

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

**ELAT 1535/17**

**In the matter of:**

**Lighthouse Education Ltd.**

**Appellant**

**v/s**

**District Council of Pamplémousses**

**Respondent**

**DETERMINATION**

1. The present appeal is against the decision of the District Council [“the Council”] for having refused to grant the Appellant, represented by its Director, Mrs. Suzanna Dalais, a Building and Land Use Permit (‘BLUP’) for the construction of what has been described in the refusal letter of the Council as *“an additional block of ground and first floor building (comprising 12 classrooms, one multi-purpose room and toilet block) to an existing secondary educational institution”* at Albert Lane, Calebasses.
2. The ground of refusal was communicated to the Appellant *vide* a letter dated 1<sup>st</sup> December 2017 signed by the Chief Executive of the Council which also makes reference to the application dated 27<sup>th</sup> October 2017. The application for BLUP was refused on the grounds:

*“1. There was a condition in the previous Building and Land Use Permit granted that has not been respected by the applicant.*

2. *There was an on-going court case with the applicant regarding the demolition of the cremation ground."*
3. When the case was called pro-forma, Counsel appearing for the Appellant objected to the filing of the Statement of Defence of the Respondent on the ground that it was being filed outside the time limit prescribed by law. The Respondent subsequently did not insist on the filing of any statement of defence. On the day of the hearing both parties were legally represented. The Appellant deponed under oath and was cross-examined by Counsel appearing for the Respondent but since no statement of defence was put in by the Respondent, for all intents and purposes the appeal was not defended as such except that Counsel for the respondent attempted to put questions regarding documents that were on record and at best, discredit her as a witness. We have duly considered the evidence placed before us as well as the submissions of Counsel.
4. The Appellant's representative in essence testified that the proposed development was part of a master plan, which the council was aware of and that the present appeal relates to the fourth application for a BLUP in line with the master plan as it was a natural progression of the development of the school. By way of background, the Appellant initially started out with a small primary school and slowly grew in phases to accommodate the academic progression of the school and it now has 300 students in both its primary and secondary schools. In the light of this growth, there is a dire need for the infrastructure growth to accommodate the growing student population at the school since the school will need to be able to offer a complete secondary schooling to its students. According to the version of the Appellant, the application together with all documents were submitted at the Council on the 27<sup>th</sup> October 2017 and Doc A, the computer generated receipt confirming payment of the BLUP fee, is on record. There were two visits on the locus by officers of the Council and fourteen working days later, that is by the 16<sup>th</sup> November, the Appellant still hadn't heard from the Council.

5. On the 1<sup>st</sup> December 2017, according to Mrs. Dalais' version, when she went personally to collect the BLUP after several calls had been made at the end of November and someone having even gone personally to the Council to enquire into the matter, she was verbally informed that the application was refused but no refusal letter was forthcoming as it was not yet signed. By the 6<sup>th</sup> December, having not received anything from the Council, Mrs. Dalais stated that the Appellant's representative went to the Council to pay for the BLUP but the latter refused to accept payment and she produced Doc B in support of her version. According to the Appellant, since the Council never reverted to it for any additional information to be provided, it was deemed that the Council was satisfied with the documents submitted. In cross-examination, the representative of the Appellant stated that the refusal letter sent by the Council to the Appellant, although dated 1<sup>st</sup> December 2017, was only received on the 7<sup>th</sup> December 2017. All evidence which the Respondent has purported to extract from the Appellant's representative and which has not been pleaded by the Respondent, is disregarded by the Tribunal.
6. It is the contention of the Appellant that the Council acted in contravention of the **Local Government Act 2011 ['LGA']** in that it failed to provide the Appellant with an answer as regards the fate of their application for the BLUP within the time limit imposed by law and that after the expiry of this time limit when the Appellant wished to pay for the BLUP, the Council would not accept the fee nor give it a BLUP by way of receipt. **Section 117 (7) of the Local Government Act 2011 ['LGA']**, as amended by the **Finance Act 2017**, is partly reproduced herewith:
- 'With the exception of an application under subsection (8) and subject to subsections (9) and (10), the Permits and Business Monitoring Committee shall, within 14 days of the effective date of receipt of the application-*
- (a) Issue to the applicant an Outline Planning Permission or a Building and Land Use Permit....*
- (b) Notify the applicant in writing that the application has not been approved and give the reasons thereof.'*

