

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 1815/19

In the matter of :

Mr. Clency Balluck & Others

Appellants

v.

District Council of Grand Port

Respondent

In the presence of:

Mr. Dupont Henri Marcelino

Co-Respondent

Ruling:

The present appeal has been lodged by the Appellants, who are objectors to the proposed development for which the Council (Respondent) has granted a BLUP to the Co-Respondent, with certain conditions.

The Supreme Court has delivered a judgment in the case of Baumann v. District Council of Riviere du Rempart i.p.o Syndicats des Co-Proprietaires de Savannah Sparrow Residence and Others [2019 SCJ 311], wherein a pronouncement was made on who is an "aggrieved person" within the meaning of section 117(14) of the Local Government Act 2011. This is as follows:

" A proper construction of these provisions [reference being made here to sections 117(14), 117(7)(b) and 12 of the Local Government Act 2011] conveys the clear and plain intention of Parliament: only an aggrieved party can appeal to the Tribunal and an aggrieved party is one who has been notified that his application has not been approved [vide sections 117(7)(b) and 117(8)(b) of the LGA 2011]. The Legislator has not provided for any other person to have the possibility of challenging the granting of the BLUP to an applicant before the Tribunal."

Their Lordships furthermore stated that:

"Obviously, any other person, a neighbour, like the present appellant for instance, who feels aggrieved by the granting of the BLUP may have recourse before another court, but certainly not before the Tribunal which does not have jurisdiction to consider and to determine complaints from those who are not 'aggrieved persons' within the definition of the Local Government Act 2011."

The Environment and Land Use Appeal Tribunal (ELUAT) is an inferior jurisdiction to the Supreme Court. Based on the principle of *stare decisis*, it is bound and must abide by the decision of the Supreme Court.

In the present matter, the Appellants are objectors to the granting of the BLUP by the Respondent to the Co-Respondent. In this respect they are not "aggrieved persons" within the definition of section 117(14) of the Local Government Act and as interpreted in the judgment of Baumann (supra).

Furthermore, the more recent legislative amendment made to section 117(5) of the Local Government Act by the Finance (Miscellaneous Provisions) Act 2020 has defined a 'person aggrieved' as meaning a person whose application for an Outline Planning Permission or a BLUP has not been approved by a local authority.

This legislative amendment is in line with the Supreme Court Judgment of Baumann (supra). It confirms that the Appellants do not fall in the category of 'aggrieved person' above.

In view of this, the present appeal cannot proceed before this jurisdiction. The appeal is therefore set aside.

No order as to cost.

Mrs. Vedalini Phoolchund-Bhadain

Chairperson

Date: 31st August 2020.