IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN

CASE NO: 11971/2013

In the matter between:

SHAHIR RAMDASS N.O **AARTHI RAMDASS NO** **VINESH RAMDASS NO**	**First Applicant**
YASEEN KAHN	**Second Applicant**
REYAAZ JACOBS	**Third Applicant**
DAVID MCNAUGHT	**Fourth Applicant**
MAX MILLER	**Fifth Applicant**

and

ETHEKWINI MUNICIPALITY	**First Respondent**
HUGO EUNOMY VAN DER WALT NO	**Second Respondent**
TASLEEM SAYED NO	**Third Respondent**
TAAHIR SAYED NO	**Fourth Respondent**

Order:

The application is dismissed with costs, including those consequent on the employment of senior counsel and, where applicable, two counsel. Such costs

will include those reserved by Vahed J.

JUDGMENT

Delivered on: 17 June 2014

PLOOS VAN AMSTEL J

[1] This is an application for a review of a decision of the Ethekwini Municipality to approve building plans for the construction of a residential building comprising of 8 flats at 263 Montpelier Road in Durban. The applicants are owners of sectional title units in a development known as The Terrace, at 42 Springfield Road. I shall refer to the first respondent as 'the local authority' and to the trustees of the Sayed Family Trust, who own the property at 263 Montpellier Road, as 'the respondents'.

[2] The two roads run more or less parallel to each other. Montpellier Road is to the north-east of Springfield Road, and therefore closer to the ocean. It is lower than Springfield Road. The two properties are situated between the two roads. On the map and the aerial photograph annexed to the report of Proprop Developers it can be seen that the respondents' property is more or less below the south eastern boundary of the applicants' property, with the result that their common boundary is very short. Both properties have common boundaries with several other properties. The respondents' property, together with three adjacent properties, was rezoned in April 2008 from Maisonette 900 to General Residential 1, without any objections. In terms of the new zoning the construction of the new building is freely permitted, in other words without any dispensation from the local authority.

[3] The building plans were approved by the local authority on 11 September 2013, at a time when the building operations were already fairly far advanced.[1] The application for the review was launched on 29 October 2013. On 6 November 2013 Vahed J made an order, pending the final determination of the review, interdicting and restraining the respondents from continuing with the building operations.

[1] The local authority instituted criminal proceedings against the respondents for building without approved plans, and they paid a fine.

[4] The basis on which the applicants contend that the approval of the plans was improper is that the application did not comply with the requirements of the National Building Regulations and Building Standards Act [2] (the Act) and the Town Planning Scheme,[3] that they were not given a proper hearing, that the building control officer referred to in s 6 of the Act was not properly qualified and that the delegation of his functions to the person who made the recommendation regarding the approval of the plans was not properly made.

[5] The statutory framework applicable to the approval of building plans is briefly as follows. Section 4(1) of the Act provides that no person shall without the prior approval in writing of the local authority erect any building in respect of which plans and specifications are to be drawn and submitted in terms of the Act. Section 4(3)(b) requires an application for such approval to be accompanied by such plans, specifications, documents and information as may be required by or under the Act, and by such particulars as may be required by the local authority for the carrying out of the objects and purposes of the Act.

[6] Section 6(1) provides that a building control officer shall make recommendations to the local authority regarding any plans, specifications, documents and information submitted to such local authority in accordance with section 4(3). In terms of s 6(4) a building control officer may, with the approval of the local authority, delegate to an officer under his control any power, duty or function granted or entrusted to building control officers in terms of the Act.

[7] Section 7 deals with the approval of building plans. Subsection (1) requires the local authority to consider the recommendation by the building control officer. If it is satisfied that the application complies with the requirements of the Act and any other applicable law, it shall grant its approval. If the local authority is not so satisfied it shall refuse to do so. Subsection (1)(b)(ii) specifies another circumstance where the local authority is obliged to refuse to grant its approval. It is when it is satisfied that the proposed building is to be erected in such manner or will be of such nature or appearance that the area in which it is to be erected will probably or

[2] Act 103 of 1977.
[3] The Durban Town Planning Scheme.

in fact be disfigured thereby; or it will probably or in fact be unsightly or objectionable; or will probably or in fact derogate from the value of adjoining or neighbouring properties; or will probably or in fact be dangerous to life or property.