7. Our reading of the law is that within 14 days of the effective date the Permits and Business Monitoring Committee ['PBMC'] must imperatively have taken a decision and either issue the BLUP or notify the applicant of the rejection of his application, as the case may be. We find that the use of the comma after the phrase '*within 14 working days of the effective date of receipt of the application*' is significant for it suggests that the phrase is an independent clause that the Legislator intended to apply to both subsections (a) and (b). Thus, **Section 117(7)LGA** is to be read plainly, that is on a literal meaning of the words, to require the PBMC to either issue the Building and Land Use Permit ['BLUP'] or notify the applicant in writing that his application has not been approved within the 14 working days limit.
  
8. In the present case, as per the Appellant's version, which is the only version on record since the respondent finally chose not to put in a statement of defence, the Council failed to comply with the requirements of the law by not informing the Appellant within 14 working days of the application being made whether it has been approved or not. We find that the evidence on record does not clearly reveal whether the Appellant received a letter from the Council stipulating clearly when the "effective date" was as per the meaning of the LGA, or whether such a letter was never forthcoming. **Section 2 of the LGA** describes '*"effective date" in relation to an application made under Sub-Part F of Part VIII of the Act, to mean the date by which all the information, particulars and documents specified in the application form are submitted.*' Although at some point, upon a question put by the Bench to the witness, we were given to understand that there may have been such a letter but it may have been with the Appellant's attorney. Later, we understood the appellant's case to be that once all documents were filed with the Council, it heard nothing from the Council (except on two occasions when site visits were done by the inspectors of the Council) until Mrs. Dalais called at the Council on the 1<sup>st</sup> December 2017 to be verbally informed that the application for BLUP had not been approved.

9. This leads to the question of whether an Appellant is entitled to obtain its BLUP upon payment of the relevant fee if the Respondent has not acted as stipulated under **Section 117(7) LGA** within the 14 working days limit. **Section 117(11) LGA** provides:

*(11) (a) Subject to paragraph (b), where an applicant has not been issued with a Building and Land Use Permit 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 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 Building and Land Use Permit. (The underlining is ours.)*

10. We are of the view that on a literal meaning of the words used, **Section 117 (11)** will apply irrespective of whether or not the Council has approved the application in question. On this reasoning, **Section 117(7)**, where it is applicable, will allow an applicant to walk away with his BLUP after payment of the relevant fee even where the Council has not in fact approved the application and indeed regardless of the actual merit or validity of the application. **Section 117(11)** is, in our view, unambiguous and there cannot be any departure from the literal meaning of **Section 117(11)**. The Supreme Court, in the case of **Municipal Council of Vacoas/Phoenix V/S AKM Rana Co. Ltd 2016 SCJ 150**, set aside the appeal and upheld the ruling of this Tribunal where it had ruled on this issue.

11. On the facts of the present case, since the version of the Appellant has remained unrebutted as regards the sequence of events which led to the lodging of the

present appeal, we believe that the Council contravened the provisions of **section 117 of the LGA** when it failed to inform the Appellant of the fate of its application within the time delay prescribed by law, but moreso when it refused to accept payment of it.

12. On the merits of the application, the Council invoked two grounds for refusal on the BLUP. Both grounds do not, in our view, reflect any decision by the decision-maker based on the planning merits of the application at hand. The primary purpose for which the Council is vested with powers to determine an application for planning approval is to control development to achieve the relevant planning outcomes and objectives on the application of planning tools. The grounds for refusal as set out by the Council in their letter dated 1<sup>st</sup> December 2017 did not in any manner demonstrate the Council took a considered view with respect to the use or development of the subject-matter of the application. The Council appears to have taken into consideration grounds which are totally irrelevant to the application at hand and did not assess the application on its own merits, which it should have. The Council could not clarify its position as it could not put forward its case.

13. For all the reasons set out above, the appeal is allowed. No order as to costs.

Determination delivered on 16<sup>th</sup> May 2018 by

---

**Mrs. J. RAMFUL**

**Vice Chairperson**

**Mr. P. MANNA**

**Member**

**Mr. G. LEPOIGNEUR**

**Member**