BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

Cause No.: ELAT 1552/18

In the matter of:

GBM PROPERTIES LTD.

Appellant

v.

MUNICIPAL COUNCIL OF QUATRE BORNES

Respondent

DETERMINATION

The appeal is against the decision of the Respondent for having refused the application for a Building and Land Use Permit made by the Appellant for the construction of a new building comprising of a basement and ground floor and twelve floors for residential apartments. The building proposes to house 144 apartment units.

The letter of refusal dated 10th January 2018 states that the sole ground of refusal is that the requirements of letter dated 21 November 2017 (which incidentally has not been produced) have not been complied with, to wit:

1. Amended plans not submitted to show relevant features such as traffic island to be constructed on road markings, road enlargement, visibility splays and proper road geometry on plan drawn to scale 1:200. And signed by an architect to reflect the views of the Traffic impact committee of the Ministry of Public Infrastructure.
2. Spaces required for road enlargement along proposed garbage disposal/security post/entrance gate and Lacoste lane have not been defined on plan.

The grounds of appeal as contained in the Notice of Appeal and the annex thereto lodged at the Tribunal on the 30th January 2018 are as follows:

1. The Respondent has acted illegally through a letter dated 25th April 2017 by changing the effective date contrary to the provisions of the Local Government Act 2011.

1. The Respondent has acted illegally through a letter dated 25th April 2017 by changing the effective date contrary to the provisions of the Local Government Act 2011.
2. The BLUP is deemed to have been approved on the 12th May 2017.
3. The decision of the Respondent as per letter dated 10th January 2018 is wrong in as much as it has not been taken within the prescribed delay.
4. The contents of the letter dated 25 April 2017 were not approved by the Permits and Business Monitoring Committee.
5. The Respondent was wrong to issue the letter dated 21 November 2017.
6. Respondent's ground to refuse the BLUP application is not in compliance with the law.

A chronology of the process relating to the application submitted by the Appellant to the Respondent is done for clarity:

- On the 21st April 2017 the applicant submitted an application for a BLUP and was issued with an acknowledgement receipt on the same date following the payment of a processing fee of Rs. 500. The acknowledgement receipt contained a note requesting the Appellant (then applicant) to call at the Council on the 12th May 2017 for either the collection of the permit and pay for the permit fee, or collection of the refusal letter, or collect the approval letter requesting for amendments.
- On the 25th April 2017, the Applicant received a letter which stated that the application had been assessed by the Respondent and certain 'amendments/particulars' were required for further processing. These were: 1. clearances from the TMRSU (Traffic Management and Road Safety Unit) and RDA (Road Development Authority), as had been requested by the conditions of the Outline Planning Permission (OPP) that had previously been issued, and clearance from the TIA (Traffic Impact Assessment) was also required. 2. Original letter from the Wastewater Management Authority. 3. Information regarding the provision of screening of balconies facing common boundary lines, which had not been indicated on the plan. 4. Submission of a contingency plan.

  This letter dated 25th April 2017 contained a further paragraph wherein it is stated that "Consequently the 'effective date' given no longer applies" and a delay of four weeks was given to him to submit amendments/particulars. The letter further stated that a new effective date will be given once the above have been submitted.
- On the 6th June the Appellant attempted to effect payment of the fees for the BLUP and issued a cheque in the sum of Rs.1,454,200 to the Respondent

- On the 10th January 2018 the Respondent issued a letter to the Appellant declining the application for BLUP.
- The appeal was lodged before this Tribunal on the 30 January 2018.

The first three grounds of appeal can be taken together as the three grounds amount to challenging the decision of the Respondent to change the "effective date" of the application. What is the '*effective date*'? Section 2 of the Local Government Act gives the following definition: "*effective date in relation to an application under Sub-part F of Part VIII, means the date on which all the information, particulars and documents specified in the application form are submitted*".
It is the position of the Appellant that the Respondent had issued an acknowledgement receipt on the 21 April 2017 and the due date mentioned therein is the 12th May 2017 and that the Respondent was not authorised to change the "effective date". This position of the Appellant finds support in an earlier ruling delivered by the ELUAT in the case of AKM Rana v Municipal Council of Vacoas Phoenix (ELAT 163/12) followed by a circular dated 24 March 2014 issued by the Ministry of Local Government and Outer Islands (Document A), which called for compliance with the case of AKM Rana (supra) and section 117 (7) of the Local Government Act 2011.

Our attention has been drawn to an amendment brought to section 117(5) (a) of the Local Government Act 2011 by Act 4 of 2017 whereby the Chief Executive of the Council now has the power to seek '*additional information, particulars or documents*' in relation to the application made. This amendment postdates the ruling given in AKM Rana (supra) and the above-mentioned circular.

It is our view that, having regard to this amendment, the Legislator has rightly and implicitly given to the Council the power to take an informed decision only after having obtained all the necessary information on the proposed development. This approach is a departure from the one where the local authority was expected to act rigidly within fourteen working days, thus irrespective the necessary parameters having been met with. The Legislator deemed it fit to intervene in this state of affairs. On one hand the statutory delay of fourteen working days was the spirit in which the Business Facilitation Act had been adopted, with a view to process applications fast, failing which the application is said to be 'deemed to be approved'. On the other hand, the amendment brought in by the Local Government Act (section 5(a) introduced by Act 4 of 2017), without doing away with this provision, allowed the Chief Executive of the local authority to have time to ask for further particulars/ details before a decision is reached. This was not done in an 'open ended' way, but was limited to eight days from the receipt of the application to seek such information.

