

MEETING OF THE HERITAGE WESTERN CAPE, APPEALS COMMITTEE

Minutes of a meeting of the Appeals Committee of Heritage Western Cape held on Tuesday, 22 September 2015, 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 09H04 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 Jenna Lavin
Mr Zwelibanzi Shiceka
Ms Penelope Meyer
Mr Jonathan Windvogel
Ms Katherine Robinson
Ms Heidi Boise
Mr Olwethu Oz Dlova

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

3. Apologies

4. Approval of agenda

The Committee resolved to approve the agenda dated 22 September 2015

5. Approval of minutes of the previous meeting

5.1 Dated 25 August 2015

The Committee agreed to ratify the minutes adopted at the meeting of 25 August 2015.

6. Disclosure of interest

None

7. Confidential Matters

None

8. Administration

8.1 Outcomes of the Appeal Tribunal

Ms Meyer advised that there is nothing to report as there have been no further Tribunal appeal decisions for the period under review.

Penny Meyer

8.2 Procedural matters relating to Appeals

Ms Meyer to liaise with Mr Summers regarding an appropriate date for the workshop regarding the HWC Appeals Policy.

**Richard Summers
Penny Meyer**

8.3 Recent Court Decision

Ms Meyer advised that there were no recent court decisions for discussion.

Penny Meyer

8.4 Assistance to stakeholders

Heritage officials are required to ascertain beforehand which representatives attending an Appeals Committee meeting require assistance and/or hearing aids to avoid problems associated with members of the public not being able to hear the verbal submissions made at the Appeal Committee meeting

Penny Meyer

9. Matter Arising

9.1 Proposed Alterations and Additions, Erf 186, Van Der Stel Street, Tulbagh: Section 34

Mr Jonathan Windvogel made a power-point presentation.

Mr Anthony Silberberg (Tulbagh Heritage Agency) and Mr Jason Clark (Tulbagh Valley Heritage Foundation) were present and took part in discussion.

In discussion it was noted that:

- Mr. Jason Clark of the Tulbagh Valley Heritage Foundation indicated that he did not represent the owner (Mr. Theron) but that he had been requested by Mr. Theron to represent the owner at the Appeals Committee. Upon request for further clarification, Mr. Clark confirmed that he did in fact represent Mr. Theron for the purposes of the appeal hearing.
- Mr. Clark apologised to the Committee for the tone and content of the letter received from Mr. Meyer of PdM Architecture and Project Management but intimated that there was a level of frustration and financial cost involved in regard to this matter for the owner.
- The Chairperson took exception to the suggestion that Mr. Theron felt that his time had been wasted by Heritage Western Cape. The Chairperson reiterated that the information submitted as part and parcel of the

application was inadequate for the purposes of the appeal. Based on that in July 2015 the Appeals Committee had requested further information which it considered was necessary in order to engage with the issues raised on appeal. The Chairperson indicated that, of his own volition, Mr. Theron had either ignored the request for information or elected to disregard it.

- This was supported by the suggestion in Mr. Meyer's letter that the owner had no intention of preparing additional drawings and reports for Heritage Western Cape.
- In spite of this, Mr. Clark indicated that he had additional diagrams and photographic material to present to the Committee. The Chairperson ruled against allowing such additional information to be handed up to the Committee on the basis that the Committee was being compromised by the submission of additional information at a late stage which should have been provided prior to the hearing.
- The Chairperson reiterated that the request for additional information had been made in July 2015 and it is not acceptable to seek to introduce information at this late stage.
- Mr. Clark confirmed that the proposals had changed and that new plans had been prepared for the façade which had not been submitted previously to Heritage Western Cape.
- Mr. Clark indicated that the Tulbagh Heritage Valley Foundation is in support of the project as the potential benefits from a tourism perspective significantly outweigh the other concerns.
- Mr. Clark conceded that the level of information contained in the original heritage statement would not support informed decision-making on the appeal.
- The Committee noted that it was reluctant to consider any further plans without seeing what the Municipality's comments were in connection with the proposed plans.
- Mr. Clark confirmed that work had been undertaken to the rear of the property and that the owner had not followed the correct procedures with regard to the work in question. Mr. Clark gave his opinion that the work done does not impact or alter heritage resources adversely. However, Mr. Clark conceded that there was no detailed report showing that this issue had been properly evaluated, considered and assessed by a heritage consultant.
- The Committee is of the opinion that the original request for additional information was both reasonable and necessary in order to render an informed decision on the appeal. The suggestion by Mr. Clark that new plans had been prepared in respect of the front façade suggests a change in the nature and scope of the application.
- Mr. Clark was then given an opportunity to confer with Mr. Theron and thereafter Mr. Clark confirmed Mr. Theron's instruction that the original application would be withdrawn and that a fresh application would be submitted to Heritage Western Cape based on the new plans.
- In terms of any fresh application the applicant would be bound to consult both with the local authority and with registered heritage conservation bodies in connection with the proposal.
- The Chairperson requested the case officer to obtain confirmation in writing from Mr. Clark and/or Mr. Theron that the application has been withdrawn.

