

MEETING OF THE HERITAGE WESTERN CAPE, APPEALS COMMITTEE

Minutes of a Meeting of the Appeals Committee of Heritage Western Cape held on Wednesday, 19 October 2016, at 09H00 in the 1st Floor Boardroom at the Protea Assurance Building, Greenmarket Square, Cape Town

1. Opening and Welcoming

The Chairperson, Mr Richard Summers opened the meeting at 09H10 and welcomed everyone present.

2. Attendance

Appeals Committee

Mr Richard Summers (RS)
Dr Antonia Malan (AM)
Dr Nicolas Baumann (NB)
Mr Trevor Thorold (TT)
Mr Rowen Ruiters (RR)

Appeals Chairperson
Appeals Committee Member
Appeals Committee Member
Appeals Committee member
Council Member

HWC Staff

Mr Mxolisi Dlamuka (MD)
Mr Zwelibanzi Shiceka (ZS)
Mr Jonathan Windvogel (JW)
Ms Penelope Meyer (PM)
Mr Olwethu Dlova (OD)

Chief Executive Officer
Assistant Director
Acting Assistant Director
Legal Advisor
Admin Officer (Secretariat)

Visitors

Mr Chris Snelling (CS)
Mr Armand Botes (AB)
Mr Derick Henstra (DH)

Ms Jenalee Harrison (JH)
Mr David Talbot (DT)
Mr Henry Aikman (HA)

Observers

None

3. Apologies

Ms Colette Scheermeyer (CS)
Ms Heide Boise

Deputy Director

4. Approval of agenda

The Appeals Committee resolved to approve the Agenda dated 19 October 2016.

5. Approval of minutes of the previous meeting

5.1. Dated 21 September 2016

The Appeals Committee resolved to approve the minutes dated 21 September 2016.

6. Disclosure of interest

6.1 None.

7. Confidential Matters

7.1 None.

8. Administrative Matters

8.1. Outcomes of the Tribunal Committee

Ms Meyer provided an update of recent matters decided by the Tribunal:

- Erven 303 & 304 Vredehoek – Appeal dismissed (Appeals committee decision upheld)
- Erf 186 Tulbagh – Appeal dismissed (Appeals Committee decision upheld)
- Erf 4431 Paarl (Cheve House) – Appeal dismissed (Appeals committee decision upheld)

Penelope Meyer

8.2. Recent Court Decisions

Nothing to report.

Penelope Meyer

8.3. Site Visits

No site visits to report.

Penelope Meyer

9. Matters Arising

9.1 Proposed Remedial Work, Erf 11306, Klein Constantia Street, Paarl: Section 27

In discussion it was noted that:

- Mr Windvogel had spoken to Mr Henry Aikman who confirmed that the Committee's request for additional information is being addressed and that a submission will be made to the next Appeals Committee meeting in November 2016.

DECISION

- The matter is held over until the following Appeals Committee meeting.

Jonathan Windvogel

9.2 Proposed Alterations and Additions, Erf 8988, 22 Plein Street, Paarl: Section 34

In discussion it was noted that:

- This appeal relates to an application in terms of section 34 in relation to proposed alterations to the existing dwelling on Erf 8988 situated at 22 Plein Street, Paarl.
- The minutes for the BELCom meeting on 5 July 2016 indicate that BELCom resolved that the building is worthy of Grade IIIB. BELCom also noted that the current application deviated significantly from a previous application which was considered by Heritage Western Cape insofar as the current proposal indicates that the period fireplace and the interior configuration of the layout is retained in terms of the current proposals. Based on the information at hand BELCom resolved at a meeting on 5 July 2016 that the proposals will have no impact on the historical, architectural and/or aesthetic value of the building and approved the application. On 13 July 2016, and pursuant to the BELCom decision, a permit was issued by Heritage Western Cape in respect of the proposed additions to the existing structure, subject to the condition that the work is to be done "*strictly in accordance with the HWC stamped plans*".
- On 5 August 2016 an appeal was lodged by the Drakenstein Heritage Foundation (DHF). On 22 August 2016 the Appeals Committee was provided with submissions by Mr Len Raymond in his personal capacity. At the appeal hearing Mr Raymond indicated that he had not complied with the prescribed formalities for lodging an appeal and had not completed the appeal form. Mr Raymond was invited to do so but

