

IN THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

IN THE MATTER OF:

Mr. KRISHNA SAWMI JUMNOODOO

Appellant

v.

CITY COUNCIL OF PORT LOUIS

Respondent

RULING

The present appeal is against a decision of the City Council of Port Louis for having refused a Building and Land Use Permit to the Appellant to convert part of an existing building at ground and second floors into a guest house of six rooms in the locality known as Pailles.

The Appellant has moved for communication of the report drawn up by the planning inspector of the City Council of Port Louis in respect of the proposed project. The Respondent objected to this motion on the ground that this report is an internal administrative document and was thus private, and not meant for communication. The issue was subject of an argument before the Tribunal.

I have considered the respective submissions made by counsel on both sides.

Emphasis was laid by the Respondent on the fact that the decision not to communicate a document which they consider to be an internal administrative one, is a matter of principle. On the other hand, the Appellant relied on the provisions of the Environment and Land Use Appeal Tribunal Act, which gives the power to 'make such orders for requiring the attendance of any person or the production of any article or document as it thinks necessary or expedient...'.
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It would be appropriate at this juncture, to set out the procedures followed by the Environment and Land Use Appeal Tribunal (hereinafter referred to as the Tribunal) since its creation by Act No. 5 of 2012.

The rules pertaining to the procedures followed by the Tribunal are yet to be set out, for the reason that that the best rules are those which emanate from the practice rather than an abstract and academic imposition of a set of guidelines. Nonetheless, the
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procedure set out in **practice**, and which is adhered to by litigants before this Tribunal is the following: The prescribed appeal form is filled, the matter is fixed 'pro forma' for the first time for the parties to appear and state how they wish to proceed, namely, whether they will be represented by a legal advisor or other person who may assist them, as provided by law. Depending on the complexity of the case and the information that may be required, the matter is fixed for '*Disclosure of documents*' by both parties so as to enable the Appellant to prepare a 'Statement of case' which is communicated to the Respondent, and the Respondent to prepare a 'Statement of Defence'. In case there is a Co-Respondent who is put into cause, the latter is also requested to file a 'Statement of Defence' if he so wishes (it has been observed that in practice many of them decide to abide by the decision of the Tribunal).

The practice of '*disclosure of documents*' has proved to be practical, thus avoiding successive postponements that may occur if information is requested and provided piecemeal, and thus enabling parties to come prepared before the Tribunal within the shortest possible delay. In addition to this time factor, **section 5 sub-section 3** of the **Environment and Land Use Appeal Tribunal Act 2012** has introduced a mechanism which is 'revolutionary' in the practice before the Tribunal namely, that of conducting the proceedings with "*as little formality and technicality as possible*". It is also provided that the proceedings shall "*not preclude an endeavour by the Tribunal to effect an amicable settlement between the parties*". This too is in line with the spirit of the legislation as mentioned above and the '*disclosure of documents*' proves to be a step towards this objective. In this respect, parties avoid spending time unnecessarily in arguments on whether to provide such and such document. The principle of disclosure serves a purpose.

Having said this, it has been argued on behalf of the Respondent that certain documents have been disclosed, namely, the Minutes of Proceedings, this being factual. However, the Respondent is not bound by its internal workings and reports, it is called upon to take into account numerous factors when taking its decisions.

The Tribunal, in considering the grounds of appeal raised by the Appellant, has to check whether the decision reached by the Respondent has taken into account all relevant factors, namely those matters which are relevant to the Council in reaching its decisions as well as those matters which have guided the Appellant in his application for a Building and Land Use permit. In this respect, the planning report drawn by the planning inspector may shed light on these considerations which are relevant for the Tribunal to assess.

A disclosure of the documents which may have been relied upon by the Respondent will be of relevance for the Tribunal to consider whether the decision reached was reasonable or was not arbitrary or was not questionable. It may also simply assist the

Tribunal when considering the background of the Respondent's case. True it is that the parties are at liberty to call for evidence to be adduced. Nonetheless, the Tribunal stands to be enlightened by the disclosure of documents that are part of the decision making process of the Respondent. As highlighted above, this is in line with the practice followed by the Tribunal as part of its pre-trial procedures.

We therefore set aside the objection raised by the Respondent and make an order for it to disclose before the Tribunal the document requested, namely the report of the planning inspector in respect of the proposed project, subject matter of the present appeal.

Delivered by:

~~Mrs. V. Phoolchund-Bhadain~~
~~Chairperson~~

~~Mrs. B Caniah~~
~~Member~~

~~Mr. R. Ramdewar~~
~~Member~~

Date: 9th July 2014