

**APPROVED MINUTES OF THE MEETING OF
HERITAGE WESTERN CAPE,
APPEALS COMMITTEE**
**Held on Wednesday, 12 May 2021 via Microsoft Teams, scheduled
for 08:30**



1. Opening and Welcome

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

2. Attendance

Committee Members:

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

Members of Staff:

Ms Nosiphiwo Tafeni (NT)
Mr Olwethu Dlova (OD)
Ms Cathy-Ann Potgieter (CAP)
Ms Anita Shologu (AS)
Ms Penelope Meyer (PM)

Visitors:

Item 9.1

Dr Stephen Townsend
Ms Elize Mendelsohn
Ms Toni Snow
Mr Richard Summers
Ms Clarice Arendse
Mr Ashley Lillie
Mr Peter Buttgens
Mr Theo Augustyn

Item 9.2

Mr Martin Bey
Dr Stephen Townsend
Ms Toni Snow
Mr Chris Snelling
Mr Alexis van der Merwe
Mr Ashley Lillie

Item 9.3

Mr Philip Viljoen
Mr Bruce Wilson
Mr Derek Salter
Ms Elize Mendelsohn
Cllr Nicola Jowell

3. Apologies

None

Absent

None

4. Approval of Agenda

4.1 Agenda dated 12th May 2021

The Committee resolved to approve the Appeals Agenda dated 12th May 2021.

5. Approval of Minutes of Previous Meeting

5.1 Appeals Minutes dated 17th March 2021

The Committee resolved to approve the minutes of the Appeals Committee meeting which was held on 17th March 2021.

6. Disclosure and Conflicts of Interest

None

7. Confidential Matters

None

8. Administrative Matters

8.1 Outcome of the Tribunal Committees and Recent Court Decisions

PM reported back on the Tribunal hearing on Kotze Street, Gardens that was heard on 10th May 2021. The Appeal was lodged over 15 months late, so the issues before the Tribunal were more related to condonation than to heritage issues. A decision regarding condonation has not been taken, which is noted to be of concern as there has not been a strong case made out as to why condonation should be granted. The Committee noted the issues relating to opening Appeals up that are lodged late.

PM reported that the Midnight Storm matter may go to the High Court.

8.2 Report back from HWC Council

None. The Committee noted that there is a Council meeting on 21st May 2021. The issues experienced by the Committee regarding Tribunal decisions and directives should be raised in the meeting. The functioning and procedure of the Tribunals have opened substantive and procedural issues for the Appeals Committee.

8.3 Site Visits Conducted

Erf 405, 11 Oldfield Road, Sea Point.

8.4 Potential Site Visits

Erf 768. Clydebank Road, Green Point. AM and AvG to undertake a site inspection, including the interior of the building, at a convenient date for the owner. CAP to arrange.

8.5 Discussion of Agenda

Following Mr Lillie's request to hear item 9.2 after 9.3, it was resolved to hear the matters in that order.

8.6 Appeals Spreadsheet

The Committee noted the spreadsheet and queried whether there would be an analysis of the decisions. PM raised that a Committee training workshop is planned by the staff. Date to be confirmed.

9. Matters Arising

9.1 Proposed Total Demolition, Erf 1430, 30 Bradwell Road, Vredehoek, CT. S34

HM/CAPE TOWN METROPOLITAN/VREDEHOEK/ERF 86617

Case No: 1911060LB1106E

Ms Cathy-Ann Potgieter introduced the case.

Response to further requirements of the Appeals Committee issued 15th July 2020.

Dr Stephen Townsend, Ms Elize Mendelsohn, Ms Toni Snow, Mr Richard Summers, Ms Clarice Arendse, Mr Ashley Lillie, Mr Theo Augustyn and Mr Peter Buttgens were present and took part in the discussion.

APPELLANTS

The Appellants presented, amongst others, the following arguments:

- The Body Corporate noted that they had attempted twice to be registered with HWC, and it was only after the demolition was permitted by BELCom that they became aware of the decision.
- HWC and the Appeals Committee were correct in hearing the late Appeal.
- The context is quite distinctive and unique, and there is a consistency of height, building form, roofscape and art-deco detailing. All the buildings were argued to indicate a continuity in the manner in which they have been built and placed on the erf.
- The area therefore has consistency from a heritage perspective.
- The proposed height is out of keeping with the buildings in the area.