he has failed to formally lodge an appeal in this regard. Mr Raymond was nevertheless afforded an extensive opportunity to communicate verbally his concerns with BELCom's decision to the Appeals Committee and in order to avoid any allegations of procedural unfairness, the submissions made by Mr Raymond will be addressed in the context of the Appeals Committee's decision despite its serious misgivings about whether or not Mr Raymond in fact complied with the Heritage Western Cape Appeal Regulations in this regard.

- A concern which is common to both the DHF appeal and the submissions by Mr Len Raymond is that the current application submitted to Heritage Western Cape is essentially the same application that served before the Ministerial Tribunal (and which was the subject of an appeal decision by that Tribunal dated 11 August 2015). The DHF and Mr Raymond infer that the applicant "*lost the appeal Tribunal hearing*" and is therefore precluded from resubmitting "*the exact same application*" to Heritage Western Cape in terms of section 34 of the Act.
- The DHF and Mr Raymond have misconstrued the appeal decision of the Ministerial Tribunal as the previous application submitted to Heritage Western Cape (in terms of section 34 of the Act) was not refused by the Ministerial Tribunal on the merits of the application. Rather the appeal was upheld on the basis that the Ministerial Tribunal deemed that the information considered by Heritage Western Cape was deficient in certain respects. There is a subtle yet significant distinction between the nature and legal effect of the Tribunal decision and what the DHF and Mr Raymond contend (incorrectly) is the effect of the Tribunal decision.
- In this present appeal, the applicant has submitted an application to Heritage Western Cape in terms of section 34 which contains a detailed Heritage Report prepared by Anne-Marie Fick. The Heritage Report has fully identified the heritage significance of the building and the site and has explained the issue of grading and the impact of grading on the resource. The applicant is not precluded from making such an application and similarly the Appeals Committee is not barred from considering the appeals. The DHF and Mr Raymond's contention in this regard has no merit insofar as it is suggested that the applicant has no right to submit the application in question. The reliance by the DHF – in part – on section 34(2) of the Act is therefore misplaced as Heritage Western Cape has not refused the application. As indicated above, the legal effect of the Ministerial Tribunal decision has been misconstrued. This is not a valid ground of appeal.
- The applicant indicated that prior to the appeal hearing they had been contacted telephonically by the Chairperson of the DHF who had expressly indicated to the applicant that they would not pursue the appeal provided that the applicant agreed to make certain changes to the proposed alterations which were acceptable to the DHF. Given the time constraints, the applicant indicated that there was not sufficient time to circulate the revised drawings in order to demonstrate effectively that these changes had been effected to the plans and resolution reached and therefore in principle agreed to make the necessary. Notwithstanding this undertaking, the DHF proceeded with lodging an appeal against the decision. The applicant is therefore understandably aggrieved by the fact that the DHF had proceeded with lodging an appeal against the decision notwithstanding the undertaking to amend the proposed building plans.

Grading:

- The reliance on the grading of the resource as a basis for appealing BELCom's decision is misplaced. On the facts of this matter, the grading of the building which is the subject of this resource was dealt with previously by this Committee and pursuant to a new application; the issue of grading has been explored and researched in significant detail by the applicant's heritage consultant (Ms Fick).
- Properly considered, the Act read with the guideline document entitled "Grading: Purpose and Management Implications" approved by Heritage Western Cape's Council on 16 March 2016 clearly shows that grading may only be carried out by the responsible heritage resources authority (in this case Heritage Western Cape). Alternatively, in the case of a Grade III heritage resource, the relevant local authority is empowered provided that it is competent to do so in terms of section 8(6) of the Act. Importantly, the guideline document recognises the right of interested parties to make submissions in relation to grading but this does not mean that gradings approved by Heritage Western Cape can be used as a challenge to the grading of a resource

where the interested party or conservation body in question does not agree with the grading approved by Heritage Western Cape.