[8] The Terrace consists of 18 sectional title units. Mr Ramdass, who deposed to the founding affidavit, says it is situated high up on the Berea and has always commanded beautifully uninterrupted views from north to south over Durban and its coast line. The views towards the Moses Mabhida Stadium and the ocean are partly over the respondents' property. He says the houses surrounding the complex are all upmarket homes and are well kept and built within the aesthetics of a traditional, upmarket Durban suburb. The unit owned by the Ramdass Family Trust is on the ground floor and has a small garden. Each of the other applicants own units with either a garden or a balcony overlooking Durban. In the founding papers the applicants' main objection was that the proposed building would severely restrict their views, compromise their privacy and derogate from the value of their properties. Accordingly, they say, the local authority should have refused to grant its approval as contemplated in s 7(1) (b) (ii).

[9] I propose to deal firstly with the complaint that the applicants were not given a proper hearing. The history of the matter is briefly as follows. The respondents applied to the local authority in January 2013 for the approval of buildings plans for the proposed construction. The Land Use Management Section confirmed that what was being proposed was permitted in terms of the Scheme, including its requirements regarding zoning, use, height, building lines, floor area ratio, coverage and so on. The building plans were however not approved because they did not comply with a number of technical requirements. The plans were amended and re-submitted on a number of occasions, until they were eventually approved on 11 September. In the meantime however the respondents had started with the construction. In July 2013 Ramdass became concerned about the construction and established that building plans for the development had not been approved. On 26 July he wrote to the local authority and recorded an objection on behalf of the body corporate of The Terrace. He pointed out that building plans had not been approved and recorded that the construction would have a deleterious effect on the applicants' properties because of its style; it directly affected their views and would cause a depreciation of the value of their properties. The local authority had by then

already prepared a notice in terms of the Act, ordering the respondents to cease all work forthwith until the building plans had been approved. This notice was served on them on 31 July. On 12 August Ramdass informed the local authority that work on the site was continuing in spite of the order to stop. On 15 August he asked the local authority for, inter alia, a copy of the application for the approval of the building plans. This was declined and on 20 August the applicants made an application for the documents in terms of the Promotion of Access to Information Act.[4] On 30 August the building control officer said the following in an email to Ramdass:

> 'Kindly note that section 7 does not require "consultative engagement" but rather requires that the local authority apply its mind to the matter in question. To that extent we are aware of the basis on which you have raised objections and are in a position to apply our minds as regards a decision. We therefore encourage you to provide any further motivation prior to that decision being made, and trust that you will avail yourself of the opportunity to view the building plans at our office as a matter of extreme urgency.'

Ramdass inspected the plans on 2 September and on the following day said the following in an email to the local authority:

> 'I have had the opportunity of inspecting the plans yesterday. Can you confirm that the building inspectorate have attended on site and confirmed that the side and rear end spaces are in fact in accordance with the plan and that no relaxation is required.'

[10] It will be recalled that the invitation included an opportunity to discuss the plans with the assessment officer. Ramdass does not say whether or not he made use of that opportunity. It is also relevant to record that his wife, who is one of the applicants in her capacity as a trustee, is a qualified town planner.

[11] On 6 September Ramdass sent an email to Mr Richard Holgate, who was the local authority's building control officer. He contended therein that the building would be unsightly, objectionable, a nuisance to the occupiers of adjoining and neighbouring properties and would have a deleterious effect on the value of such properties. He reiterated that he needed all relevant documents 'to enable our experts to fully and adequately consider and amplify our clients (sic) objections'. He

[4] Act 2 of 2000.

contended that the approval of the plans could not be considered until the Council had fully considered the objection which had been lodged by his client, amplified as aforesaid. He said that could only be done after they had received the 'PAIA documents' and after they had had a reasonable time to consider them and draft their amplified objections. He was informed on 12 September that the plans had been approved the previous day. He collected the documents which he had requested in terms of PAIA on 17 September, but was not given a copy of the plans. When he queried this he was informed that he had only been given 'viewing rights' and was not entitled to copies of the plans.

