

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 1872/19

In the matter of :-

Mantee Bundhoo

Appellant

v/s

District Council of Flacq

Respondent

RULING

1. This is an appeal against the decision of the Respondent ["the Council"] for having issued a pulling down notice to the Appellant for the construction of a boundary wall at Cent Gaulettes Street, Sebastopol, without being in possession of a Building and Land Use Permit ['BLUP'] as per the Notice of Appeal of the Appellant and her Statement of Case. At the sitting of the 15th March 2022, Me. Luttoo, Counsel for the Respondent raised a two-limbed preliminary objection in law as follows, which was subsequently resisted by Me. J. Seetaram, counsel for the Appellant:
 - (i) The Tribunal has no jurisdiction to hear the present appeal and the Tribunal is not the appropriate forum to entertain this present matter in as much as, as can be gleaned from the pleadings, the Appellant is appealing against a pulling down notice.
 - (ii) Alternatively, the appeal has been lodged outside delay in as much as the pulling down notice which is being appealed against was issued on 17th July 2019.
2. We have duly considered the submissions in law of both counsel and their submissions ex-facie the pleadings. We shall not reproduce their submissions save that reference will be made thereto where we deem it fit to do so. From the record, the Notice of Appeal with a rejection letter and a Statement of case were lodged on 4th September 2019 before the Tribunal.

I. THE PLEADINGS

3. As regards the content of the Notice of Appeal filed by the Appellant, the decision that is being appealed against as provided under paragraph 1 is *"pulling down notice for construction without being possession of a BLUP"* and the particulars of the decision against which appeal is made is provided under paragraph 2 as *"Pulling down notice for illegal work which consists of construction of boundary wall along a public road."* At paragraph 3, the 2 Grounds of Appeal set out are *"(a) There has never been any new construction. (b) There was an existing wall which was being repaired and new blocks were being out to replace cracks on the wall damaged during tornado."* In the introductory paragraph of the Statement of Case, it is averred *"The Appellant are appealing against the decision of the Respondent for issuing to her a pulling down notice for construction without being possession of a Building and Land Use Permit at Cent Gaulettes Street, Sebastopol."* The Statement of case, in essence, sets out that following an inspection by an officer of the Council, the Appellant out of fear applied for a BLUP for the construction of a boundary wall where as in fact the Appellant had merely been having an existing wall repaired since it had cracked during the passage of a storm. The BLUP application was rejected and the Council ordered a pulling down of the boundary wall. The averment in the conclusion is *"The Appellants therefore move that the decision of the Respondents to be reversed in as much as the existing boundary wall was simply being repaired and no new construction was ever carried out. I shall pray that the Appeal to succeed based on the above mentioned reasons."* The mail from the Council to the Appellant refers to the BLUP application for construction of a boundary wall along a public road at Riverside Road, Sebastopol and the grounds for rejection are: *"(i) Plans submitted are misleading: the plans show a reserve of 1.00m along tarred road but the boundary wall has been put up on edge of road. (2) Clearance from forestry services not submitted as site adjoins a river profonde. (3) Application should have been made in the name of Mr. Rakesh Bundhoo instead of Mrs. Mantee Bundhoo since a compliance notice and a pulling down notice were served upon Mr. Rakesh Bundhoo."* These are the only documents, as per the Tribunal's record, filed by the Appellant on the 4th September 2019 and subsequently on the 6th September a document, photocopy of a receipt from the Mauritius Post Ltd, was received as evidence of service on the Respondent.

II. THE LAW

4. **Section 4 of the Environment and Land Use Appeal Tribunal Act 2012 [‘ELUAT Act’]** sets out the jurisdiction of the Tribunal and **Section 4 (1)**, which is relevant for our purposes, is reproduced hereunder:

“4. Jurisdiction of Tribunal

(1) The Tribunal shall –

(a) hear and determine appeals-

(i) under section 54 of the Environment Protection Act;

(ii) from a decision of a Municipal City Council, Municipal Town Council or District Council under sections 117(14) and 120C (4)(d) of the Local Government Act 2011;

(iii) under section 7B of the Morcellement Act; and

(iv) under sections 7 and 25 of the Town and Country Planning Act; and

(b) exercise such other jurisdiction as may be prescribed in any relevant Act.”

[stress is ours]

5. The Tribunal therefore has the jurisdiction to hear and determine appeals from a decision of a local authority under **sections 117(14) and 120 c (4)(d) of the Local Government Act 2011 [‘LGA’]**, as set out under **subsection (1) (a) (ii)** above, which is the relevant subsection for the purposes of the subject matter of this ruling since it is the only one that deals with the decisions from the Councils. It is clear that this Tribunal’s jurisdiction, as bound by law, is limited to the hearing and determining matters subjected to appeal falling under **sections 117(14) and 120c (4) (d) of the LGA**. The Tribunal, being a creation of statute, does not have unlimited jurisdiction on all matters pertaining to decisions of a local authority because if it did, the legislator would have drafted the law without specifying “*under sections 117(14) and 120 c (4)(d) of the Local Government Act 2011*” under **section 4 (1) (a) (ii) of the ELUAT Act**, which is the parent enactment conferring upon the Tribunal its jurisdiction. The drafting language shows that the intention of the legislator was to give to the Tribunal specific parameters within which to hear appeals.

