
- However, the definition of the HPOZ is not strong enough to provide clear guidance for future design, and the CoCT has permitted different styles to evolve.
- Symmetry and centrality are identifying elements in roofscapes in the surrounding context the roof proposal is not in line with this. The committee considers the roofscape important in this case.
- The building is not responding to heritage precedent in the area; it is a new style.
- There is no evidence of alternative designs having been explored
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- The committee is of the opinion that the building is a departure from the general character of the area (hipped roofs etc).
- The area does have significance, and heritage indicators would inform a more sensitive design.

FURTHER REQUIREMENTS

The Committee notes the opinion of BELCom that: "the site falls within an area that is changing with the introduction of contemporary architecture. However, this is a corner site located in a heritage area. Therefore, while the committee does not have objection in principle to the subject building being altered, the manner in which this is done must respond positively to the character of its neighbours."

This Committee requires the submission of revised proposals which are in line with identified heritage indicators and informants. The impact of the proposal on the existing structure and its neighbours, with particular reference to the corner condition of the site, should be the focus of the study. Indicators should include, *inter alia*, analysed house forms and house street relationships and their contribution to the streetscape. The analysis should inform the formulation of heritage indicators. These indicators and informants, and a heritage-related assessment of the proposals should be formulated by a suitably qualified heritage practitioner with architectural expertise.

**9.2 ITEM 9.2: Appeals for Proposed Total demolition of Erf 353Re, 6 Kloof Road, Sea Point.
HM/ CAPE TOWN METROPOLITAN/ SEA POINT/ERF 353RE
Case No: 21030811KB0920E**

The appeal pack was tabled.

A site inspection report was tabled.

KB introduced the case, which is an appeal against a BELCom decision to permit a total demolition of the site.

The following were present and participated in discussions:

- Mr Gordon Metz (SFB)(Appellant)
- Mr Ian Pretorius (Simon van der Stel Association) (Second Appellant)
- Ms Sarah Winter (Heritage consultant for the second appellant)
- Mr Ashley Lillie (Heritage consultant for the Respondent)
- Mr Anthony Arvan (Attorney for the Respondent)

AvG read the site inspection report into the record.

APPELLANT 1 (Mr Metzfor SFB) presented, amongst others, the following arguments:

- Application was made on 15 October 2021 he applied for a recording, which has not been forthcoming and requested a postponement in writing.
- Nevertheless agreed to, will proceed.
- Dissenting opinion in BELCom whether "Gees Judgement" should be applied.
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- The building contributes significantly to the heritage context.
- BELCom also did not consider potential negative impact of replacement building.

APPELLANT 2 (Mr Pretorius for Svds Foundation)

- The site is in the heart of Sea Point on a triangular piece of land, and has landmark qualities.
- It is therefore an important resource which must be protected

APPELLANT (Ms Winter for Appellant 1)

- Reference was made to the heritage statement prepared by Winter and Scurr.
- No party is disputing the Grade IIIc significance.

- Serious difference of opinion of the nature and significance of the context.
- It is in many ways a textbook example of a Grade IIIC, if one considers the reason for creating this grading category.
- BELCom refers only to the fire station, not the rest of the context.
- Grading relates to the level of the street block; and the role of a building in a particular street block.
- Heritage document unpacks the significance of the street block.
- There is coherence of the surrounding context, which has rarity value.
- There appears to be a difference of opinion as to the potential impact of the redevelopment on the heritage context. BELCom opted to waive the right to impose conditions.
- Development which does not take the heritage context into account will be damaging to this context.
- Heritage conditions suggested in Heritage Statement. Begins to unpack where particular street block character is important in terms of street interface.
- The following questions need to be asked: what is the nature of the heritage context? What would the impact of a building with no heritage conditions imposed be? What conditions of approval would be required to mitigate those impacts?

RESPONDENT (Mr Lillie) presented, amongst others, the following arguments:

- The building is not protected in terms of the NHRA, and there are no heritage graded buildings within the area according to the CoCT grading map.
- The area has not been put forward for HPO status.
- At BELCom the question of imposing conditions was raised, and the chair raised the site, 246 Main Road, Sea Point, which was next door to two grade IIIA buildings. The conditions imposed there were ultimately removed.
- The Gees judgement must be applied judiciously.
- Concern is expressed about conduct of appellants and very emotive statements which are not conducive to calm and rational decision making.
- The appellants have made perfunctory submissions regarding BELCom's view of the demolition. No case has been made for retention.
- The building has no intrinsic qualities to contribute to an environment which is not in and of itself a heritage resource.
- The reliance on the Gees Judgement is misplaced.
- The heritage statement focuses primarily on the need to impose conditions. It is an inappropriate application of conservation principles.
- The fire station would not be negatively impacted on. The zone is designated in the Todeschini & Japha report as a special area. No suggestion has been made to designate it an HPOZ. In the Gees case, the site was within a proposed HPOZ. Area must have sufficient coherent character to warrant protection.
- Other buildings in immediate area have been approved for demolition. Isolated buildings do not provide sufficient motivation for the retention of this building.