[12] It will be seen from this that Ramdass had made use of the opportunity given to him to inspect the building plans and had conveyed the applicants' objections to the local authority. As I said, he had also been invited to discuss the plans with the assessment officer. I am not persuaded that in those circumstances the applicants were not given an adequate hearing. They were not entitled, as of right, to be heard as to whether or not the respondents' plans should be approved. Their entitlement to be heard was based on the invitation extended to Ramdass to inspect the plans and convey the applicants' objections to the local authority. What he then demanded was much more. He wanted copies of the application, copies of the plans and a variety of other documents. He wanted to employ experts to analyse the documents and then he wanted the objections which would be formulated on their advice to be considered by the Council. The applicants were not entitled to what would have amounted to a form of discovery of documents and the employment of experts to formulate their objections. The invitation which had been extended was to inspect the plans and say what their objections were. That was done and the local authority was then entitled to consider the application, together with the objections, and make a decision.

[13] That brings me to a consideration of the complaint with regard to s 7(1)(b)(ii). The case made by the applicants is that their view is a major factor in determining the values of their properties and that the impairment of the view has resulted in a reduction in those values. They also point to the loss of privacy occasioned by the fact that some of the units are visible from some of the flats in the new building, and the imposing presence of it. This is however not the test for the purposes of

s 7(1) (b) (ii). *In Camps Bay Ratepayers' and Residents' Association v Harrison*[5] Brand AJ said the following:

> 'The flaw lies in the assumption that derogation of value of neighbouring property is always a s 7(1) (b) (ii) issue. This is not so. "Value" must, in the context of s 7(1) (b) (ii), be understood as "market value". Traditionally, market value is said to be the price that an informed buyer will pay an informed seller, both of them having regard to all the potential risks – realised and unrealised – pertaining to the subject property. One of the unrealised risks that the hypothetical parties will contemplate is that a neighbouring property, unimproved at the time of valuation, might be built upon, or even, when built upon, might be replaced by a new building which may, for example, be more obstructive to the view enjoyed from the subject property. This will be of particular relevance in a case where the view from the subject property is of special import. That is why a property fronting directly on the ocean is generally worth substantially more than the property behind it, even when neither has been developed. While the latter bears the risk of being deprived of its view, the former does not…The realisation of a risk already discounted will generally not have an influence on the market price. In consequence, the fact that a new building is then erected on the neighbouring property which interferes with previously existing attributes of the subject property will not, in itself, be regarded as derogating from the value of the latter. This is so long as the new building complies with the restrictions imposed by law. Derogation from market value, therefore, only commences: (a) when the negative influence of the new building on the subject property contravenes the restrictions imposed by law; or (b) because the new building, though in accordance with legally imposed restrictions, is, for example, so unattractive or intrusive that it exceeds the legitimate expectations of the parties to the hypothetical sale. In (a) the cause of the depreciation will flow from a non-compliance with s 7(1)(a). It is only in the event of (b) that s 7(1)(b)(ii) comes into play.'
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> Also see True Motives 84 (Pty) Ltd v Mahdi and Another.[6]

[14] Mr Rajkumar, who recommended that the plans be approved, commented in his recommendation that the objector should have been aware of the development potential on surrounding sites. Mr Mohanlal, who approved the building plans, says in his affidavit that he was of the view that the proposed building would, in all probability, not have a negative impact on the value of adjoining properties in the

[5] 2011 (4) SA 42 (CC) para 38 to 40.
[6] 2009 (4) SA 153 (SCA) para 30.

area. He makes the following points in this regard. The property was previously a vacant, overgrown site with a crumbling dilapidated building on it, frequented by vagrants, and creating an unsafe environment. There are a number of high rise buildings within the neighbourhood and the proposed building is consistent with those as far as architecture and finishes are concerned. He says the rezoning of the property would have resulted in a reasonable expectation that a building of this nature would be erected on the property. According to the report by a valuer, submitted to the local authority by the respondents, it is the norm rather than the exception for views of the properties on the south-western side to be obstructed by the properties on the north-eastern side. He also observed that The Terrace was obstructing the views of dwellings on the south-western side of Springfield Road.

[15] In *True Motives*[7] Heher JA said:

> 'The refusal mandated by section 7(1) (b) (ii) follows when the local authority is satisfied that the building will probably or in fact cause one of the undesirable outcomes. Section 7(1) (b) (ii) does not authorise a local authority to refuse to grant its approval upon the strength of a mere possibility that one of those outcomes may eventuate. Such an outcome must at the least be "probable". The Act is not to the effect that the local authority may withhold approval because it is not satisfied that the building will not cause one of those outcomes'.