DECISION

In light of Mr Clark's advice that the owner had indicated that the application was withdrawn, the Committee resolved that there is no longer any basis to continue to consider the appeal.

Jonathan Windvogel

9.2 Proposed Total Demolition, Erf 5028, Garmor House, 12 Plein Street, Cape Town: Section 34

Ms. Meyer advised that a heritage statement had in fact been received by Heritage Western Cape but it had not been received in time to be placed on the agenda for the Appeals Committee meeting of today. The heritage statement will be circulated to Appeal Committee members in due course with a view to it being placed on the agenda for October 2015.

The Appeals Committee noted that it was therefore still waiting for the information it had requested in connection with the proposed development and the appeal will remain pending until such time as the requisite information has been received.

Katherine Robinson

10. New matters

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

Mr Jonathan Windvogel made a power-point presentation.

Mr Martin van der Merwe (part owner of the property) was present and took part in discussion.

In discussion it was noted that:

- The Municipality had not been in a position to provide a final comment in connection with the application as the work had effectively been done illegally and had already been completed. The Drakenstein Heritage Foundation did not support the proposal to install corrugated metal roofing on the property. It was noted that the work has been done without the requisite approvals and that the decision by BELCom was that the thatched roof needed to be reinstated.
- The work on the property has been stopped as the Drakenstein Municipality issued a Stop Works Order. The work in installing the corrugated metal roofing has not been completed in its entirety as, for example, there are still no gutters installed.
- Mr. van der Merwe indicated that there was no information regarding the historical significance or nature of the property on the website (he referred in particular to the Drakenstein Heritage Foundation website). Mr. van der Merwe also indicated that he was not aware of any permits that were required in respect of the roof replacement. He indicated that he had not received any guidance from the Municipality in pointing him in the direction of what permit requirements should be satisfied.
- Mr. van der Merwe listed a host of structural constraints in support of the notion that the roof was required to be replaced including, describing that the roof structure was not attached to the house and it was therefore posing a safety threat.

- Mr. van der Merwe elaborated on the impact of the thatched roofing on his son's health concerns, including eczema which his son had apparently not experienced prior to moving into the house with the thatched roofing. Mr. van der Merwe also stressed that his child has a right to health and that this issue was of paramount importance.
- Mr. van der Merwe confirmed that the trees and foliage from the trees surrounding the property continue to be a massive problem and he is required to clean the gutter at least once a week to avoid the significant amount of foliage clogging the gutters. He indicated that the photographic material submitted as part of the appeal does not justify the size of the trees adjacent to the property.
- With regard to the quote in the appeal documentation from Lucas Quality Thatchers dated 2013 Mr. van der Merwe indicated that they did not pursue the quote for rethatching at the time based on the fact that his son had by then developed eczema. Mr. van der Merwe indicated that he would prefer to be able to put the thatch back on the roof but he can't due to his son's health issues. Mr. van der Merwe emphasised that they are trying to restore the building to the best of their abilities but this will take time and will require significant investment.
- With regard to whether the building is situated within a Heritage Overlay Zone, Mr. van der Merwe confirmed that the Blouvlei area is protected but not the area in which the house is situated.
- With regard to the pitch of the roof, Mr. van der Merwe confirmed that the pitch is exactly the same as the original pitch and that nothing has changed in this regard except for the structure of the roof.
- It was questioned as to why, if the building was in such a bad state of repair, a repair order had not been issued in terms of the National Building Regulations because it was a derelict building.
- It was noted in the appeal documentation that the only reference to the grading of the building in question is a reference to the resource being of Grade 3B significance and that was made in correspondence from the Drakenstein Municipality. There is no further substantiation of the grading in the documentation and in BELCom's decision.
- The Committee has no information on the age or significance of the building. The documentation before the Committee is therefore inadequate. The building looks to be an early to mid-19th Century building with some considerable significance. It is distressing that there had been no input from a heritage consultant or a suitably qualified conservation architect as a lot of the issues in discussion could have been dealt with appropriately through the appointment of appropriate consultants. It was considered that it would not be possible to decide on the appeal without having first undertaken a site inspection.

