



REPORT TO MUNICIPAL PLANNING TRIBUNAL

CASE ID	70473332		
CASE OFFICER	Jevon Jacobs		
CASE OFFICER PHONE NO	021 444 7514		
DISTRICT	TYGERBERG		
REPORT DATE	16 October 2019		
INTERVIEW REQUESTED	APPLICANT OBJECTOR(S)	YES	NO X

ITEM NO      MPTNE18/11/19

APPLICATION FOR ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL) IN RESPECT OF ERF 12172, GOODWOOD.

1    EXECUTIVE SUMMARY

Property description	Erf 12172, Goodwood
Property address	24 Fester Avenue, Balvenie
Site extent	991m <sup>2</sup>
Current zoning	Single Residential 1 (SR1)
Current land use	Dwelling house.
Overlay zone applicable	None.

Submission date	1 October 2019
Subject to PHRA / SAHRA	None.
Any unauthorised land use / building work?	Unauthorised building works in the form of an as-built lapa south of the property.
Has owner applied for the determination of an administrative penalty	Yes.
Has the City Manager applied to the MPT for an order that a person who is contravening the MPBL must pay an administrative penalty in an amount determined by the MPT	No.
Has the City issued a demolition directive i.t.o section 128 of the MPBL? If yes, an administrative penalty may not be applied for.	No.
Has the City served a notice on the owner or other person in respect of the unlawful land use or building work which required the owner or other person to apply for the determination of an administrative penalty?	No.

For decision by the Municipal Planning Tribunal

**3 BACKGROUND / SITE HISTORY**

Erf 12172, Goodwood is currently zoned as Single Residential 1 (SR1). However, the property has unauthorised building works (lapa) encroaching the southern 3m common boundary building line setback.

The owners unlawfully built the lapa prior to any building plan submission. Hence the application for the determination of an Administrative Penalty in terms of Item 129 of the MPBL, 2015. Therefore, this lapa contravenes the MPBL of 2015 as per section 39(1) and 42 of the Development Management Scheme (DMS).

**4 SUMMARY OF APPLICANT'S MOTIVATION**

The applicant's motivation of the proposed is attached as Annexure C and may be summarised as follows:

- Despite the unauthorised building works, Erf 12172, Goodwood is still primarily being used for residential purposes.
- The owners were unaware of the need for approved building plans for the unauthorised lapa.
- The lapa has no negative impact on surrounding properties.
- The owners have not previously contravened the MPBL, 2015 or any other planning law.

**5 ASSESSMENT OF APPLICATION**

- 5.1 As indicated above, the unauthorised building works is in contravention of the Development Management Scheme.
- 5.2 In terms of Item 129(7)(a) of the By-Law, an administrative penalty for a building work contravention may not be more than 100% of the value of the building, construction and engineering work unlawfully carried out.

**Administrative Penalty: Calculation****5.2.1 Unauthorised building work**

$$\text{Value per m}^2 (\text{R1 020}) \times \text{Total Unlawful area (13.95m}^2\text{)} = \text{R14 229}$$

An amount which is not more than 100% of R14 229 may be imposed as administrative penalty

- 5.3 The following factors need to be considered when determining an appropriate administrative penalty, as contemplated by Item 129(8) of the By-Law:

**a) The nature, duration, gravity and extent of the contravention**

**Nature** - The contravention involves unauthorised building works that encroach the southern 3m building line setback on the property. The unlawful building works include a lapa.

**Duration** - As per the City's Geographic Information Systems (GIS) photographic information, dated February 2018, the unauthorised lapa has been in existence since December 2012. This means that the lapa has been in existence for approximately 7 years. The applicant, however, indicates that the unauthorised lapa has only been in existence for approximately 2 years.

**Gravity** - Although the unlawful building works, without the necessary approvals and quality inspections (such as compliance with safety and health requirements as well as National Building Regulations), is a concern, the unauthorised structure is not of unreasonable scale and is similar to structures found on neighbouring residential properties.

**Extent** – The total extent of the unauthorised building works encroaching the building line setback is 14.3m<sup>2</sup>.

**b) The conduct of the person involved in the contravention**

According to the applicant, the owners were unaware of the requirement to obtain building plan approval(s) prior to the unlawful construction of the structure. There is however a contradiction between the applicant's account of duration of the contravention and Council's aerial photography that indicates that the structure has been in existence at least since 2012.