[16] I do not consider that the applicants have shown that the local authority's decision in this regard is reviewable on any of the grounds listed in s 6(2) of PAJA. The attack based on s 7(1) (b) (ii) must therefore fail.

[17] The applicants contend that the plans do not comply with the provisions of the Scheme in a number of respects and should therefore, as required by s 7(1) (b) (i), not have been approved. I deal with these points in turn.

[18] The applicants contend that the permissible coverage was exceeded. They refer to clause 21(1) of the Scheme which provides that no site may be covered by buildings to a greater extent than the relevant percentage in Table B. The plans provide for a roof overhang of approximately one meter around the structure. The applicants contend that as the roof is part of the building the overhang must be

[7] Note 5 para 21.

included in the assessment of the coverage, in which event the permissible coverage will be exceeded. It was common cause before me that if the roof overhang is not taken into account the permissible coverage is not exceeded. Mohanlal, who approved the plans, says in practice the roof overhang is not included in the coverage calculations. Coverage is measured from the external wall of a building. This how the local authority interprets and applies the Scheme in regard to all building plans. He says Soni (the applicant's town planner) also follows this practice. There is no definition of coverage in the Scheme. I do not think the fact that a roof is part of the building necessarily means that the roof overhang should be included in the coverage. That depends on what is meant with the expression 'no site may be covered'. There is plainly a difference between the footprint of a building, or how it stands on the site, and a view from the air, which will include the overhang. I find nothing irrational in the local authority's practice in this regard and I am not persuaded that its interpretation of the Scheme is incorrect.

[19] The applicants say that in the case of a General Residential 1 zoning no less than 20 per cent of the site area must be set aside for garden and recreation purposes. In the plans however no garden area is reflected, nor is it possible, according to the applicants, given the proposed drive-in access and provision for parking. The respondents say more than 20 per cent of the property area is available as garden space. They point out that garden space is not depicted on building plans because there are no buildings involved. Mohanlal confirms that there is ample space set aside for this purpose.

[20] The next complaint relates to an underground 'attenuation tank' which comprises about 17, 6 square meters. It is located within the 7, 5 meter front building line**,** in close proximity to the front boundary, and also within the side space. It is part of the subterranean storm water drainage system. The respondents say that although the tank falls within the definition of 'building' in the Act and the Scheme, 'building line' in the National Building Regulations applies only to above ground buildings. The definition provides that 'building line' in relation to a site, means a line prescribed in any town planning scheme or any other law designating the boundaries of the area of the site outside of which the erection above ground of any building is prohibited. Mohanlal says this is how the local authority approaches

the matter in practice. The applicants contend that the definition of building line is intended for the purposes of the regulations and does not apply to the Scheme. The regulations do however apply to the approval of building plans. Regulation A2 provides that any person intending to erect any building shall submit to the local authority the plans and particulars set out in sub-regulation (1). The regulations contain detailed provisions as to what should be reflected in such plans, including any building line, and this is the relevance of the definition. Regulation A24 provides for an examination of the plans and specifications by the 'council'[8] and the issue of a report in connection therewith. If the report states that the proposed building complies with all the relevant requirements of the regulations any application for approval to erect such building, where accompanied by such report, shall be deemed to satisfy the requirements of the Act. Even if it is correct to say that the scheme should be interpreted without reference to the regulations it can hardly be contended that the local authority's practice with regard to the building line is irrational if it accords with the National Building Regulations. As far as the side space is concerned clause 19(9) of the Scheme provides that the Council may authorise the erection of any portion of a building which is below the level of the ground within the side or rear space of the site. The underground tank in question is at the very front of the respondents' property in Montpellier Road, and its construction there can clearly have no impact on any of the applicants or their properties.

[21] The applicants contend that the roof overhang (which is three floors up) extends about one meter from the building and intrudes into the side space. They say the plans are therefore not consistent with clause 19 of the Scheme. The respondents say a roof overhang is not taken into account with regard to side space. Clause 19(3) of the Scheme provides that side space is measured from the external wall of the building. Mohanlal confirms that this is how the local authority interprets and applies the Scheme.