- In the present matter, the dwelling in question was graded IIIC in terms of the Drakenstein Municipality Heritage survey. That grading was approved by Heritage Western Cape as the responsible heritage resources authority under the Act (as the local authority does not have competence in this regard). The Drakenstein survey indicated that further information could warrant a different grading if the relevant circumstances prevailed.
- The Drakenstein survey also indicated that there were certain areas which could be contemplated for Grade II grading. That determination, however, was undertaken at a very high level only as it was not part of the formal mandate of the Drakenstein survey and was therefore not approved by Heritage Western Cape. In terms of the grading of resources, only the individual buildings (i.e. Grade III resources) were officially approved in terms of the survey.
- The Heritage Report supplied by the applicant contained detailed further investigations which indicate that the resource warrants a Grade IIIB resource. This grading was confirmed by Heritage Western Cape at the BELCom meeting.
- The argument that the resource qualifies as a Grade IIIA – by Mr Raymond – was not substantiated (i.e. the information which served before the Committee did not justify the conclusion that the grading of the resource should be altered). Similarly, the indication made to the Ministerial Tribunal that the resource could in fact warrant a Grade II grading based on the Drakenstein survey is misleading as the survey did not result in any Grade II areas being formally approved in respect of the jurisdictional area of the Drakenstein Municipality. It is a misconstruction of the output of that study if the suggestion is that this individual resource could qualify as a Grade II resource without the requisite approval from Heritage Western Cape as the responsible heritage resources authority.
- The issue of grading of the resources was dealt with comprehensively in the Heritage Report and the consultant had clearly demonstrated that the building was not of Grade IIIA significance. Neither the DHF nor Mr Raymond have placed information before the Committee which would serve to justify that the grading analysis contained in the Heritage Report is not accurate. The evidence put forward by the DHF and Mr Raymond is at best anecdotal. The architect believed to have designed the dwelling (Immelman) is potentially of local / regional significance, but has not achieved much widespread recognition to date and does not serve as a basis to elevate the grading of the resource.
- Pursuant to a site inspection in which both the exterior and interior of the building were inspected by the Appeals Committee, the Committee agreed that the resource warrants a grading of IIIB in terms of the criteria stipulated in the Heritage Western Cape Guidelines. The findings of the Heritage Report are supported in this regard.
- In his submissions, Mr Raymond argued that the grading must be motivated in detail and substantiated by research to supplement any gap in information in the local survey undertaken on behalf of the Drakenstein Municipality. It was apparent from this, the DHF had previously motivated the grading as being at least Grade IIIA and further that Mr Raymond contended that it should also be considered as a Grade II resource.
- Firstly, Mr Raymond's submission completely ignores the detailed submissions in the Heritage Report and fails to grapple with the comprehensive nature of the grading exercise and related information shown in that report. Instead, Mr Raymond relied on previous arguments made to the Ministerial Tribunal which as indicated above was of the view that the information that served before Heritage Western Cape was deficient in certain respects. The Heritage Report that served before BELCom in connection with this application and the pending appeal is detailed and comprehensive and has adequately motivated the grading in connection with the application and the applicable guidelines. There is no indication that either the DHF or Mr Raymond have substantiated their concern that the grading warrants anything other than a grading of IIIB. To suggest otherwise is fanciful and appears to be motivated by subjectivity rather than the criteria in the Grading Policy.
- The four factors relied upon by Mr Raymond – namely (1) that the building stands on an old wagon road; (2) the building faces on to Van der Poel's Plein; (3) the Plein is of

historical importance and significance; and (4) the buildings that surround and face onto the Plein in the immediate context, in support of the argument that the subject-building is of special significance satisfying Grade II criteria do not elevate the grading of the structure.

