

MEETING OF THE HERITAGE WESTERN CAPE, APPEALS COMMITTEE

Minutes of a Meeting of the Appeals Committee of Heritage Western Cape held on Tuesday, 17 February 2016, at 09H00 in the 1st Floor Boardroom at the offices of the Department of Cultural Affairs and Sport, Protea Assurance Building, Greenmarket Square, Cape Town

1. Opening and Welcoming

The Chairperson Mr Richard Summers opened the meeting at 09H00 and welcomed everyone present.

2. Attendance

Appeals Committee

Mr Richard Summers
Dr Nicolas Baumann
Dr Antonia Malan
Mr Trevor Thorold
Dr Piet Claassen

Chairperson Appeal Committee
Appeal Committee member
Appeal Committee member
Appeal Committee member
Council Member

HWC Staff

Dr Errol Myburg
Ms Colette Scheermeyer
Ms Penelope Meyer
Ms Katherine Robinson
Ms Heidi Boise
Mr Olwethu Oz Dlova

Chief Executive Officer
Deputy Director
Legal Advisor
Heritage Officer
Heritage Officer
Admin Officer (Secretariat)

Visitors

Mr Richard Moffat
Mr Graham Jacobs
Mrs Yvonne Leibman
Mr Russel Baker
Ms Anelia Coetzee
Mr Johan Malherbe
Mr Daniel Nugent
Mr Mayiji Nyikosa
Mr Leonard Raymond

Mr Shekesh Sirkar
Prof Fabio Todeschini
Mr Ashley Lillie
Mr Neil Basson
Mr Johan Treurnicht
Ms Sarah-Jane Jackson
Mr Deon Deetlefs
Mrs Anne Kruger

Observers

None

3. Apologies

3.1. Mr Jonathan Windvogel Heritage Officer

4. Approval of agenda

The Committee resolved to approve the agenda dated 17 February 2016.

5. Approval of minutes of the previous meeting

5.1. Dated 19 January 2016

The Committee resolved to approve the minutes without additions.

6. Disclosure of interest

Richard Summers recused himself from Item 9.2.

7. Confidential Matters

7.1. None

8. Administrative Matters

8.1. Outcomes of the Tribunal Committee

Ms Meyer noted that there is nothing to report.

Penelope Meyer

8.2. Procedural matters relating to Appeals

8.3. Recent Court Decisions

Ms Meyer noted that there is nothing to report.

Penelope Meyer

8.4. Site Visits

The Committee confirmed that it had undertaken a site inspection on 26 January 2016 of Erf 827, 216 High Level Road, Sea Point and a Site Visit Report was tabled in that regard.

Penelope Meyer

9. Matters Arising

9.1. Proposed Alterations and Additions, Erf 14363, Lodge Laan 1, Wellington: Section 34

In discussion it was noted that:

- The Appellant had been afforded a reasonable period within which to provide the Committee with the information that was first requested at the Appeals Committee meeting on 22 September 2015. Despite the Case Officer liaising subsequently with the Appellant in this regard, the information requested has not been provided to the Committee.
- Additional enquiries were made by Mr Thorold to assess whether a heritage consultant had been appointed or engaged to undertake the work in question. Although the Appellant had been in touch with Mr Chris Snelling to discuss this matter, Mr Thorold reported that Snelling had referred the owner to Mr Henry Aikman to undertake the investigation in question. There was no evidence that the Appellant had in fact

communicated with Mr Aikman or that any effort had been made in this regard.

- The current situation is one in which the Appellant, through persistent inaction, has of his own volition delayed the finalisation of the appeal. The position is untenable from the perspective of administrative uncertainty and the Appeal cannot go undecided for this reason.
- In the final assessment, no expert evidence was placed before the Committee in support of the Appellant's contention that there were several structural constraints supporting the notion that the roof was required to be replaced.
- The Committee is sympathetic to the Appellant's concerns about the impact of the thatch roofing on his son's health. That fact however does not entitle the Appellant to unilaterally alter a heritage resource without first obtaining any approvals required by the National Heritage Resources Act.
- The Appellant's contention that there was no information regarding the historical significance or nature of the property on the Internet and that the Appellant was not aware of any permits that were required in respect of the roof replacement are not supported. The building is clearly a 19th Century building with some considerable (and readily ascertainable) degree of heritage significance.
- It is of great concern that there has been no credible attempt to obtain the input from a heritage consultant or a suitably qualified conservation architect despite this having been requested by the Committee.