[22] The plans provide for a generator located within the 7, 5 meter building line. The applicants contend that this is not permissible as it will probably be an

[8] The definition of 'council' in the Act was deleted by s 36 of Act no 8 of 2008.

immovable. The respondents say it is a movable piece of machinery and the building line restriction does not apply to it.

[23] The applicants contend that on the south west and south east elevations the boundary walls in places exceed two meters in height. They say the definition of a building includes ‘any wall or closed boarded fence more than two meters in height’. Accordingly such walls may not be erected in the side space. Mohanlal says the building plan submitted to the Land Use Management Section indicated that the boundary walls were not in excess of 2 meters in height if viewed from the neighbouring properties.

[24] The applicants say the diameter of a sewer pipe designed to connect to the municipal sewer pipe located on Montpellier Road as shown on the approved plan is 150mm. A plan prepared by BM Engineering Consultants, which was approved by the local authority’s Water and Sanitation Department however shows a diameter of 160mm. This pipe is located on the eastern boundary of the respondents’ property. Mohanlal says the discrepancy is as a result of a rational design outcome. This is comparable to an architectural plan showing a floor slab of 110mm but the engineer requiring a 140mm slab.

[25] The applicants say the approved plans contain amendments to the levels of the building which, when originally designed, were some 3 to 4 meters lower. The respondents confirm that the concept plans which were submitted to the Land Use Management Section had different levels from those on the approved plans. They say the amended levels are based on the surveyor’s certificate which was required by the local authority. It is however common cause that the building is within the height restriction of 105 meters above mean sea level. There is nothing to suggest that the levels on the approved plans are in conflict with any statutory requirement. Mohanlal says on both plans the relationship between the natural ground level and the height of the building is consistent. He says the different levels on the plans may be indicative that different datum levels were used.

[26] On the papers the applicants challenged the validity of the recommendation by the building control officer on the basis that he was not suitably qualified for the

position. The local authority put up an extract from the minutes of a Council meeting on 20 September 2007, when the Council approved the appointment of Richard Holgate as Building Control Officer. There has been no application to set aside that appointment, with the result that it stands. See in this regard *Oudekraal Estates (Pty) Ltd v City of Cape Town And Others*[9] and *MEC for Health, Eastern Cape, and Another v Kirland Investments (Pty) Ltd t/a Eye and Laser Institute.*[10] Counsel did not pursue this point in argument.

[27] The applicants also challenged the validity of the recommendation on another ground. The recommendation was made by Rajkumar, to whom Holgate had delegated his functions as building control officer. He says the vastness of the area and the volume of work make it impossible for him to assess all the plans which are submitted for approval, with the result that he has delegated his functions to eighteen employees of the local authority with the appropriate qualifications. The applicants challenged the validity of the delegation of Holgate's functions to Rajkumar on two bases. They contended that Holgate did not have the power to delegate his functions and, secondly, that he did not have the required authority to do so. Section 6(4),[11] on a proper interpretation, seems to me to justify the conclusion that Holgate did have the power to delegate his functions. Holgate personally interviewed and shortlisted Rajkumar for the position, which includes the duty of recommending '…either the approval or refusal of building plan applications in terms of the delegated authority for the Building Control Officer, by assessing the .application in terms of the National Building Regulations and Building Standards Act, and provides a recommendation to the Council…'. In terms of Holgate's job description one of his duties is to serve the municipality by 'effectively delegating the BCO powers to appropriate staff when necessary to facilitate operational efficiencies'. He says the local authority, through the head of Development Planning, Environment and Management and through the City Manager, approved Rajkumar's appointment. The duty schedule which Rajkumar signed includes the delegated authority for recommendations regarding the approval of building plans. The applicants also contend that in terms of s 59(2) (b) of the Local Government:

[9] 2004 (6) SA 222 (SCA) para 26 at 242A-B.
[10] 2014 (3) SA 219 (SCA) para 19 – 21.
[11] It reads as follows: 'This section shall not be construed so as to prohibit…any building control officer, with the approval of a local authority, from delegating to an officer under his control any power, duty or function granted or entrusted to building control officers in terms of this Act'.

Municipal Systems Act[12] delegations must be in writing. This section however applies to delegations by the municipal council in terms of sub-section (1). I am satisfied on the evidence that Holgate delegated his functions to Rajkumar properly.