- The submission by Mr Raymond relating to “the designers” is incoherent and does not clearly evidence a valid ground of appeal. None of the features cited by Mr Raymond support the contention that the building and site are not suitably identified as a Grade IIIB resource.

Significance of the resource and context:

- The core or determining factor in connection with this appeal is that the structure is regarded as being a IIIB heritage resource, the primary significance is related to the contribution to the streetscape and its contextual value, with some fine period detailing, particularly related to the street façade.
- The dwelling is a fine and interesting period piece. However, it cannot be considered to be in an original or unaltered condition as the house and property has been much altered internally, and has several additions and new outbuildings on its northern (back) and eastern sides, the latter being clearly visible from Plein Street.
- The rather unsympathetic paint schemes, AC units, landscaping / paving etc. all contribute to diminish the external impressions and qualities of the property and do not support a conclusion that the subject-building is of special heritage significance. It was ascertained by the Committee that the gated lane alongside the western boundary of the property is a private road or servitude across a neighbouring property. The western side of the house is screened from public view by hedging and dense planting.
- The Committee agreed with the BELCom decision that on the basis of the detailed Heritage Report, the house / property warrants a grading of IIIB.

Impact of the proposals:

- The DHF and Mr Raymond identified several specific concerns to the proposals as they relate to both interior and exterior changes to the house.
- Specifically the following issues, among others, were addressed: the lintel height of all new windows should match existing lintel heights; standard (i.e. off the shelf) windows and doors are not appropriate for this resource; demolition of the north west wing exterior wall was not disclosed and was represented as an interior wall in the application; the use of support beams to hold up the roof structure and achieve the open plan design is unacceptable.
- The issues relating to specific design considerations raised by the DHF are of great concern particularly given the applicant’s assertion that the owners had been contacted immediately prior to the hearing with an indication that the DHF would not be pursuing this appeal if the proposed changes were effected to the plans. There was no indication that this had not been done and the DHF (Mr Smit) did not contest that the Chairperson of the DHF had in fact made this undertaking to the applicant. It is not disputed that the building has heritage significance and that the grading of IIIC is applicable and that it has contextual value. It is also worth noting that Dr Elzette Albertyn and Paarl 300 supported the application. Despite this heritage significance the house derives its value from the specific elements detailed in the Heritage Report. In the circumstances, the alterations do not give rise to a significant negative impact on the resource itself and in this regard the brickwork (fabric) that would be impacted due to the removal of the internal walls and the replacement of existing windows and doors will not constitute an overwhelming negative heritage impact.
- The proposed alterations / replacement of the windows and doors on the western and northern sides will not impact upon the architectural heritage significance of the property. The sizes and proportions of the proposed replacement / new windows on the western side are sympathetic to the original window penetrations. It was agreed that appropriate purpose-designed joinery (as apparently agreed to by the Owner and DHF) would be more appropriate than the stock items indicated on the plans.
- The complete removal / demolition of the wall separating original kitchen and attached lean-to back room (“Boy’s Room” on plan shown by Anne-Marie Fick) will not

negatively impact on the significance of the house. The proposals will have minimal impact on the street interface.

DECISION

The Committee resolved to dismiss the appeal for the following reasons:

- The application which served before the Ministerial Tribunal had been upheld on the basis of insufficient information which served before Heritage Western Cape.
- This deficiency has been remedied in the form of a detailed Heritage Report which has resulted in Heritage Western Cape approving the recommendation that the resource is worthy of a Grade IIIB status.
- The grading of a resource falls within the competence of Heritage Western Cape as the responsible heritage resources authority under the Act and cannot be second guessed by persons dissatisfied with the decision without compelling and sound reasons.
- In the present matter, no such compelling information has been placed before Heritage Western Cape to motivate a change in the status of the resource in question.
- In light of the above, the Committee does not support the argument that the lintel height of all new windows should match the existing lintel heights as the applicants have submitted substantial motivation for the proposed deviation in the present context.
- The Committee is of the opinion that the proposed standard “off the shelf” casement windows and replacement doors should instead be custom-designed and made to be more in keeping with the original Arts and Crafts Style elements of the house. The Committee therefore requires revised plans to be submitted to Heritage Western Cape for further approval.

