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**JURISDICTION** : TOWN PLANNING APPEAL TRIBUNAL

**CITATION** : BRIGHT & ORS and TOWN OF EAST  
FREMANTLE [2003] WATPAT 22

**CORAM** : MR P MCGOWAN  
MR L GRAHAM  
MS M CONNOR

**HEARD** : 17 JUNE 2003

**DELIVERED** : 30 JUNE 2003

**FILE NO/S** : APP 71 of 2003

**BETWEEN** : ERIC NORMAN BRIGHT  
MARGARET BRIGHT  
ROSEMARY ERICA BRIGHT  
GRAEME JOHN BRIGHT  
Appellants

AND

TOWN OF EAST FREMANTLE  
Respondent

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*Catchwords:*

Demolition - Cultural Heritage - Municipal Inventory

*Legislation:*

Nil

*Result:*

Appeal allowed subject to conditions.

*Category:* B

**Representation:**

*Counsel:*

Appellants	:	Mr A Roberts
Respondent	:	Mr C Slarke

*Solicitors:*

Appellants	:	Minter Ellison
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 The Appellants are the owners of 20 Pier Street, East Fremantle. Eric Norman Bright and Margaret Bright are the parents of Graeme John Bright who is married to Rosemary Erica Bright. The Appellants purchased 20 Pier Street, East Fremantle in 1985. They have rented the property out on a more or less continuous basis since then.
- 2 They now desire to effect demolition of the house on the property and wish to investigate ways by which the property can be developed.
- 3 The weatherboard house on the property was constructed in 1934.
- 4 The Appellants made application to the Respondent to demolish the existing residence by application dated 9 December 2002.
- 5 The matter was dealt with by the Respondent on 18 February 2003 at which time the Respondent resolved to refuse the application. The following reasons for refusal were provided:
  - “(a) The place is of cultural heritage significance and is a significant place of heritage value and its demolition is contrary to the objectives of Town Planning Scheme No. 2(g);
  - (g) The place contributes to the environment, character and pleasantness of the District as it represents by way of its building fabric and its setting the earlier stage of development (pre WW2) of Pier Street and the general area.”
- 6 In addition, Council recommended that the place be considered for entry onto the Heritage List of TPS 3 when it is gazetted.
- 7 In order for the Respondent to deal with the Appellants’ application for demolition, the Respondent required the Appellants to produce evidence in relation to heritage issues.
- 8 The Appellants had a Heritage Assessment Report from Mr Sasha Ivanovich. This report dated November 2002 concluded as follows:

**“THE STATEMENT OF SIGNIFICANCE;**

No. 20 Pier Street timber cottage with metal roof tiles and a front verandah has no cultural heritage significance for the following reasons;

- The weatherboard cottage is not rare, not typical of its time, nor does it have any direct relationship to significant social economic or political events or persons.”

- 9 The Respondent, however, not being satisfied with the report provided by Mr Ivanovich commissioned a further report from Ms Kristy Bizzaca. In essence, the conclusion of her report was:

“House 20 Pier Street, a weatherboard cottage with metal roof tiles has cultural heritage significance for the following reasons:

- The place contributes to a broader understanding of the historical and residential development of the Town of East Fremantle, which dates from the expansion of Fremantle that occurs as a result of the Western Australian gold rushes in the 1880s and 1890s;
- The place has social value to the community for its contribution to the built environment of the Town of East Fremantle and thus contributes to the community’s sense of place;
- The place is representative in plan and style of a single storey weatherboard cottage built during the first half of the 20th century; and
- The place has associations with Robert Gordon, who served on the East Fremantle Council from 1921 to 1945.”

- 10 It was essentially the differences between the advisors to the Appellants on the one hand and the Respondent on the other which lay at the heart of the dispute the subject of this appeal.
- 11 It was effectively accepted that there were no other planning considerations on which the Respondent relied in order to in any way oppose the application for demolition of the dwelling.