6. We turn to the provisions of **Section 117(14) of the LGA** which makes reference to **S. 117(7) (b), (8) (b) and (12)** and are all reproduced below. It is worth noting that all provisions falling under **Section 117 of the LGA** relate to applications of **Building and Land Use Permit** ['BLUP'] and **Outline Planning Permissions** ['OPP']:

“(14) Any person aggrieved by a decision of a Municipal City Council, Municipal Town Council or District Council under subsections (7)(b), (8)(b) or (12) may, within 21 days of receipt of the notification, appeal to the Environment and Land Use Appeal Tribunal.”

“(7) With the exception of an application under subsection (8) and subject to subsection (9), the Permits and Business Monitoring Committee shall, within 14 working days of the effective date of receipt of the application,–

(a) ...

(b) notify the applicant in writing that the application has not been approved and give the reasons thereof.”

“(8) Subject to subsection (9), where an application for an Outline Planning Permission or a Building and Land Use Permit is made by a microenterprise or small enterprise registered under the Small and Medium Enterprises Act 2017, the Permits and Business Monitoring Committee shall, within 3 working days of the effective date of receipt of the application –

(a) ...

(b) notify the applicant in writing that the application has not been approved and give the reasons thereof.”

“(12) (a) Repealed by [Act No. 18 of 2016]

(b) The Minister –

(i) shall have a droit de regard on any decision or recommendation made by the Permits and Business Monitoring Committee; and

(ii) may direct a local authority to refer a particular application made to it for determination by him where he considers that it is necessary or expedient in the public interest to do so.”

From our reading of the above subsections, the case scenario provided for appealing before the Tribunal is for those applicants who are aggrieved by the decision of the Council for having rejected their application for either a BLUP or an application for an OPP, including the cases of application for BLUP or OPP where the Minister exercised “his droit de regard”. It is in these specific instances that the Tribunal has jurisdiction to determine appeals of the impugned decisions.

7. Furthermore, under **section 120 (c) (4) LGA**, an applicant who has received a BLUP but fails to receive an occupation certificate under specific circumstances may lodge an appeal before the Tribunal as provided hereunder:

“(4) (a) Where an applicant fails to comply with his Building and Land Use Permit, the local authority shall, in accordance with section 127B, issue an enforcement notice specifying the measures that shall be taken to comply with his permit.

(b) Where an applicant takes the measures pursuant to paragraph (a) and the builder and developer pay, where applicable, the necessary premiums for an insurance policy in accordance with section 21 of the Building Control Act, the local authority shall issue an occupation certificate to him within 5 working days from the date on which all the measures have been taken.

(c) Where an applicant fails to take the measures pursuant to paragraph (a), the local authority shall reject the application and shall inform the applicant of its decision, giving its reasons.

(d) Any applicant who is aggrieved by the decision of a local authority under paragraph (c) may appeal to the Environment and Land Use Appeal Tribunal.”

III. OUR DECISION

8. We believe that the provisions of **section 4 (1) (a) (ii) of the ELUAT Act**, clearly set out the specific circumstances under which the Tribunal has the jurisdiction to hear and determine appeals from a decision of a local authority, which does not include cases where a party is aggrieved by the decision of the local authority for having issued a pulling down notice as in the present case. It is noteworthy that neither **s.117** nor **s. 120C of the LGA** deals with the issuance of a pulling down notice by the Council to a developer. The power to issue a pulling down notice by the Council is in fact provided

under **section 127C of the LGA** and failure to comply with it leads to a criminal prosecution. The **LGA** does not provide for any recourse for challenge by a party aggrieved by the decision of a local authority for having issued a pulling down notice. In the absence of such provision, the developer, if aggrieved by the decision of the Council, may wish to challenge such a decision before another forum, possibly, by way of judicial review as submitted by learned counsel appearing for the Respondent. There can certainly, however, be no such challenge before the Tribunal for want of jurisdiction, as provided under **Section 4 (1) (a) of the ELUAT Act**.

9. In the present case, it is clear from the Notice of Appeal and the Statement of Case of the Appellant that the impugned decision that is sought to be challenged before this forum is the issuance of a pulling down notice by the Council. In fact, the Appellant's appeal is based on the premise that it was not a new development, thus clarifying any doubt that she could be challenging the decision of the Council for having rejected her application for a BLUP for the construction of a new wall. Her case is that she was merely repairing an existing wall which had cracked following a storm. Hence, we do not subscribe to the submissions of Counsel for the Appellant that it was the Council that had directed the Appellant to lodge an appeal before the Tribunal, the reason being that the refusal letter from the Council was with regard to an application for BLUP of a boundary wall whereas the appeal lodged is against the issuance of a pulling down notice.
10. For all the reasons set out above, we find that the point has been rightly taken by the Respondent. The appeal cannot be entertained before this Tribunal for want of jurisdiction and we consider it to be a frivolous appeal which is devoid of any arguable legal basis before this Tribunal. We therefore uphold the objection taken by the Respondent. Having reached this conclusion, we do not deem it necessary to consider the other objections raised. The appeal is dismissed. No order as to costs.

Ruling delivered on 19th May 2022 by

Mrs. J. RAMFUL-JHOWRY
Vice Chairperson

Mr. R. SEEBOO
Member

Mr. S. SUFFEE
Member