Jonathan Windvogel

9.3 Proposed Alterations and Additions, Erf 3190, 4 Constantia Road, Oranjezicht: Section 34

In discussion it was noted:

- The dwelling is identified as a grade IIIB resource.
- The dwelling is situated within a HPOZ.
- The architectural qualities and form of the existing building are significant from a heritage perspective and contribute directly to the qualities of the streetscape and context of Constantia Road area.
- The heritage qualities associated with the area of Constantia Road in which this dwelling is situated are evidenced by the grain and fabric which could contain double-storey dwellings designed with architectural integrity.
- The BELCom decision did not specify the precise manner in which the proposal was considered to be over-scaled but the Committee has similar concerns namely: the scale of the proposed renovation to the roof space is substantial and entails the total removal of the existing roof structure; raising the eaves; inserting a reinforced concrete first-floor slab; and constructing bedrooms and bathrooms in the significantly raised and altered form of the new roof structure.
- The concerns identified by the Committee with the proposal relate not only to the dormer window, as argued by the Appellant, but to the entire proposal.
- The result of the proposal will be such that it creates a materially different view and perspective of the dwelling (from the west and south elevations in particular) and the impact on the streetscape as a result of this will be considerable. The proposal is not sympathetic to the texture and grain of the area.
- The Committee is sympathetic to the owner's desire to create additional living space. It was felt however that this could be better achieved through a more considered architectural approach which is sympathetic to the heritage resource and context. The current proposal fails to achieve that imperative and results in a proposal which is over-scaled and inappropriate from a heritage perspective.
- In essence the result of the City's apparent refusal to entertain an appropriate architectural design for a double-storey, and thereby forcing the owners to work within

the roof-space of a single-storey is an awkward architectural design with negative impacts on heritage significance.

- The result is a compromised design proposal in which the Appellant was at pains to point out that there was hardly sufficient head room to manoeuvre comfortably.
- An alternative design response which strives to maintain the streetscape qualities would be preferable.
- As a result of the site visit undertaken by the Committee it was considered that the consideration of the reallocation of required additional living space elsewhere on the site would impact less on the streetscape and the consideration of the possibility of a double-storey structure for which there is precedent in the street context, could result in a less adverse heritage impact.
- The Appellant cited several examples in which double-storey dwellings had been approved by “heritage”. This claim was not substantiated with proof of approvals granted previously by HWC and after further investigation by the HWC case officer (which confirmed that there is no record of HWC approval for such dwellings) the only rational conclusion is that such precedent buildings were approved by the City and not HWC.
- Nevertheless the Committee noted that there is precedent for double-storey renovations in the street which are sympathetic to the heritage context.
- The Committee was advised by the Appellant that the possibility of a double-storey was discussed with the City and the City had unequivocally indicated that it would never approve a double-storey for the proposed dwelling.
- In the result the proposal is over-engineered and the outcome is a design proposal which is out of sync with the streetscape and heritage qualities of the grain and fabric of the streetscape. This concern relates not only to the proposed dormer window but it is the combination of the entire redesign of the roof structure coupled with the dormer window.
- The owner has a relatively large property and there are opportunities for the site to be redeveloped in different ways which could result in a more sympathetic treatment to the streetscape.
- The Appellant cited several safety and functional concerns in support of the contention that the dormer window is absolutely necessary in order to make the living space functional. Although sympathetic to the owners’ concerns, these do not constitute valid heritage arguments in support of the proposal.
- The owners’ desire and requirements for additional living space is noted but the current proposal is not the best practicable heritage solution for the resource.

