

Residents celebrate cell mast victory

KAREN WATKINS

Vindication, relief and gratitude that justice prevailed are some of the sentiments expressed by Constantia residents after the Western Cape High Court set aside a building approval granted by the City of Cape Town allowing MTN to erect a base telecommunications station, including a 14.5m mast.

On November 28 last year, about 90 residents in the Strawberry Lane area congregated in Spaanschemat River Road and then marched along Strawberry Lane and into Dalham Road where the MTN cell mast stands ("Protest against cell mast", Bulletin, December 4).

Nicola Marshall, who lives adjacent to the cellphone tower, said the ruling has far reaching implications as it prevents MTN and the City from erecting base stations and cellphone masts across the Constantia Valley under the pretext that such infrastructure is temporary.

"The greater community of Strawberry Lane has been opposing cellphone masts for over 18 years due to the serious concerns over health and devaluation of properties. We look forward to the removal of MTN's base station and cellphone mast," said Ms Marshall.

They had marched, signed petitions, launched websites and had met with cellphone company executives to explain their views and



Strawberry Lane residents stand together against a cell mast erected in Dalham Road.

position.

Resident Justine Hansen said in the 1990s it took two years to have an illegal Vodacom mast removed from the Bible College. In 2011, they again took action when a second mast was erected on that site. "There are no suitable mast sites in this Strawberry Lane area, hence strong community opposition as reflected in a neighbourhood poll just before the (2014) protest where 142 out of 151 signed a petition against the Dalham Road mast,

a similar result to a 2011 petition signed by 91% of homes polled," she said.

Judge Owen Rogers handed down his judgment on Wednesday June 3. There were more than 20 objections to the building plan and numerous other objections at different stages over the years.

The City was cited as a respondent to the application, but did not oppose the relief sought, and agreed to abide by the court's decision.

As stated in the judgment, MTN had applied for City approval for a departure in terms of the Land Use Planning Ordinance to use the property, which was zoned single residential, as a base station for five years. MTN also needed approval to construct the base station.

The City granted the departure in October 2010, which was valid for five years. An appeal by the Constantia Property Owners' Association (CPOA) was unsuccessful.

The initial plan submitted by MTN was not approved by the council so MTN subsequently submitted another plan for a temporary structure to be erected in a different location on the same property. This temporary departure was then granted by council but ruled as illegal by the High Court.

In his judgment, Judge Rogers looked at whether or not the base station was a temporary structure, saying two requirements had to be met for any building to qualify as temporary.

This included that it must be declared so by the owner and it must be one which is being used, or will be used, for a specified purpose and for a specified period of time.

Judge Rogers said he was sure that MTN did not intend to use the base station for only five years. "MTN's motivation for the departure emphasised the need for improved network coverage. Other sites had been considered but none met MTN's requirements. This par-

ticular site was optimal. In response to objections, MTN said that the site could be decommissioned after five years, if further research showed that base stations of this kind had deleterious health effects," he said.

He said there was no information before the court about the cost of constructing the base station, which "must be considerable". Also, there was no evidence that MTN had ever demolished base stations after a short period of time.

Judge Rogers said since the departure expired in March 2018, and construction only started in July, the base station would not operate for the full five years. "This makes it even more implausible that MTN could have intended the base station only to be operative for the period of the departure."

He concluded that the base station did not qualify as a temporary building and that, in the circumstances, the authorisation granted to MTN for the construction of the base station as a temporary building could not be allowed to stand.

Speaking on behalf of the CPOA, Chris Rousseau said: "Another one that the City lost with costs."

Ms Hansen said the judge did not rule when the mast must be removed, only saying it must be sorted out by council and MTN, who have been given 20 court days to respond. She said the community remains vigilant and ready should the mast not be removed.

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