- 12 Mrs Rosemary Erica Bright gave evidence on behalf of the Appellants.
- 13 She clarified that the Appellants' position was that they were prepared to give the dwelling located on the property to the Respondent if its ultimate desire was simply preservation of the building.
- 14 At present it does not appear to be an offer that the Respondent intends to take up.
- 15 In evidence that was lead from Mr Ivanovich he made the following observation:
- “That building has no more cultural significance than the buildings around it, it just happens to be older.”
- 16 One of the issues which was canvassed in this appeal was whether there was some particular cultural significance attaching to the location of this particular house.
- 17 In general terms, evidence was given by Mr Oliver, town planner for the Respondent, that although there are quite a number of such weatherboard cottages constructed in the area of the Respondent known as Plympton and some in parts of South Fremantle, this appeared to be one of the few if not the only example that remained in the area described as the Preston Point Precinct.
- 18 Mr Oliver, in his evidence, identified that the development within the municipality effectively lead to the result that Plympton was an area of lower economic prominence such that there was a proliferation of such style of workers' cottages.
- 19 By contrast, the Preston Point Precinct was an area of East Fremantle developed at a later stage and the development as it moved north from Canning Highway appears to be dated at a considerably later period than the gold rush and early 20th century era which appears to be associated with the Plympton area.
- 20 Adverting to the style of building itself, Mr Ivanovich was of the view that the building was not of any architectural significance, it was just a common or typical style of residence of the era during which it was built (ie the 1930s).
- 21 Ms Bizzaca called on behalf of the Respondent really did not suggest otherwise in relation to this issue.

- 22 In the course of her evidence, Ms Bizzaca seemed to suggest that the criteria applied by her in relation to the assessment of the building at 20 Pier Street were the criteria used under the Heritage Act, but with some modification to make those criteria applicable or referable to local consideration. However, the report that she prepared makes no such qualification. It appears to us that the report was prepared, presented and acted upon on the basis upon which it presents, namely by reference to the criteria in the Heritage Act. At best Ms Bizzaca may have been confused but in any event no documentation or other evidentiary basis was produced to establish that there was another or different set of criteria to which she was working or even if she was, the statutory or other bases to which such criteria could be said to apply.
- 23 In essence, Ms Bizzaca's view was that the aesthetic and cultural significance of the residence at 20 Pier Street was the fact that it was built. The fact that it is where it is contributes to the sense of place and the fact that it was built when it was built and where it was built is of cultural significance because it evidences what was occurring and where it was occurring at the time that the house was built, again in the 1930s.
- 24 Ms Bizzaca's background and training is as an historian. Mr Ivanovich's training is as an architect of considerable experience.
- 25 To the extent to which there is any actual apparent conflict between the two we prefer the views of Mr Ivanovich. As indicated in the report that Mr Ivanovich provided to the Respondent and the evidence he gave he concluded to the effect that the house did not satisfy the criteria for aesthetic historic scientific or social value. He concluded it had none of those values.
- 26 For those reasons he concluded the house has no cultural heritage significance.
- 27 It is important to emphasize this is not a case where argument was advanced on the basis that streetscape was an issue. This matter fell to be determined by reference to the house itself.

### **Heritage Considerations in a Planning Context**

- 28 This issue has been addressed by the Tribunal in recent decisions, in particular, *Moullin v Town of Cottesloe* [2002] WATPAT 23.
- 29 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.”

30 Both of those points bear significantly upon the resolution of the issues in this appeal.

31 In this case the house on the subject property was on the Municipal Inventory.

32 The short point is that this property has not been placed on the Heritage List under the Respondent’s town planning scheme.

33 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.

34 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.

## **Conclusion**

35 In our view, we accept that absent cultural or heritage considerations there are no planning reasons why the Appellants’ application ought not be granted.

36 For the reasons we have indicated above, little or no weight should be attached to heritage considerations in circumstances where the property is merely on the Municipal Inventory.

37 In this case, we accept the evidence of Mr Ivanovich that the place has no heritage or cultural significance.

- 38 As a result, we are satisfied that this is an appropriate case where approval ought to be granted to the Appellants to be allowed to demolish the existing building.
- 39 Although it was suggested in the course of cross examination of Mrs Bright and again in the subject of submissions to us that consideration of other options is a pre-requisite to the grant of this approval, for which reliance is placed upon section 11(3) Heritage Act, we are not at all persuaded that that section has any applicability to this case. There are two compelling reasons, first, it appears to be a directive referable to the local authority, notwithstanding this appeal to this Tribunal and notwithstanding such an appeal is a hearing de novo it could not lead to an extension of the application of that provision to this Tribunal. Secondly, it is patently clear that the provision speaks to places which have been placed on the Register under the Heritage Act. This is not such a place.
- 40 The rationale of section 11(3) Heritage Act is clear. It is equally clear that it has no applicability to the matters with which we are dealing in this case.

### **Conditions**

- 41 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.
- 42 In allowing this appeal we are persuaded that these are appropriate conditions to impose. We reproduce them for the sake of clarity.
- (a) The Appellants are 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.

43 In the event that any of these conditions pose difficulties for the Appellants we will allow the Appellants liberty to apply.