

**BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL**

**Cause No. : ELAT 1062/16**

**In the matter of:**

**MR. KAVIRAJ SEEBARUTH**

**Appellant**

**v.**

**DISTRICT COUNCIL OF FLACQ**

**Respondent**

**DETERMINATION**

The appeal is against the decision of the District Council of Flacq for having refused to grant a Building and Land Use Permit (BLUP) to the Appellant for the conversion of an existing building at ground floor to be used as a multipurpose hall at Caroline, Bel Air Riviere Seche. The Notice of appeal contains nine grounds of appeal which are summarized as follows:

1. The Executive Committee has acted ultra vires the law.
2. It had acted outside the time limit imposed by law.
3. The Appellant was not given the opportunity to explain or to rebut any of the grounds taken into account by the Executive Committee.
4. The hall being a small one, the issues raised as to traffic nuisance, noise pollution and parking are of no consequence.
5. The area is provided with sufficient parking.
6. The representations made against the application are non-issues for which the law makes no such provisions.
7. The 'acknowledgement receipt' shows that the Appellant has done all that was required of him for the issue of the BLUP.
8. The District Council is biased for having prosecuted the Appellant in the past.
9. There has been a previous legal action entered against the Appellant's mother by one of the persons who made representations against the Appellant.

We have heard the evidence adduced by the respective parties before this Tribunal.

## 1. Ultra vires

The Appellant filed a letter from the Respondent dated 28 December 2015, stating that the Council had 'not favourably considered the application'. We do not subscribe to the submission made on behalf of the Appellant that the decision of the Executive Committee is not a 'decision' as such. It would require a stretch of imagination to interpret the words 'the Executive Committee did not favourably consider' as meaning that there was no decision at all. In our reading, it plainly means that the Executive Committee has reached an unfavourable decision after considering the application.

We also do not subscribe to the view that the decision-making body ought to be the Permits and Business Monitoring Committee (PBMC) and not the Executive Committee. Although Document D (letter dated 3 December 2015) refers to the PBMC determining the application, this does not in any way imply that the decision making power is at the level of the PBMC. It has been amply explained by the representative of the Council that the process involves the determination by the PBMC and the matter be sent to the Executive Committee. Even if the initial assessment is done at the level of the PBMC, the final decision at the level of the Council lies with the Executive Committee.

In addition, section 48(1) of the Local Government Act clearly provides that "*Subject to the procedures and exceptions laid down in sections 117 and 160 the Executive Committee shall be responsible for the determination of applications for Outline Planning Permissions and Building and Land Use Permits...*". The Act further explains the role of the PBMC under section 117(6) which is *to process every application for an Outline Planning Permission or BLUP and to issue an OPP or BLUP where the necessary conditions are fulfilled 'after approval by the Executive Committee' as provided under section 117(7) of the Local Government Act.* Moreover, section 117(12) of the LGA provides that in case the 'recommendation' of the PBMC is rejected by the Executive Committee, the matter shall be referred to the Minister for determination.

For these reasons, we do not concur with the submission that the Executive Committee is not 'empowered to entertain, consider or otherwise determine the application'. The ground that the Executive Committee has acted ultra vires cannot stand. We set aside ground 1.

## 2. The issue of time limit

Lengthy evidence was adduced in relation to the effective date and the issue of the permit within two working days after the expiry of 14 days from the acknowledgement receipt having been issued. However, in addition to the provisions

of section 117 (7) of the Local Government Act on the time limit, we also take into account that the acknowledgement receipt (Document B), at note 3, mentions that if an application falls under section 117(9) & (12) of the Local Government Act 2011, the effective date does not apply and the Applicant will be informed accordingly.