The Legislator does not legislate in vain and this amendment had the result of allowing local authorities to exercise a more efficient administration.

This new policy necessarily had an impact on the operation of section 117 (7)(b) of the Local Government Act. Nothing in the amendment is mentioned as to the impact of these eight days on the statutory delay of fourteen working days to determine an application. In the silence of the Legislator on this issue, we take the more logical approach: if in the Council's perspective more information, particulars and documents are required, how can the clock keep ticking whilst this assessment is in process?
It is our view that the 2017 amendment, is to be read in conjunction with the definition of effective date given in section 2 of the LGA, namely that "effective date means the date by which all the information, particulars and documents specified in the application form are submitted". In simple terms it means that the clock starts ticking when the application is fully in shape for the Council's consideration.
The determining issue is when was the application fully in shape?

A letter dated 25th April 2017 (Annex D to the Statement of Case) was sent by Chief Executive the Council (the Respondent) requesting the Appellant to provide amendments and particulars in relation to clearances from the TMRSU and the RDA, original letter from the WMA among other things (supra). The standpoint of the Appellant has throughout been that the Respondent was not entitled to amend the "effective date". For the reasons as detailed above, we find that this position is flawed in as much as the Council was fully entitled to ask for these particulars, and the request for same had a suspensive effect on the delay in which the Council had to determine the application.
We do not adhere to the argument of the Appellant that this amounted to an amendment of the effective date, as this date can only be 'effective' once all the relevant information had been communicated to the Council. Besides, the Appellant has been harbouring under the wrong impression that the effective date runs as from the date the application is deposited at the Council and an acknowledgement receipt is given to him. The acknowledgement receipt (Annex B to the Statement of case) contains a clause in its heading which reads as follows: "*As per section 105(10) of the Local Government Act 2003 "Effective date in relation to an application means the date by which all the information, particulars and documents specified in the application form are submitted."* This clause only confirms the above position taken. The issue of shifting the "effective date" does not arise.

The process then followed by the Respondent has been to request the Appellant to seek the clearance of the TMRSU and the RDA by its letters dated 25 April 2017 (Annex D to the Statement of Case) and 1st June 2017

(Annex E). The evidence of the Respondent is that the Appellant failed to comply with the requests contained therein. Documents E, F and G from the Ministry of Public Infrastructure and Land Transport (Land Transport Division) addressed to the Respondent show the assessment of the proposed development and the amendments proposed to be brought by the developer. These do not seem to have been complied with as at this date.

We do not subscribe to the position of the Appellant and are of the view that the Respondent was entitled to request for additional information, particulars and documents. We concur with the position as submitted by the Respondent that the flaws in the proposal as regards traffic flow, as per the views obtained from the TMRSU, called for a request for amended drawings to be submitted. The Appellant did not comply with the requests made on this aspect of the application and sought a rigid application of section 117 (7) (a) of the Local Government Act without paying heed to the other provisions, namely section 117 (5) (a) of the Local Government Act 2011 as amended.

We distinguish from the ruling given in the case of AKM Rana (supra) by reason of the legislative amendment brought in by Act 4 of 2017. We also take the position that despite the wording of the documents emanating from the Council, a distinction should be drawn between the date of the acknowledgement receipt and the "effective date".

We furthermore find no need to go into the averments of bad faith raised by the Appellant in trying to delay the processing of the application. The Respondent's representative has time and again stated that should the amended plans incorporating the proposals of the TMRSU be submitted, the application will be approved. Delay, if any, seems to originate from the Appellant.

It is also on record that the Appellant attempted to make a payment as evidenced by Annex F to the statement of case. The version of the Respondent as per its statement of case is that the Appellant has been refusing to take back the cheque when it was returned to him. We must say that we find the fact that the Respondent is still in possession of the said cheque raises questions. We do not find, however, that this should have a bearing on our findings as regards the application for BLUP itself.

The grounds of appeal as contained in the Notice of Appeal, when lumped together question the legality of the letter dated 25 April 2017 and the fact that the "effective date" was changed. As stated above, we find that the "effective date" could only be given once all the information that the Respondent needed for the assessment were laid before it. In the absence of same, the application could not be said to be complete. The evidence before this Tribunal shows that certain important elements that were required for a proper assessment of the proposed development were lacking. It was stated time and again before the Tribunal that the Council would be willing to assess and

approve the proposed development in the presence of the amended plans that would comply with the views of the TMRSU.

As matters stand, for all the reasons as detailed above, we find that the grounds of appeal cannot be upheld. We do not condone the Appellant's call for a purely technical and narrow approach to be taken in reading section 117 without placing these provisions in context. An approach that favours a mathematical calculation of the delay rather than an '*in concreto*' assessment of a project of this magnitude, taking into account the views of the relevant authorities is not recommended. For all the reasons mentioned above, we set aside the present appeal.

Delivered by:

Mrs. Vedalini Bhadain, Chairperson

Dr. Yaswaree Mihilall, Assessor

Dr. Geeta Devi Somaroo, Assessor

Date: 5th November 2019