APPLICANT

The Applicant presented, amongst others, the following arguments:

- The Applicant submitted a consolidated response to the Committee's further requirements issued in July 2020.
- With regards to lawfulness, neither HWC nor its Appeals Committee has the power to hear late appeals under the Act.
- The fact that the Committee previously heard the matter is not requisite to overlook the lawfulness of hearing the matter in the current hearing.
- The degree of lateness (in this case is 3 weeks), the reasons for delay, and fairness are irrelevant, as the Act does not confer these powers onto the Committee.
- There was compliance with the required public participation process.
- The Act does not intend for HWC to regulate design proposals where heritage issues are not raised. In this case it is not HWC's prerogative to approve the replacement building. An objective consideration based on the overall scheme of the Act is required.
- The issue in this case is whether there is a sufficiency of cultural significance in the immediate and broader area and whether the cultural significance warrants the imposition of conditions on the permit.
- Mr Richard Summers presented diagrams to indicate that BELCom's approval of the application was appropriate, and how the design iterations tabled before BELCom were also appropriate.
- The streetscape diagram shows that the integrity of the built environment is minimal and does not hold much heritage significance. In a spatial planning context, Bradwell Road is a transitional area within the urban fabric.
- The proposal is therefore appropriate. There is a depth to the façade, and there is a softness to the curvature of the design due to the greenery. The height difference is argued to not be a heritage issue.
- Permit conditions would therefore not be appropriate in the context where no heritage resources will be significantly affected.

DISCUSSION

Amongst other things, the following was discussed:

- The Committee noted that the revised proposal is an appropriate response to the further requirements, which have therefore been adequately addressed.
- The Committee noted the first ground of appeal.
- However, it was further noted that the decision to issue further requirements cannot be reversed and therefore the matter should continue to be heard.

DECISION

The Appeal is dismissed. The revised proposal with drawing no 20.D05 and dated 8th February 2021 is approved as having met the further requirements set by the Committee.

9.2 Tribunal: Proposed Demolition, Erven 55165 and 55166, 8 & 10 Feldhausen Road, Claremont. HM/CAPE METROPOLITAN/CLAREMONT/ERVEN 55165 & 55166 Case No: 1607051JW0720E

Ms Cathy-Ann Potgieter introduced the case.

Tribunal directive dated 10th November 2020 as a condition attached to the successful appeal.

Mr Martin Bey, Dr Stephen Townsend, Ms Toni Snow, Mr Chris Snelling, Mr Alexis van der Merwe and Mr Ashley Lillie were present and took part in the discussion.

APPLICANTS

The Applicants presented, amongst others, the following arguments:

- The indicators are clearly identified in the initial report and need not be re-stated.
- The objectors do not indicate an engagement with the heritage indicators nor how heritage resources are affected.
- The objectors do not discuss the potential impact on the heritage value.
- The Tribunal ruling means that the Committee cannot engage in a substantive debate or accept further submissions regarding this matter.
- The objectors seek to impose improper interpretations of the Tribunal ruling.
- The initial report comprehensively complies with the ruling.
- The development proposal is comprehensive and is argued to not have been properly engaged with by the objectors.

OBJECTORS

Dr Stephen Townsend presented, amongst others, the following arguments:

- The criteria set out in the Tribunal's directive has been interpreted inappropriately by the Applicant.
- The area has long been recognised as having heritage value.
- The Applicant is incorrect in framing the objectors' argument as being related to the impact on neighbours. The argument is based on heritage grounds.
- The objections relate to the limits of what would fit into the townscape, and that the proposed new development is inappropriate.

UCRRA presented, amongst others, the following arguments:

- The subject block and the heritage resource must be considered.
- The revised proposal does not appropriately respond to the Tribunal directive and the heritage fabric of the area.

