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7 February 2019

BY COURIER

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Executive Director
Heritage Victoria
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8 Nicholson Street
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Dear Sir,

Spurling House, 38 Black Street, Brighton - HO126

We advise that we continue to act on behalf of Dr Damien Louis in respect of the heritage place, being Spurling House, located at 38 Black Street, Brighton, HO126.

In the reasons for decision of the Heritage Council Permits Committee [the Committee] in Permit Appeal No. P26464 given on the 21st of August 2017 the findings of the Committee included that:

“The evidence of Mr Cole is that it is unlikely that the building is safe to remediate due to mould. The evidence of Dr Neumeister-Kemp is that it is most likely that all of the building is contaminated with mould. Although testing was carried out on surfaces and airspaces within the building, testing was not carried out by Mr Cole or Dr Neumeister-Kemp to determine whether or not mould had penetrated the brickwork and other building materials, and if so, to what extent the mould had penetrated the brickwork and other building materials. In light of this evidence, the Committee is not persuaded that the evidence has established that the brickwork and other building materials are affected by mould (including internal penetration of mould within the brickwork and other building materials) to such an extent that demolition of all building fabric at the Place is required at this point in time.” (48)

and

“... The Committee also considers that based on the evidence of Mr Cole and Dr Neumeister-Kemp, it is not unreasonable to establish whether or not mould has penetrated

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the brickwork and other building materials, and if so, to what extent. Once this is established, it is also not unreasonable to establish whether any reasonable steps are available to remediate the mould, and whether remediation would materially affect the cultural heritage significance of the Place, before drawing a conclusion about whether or not remediation without substantial demolition is reasonably possible.” (50)

and

“... the Committee considers that rather than proceeding with the Proposed Works on the basis of the evidence of Dr Neumeister-Kemp that it is most likely that all of the building is affected by mould, and the evidence of Mr Cole that it is unlikely that the building can be safely remediated, it is not unreasonable to establish whether or not the brickwork and other building materials in the Place have been penetrated with mould, and if so, to what extent ... ” (52)

and

“... On the basis of this evidence, and given that testing has not occurred to establish whether or not mould has penetrated the brickwork and other building materials (and if so, to what extent) the Committee is not satisfied that the constraints on effective structural and mould remediation, particularly with respect to the brickwork and other building materials are such that the Proposed Works are required.” (53)

and

“... Whilst the evidence presented on behalf of the Appellant is that it is most likely that all of the building is affected by mould, and that it is unlikely that the building can be safely remediated, testing has not occurred to establish whether or not mould has penetrated the brickwork and other building material, and if so to what extent. This building fabric (including the timber shingles and the double brick walls) continues to contribute to the cultural heritage significance of the Place from an architectural perspective, due to its contribution to the structure, form and floorplan of the Place, the Place has not lost its historical association with John Horbury Hunt.” (54)

Further, the Committee acknowledged that witnesses were not called at the hearing to rebut the evidence of the Appellant’s witnesses (53).

It follows that, notwithstanding the unrebutted evidence that was totally consistent that the Place was contaminated with mould which could not be remediated without demolition the application was refused, thereby rejecting the overwhelming evidence of a body of highly qualified experts whose expertise has been acknowledged worldwide and acknowledged by the Committee.

Since the said decision of the Committee further testing has been undertaken pursuant to a permit obtained from Heritage Victoria which has confirmed by empiric evidence our client’s contention

and the unanimous conclusion of those experts retained by her that the brickwork and mortar is infected with mould. The investigations were undertaken in accordance with the conditions imposed by Heritage Victoria in Permit P27984 and reported to Heritage Victoria including a concise written and illustrated assessment of the extent and impact of the destructive testing on the fabric of the heritage place, in accordance with the methodology statement approved by you directed to ensuring, *inter alia*, that the testing was representative of the whole building. That assessment and the detailed laboratory analysis and peer review were provided to you on 6 December 2018.

Consistent with the unanimous expert opinion of the consultants whose evidence the Applicant led before the Committee the testing verifies their unanimous opinion that the result of the events following the fire to the heritage place has resulted in complete colonisation of the masonry walls and presents as a serious health risk and confirm the expert conclusions that no remediation effort can address both infection control and source removal otherwise than by full demolition and disposal, demolition being the only method to make the site safe and remove the cross-contamination infection and allergen risks.

The proposal is for the complete demolition of the heritage place.

We enclose the following:

1. Heritage Victoria Permit Application including receipt for payment of the application fee;
2. A current copy of the title;
3. Heritage impact statement prepared by Mr Bryce Raworth dated February 2019;
- 4.1 Statement of Dr Cameron Jones of 24 May 2017;
- 4.2 Report of Dr Jones of 9 December 2015;
- 4.3 Report of Dr Jones of 10 December 2015;
- 4.4 Microbiological report of Dr Jones of 24 October 2018; and
5. Mr Brian Murphy's report of 19 November 2018 reviewing the test results performed on the brickwork of the heritage place;
- 6.1 Report of Mr Brett Cole of 20 November 2018;
- 6.2 Statement of Mr Cole of 22 May 2017;
- 6.3 Report of Mr Cole of 14 March 2017; and
- 6.4 Expert Witness/Peer Review Report No. 20170010 of Mr Cole of 24 May 2017;

- 7.1 Dr David Lark's statement of 27 May 2017;
- 7.2 Analytical report of Dr Lark of 12 May 2017; and
- 7.3 Analytical report of Dr Lark of 8 March 2017;
- 8. Dr Heiki Neumeister-Kemp's statements (2) of 5 June 2017;
- 9.1 Submission of Mr Peter Lovell of 5 June 2017; and
- 9.2 Mr Lovell's submission in reply of 26 June 2017;
- 10. Mr Raworth's statement of evidence of 18 May 2017.

It is the Applicant's contention that you as Executive Director and the Committee, whilst not bound by the rules of evidence, are bound by the rules of natural justice which require, *inter alia*, that any decision must be based on evidence and if, which has not been the situation in relation to the matters in issue in this permit application, there is a conflict of evidence the evidence must be weighed judicially.

It is the Applicant's contention that the evidence is all one way that the expert opinion of the Applicant's consultants as to the extent of contamination put in question by the decision of the Committee has been empirically confirmed and that the only expert evidence before you is that there is no safe method of remediation that does not involve the total demolition of the building on the Place.

We await your decision.

Yours faithfully
BEST HOOPER



Ian Pitt QC
Special Counsel

Enc.