
JURISDICTION : TOWN PLANNING APPEAL TRIBUNAL

CITATION : JONES & ORS and TOWN OF EAST FREMANTLE
[2003] WATPAT 21

CORAM : MR P MCGOWAN
MR L GRAHAM
MS M CONNOR

HEARD : 17 JUNE 2003

DELIVERED : 30 JUNE 2003

FILE NO/S : APP 68 of 2003

BETWEEN : SHIRLEY JONES
RAEWYN VINCENT
MARK VINCENT
Appellants

AND

TOWN OF EAST FREMANTLE
Respondent

Catchwords:

Demolition - Cultural heritage - Streetscape - Municipal inventory

Legislation:

Nil

Result:

Appeal allowed subject to conditions.

Category: B

Representation:

Counsel:

Appellants	:	Mr M Jones
Respondent	:	Mr C Slarke

Solicitors:

Appellants	:	As Agent
Respondent	:	McLeods

Case(s) referred to in decision(s):

Moullin v Town of Cottesloe [2002] WATPAT 23

MR P MCGOWAN, MR L GRAHAM, MS M CONNOR:

- 1 Mrs Shirley Jones is the owner of No. 2 Walter Street, East Fremantle. Mrs Jones and her late husband, Mr Robert Jones, have lived in the house since 1950. Mr Jones died on 15 June 1967 and the property was transferred into the ownership of Mrs Shirley Jones on 30 April 1969.
- 2 Mrs Jones, we are advised, is in poor health. As a result of that her daughter and son-in-law (the second and third named Appellants) have indicated they now wish to live together for safety, support and quality of life.
- 3 To that end, the Appellants have investigated options for the property and house at 2 Walter Street, East Fremantle (“**subject site**”).
- 4 A consideration of options has lead to the Appellants determining that they wish to demolish the existing house and construct a new dwelling on the subject site which would address their issues of safety, support and quality of life.
- 5 To that end, application was made to the Respondent on 21 October 2002 to demolish the existing house a garage and a tree on the subject site.
- 6 The house on the subject site is on the Respondent’s Municipal Inventory. As part of the considerations that arise from the house being on the Municipal Inventory, the Respondent required a Heritage Assessment to be undertaken by the Appellants in relation to the house on the subject site.
- 7 That was done by the Appellants at their own cost and a report from Kelsall Binet Architects dated November 2002 was prepared and provided to the Respondent.
- 8 On 18 February 2003 the Respondent resolved to refuse the Appellants’ application for planning consent for the demolition of the existing house, garage and tree.
- 9 In refusing the application, the Respondent gave the following reasons:
 - “(i) The dwelling makes a significant contribution to the environment, character and pleasantness of the area. It is part of a largely intact precinct which demonstrates the sequence of development of the streetscape and area comprising the former Easton Estate;

- (ii) The dwelling is part of an intact group of housing which established the character of the streetscape in the vicinity; and
- (iii) The demolition of the dwelling and replacement with a contemporary equivalent will have an adverse impact upon the environment, character and pleasantness of the area.”

10 This appeal is brought from that decision.

Planning Considerations

- 11 The subject site is zoned Urban under the Metropolitan Region Scheme (“**MRS**”) and is zoned Residential under the Respondent’s Town Planning Scheme No. 2 (“**TPS 2**”).
- 12 Demolition of the dwelling on the subject site requires approval under TPS 2 since it falls within the definition of development under Clause 5.1. In that respect it corresponds to Clause 24 of the MRS.
- 13 In TPS 2, objects of the Scheme include the following:
- “1.4.1 (b) To protect and enhance the environment, character and pleasantness of the District;” and
 - (g) To protect significant places of heritage value within the District;”
- 14 We were advised during the course of the hearing that TPS 2 was gazetted on 9 July 1982. Appendix V - Schedule of Places of Heritage Value also appears as part of TPS 2. That Schedule lists some 34 separate entries. Neither No. 2 Walter Street nor any house in Walter Street appears in that Appendix.
- 15 We were advised during the course of the hearing that there had been no addition made to Appendix V since the initial gazettal of TPS 2.
- 16 The Respondent accepted that apart from Heritage considerations there were no other bases to oppose demolition.

Heritage Considerations

- 17 The Heritage Assessment undertaken on behalf of the Appellants includes the following:

“House 2 Walter Street has aesthetic value as part of a largely intact precinct of Inter-War buildings. While none of these buildings are greatly significant in themselves, collectively they form a streetscape that is significant to the Town of East Fremantle.”

18 The following also appears:

“House 2 Walter Street is a modest and representative example of the Federation bungalow style but does not exhibit particular creative, design or artistic excellence, innovation or achievement.”

19 The Respondent called Julie Grace Mackay. Ms Mackay is presently the heritage planner for the Town of East Fremantle, albeit that she only took up the position in May 2003. She provided the following evidence:

“The house on the appeal land is one of a group of buildings which creates a distinctive amenity and character of the street. It is a particularly important part of the group as it is the anchor house for the street. After entering Walter Street from Canning Highway, the land rises and the building on 2 Walter Street is the first building that comes into view on the top of the rise to the right of the street, thus setting the tone for the entire street.

Blonde brick flats have been constructed adjacent to the appeal land, at the corner of Canning Highway and Walter Street. the flats are undoubtedly visually unattractive, but in my opinion they do not form a significant part of the Walter Street streetscape, nor does their existence act as a justification for the demolition of the building on the appeal land.”