DISCUSSION

Amongst other things, the following was discussed by the Committee:

- This is a unique situation; the arguments presented by the appellants have merit.
- The issue of precedent needs to be weighed against the need to judge each case on its own merits.
- The triangular block is a heritage resource comprising an ensemble of buildings. If this building's removed, the impact on the block must be considered.

- The existing zoning controls are quite extensive and permit a large development which would have a serious impact on the heritage significances of the block.
- The Committee agrees with CoCT's comment and considers it to be of relevance, although the committee does not agree with the assessment that the building could be re-purposed.
- The street elevation on the building has lost some detail. The building has been much altered over the years. Insisting on the retention of the building is not warranted.

DECISION

The appeals are upheld. The decision of BELCom is replaced with the following:

The building can be demolished subject to any replacement building being in line with the indicators listed in S4.2 of the Winter and Scurr Heritage Statement dated 22 November 2021. Final drawings to be circulated to the appellant parties for a 30-day period to comment prior to the plans being submitted to the HWC Appeals committee for final consideration. The demolition permit will only be issued once final plans are approved.

10. New Matters

10.1 Proposed Development of New Dwellings on Erf 2090, 50 Olivenhout Avenue (S38(1) of the NHRA) HM/CAPE TOWN METROPOLITAN/PLATTEKLOOF/ERF 2090 Case No: 21091602SB0920E

The appeal pack was tabled.

The appeal is against a HOMS decision to require an HIA.

Ms Stephanie-Ann Barnardt introduced the case.

SH read the site inspection report into the record.

The following parties were present and took part in the discussion.
Mr Johan Cornelius (Heritage consultant for the Appellant)

APPELLANT (Mr Cornelius) presented, amongst others, the following arguments:

- The question of the rectangular form: this was a fence, not an archaeological resource.
- The old farm werf is the prime heritage resource together with the cemetery. The subject site was part of the farm many years ago.
- The farm werf was the subject of a previous HIA which in turn was well informed by other heritage reports. This HIA did indicate that a development could take place, as the views from the werf to the subject site will not be impacted.
- The slope of the site allows for taller buildings at the bottom of the site, which will not impact the views.
- Accordingly, there is no potential impact on heritage resources.
- The property was zoned for residential development when it was sub-divided from the farm.

DISCUSSION

Amongst other things, the following was discussed by the Committee:

- No heritage resources observed at the site inspection
- There is a fence which forms the rectangle visible in the aerial photograph

DECISION

The appeal is upheld. No Heritage Impact Assessment is required.

10.2 ERVEN 439, 440 & 442, 47 & 49 NAPIER STREET & 13 JARVIS STREET, THE VILLAGE LODGE, DE WATERKANT HM/CAPE TOWN METROPOLITAN/DE WATERKANT/ERVEN 439,440 & 442 Case No: 19080507LB0807E

The appeal pack was tabled.

The following were present and took part in the discussion:

FOR THE APPELLANTS

Mr Spider Clark
Dr Stephen Townsend

FOR THE RESPONDENTS Mr Johan Cornelius

SB introduced the appeal, which is against a decision of BELCom.

APPELLANT (Mr Clark) presented, amongst others, the following arguments:

- The setback and height of 5 Jarvis St was the defining parameter with which the subject properties needed to comply.
- Confusion about measurements; must just comply with the setback.
- A surveyor should do the measurements.
- The rooftop pergola is a contentious issue, it must be marked on the plan as per the original approval.

APPELLANT (Dr Townsend heritage consultant) presented, amongst others, the following arguments:

- Please insist on a land surveyor to determine the setback from the parapet and boundary. The height must also be determined.
- No part of the pergola was ever approved. The drawing does not reflect the pergola, and yet there is a note stating that the pergola is to remain. The appellants do not believe that it should be approved at all.
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- In 2003 the approved terrace only covered half of the roof.
- The use as a hotel is not approved by the City. All 3 houses now have substantial roof terraces.
- It is very confusing to provide a cogent comment on the proposals as a result of all the unauthorised work.

RESPONDENT (Mr Cornelius) presented, amongst others, the following arguments:

- None of the proposal is confusing; all the issues that Dr Townsend raised with regard to the land use application are not relevant to heritage.
- The pergola is not part of the application.
- The client may introduce structures which are more intrusive, such as sheltering structures for the rooftop pool.

- The distance from the parapet wall is the main point
- The appeal is unnecessary as agreement was reached with the appellants.

DISCUSSION

Amongst other things, the following was discussed by the Committee:

- The process of the City of Cape Town is not relevant to the HWC Appeals Committee.
- It is noted that the pergola was not approved by BELCom and is accordingly not depicted on the drawings.
- The dispute over the measurements can however be dealt with at the City of Cape Town plans approval stage.

DECISION

The Appeal is dismissed and the decision of BELCom is upheld.

12. GENERAL

13. Proposed next date of the meeting: **12 January 2022**

14. Adoption of decisions and resolutions
The Committee resolved to adopt the decisions and resolutions dated 7th December 2021.

15. Closure: The meeting was adjourned at 14 h 14.

MINUTES APPROVED AND SIGNED BY:

K. Dumbrell

CHAIRPERSON _____

DATE _____

SECRETARY _____

DATE _____