DECISION

The appeal is dismissed and BELCom’s decision is upheld. The current proposals do not compliment but rather detract from, and negatively impact, the architectural qualities of the heritage resource (namely the existing dwelling and the streetscape context).

Jonathan Windvogel

9.4 Proposed Total Demolition, Erf 26939, 6 Roman Road, Observatory: Section 34

In discussion it was noted that:

- Ms Boise was not present at the meeting but Mr Windvogel confirmed that Ms Boise has communicated the Committee decision to the applicant/appellant and is awaiting further information according to the Committee’s decision.

DECISION

The appeal is held over until the following Appeals Committee meeting.

Heidi Boise

10. New Matters

10.1 Proposed Redevelopment of Erf 19506, Paardevlei, Somerset West: Section 38 (4)

Mr Jonathan Windvogel made a power-point presentation.

Mr Chris Snelling, Ms Jenalee Harrison, Mr Amond Botes, Mr David Talbot, Mr Derick Henstra and Mr Henry Aikman were present and took part in the discussion.

In discussion it was noted that:

- Ms Harrison argued in favour of the appeal hearing proceeding and not being postponed on the basis that it would be procedurally unfair to do so and her client would suffer prejudice if the meeting were to be postponed. Ms Harrison also was of the opinion that PAJA was not applicable in this instance and Mr Snelling is neither materially nor adversely affected by the decision by IACom which is the subject of the appeal. Ms Harrison also argued that Mr Snelling had no legitimate expectation regarding any decisions by Heritage Western Cape and that this is not an internal appeal. Ms Harrison suggested further that Mr Snelling was not listed as an interested party in the communication received from the Committee and that in her client's opinion Mr Snelling is not an interested and affected party although they had previously been engaging directly with Mr Snelling in connection with the application and subsequently communications between them had broken down.
- Mr Snelling indicated that he is happy to waive the concerns that he raised in his correspondence to Heritage Western Cape dated 18 October 2016 but ultimately indicated he would abide by the decision of the Committee. Mr Snelling indicated that he is concerned that there is new information tabled in the appeal lodged with Heritage Western Cape which has led to the issue in dispute. Mr Snelling indicated that the development had been undertaken in a piecemeal manner and that a proper section 38 process was required to be followed. Mr Snelling confirmed that he had made submissions directly to IACom on two previous occasions in connection with the application and noted that he had requested previously to be regarded as an interested and affected party.
- Due to the communication received from Mr Snelling in the form of a letter dated 18 October 2016, the Committee was not in a position to proceed with the full hearing as it had contemplated that the item needed to be postponed in order to provide Mr Snelling with a fair opportunity to make representations. The Committee had only seen the correspondence from Smith Tabata Buchanan Boyes during the appeal meeting and PAJA requires the exercise of public power to be undertaken with regard to the principles of administrative justice and the concepts of transparency and accountability. Mr Snelling has raised a concern with HWC in connection with the appeal submission and despite the contentions by Ms Harrison the Committee was of the prima facie view that Mr Snelling falls within the categories of persons contemplated in Regulation 12 of the HWC Appeal Regulations governing appeals of this nature.
- The Committee resolved that Mr Snelling be required to submit a responding statement by close of business on 26 October 2016 and the appellant be provided an opportunity to respond in writing to Mr Snelling's responding statement by no later than close of business 2 November 2016. The parties will be provided an opportunity for verbal submissions at the Appeal Committee hearing in November 2016 but the Committee resolved that no further written submissions will be entertained save as described herein.

DECISION

- The Committee resolved that the appeal is held over for determination at the next Appeal Committee meeting.

Jonathan Windvogel

11. Other Matters

None

12. Adoption of decisions and additions

The Appeals Committee resolved to adopt the decisions.

13. Closure of the meeting

The Chairperson closed the meeting at: 11H00

14. Date of next meeting

16 November 2016

Chairperson's Signature.....

Date.....

Approved