DECISION

Despite having undertaken a site inspection, the Committee resolved that the documentation / information submitted in connection with the appeal is inadequate to enable an informed assessment of the significance of the resource in question, the degree to which the heritage significance of the building has been affected by the intervention.

The Committee is therefore unable to second-guess the relative merits of the decision by BELCom to require the reinstatement of the thatch roofing. The appeal is accordingly dismissed.

Jonathan Windvogel

9.2. Proposed Alterations and Additions, Erf 10373, Glen Dirk, Klaassens Road, Constantia: Section 34

RS recused himself and AM took the chair for this item.

Mr Richard Moffat, Mr Shekesh Sirkar, Mr Graham Jacobs, Prof Fabio Todeschini and Mrs Yvonne Leibman were present and took part in discussion.

In discussion it was noted that:

- The discussion and minute for item 10.1 heard by the Appeals Committee meeting of 8 December 2015 pertains.
- The item before the Appeals Committee is restricted to the s.34 application and BELCom decision regarding proposed alterations and additions to the Cistern, and the issue of the new house is a completely separate process.
- Comments received from I&APs do not amount to substantial objections to the proposals in terms of heritage conservation.

- The BELCom decision and permit dated 14 October 2015 stated: The Committee decided the grading of the building to be grade IIIB. The Committee resolved to approve the proposals as they are sensitive to the historic fabric and retain the overall legibility of the original form. The work must be monitored by the heritage architect and a close out report must be submitted within 30 days of practical completion.
- The matter was postponed and removed from the agenda of the Appeals Committee on 19 January 2016, as HWC was still awaiting a response from SAHRA. A letter of comment was then received from SAHRA stating that “SAHRA has no objection to the partial demolition, reconstruction and reconfiguration of the Cistern on Erf 10737 [sic], Constantia.”

DECISION

The Committee supports the BELCom decision and conditions as recorded in the permit letter of 14 October 2015.

The appeal is therefore dismissed.

Katherine Robinson

9.3. Proposed Total Demolition, Erf 827, 216 High Level Road, Sea Point: Section 34

Mr Ashley Lillie and Mr Russel Baker were present and took part on discussion.

In discussion it was noted that:

- The form of the building is relatively intact, but largely concealed by later additions and alterations at the front, rear and sides of the original building.
- Elements of fine joinery and fabric remain; however the condition of the core building remaining has deteriorated and been compromised to such an extent that the historical value of the building could not be considered to be of high significance.
- The Committee considers it unnecessary to consider whether or not the building is indeed recoverable or the related issue of the financial feasibility thereof, save to state that in this particular instance the advanced state of degradation and deterioration of the original heritage resource calls into question the merits of the suggestion that the resource can in fact be recovered.
- The extent of the degradation is evidenced by, among others, the extent of concrete infill throughout the building, the significant adverse impact and damage associated by several accretions to the building all the way around the building.
- The building is not necessarily irrecoverable but the Committee has had regard the specific factual circumstances relating to this building, and in particular the extent of degradation.
- The Committee also noted that the context immediately around the building has changed fundamentally and any heritage significance attributable to the building could not validly be based on contextual significance.
- The appeal is therefore well-motivated.

DECISION

The Committee resolved to uphold the appeal on the basis that the condition of the core of the building has deteriorated significantly and any heritage significance compromised.

Heidi Boise

9.4. Proposed Total Demolition, Re-erf 5396, 15 Contour Road, Hermanus: Section 34

The matter was postponed until 23 March 2016 at the request of the applicant/appellant.

Heidi Boise

10. New matters

10.1. Proposed Alterations and Additions, Erf 168, Free Mason Hall, C/O Smuts & Prospect Street, Malmesbury: Section 34

Ms Katherine Robinson made a power-point presentation.

Mr Neil Basson, Ms Anelia Coetzee and Mr Johan Treurnicht were present and took part in discussion.