20 Ms Mackay then went on to indicate that Walter Street contains nine buildings which are included on the Respondent’s Municipal Inventory and a further 11 buildings which have been recommended by heritage consultants engaged by the Respondent as likely to meet the threshold for inclusion in a new Municipal Inventory.

21 A plan annexed to and forming part of Ms Mackay’s statement indicated in the most simple way the location of the houses to which reference is made, but no other narrative or expert opinion was provided into the underlying qualities or features of the houses other than what is provided in the extract of evidence referred to above.

- 22 There was no pictorial representation of the streetscape or of the houses and the evidence presented in that regard, therefore, was less than satisfactory.
- 23 Nevertheless we are required to proceed on the basis of the evidence as adduced by the parties to the hearing of this appeal with a view to its disposition.
- 24 The essence of the Respondent's position is that the house at 2 Walter Street is not of architectural significance, is not a landmark building and does not meet in any way the criteria for inclusion on the State Heritage Register.

Considerations of Heritage Matters in a Planning Context

- 25 This issue has been addressed by the Tribunal in recent decisions, in particular, *Moullin v Town of Cottesloe* [2002] WATPAT 23.
- 26 There are two critical parts to that judgment which bear on the determination of this appeal:
- “(d) The placement of a property on the Municipal Inventory raises heritage values for consideration that such placement will carry little weight;
 - (e) The placement of a property on a Heritage List under a town planning scheme will make the heritage values of the place relevant in the consideration of a development application but will be only one factor in the determination.”
- 27 Both of those points bear significantly upon the resolution of the issues in this appeal.
- 28 It is important to emphasise again that in this case although the house on the subject property was on the Municipal Inventory, the way in which the matter was advanced by the Respondent was not that the house itself bore significant cultural value rather that it formed part of a streetscape which is said to have had that value. Neither the house nor any other house in Walter Street has been included in Appendix V to TPS 2.
- 29 The short point is that neither this property nor any other property nor the streetscape of Walter Street has been placed on the Heritage List under the Respondent's town planning scheme.

30 As such, therefore, the matter remains, as this Tribunal has previously pointed out, one where heritage values will carry little weight in the determination of whether approval should be granted to the Appellants' application for demolition of the house on the subject property. This is, again, a matter where:

“The starting point for the consideration of a development application for a building (by which we would include a demolition application) that is not entered on the Register of Heritage Places should be a wide open inquiry into all aspects of amenity and a consideration of the degree to which what is proposed should take its place in the locality.” *Moullin v Town of Cottesloe* at 22.

31 Evidence was lead that the application for demolition of the house on the subject site was the subject of advertising. There was no objection received to it. No evidence was lead by the Respondent from any resident who took a position in relation to the demolition of the house on the subject property.

32 This was not a consideration of a house, the demolition of which would lead to the elimination of a rare or unique style of architecture or elimination of housing stock which was entirely representative of a given or limited period.

33 There is express reference in TPS 2 to the sorts of considerations by which the Respondent could approach the protection of this area and this house in particular if it was so motivated. For example, clause 1.4.2(a) as a particular object identifies to promote the continued use of significant buildings in the provision of limited local services in George Street. A particular objective which links with the George Street Precinct No. 33 in Appendix V of the Schedule of Places of Heritage Value.

34 During the course of the hearing, issue was raised as to whether in fact the Respondent had design guidelines which applied to or sought to address matters which would arise consequent upon demolition of a house in respect of which it was said there was heritage interest or cultural value.

35 No such policy or strategy exists.

36 Having said that however, and although it is not in any way determinative of or forms part of the disposition of this appeal, we note that the Appellants intend, if approval is granted, to demolish the existing house to

effect construction of a house which is as far as possible sympathetic to both the area and to the design and styles of houses around it.

37 This Tribunal has previously pointed out in Moullin that there is no obligation that in all shapes and respects a new house constructed in such an environment should in all respect comply with and be limited to the design of a previous era.

38 For these reasons, we are of the view that this appeal should be allowed and that approval be granted to the Appellants to effect demolition of the house on the subject site.

Conditions

39 In the course of submission of this matter to Council there was a split recommendation. As part of that split recommendation there were a number of conditions offered to Council in the event that it came to the conclusion that it would grant approval to demolition.

40 In allowing this appeal we are persuaded that these are appropriate conditions to impose. We reproduce them for the sake of clarity.

- (a) The Appellant is to submit three copies of 1:100 floor plan and elevations of the dwelling and one copy of a black and white photographic record of the exterior of the house (all elevations photographs and negatives) to Council prior to commencement of demolition works. The documentation is to be to the satisfaction of the Chief Executive Officer in consultation with the town planner prior to the demolition works commencing;
- (b) All trees on the site are to be retained and protected until such time as planning consent is granted for new development on the site which makes provision for the retention and protection or removal to trees on the site;
- (c) The proposed works are not to be commenced until Council has received an application for a demolition license and issued a demolition license which is to comply with the planning consent unless otherwise amended by Council;
- (d) This planning consent to remain valid for a period of 24 months from the date of this approval;

- (e) All conditions attached to this approval are to be completed to the satisfaction of the Chief Executive Officer in consultation with relevant officers.

- 41 In the event that any of these conditions pose difficulties for the Appellant we will allow the Appellant liberty to apply.