In this particular application, the representative of the Respondent has explained that the application had to be sent to the Minister being given that the site would be situated along a river bank. This, in his opinion, justified the note put on the acknowledgement receipt, which in effect suspended the operation of due date. We do not condone the position taken by the representative of the council on this process. Explanation provided for the deleting of the 'due date' was the fact that the matter had to be referred to the Minister for determination. Yet, it came out that the matter was not referred to the Minister at all, being given that the PBMC had itself rejected the application, and this was endorsed by the Executive Committee. The matter was therefore not sent to the Minister. We do not find that this process is sufficient to cast doubt on its objective. The exception contained in section 117(9) of the Local Government Act is sufficient to do away with the issue of time limit. We set aside ground 2.

### 3. The absence of any questioning or examination of witnesses

The Council's position is that there had been objections raised against the proposed project. The Council's letter (Document C) indicates that a hearing would be conducted due to those complaints. Document D is a letter convening the hearing before the PBMC on the 9<sup>th</sup> December 2015. The statement of defence referring to the conduct of the hearing following which the Executive Committee took its decision has remained unrebutted. Ground 3 which is to the effect that the reasons given by the Council had not been made the subject of questioning, and that the Appellant had been deprived of an opportunity to rebut same has not been substantiated in evidence. We find no reason to uphold it. Ground 3 is accordingly set aside.

### 4. The planning merits

The planning merits are contained in grounds 4, 5 and 6 of the grounds of appeal. The evidence of the Respondent in support of the reasons on which the Council based itself to reject the application has been unrebutted. These relate to the issue of the residential character of the area, the adequacy of the access road and parking provisions and the absence of objection from those living in the neighbourhood.

The Appellant contented himself by stating at ground 6 that the exact location of the proposed development and the representations made against it are non-issues in that no such provision has been made under the law. We do not concur with this position. Parking is an issue for this type of development. The General Guidelines in

the Design Guidance- Commercial Development in the Planning Policy Guidance (PPG 1) provides that for Wedding Halls, the parking requirement is one car parking space per 4 square metres public floor area. The floor area of the hall excluding open porch would be 14m55 x 7m90 which amounts to about 115 square metres and this requires at least 28 parking spaces. As per plan submitted, provision has been made for 17 parking spaces which would be inadequate.

Furthermore, as per documents E and F, access to the site is through Darwin lane, which is approximately 3.75 metres wide. The increase in traffic flow to and from the hall in the course of the proposed activities to be held hall may cause serious traffic congestion along this 'no through' road which ends on the boundary of a rivulet. Ground 4 which is to the effect that the fact that the hall is relatively small and would thus have no impact on the residential area and issues like traffic nuisance, noise pollution and parking not being of consequence cannot be upheld. Planning parameters have not been observed. No evidence has been adduced in response to the Council's concern on the observance of those parameters. The Appellant is simply inviting this Tribunal to disregard the planning parameters as contained in the PPG. We do not subscribe to this approach and set aside grounds 4, 5 and 6.

#### 5. The Acknowledgement Receipt

The acknowledgement receipt (Document B) is an administrative document. It contains information on the applicant, the proposed development and the effective date and what the applicant needs to do. In the present application an exception to the operation of the effective date is contained at Note 3. Compliance with any information in this document is not a ground of appeal. Ground 7 is therefore set aside as being no ground at all.

#### 6. Previous litigations:

At the outset, the issues relating to previous litigation between the Appellant's mother and an objector, as well as legal actions that may have been entered by the Respondent against the Appellant are set out in grounds 8 and 9 above as grounds of appeal. The Appellant may feel that there is a likelihood of bias for the reasons mentioned. But it is our view that they are by no means grounds of appeal. The 'remedy' that the Appellant wishes to seek under these may be before another forum for judicial review. The 'grounds' as listed in the notice of appeal are not grounds of appeal per se. We set aside grounds 8 and 9.

In view of the above, the appeal is set aside.

Delivered by:

Mrs. Vedalini Bhadain, Chairperson

Mr. M. Reynolds Guiton, Assessor

Miss Roovisha Seetohul, Assessor

Date:

17th May 2018

