

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

Cause No. : ELAT 233/12

In the matter of:

MR. AVINASH SUKHOO

Appellant

v.

DISTRICT COUNCIL OF GRAND PORT/SAVANNE

Respondent

RULING

The Appellant has appealed against the decision of the Respondent for having refused his application for a Building and Land Use Permit (BLUP) for the construction of building at ground floor level for residential purposes. The grounds of refusal are that firstly, the site is found outside settlement boundary and secondly, that the construction will not satisfy the minimum buffer from existing bad neighbor development. The appeal was initially made to the Town and Country Planning Board. It was transferred to the present Tribunal with the enactment of the Environment and Land Use Appeal Tribunal Act, in accordance with section 9 sub section 3 of the said Act.

After the filing of respective statements of case, the point was raised that the application was deemed to be granted in accordance with the provisions of section 117 (11) (a) of the Local Government Act, position which is disputed by the Respondent.

We have considered the submissions made by both parties in relation to this point and make the following observations:

The application for BLUP was submitted at the Council on the 9th July 2012. It is on record that counsels agree, as indicated on the application form, that the effective date is 10th July 2012. The effective date as defined by section 2 (the definition section) of the Local Government Act 2011 (LGA 2011) means 'the date by which all information, particulars and documents specified in the application form are submitted'. The

definition of the 'effective date' takes importance because of two subsequent provisions of the Local Government Act 2011, namely:

Section 117 sub- section (7) of the LGA 2011 which is to the effect that the Permits and Business Monitoring Committee **shall within 14 working days** of the effective date of receipt of the application, and after approval of the Executive Committee, (a) issue to the applicant an OPP or BLUP.....(b) notify to the applicant that the application has not been approved and give reasons thereof, and

Section 117 subsection 11 (a) which is to the effect that where an applicant has not been issued with a BLUP or has not been notified that his BLUP has not been approved ...within 2 working days of the expiry of the due date, the application shall, on payment of the feebe deemed to have been approved...and the acknowledgement receipt together with the receipt acknowledging payment of the fee, shall be the BLUP.

By application of the above provisions, if the effective date is 10 July 2012, the due date would be 27 July 2012 (and not 22 July as submitted by counsel for the Appellant, bearing in mind that the law refers to 14 working days and not calendar days). The acknowledgement receipt (Document A) requires the applicant to call in person to collect his refusal letter on the 30 July 2012 between 12.30 to 14.30.

It has been submitted on behalf of the Appellant that the BLUP is deemed to be granted because the notification of the refusal has not been given to the Appellant before the expiry of the due date. As stated above, the due date is in fact 27 July 2012. By the operation of section 117 (11)(a), the application shall be deemed to be approved provided the Appellant makes a payment of the fee as prescribed by section 117 (10) LGA 2011, and this, within two working days from the expiry of the due date. The provisions of Section 117(11)(a) are reproduced below:

'Subject to paragraph (b), where an applicant has not been issued with a BLUP or has not been notified that his application has not been approved under subsection (7) or (8), as the case may be, within 2 working days of the expiry of the due date, the application shall, on the payment of the fee referred to in subsection (10) be deemed to have been approved by the Municipal City Council, Municipal Town Council or District Council and the acknowledgement receipt , together with the receipt acknowledging payment of the fee, shall be deemed to be the BLUP'

The latter part of the above provision allows for payment to be made within 30 July to 31 July 2012 (taking into account that the two additional days provided have to be working days). It was therefore technically possible for the Appellant to effect payment of the fees payable on the issue of the permit. There is nothing on record to establish that such payment of fees has been done. The only payment effected by the Appellant is the

processing fee of 500 rupees (annex to document A). Had the fees been paid (such fees being computed in accordance with the Schedule as contained in Part C of the application for BLUP), the acknowledgment receipt together with the receipt acknowledging the payment of fees would be deemed to be the BLUP. The preliminary point taken by the Appellant therefore fails.

We must however point out, as highlighted by counsel for the Appellant, that although the cursum followed by the local authority is to rely on the acknowledgement receipt with a given date to serve as notification given to applicants, this is not in compliance with the provision of the law which requires an actual notification. The practice followed by the local authority has inherent defects, as highlighted by the representative of the Respondent: namely the date is a computer generated one, and the computer system generates different dates depending on the time at which the receipt is issued. Not only this is not in line with the intention of the Legislator but delay being of the essence, this can seriously impact on the rights of applicants. Having said this, the fact that the Appellant did not collect the refusal letter on the 30 July 2012 has no bearing on the BLUP. What matters is that no payment of fees was done despite the fact that the Appellant relies on the section 117(11)(a) of the LGA 2011.

Therefore, as matters stand, there has been no BLUP issued (or deemed to have been issued). The appeal may proceed on the merits.

Delivered by:

Mrs. V. Bhadain, Chairperson

Mr. M. A. Busawon, Assessor

Mr. G. Seetohul, Assessor ...

Date: 2nd June 2017.....