- Mr Summers questioned why this matter had been placed on the Agenda for the Appeals Committee.
- Mr Summers explained to Mr Treurnicht that the original decision taken by BELCOM in connection with the proposed alternations was in fact taken in July 2015 and that the decision communicated in December by BELCOM did not fall within the purview of what is appealable in terms of the appeal regulations promulgated in terms of the National Heritage Resources Act.
- Mr Summers explained that the appeal committee's powers are restricted to hearing appeals against a decision by a committee of Heritage Western Cape to either refuse or grant a permit. In December 2015 BELCOM did not in fact take any such a decision but elected rather not to consider the application further pending resolution of BELCOMs recommendation that charges be laid against the owner for allegedly unlawful work that had been undertaken on the building in question without the requisite authorisation.
- Mr Treurnicht explained that he was not aware of the original BELCOM decision and that although the original BELCOM decision had been communicated to his professional advisors (planner and architect) that information was not communicated directly to him. Mr Treurnicht indicated that any alterations that had been undertaken to the building were done specifically in order to save this structure. This work was done since the signing of the agreement with the previous owner in May 2014 and were affected in order to get the building through the winter. Mr Treurnicht contested the suggestion that they proceeded regardless of the heritage implications.
- Mr Summers informed Mr Treurnicht that his concerns regarding BELCOMs recommendation that charges be laid should be directed directly through the office of the CEO of Heritage Western Cape and that

the letter informing him of BELCOMs decision should not have stipulated that that the decision was appealable.

- The CEO confirmed that as of yet no such decision has been taken by Heritage Western Cape as to whether to proceed in laying charges against Mr Treurnicht and therefore the opportunity still represented itself for him to make representations to the relevant authorities at Heritage Western Cape in this regard.
- It is noted that as part of the iterated process of engaging with Heritage Western Cape, Mr Treurnicht's professional advisors had been engaging with Heritage officials and that position needs to be concluded and the final submission made to BELCOM in this regard.

DECISION

- The appeal is premature in the sense that BELCOM has not yet taken a final decision with regard to the application. There is no basis in the National Heritage Resources Act to support the decision adopted by BELCOM that it was not going to proceed with considering the application until such time as the issue of criminal charges had been finalised. The obligation imposed on BELCOM is to assess the application on its merits and to take a final decision to either grant or refuse the permit in question.
- The Committee resolved that the matter should not have served before the Appeals Committee and the matter is referred back to BELCOM to render final decision on the s 34 application.

Katherine Robinson

10.2. Proposed Alterations and Additions, Rem of Ptn 5 of Farm 1397, Groenendal Farm, Bovlei, Wellington: Section 34

Ms Katherine Robinson made a power-point presentation.

Mr Johan Malherbe, Ms Sarah-Jane Jackson, Mrs Anne Kruger and Mr Leonard Raymond

In discussion it was noted that:

- The DHF argued that the two contested components of the proposed alterations are reliant on each other (i.e. the location and scale of the staircase will determine the width of the proposed rear gable).
- The DHF's submission is that the gable appears to be too wide and that the appearance of the gable could be improved with pilasters. The DHF was however not opposed to the construction of the rear gable in principle. The DHF did consider however that the proposed positioning of the interior staircase was inappropriate. The existing staircase is considered by the DHF to be less intrusive from a heritage perspective and does not cut across the beams.
- The building is graded IIIA.
- With regard to the possible destruction of fabric, the DHF took issue with the notion that the impact on oregon beams is somehow not as serious a concern from a heritage perspective as an impact on yellowwood beams. Mr Malherbe pointed out that the beam is in fact a poplar beam.
- The building derives its heritage significance partly in relation to its situation within a site that forms part of the proposed Cape Winelands Cultural Landscape and within the Bovlei area which is one of the best preserved areas from a heritage perspective.

- The DHF expressed a general concern about the fact that the significance of the setting can be eroded by subsequent and consistent removal of significant fabric from heritage resources within the area.
- The DHF suggested that a simple recovery of plaster would assist in determining the width of the original gable if any and that there is insufficient information to establish whether or not there was in fact an original gable. The DHF suggested that further research was required. Mr Malherbe indicated that this is essentially a modern intervention to make the building workable as a guesthouse and that the imperative has been to avoid having a staircase in the kitchen and to enable the optimal utilisation of the top floor.

DECISION

- The staircase results in a modern addition to the fabric of the building. Although the building is graded IIIA there is a history of chronological layering and fragmentation over time. The two contested interventions (the staircase and the gable) are not considered to be sufficiently problematic from a heritage perspective to warrant the intervention of the Committee in requiring the proposed intervention to be redesigned.
- The proposals are designed to give effect to the owner's intention to change the use of the building to accommodate a guesthouse. The proposed changes are not considered as having a significant impact on the heritage significance of the building or its setting. There is insufficient evidence to suggest that the changes will have a serious impact on the heritage significance of the building or on its setting
- The Committee resolved to dismiss the appeal. The Committee however requires, as a condition of approval that the applicant must ensure the appropriate recordal of the fabric and interventions associated with the application and a comprehensive report in this regard is required to be submitted by the applicant to HWC.