DECISION

The Committee resolved that the documentation submitted in connection with the appeal is inadequate to enable an informed assessment of the significance of the resource and the relative merits of the decision by BELCom to require the reinstatement of the thatch roofing. The applicant is therefore required to appoint a suitably qualified and experienced conservation architect to undertake an independent assessment of the heritage significance of the resource and which assessment shall specify in detail the degree of loss of authentic fabric as a result of the works undertaken on the building (including, but not limited to the replacement of the thatch roofing material with corrugated roof sheet material). The independent assessment shall also include and address the following aspects:

- The historical origins of the property in order to enable the Committee to understand the historical significance and the nature and context of significance.
- Any particularly unique attributes associated with the resource.
- An adequate assessment of the physical fabric to provide an understanding of such fabric in relation to the subdivided property and its relationship with the broader context.
- A photographic survey of the resource and hand drawn diagrams, where necessary for illustration purposes.
- Possible threats to the resource associated with the current *status quo* i.e. incomplete building works.
- The history of the subdivision process and the treatment of the barn.
- The independent assessment must also include whether there is any relevant information in the Heritage Survey undertaken for the area.

In the meantime, the Committee resolved to undertake a site inspection.

Jonathan Windvogel

10.2 Proposed Total Demolition, Erf 55750, 12 Hugon Road, Claremont: Section 34

Ms Heidi Boise made a power-point presentation.

Mr Ashley Lillie, Mr Donovan Pearson and Mrs Suzanne Pearson were present and took part in discussion.

In discussion it was noted that:

- Mr. Lillie indicated that subsequent to receipt of the comments from the City of Cape Town the owners have made many changes to the building.
- Mr. Lillie is not aware that the area had been re-graded as part of the 2015 audit by the City.
- Mr. Lillie's submissions focused particularly on the redevelopment and transformation of the area and that recent developments included several applications for demolition of buildings of similar morphology to the subject application had been approved. Mr. Lillie emphasised that a variety of buildings in the area had already been authorised for demolition and all of those had had the support of the City of Cape Town. The City did not consider the area to be conservation-worthy in that in general there is a relatively high number of demolitions which have been approved.
- Mr. Lillie emphasised that the building in question is a Grade 3C heritage resource which derives from the contextual significance.
- Mr. Lillie indicated that Grade 3C resources only warrant retention where sufficient examples exist within the immediate context in order to warrant a specific building's retention. He submitted further that insufficient other examples exist which would warrant the building's retention as part of a grouping.
- Mr. Ashley Lillie emphasised that the general approach adopted and implemented consistently by HWC that in terms of the Heritage Western Cape Guidelines unless the buildings in question contribute to the character of the local environment they do not necessarily warrant formal protection. The notion of precedent is not treated as an absolute but factually it has led to a complete change in the quality of the area and what effect is on the context of the area. Mr. Lillie referred to the additional

photographic material which was submitted to HWC on 18 June 2015 with regard to expanding upon his argument regarding the characteristics of the context.

DECISION

The Committee resolved that it was necessary to understand the significance of the arguments regarding the contextual significance and also to understand the intrinsic significance of the building. The Committee resolved to undertake a site inspection on Thursday, 8 October 2015.

The Committee resolved further to request Mr Lillie, as the appellant's heritage consultant, to provide the Committee with a plan depicting which properties in the local area had been graded in terms of the NHR Act (and to specify the grading in question).

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

11H57

14. Date of next meeting

30 October 2015

Chairperson's Signature.....

Date.....

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