

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

Cause No. : 512/13

In the matter of:

MR. KUMAREN MURUGESAN & OTHERS

Appellants

v.

MUNICIPAL COUNCIL OF QUATRE BORNES

Respondent

In presence of :

IMMEUBLES IQ LTD.

Co-Respondent

RULING

The Appellants have moved for communication of the following documents:

1. Copy of the application form submitted by the Co-Respondent
2. Copy of the plan approved by the Respondent
3. Copy of the Outline Planning Permission as issued by the Respondent
4. Copy of the planning report circulated by the head planner to the Permits and Business Monitoring Committee.

The Respondent has raised objection to the motion on the ground that those documents, being confidential, cannot be communicated.

The stand of Respondent was subsequently amended and there was no objection for communication of a copy of the Outline Planning Permission (OPP) to the Appellant. However the other three documents requested still met with a refusal to disclose.

The Respondent relied on the provisions of section 150(4) of the Local Government Act to refuse to communicate those documents. This stand is challenged by the Appellant. The matter was argued.

For the purposes of the present ruling, we reproduce below the provisions as contained in **section 150 of the Local Government Act**:

Section 150 (1): Where, under any enactment, a document is deposited with the Chief Executive or any other officer of a local authority, the Chief Executive or the other officer shall: (a): receive and retain the document in the manner and for the purposes directed by the enactment, and, (b): shall make such memorials and endorsements on and give such acknowledgements and receipts of the document as may be required.

Section 150(2): "Subject to anything to the contrary in any other enactment, a person interested in a document deposited as specified in subsection (1) may, during office hours, inspect and make copies or extracts from the document on payment of such fee as may be prescribed.

Section 150(3): Any person having custody of any document specified in subsection (1) who obstructs any person who wishes to inspect the document or to make copy of or extract from it shall commit an offence.

(4) This section shall not apply to plans for Building and Land Use Permits and other related documents which shall be treated as confidential.

At the outset, our observation is that subsection 2 and 3 (*supra*) were meant to ensure transparency in the application procedure, so much so that it was felt necessary by the legislator to prevent any interference in the ability of a person wishing to avail himself of this transparency, by providing a sanction in case of failure to observe this right of public inspection. In this context, sub section 4 can only mean that the provisions on public inspection, and the provisions allowing copies of same to be made by any person interested in a document, do not apply, as those documents (i.e. application for BLUP and related documents) are treated as confidential.

Subsection 4 limits the open approach stated in the other sections of this provision by prohibiting access to plans submitted for BLUP and related documents. These are not open to anyone wishing to inspect the documents upon payment of a fee. The custodian of the documents does not run the risk of being prosecuted for his decision if he does not allow such an inspection.

1. The first request for communication is for a copy of the **application form**. The only reason put forward by the Respondent for refusing to communicate this is

'because there is normally a plan that is attached to the application form', and this makes it a *'related document'* within the definition of section 150(4) of the Local Government Act.

To this point, we tend to agree with the submission made on behalf of the Appellant, which is to the effect that section 150(4) does not bring "application forms" within the ambit of 'privileged documents'. Had the legislator intended to include application forms in category falling within the 'privileged documents' an express provision to that effect would have been made. The decision of the Respondent not to communicate the application is an inference on its part which we do not uphold.

2. The second document requested is a **copy of the plan submitted** to the Respondent. Here, the Respondent raised the justification of the confidentiality of the document as expressly stated in section 150(4).

This raises the question as to whether section 150(4) of the Local Government Act is meant to avoid public inspection of deposited documents only or does it extend to disclosure of the said documents in the course of a judicial or quasi-judicial process? We are of the view that section 150(4) is to be interpreted as a limit on the public inspection of documents related to a BLUP which are deposited with the Chief Executive of the local authority. Extending this to non-disclosure before a quasi-judicial body which is called upon to look into the propriety of the decision would amount to frustrating the intention of the legislator. Indeed, the legislator has provided for an appellate mechanism by which an aggrieved party may seek redress. It would frustrate its intention if all documents relating to the appeal are not made available before the appellate jurisdiction.

Furthermore, we agree with the submission made on behalf of the Appellant that confidentiality cannot be an immutable concept. Decisions of local authorities are decisions of a public authority. Local authorities are vested with public powers and in the exercise of such powers, it is necessary that a scrutiny of their decisions be possible. One of the ways to effect such scrutiny is through the appeals that are made against decisions taken by them or other remedies that litigants can contemplate, namely, judicial review of their decisions.

The cited case of *R v Lancashire County Council, ex parte Huddleston* 1986 2 All ER 941 is relevant, where it was held that where a challenge is made to the Court against a decision of a public authority, there is an obligation on the Respondent public authority to put before the Court the material necessary to deal with the relevant issues.

We take on board the submission of counsel for the Respondent that it is bound by the provisions of section 150(4). Nonetheless, our reading of this provision is that this can only apply to the duties of the Chief Executive, or any of his officers, in relation to their

obligations as listed in sections 150(1)(a) and (b) and the full transparency listed in section 150(2) and (3). As stated above, disclosure in a judicial/quasi-judicial process do not fall in this ambit.

3. A request for copy of the planning report circulated by the head planner to the Permits and Business Monitoring Committee has also not been disclosed.

The respondent has raised that this is a working document intended for internal purposes which is treated as confidential. We subscribe to the view that the internal working documents of the Respondent need not be disclosed, this not being part of the application and/or relevant for the purposes of the appeal. We have considered the submission made on behalf of the Appellant to the effect that the planning report may have been circulated before the hearing in order to influence the members who were hearing the objectors. However, such considerations, which go to the assessment of the decision making process, are within the realm of judicial review actions. Here, being an appellate body, what we need to assess is the propriety of the decision and not the process. For this reason, we do not find it necessary to consider issues that may have/or have not influenced members of the committee.

On the basis of the above, we overrule the objection raised to the disclosure of the copy of the application form submitted by the Co-Respondent as well as the copy of the plan approved by the Respondent and order that those documents be communicated to the Appellant. As regards the planning report, for reasons given, we uphold the objection to disclosure of this document.

Delivered on 6th May 2015 by:

Mrs. V. Bhadain

Chairperson

Mrs. B. kaniah

Member

Mr. V. Reddi

Member