Katherine Robinson

10.3. Proposed Alterations and Additions, Erf 4431, Cheve House, 27 Mill Street, Paarl: Section 34

Ms Heidi Boise made a power-point presentation.

Mr Johan Malherbe, Ms Sarah-Jane Jackson, Mr Daniel Nugent, Mr Deon Deetlets, Mr Mayiji Nyikosa, Mrs Anne Kruger and Mr Leonard Raymond were present and took part in discussion.

In discussion it was noted that:

- The DHF has a long standing history of involvement with the building and clearly has an interest in an application of this nature. The DHF relies heavily on its research and its understanding of the heritage significance of the building to argue that something more is required by way of restoration than that which is contemplated in the application.
- The DHF has made a valuable contribution to the information which was placed before HWC through additional written submissions which were considered by the Committee. This has contributed greatly to placing relevant information before the Committee.
- The building was graded IIIB as part of the Drakenstein heritage survey. BELCom had requested HWC's IGICom to consider whether the building

qualifies as a Grade IIIA resource; however no additional assessment of the grading has to date been undertaken by HWC.

- The DHF (the Appellant) submitted that the grading is of central relevance as the application relies (incorrectly in the opinion of the DHF) on the IIIB grading whereas the DHF submits the building is of greater significance.
- In further submissions the DHF argued that the applicant was required to undertake further investigations of intangible heritage resources. The DHF also argued that the threshold of restoration imposed on the applicant (as an organ of state or public entity) was higher than that imposed on a private entity.
- Through its long history of involvement with the property the DHF has come to expect that the property would be restored to a condition identified by the DHF and in respect of which a permit was previously obtained by the DHF in 2008.
- In the written appeal submissions the DHF raised a number of procedural arguments, including the argument that HWC did not have the power to consider the application. These arguments were not pursued during the appeal hearing and the DHF confirmed at the hearing that it was not persisting with the procedural arguments.
- Mr Malherbe contested the suggestion that this is the old Bethel property and argued that they had made an informed decision on the heritage significance of the property based on a plaster stripping permit which had been obtained to establish the factual development of the property. Mr Malherbe emphasised that this minimal intervention process is designed to retain and respect the historical layering of the building.
- Paarl 300 supported the Heritage Statement.
- The DHF's claims on appeal are made with reference to the recent history of the property and the notion that the property had been donated by the provincial government for specific restoration purposes.

DECISION

The Committee is of the opinion that the suggestion to undertake further investigations of the intangible heritage resources has been addressed through the additional information made available by the DHF and the investigations undertaken by Malherbe Rust. There is no need for further investigations in this regard in connection with the application.

The appeal does not take issue with the nature of the proposed alterations *per se* but rather is informed by the DHF's position that the current proposals should adhere to the original intent to restore the building and evidenced by a previous permit obtained by the DHF to restore the building (which the DHF contends should include the reinstatement of the original roof shape and gables). Indeed, the DHF concedes that the proposals would be acceptable if the applicant was a private entity and not a public body. The DHF concedes further (in a letter dated 1 December 2015) that if the applicant had been a private individual then BELCom's decision to approve the application would be "fair".

The argument that HWC has no power to consider the application is without merit. The interpretation of section 9 of the Act suggested by the DHF does not deprive HWC from the authority to consider permit applications in terms of section 34 of the Act. Moreover, Mr Malherbe indicates that SAHRA had been approached by the applicant for comment and that SAHRA indicated that it had no records relating to the property.

The interventions forming part of the application are relatively limited and do not impact seriously on the heritage significance of the property. Only relatively modern layering is proposed to be removed as part of the alterations. There is no merit to the suggestion that the applicant must be forced to undertake a greater scope of restoration work than that required to give effect to the new proposed use for the building.

The Committee resolved that the heritage statement and the additional documentation placed before the Committee provided adequate information to conclude that the proposals do not impact severely on the heritage significance of the property.

The Committee resolved to dismiss the appeal and to uphold the original decision by BELCom.

Heidi Boise

11. Other matters

None

12. Adoption of decisions and additions

The Committee resolved to adopt the decisions.

13. Closure of the meeting

The Chairperson closed the meeting at **12H30**

14. Date of next meeting **23 March 2016**

Chairperson's Signature.....

Date.....

Dr Errol Myburg
Interim Chief Executive Officer
ACCOUNTING AUTHORITY
For Head of Department