BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 624/14

In the matter of :-

Pamela Ramsaha

Appellant

v/s

City Council of Port Louis

Respondent

DETERMINATION

The present appeal is against a decision taken by the Council for having rejected the application of Mrs Pamela Ramsaha for a Building and Land Use Permit for the renovation and extension of an existing building at ground floor for residential purposes at No. 7, Muslim Cemetry Road, Roche Bois, Port Louis. The grounds for rejection communicated to the appellant in a letter dated 20th February 2014 are set out below:

"The building has already been put up without having applied and obtained a Building and Land Use Permit and in breach of section 8 of the Town and Country Planning Act."

The Appellant deponed under solemn affirmation and was cross-examined by Respondent's counsel. Mr Goburdhun, deponed on behalf of the Council and was cross-examined by the appellant. We have duly considered all the evidence placed before us.

The background to the case is that the appellant sought to carry out some extension and renovation works to her existing property which infact belongs to her mother who consented to it. The works commenced before she applied for a Building and Land Use Permit. Following complaints received from a neighbour, the Council visited the site and issued two stop notices to halt the works undertaken by the appellant. The appellant explained that that it was through oversight that she failed to apply for the BLUP as her father was seriously ill at the time. In her notice of appeal she stated that the building was originally built with timber and iron sheets by

a "Trust Fund" with elaborating and that it was later decided to have the block walls constructed.

The refusal of the Council is grounded essentially on the point that as this was alteration to the existing building, having already commenced without a permit, it was right in its decision not to grant the Building and Land Use Permit ('BLUP') to the appellant. **Section 117 (2) of the Local Government Act 2011** provides that any person who intends to commence the construction or demolition of a building, or effect extensive alterations, additions or repairs to an existing building shall apply to the Council for a BLUP. **Section 8 of the Town and Country Planning Act** which is to be read in conjunction with the Local Government Act is the offending section. It provides for the criminal sanction attached to any development having been made without the required permit. It is therefore clear that where such works have been carried out without a permit from the Council a criminal offence is committed. In fact evidence was adduced by the Council that the appellant was even served with notices to stop the works undertaken. As the law stands, any unauthorized alteration done to a building which requires a BLUP is a criminal offence which is liable to prosecution before a criminal court. This being said, we do not believe that an omission on the part of the applicant to apply for a BLUP should altogether deprive her of her rights to subsequently acquire one since the applicant has breached a planning control in that she has carried out works which require planning permission. In many cases, unauthorized developments can be regularized by requesting that the developer submits a planning application which will allow the Council to assess the planning merits of the development. Where necessary the Council can impose conditions to make the development acceptable. This could include that the unauthorized development or part of it be removed or planning conditions be complied with. The Council has a duty to assess every development for which an application has been put in on its own planning merits and assess the harm that the unauthorized development may be causing. Whether the development has already started without a permit is a different issue which can be dealt with criminally. The Council has the discretion to prosecute the offender and move for a pulling down order if deemed necessary. But a breach in planning control cannot absolve a developer of his/her right to get planning permission for a development already undertaken. That would be tantamount to sanctioning not the breach but the developer.

Counsel for the respondent submitted that the case for the Council was that the construction being carried out without a Building and Land use Permit and that was in breach of **section 8 of the Town and Country Planning Act**, it was sufficient reason to dismiss the appeal. We do not agree with this ground of refusal for the reasons set out above.

This being said, we need to assess whether this development should infact gain planning acceptance.

As stated above, according to the appellant the Building was originally built by a "trust fund". The contention of the Council is also that the required set back has not been observed by the appellant. The width of the road is 1.95 metres and the setback of the property of the appellant from the road is only 5 centimetres. It should have been 1.5metres according to the representative of the Council. This was disputed by the appellant initially but the Council's representative confirmed the measurements following a second site visit which was done in the presence of the appellant's mother. The Council also produced photographs. The Tribunal notes from the photographs produced that the setback between the house of the appellant's neighbour, whose house is in front, from the side of the road does not seem to respect the required standards either. Infact from the photographs, it appears that the neighbour's house and that of the appellant seem to be aligned. There also appears to be on the opposite side of the road, a ramp near a neighbour's gate leading onto the same road and some protruding pipe works which not only appear to be cumbersome but seem to further reduce the width of the road. These factors are likely to hinder vehicular access along this substandard road. While the Tribunal does appreciate that there is a need to respect setbacks for safety reasons mainly, the issue is whether the block wall of the appellant's house as it currently stands is narrowing down the width of the road any more than that that of the neighbours? It is hard to tell with certainty from the angle in which the photographs are taken.

The Council annexed to its statement of defence a letter of complaint dated 4th September 2012 allegedly received from a neighbour, under the signature of one Mr. Ramsamy Utchanah. It is in our view important for the Council to consider objections from neighbours especially if the proposed development is likely to cause harm or prejudice to surrounding land users or occupiers. Public interest, after all needs to be protected. In the course of the hearing, the Council neither substantiated this point by calling witnesses nor was this made a live issue. We believe that a rather important point was raised in the letter regarding septic tank and waste discharge especially during heavy rains, apart from the concerns regarding the width of the road. If this is the case, the local environment can also be harmed if action is not taken and neglecting such conditions can adversely affect the amenity of the area. Unfortunately, these pertinent issues were not addressed nor canvassed before this Tribunal. In the absence of evidence, we are not ready to surmise on these issues which we believe are very important ones for the Council, as a planning enforcement agent, should look into.

The Tribunal is unable to make an assessment on the planning merits of this case due to environmental aspects such as the location of the septic tank and waste discharge systems which the Council has failed to look into. Therefore in the absence of such evidence, which are environmentally sensitive issues that this Tribunal needs to also consider, a final conclusion cannot be reached. We accordingly find that in order to meet the ends of justice the matter be remitted back to the Council to make an assessment on the issues raised by the neighbours

who have objected. The Tribunal has on several occasions stressed on the importance for the Councils to assess applications comprehensively and in the event that applications are rejected, that clear and precise motivation is therefore given.

Determination delivered on 21st October 2015 by

Mrs. J. RAMFUL	**Mrs. B. Kaniah**	**Mr. G. Seetohul**
Vice Chairperson	**Assessor**	**Assessor**