DISCUSSION

Amongst other things, the following was discussed:

- The Committee raised concerns around whether there would be any real heritage impact in this suburban context.
- The Committee noted that the revised submission complied with the Tribunal directive in the following ways:
 - Sufficient information for decision-making has been supplied.
 - Information on how the relationship to the existing urban fabric will be affected in respect of grain, fabric, roofscape and height has been supplied.
 - The assessment of the impact on heritage resources of significant value has been provided.

DECISION

The directive of the Tribunal has been complied with, and HWC endorses the proposal in the document dated April 2021 by Zeanne & Goss with Objek Architects. The Council submission plans must come back to HWC for stamping.

9.3 The Proposed Total Demolition of Erf 405, 11 Oldfield Road, Sea Point HM/CAPE TOWN METROPOLITAN/SEAPOINT/ERF 405 Case No: 20102604ND1027E

Ms Cathy-Ann Potgieter introduced the case.

Appeal against HOMs permit for Total Demolition issued in terms of S.34 of NHRA on 9th March 2020. Site inspection report to be tabled.

Mr Philip Viljoen, Mr Bruce Wilson, Mr Derek Salter, Ms Elize Mendelsohn, and Cllr Nicola Jowell were present and took part in the discussion.

The site inspection report was presented by Dr Baumann (annexed to these Minutes).

APPELLANTS

Mr Philip Viljoen and Ms Beate Lietz presented, amongst others, the following arguments:

- The appeal is against HOMs decision to approve the proposed development.
- The unique historical significance and character of the area is stressed.
- The surrounding area is a representative subset of the context, and the proposed demolition will therefore impact the heritage resources there.
- The premise of the Appeal is that the heritage value of the house is significant, and its demolition will therefore substantially affect the heritage resources of the structure as well as the surrounding context.

FNAG presented, amongst others, the following arguments:

- The fact that the area falls within a HPOZ is an important indication of the impact that the demolition will affect heritage resources.
- FNAG wants to ensure that development will not affect the heritage character of the area, while stressing that they do not want to stop possible development.
- They argued that BELCom did not appropriately consider that the structure falls within the HPOZ.

- Concerns are raised regarding the probable impact on the cactus garden in place for over 60 years.
- The scale of the proposed replacement building is also of concern due to its potential long-term impact on the area and the adjacent IIIA-graded park.

APPLICANT

The Applicant presented, amongst others, the following arguments

- While it is agreed that the context holds heritage significance, they dispute that the structure itself holds heritage value.
- They suggest that the demolition and replacement structure will complement the heritage character of the area.

DISCUSSION

Amongst other things, the following was discussed:

- The Committee raised concerns regarding the fact that there was no specific reference to what the impact on heritage significance would be.
- The Committee does not believe that there are sufficient heritage grounds raised to uphold the Appeal.
- Much of the argument raised relates to parking and other issues that are not heritage concerns. The appearance of many cars in the area does not amount to a heritage issue.
- As such, the issues raised seemed to relate to City Planning policies as opposed to heritage issues.
- The Committee raised concerns regarding its jurisdiction over issues related to Zoning and City Planning.
- The Committee is of the opinion that the concerns raised by BELCom have been adequately addressed by the proposal.
- The Committee is of the opinion that the proposal appropriately responds to the requirements of BELCom. The proposed development is sensitive to the surrounding environment. However, the impact on the adjacent park must be investigated.

DECISION

The Appeal is dismissed. The revised design iteration presented in January 2021 to BELCom is endorsed.

10 New Matters

10.1 Proposed Alterations and Additions on Erf 768. Clydebank Road, Green Point, CT.

S.34-A&A

HM/CAPE TOWN METROPOLITAN/GREEN POINT/ERF 768

Case No: 20091008KB0921E

Interim Appeals Pack for noting only. The Committee resolved to undertake a site inspection before the next Appeals meeting.

11. Adoption of decisions and resolutions

The Decisions and Resolutions of the meeting were unanimously adopted by the Appeals Committee.

12. Closure: The meeting was adjourned at: 13:05

13. Proposed next date of the meeting: 15th June 2021

MINUTES APPROVED AND SIGNED BY:

CHAIRPERSON _____

DATE _____

SECRETARY _____

DATE _____