



In The Supreme Court of Bermuda

APPELLATE JURISDICTION

2008: No. 321

THE BERMUDA ENVIRONMENTAL SUSTAINABILITY TASKFORCE

Appellant

-AND-

THE MINISTER OF ENVIRONMENT AND SPORTS

Respondent

RULING (Ex tempore)

(In Court)

Date of Hearing: August 3, 2010

Date of Ruling: August 3, 2010

Mr. Timothy Marshall, Marshall Diel & Myers,

for the Appellant

Mr. Huw Shephard and Ms. Shakira Dill,

Attorney-General's Chambers, for the Respondent

1. In this matter the Crown has conceded that the appeal must be dismissed because of the absence of reasons for the decision.

2. It has been suggested that the Court has the power under section 61(2) of the Development and Planning Act 1974 to remit the matter to be dealt with according to law by the Minister. Mr. Marshall for the Appellant urges the Court having regard to all the circumstances of the present appeal not to take that course.
3. I am minded to accept the submissions of Mr. Marshall that in this case it would be unsatisfactory, the appeal having been conceded, for the matter to be remitted to the Minister to be dealt with again. I think that there are two reasons for reaching that conclusion.
4. Firstly, it seems to me that the statutory framework in which an appeal goes to the Minister is one in which a member of the Executive is being asked to perform a judicial function, which in and of itself is problematic requiring a Government Minister to make a judicial decision. And in those circumstances, the burden on the Minister to be seen to act fairly and judicially in an appellate context is so high that, where a decision made has been reversed on the basis of no sufficient reasons being given against a background of allegations of lack of impartiality, it seems to me that justice would not be seen to be done if the matter were to be remitted back to the same Minister to be dealt with again.
5. I find that the appeal should be allowed, the decision of the Minister quashed and the planning applicant is of course at liberty to make a fresh application if he is advised to do so. It follows that the cost of the appeal should be awarded to the successful Appellant.
6. Mr. Shepherd for the Respondent is to be commended for recognizing the inevitable outcome, having heard Mr. Marshall's opening submissions this morning, and for assisting the Court in avoiding a waste of time and public expense by allowing the appeal to run its full course.

Dated this 3rd day of August, 2010

KAWALEY J