**c) Whether the unlawful conduct was stopped**

The unlawful structure has remained in existence.

**d) Whether a person involved in the contravention has previously contravened this By-Law or any other planning law**

Other than the contraventions under discussion in this report, there is no evidence that the owner has previously contravened the provisions of the MPBL or any other planning legislation.

- 5.4 Given the long duration but relatively minor scale of the unauthorised building works, an approximate guide of 6% administrative penalty is

considered appropriate. This results in an administrative penalty amount of R 800,00.

## 6 REASONS FOR DECISION

Reasons for the recommended decision may be summarised as follows:

- The nature of the contravention involves unauthorised building works which have been in existence for a duration longer than motivated by the applicant. In this light, the contravening building works have been in existence for at least 7 years despite the applicant motivating its existence for approximately 2 years.
- The extent of the building works contravention is of a minor scale in comparison to the size of the property.
- The applicant/owner is willing to rectify the unauthorised building works and was forthcoming with information on request.
- There is no evidence that the owner has previously contravened the MPBL or any other planning law and has conscientiously applied for the determination of an Administrative Penalty in terms of Item 42(r) of the MPBL, 2015.

## 7 RECOMMENDATION

In view of the above, it is recommended that:

- a) That an administrative penalty in the amount of **R 800,00** be determined in terms of Item 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of **Erf 12172, Goodwood** in accordance with Annexure B.

## ANNEXURES

- |            |                        |
|------------|------------------------|
| Annexure A | Locality Plan          |
| Annexure B | Building Plan          |
| Annexure C | Applicant's motivation |

JWlan

**Section Head : Land Use  
Management**

Name T.R. Kotze

Tel no 021 444 7806

Date 16.10.2019

575

Comment



**District Manager**

Name D Smith.

Tel no 021 444 7840

Date 22/10/2019

Comment

# **Annexure A Locality Plan**

**PLANNING AND BUILDING DEVELOPMENT MANAGEMENT  
LOCALITY MAP**

## **ANNEXURE**

577

Overview		Erf:	District:	
		Allotment:	Suburb:	
		Ward:	Sub Council:	
 1:1 200	Notices Served	<input checked="" type="radio"/>	Support Received	<input checked="" type="checkbox"/>
	Petition Signatory	<input type="checkbox"/>	Objections Received	<input checked="" type="checkbox"/>
Generated by: J Jacobs				
Date: Wednesday, October 9, 2019				
 CITY OF CAPE TOWN ISIXEKO SASEKAPA STAD KAAPSTAD				
File Reference: 70473222				

## **Annexure B Building Plan**





## **Annexure C**

# **Applicant's motivation**



582

THE CITY OF CAPE TOWN – NORTHERN DISTRICT  
121 Voortrekker Road,  
Parow  
Cape Town  
7500

29 September 2019

**MOTIVATION REPORT IN TERMS OF ITEM 129(8) OF THE MPBL**

**RE: ERF 12172, ELSIES RIVER**

To whom it may concern,

It has been brought to the owners of erf 12172 attention that an administrative penalty fee will need to be paid for the erection of the Lapa on their property without approved building plans. As per section 129 (8) of the MPBL, please see below the motivation report for their case.

- **Point 'A':**  
The existing structure in question is a Lapa built on erf 12172. The existing Lapa was built +2 years ago and currently still stands. This is quite a serious contravention as the Lapa was built without approved plans, however it has no negative impact on the surrounding properties. The Lapa covers 28.6sqm of the property of which 14.3sqm encroaches the building line. Please refer to the attached plan as reference.
- **Point 'B':**  
Mr & Mrs Taff are very humble and are a very well-groomed couple. This is their first home they own together since marriage and because of their naivety regarding the laws about adding or altering any portion of your dwelling - this was their first ever contravention. They are well known in the community and both born and raised in Elsies river. Added to that, they both have excellent relationships with their surrounding neighbours.
- **Point 'C':**  
The existing Lapa currently still stands and since being built no other additions have been made. As mentioned in point A – The Lapa covers 28.6sqm in total on the property and 14.3sqm encroaches the permitted 3.0m common boundary building line.
- **Point 'D':**  
This is the very first time Mr. & Mrs Taff have contravened this Municipal By Law or any other related By law.

We hope that you look favourably upon our application and consider some leniency with issuing the penalty fee to Mr & Mrs Taff.

Yours faithfully,

Robert Cupido

SIGNED

29.09.2019

DATE