[28] In terms of s 7(1) (a) of the Act it was the local authority which had to be satisfied that the application complied with the requirements of the Act and any other applicable law. It was so satisfied and it granted its approval. The question then arises whether its decision is reviewable on any of the grounds set out in s 6(2) of PAJA. That is however not the only question. Section 8 provides that in proceedings for judicial review of an administrative action the court may grant any order that is just and equitable. In *Chairperson, Standing Tender Committee and Others v JFE Sapela Electronics (Pty) Ltd and Others*[13] Scott JA said in appropriate circumstances a court will decline, in the exercise of its discretion, to set aside an invalid administrative act. He referred to *Associated Institutions Pension Fund and Others v Van Zyl and Others*[14] where Brand JA said there is a public interest element in the finality of administrative decisions and the exercise of administrative functions. Scott JA said he would add considerations of pragmatism and practicality. Sometimes an invalid administrative act must be allowed to stand.

[29] There is the further consideration that although s 6(1) of PAJA provides that any person may institute proceedings for the judicial review of an administrative action there are restrictions on the specific litigant who may approach a court for relief. It is difficult to understand, for example, why a busybody who lives in one suburb should be entitled to review a building plan which relates to a property in a different suburb on an aspect which has no impact on him at all. In *Judicial Review of Administrative Action in South Africa*[15] the learned author says at 401 that there can be little doubt that the standing requirements provided for in s 38 of the Constitution[16] apply also with respect to review applications under PAJA. The persons referred to in s 38 are (a) anyone acting in their own interest; (b) anyone acting on behalf of another person who cannot act in their own name; (c) anyone acting as a member of, or in the interest of, a group or class of persons; (d) anyone

[12] Act 32 of 2000.
[13] 2008 (2) SA 638 (SCA) para 28.
[14] 2005 (2) SA 302 (SCA)
[15] JR de Ville, Revised 1ed, 2005.
[16] The Constitution of the Republic of South Africa, 1996.

acting in the public interest; and (e) an association acting in the interests of its members. He says an interesting question which arises under PAJA is whether the definition of administrative action, specifically the phrase 'adversely affects the rights of any person' must be read as forming part of the requirements for standing. Stated differently, must a person, bringing an application for review in his own interest, show not only that he has an 'interest' but also that his rights were adversely affected, before he will have standing?[17] He says in *Ferreira v Levin NO and Others; Vryenhoek v Powell NO and Others*[18] Ackermann J was of the view that a person would have standing only in so far as an allegation is made that a specific fundamental right has been infringed or is threatened with infringement. Chaskalson P rejected this approach as 'highly technical'[19] and laid emphasis on the discretionary powers of the courts in relation to standing. In so far as one of the categories of persons who have standing is a person who brings the challenge in his own interest, 'it is for this Court to decide what a sufficient interest in such circumstances is.'[20] Whether or not an applicant in a particular case has such an interest is one of the considerations the courts take account of in determining whether it should invalidate the action.[21]

[30] The applicants' main attack, based on an alleged derogation of the value of their properties as contemplated in s 7(1) (b) (ii), must fail. So must their challenge to the validity of the recommendation made by the building control officer, and the complaint that they did not get a fair hearing. Their objections relating to coverage, garden space, the generator, roof overhang, the levels and the sewer pipe appear to me to be without merit. There may be substance in the points which they made with regard to the tank and the building line, and possibly the boundary walls. A ground of review in terms of s 6(2) is if the action was materially influenced by an error of law.

[31] But we must have regard to the context and the practicalities. The underground tank is in the front of the respondents' property, on the Montpellier Road side. It cannot possibly have any impact on the applicants or their property. It

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[17] Note 13, page 402.
[18] 1996 (1) SA 984 (CC) paras 31-42.
[19] Para 163.
[20] Id para 168.
[21] Note 13 page 406.

may be in contravention of the provisions of the Scheme, but it is allowed by the National Building Regulations. The boundary walls which are said to be higher than 2 meters in places are not between the applicants' and the respondents' properties, although one of them ends against their common boundary. As I read the plan the boundary wall at that point is substantially lower than 2 meters. Viewed from the other neighbours' sides the walls do not exceed 2 meters in height.

[32] These complaints are in my view trifling. They are not based on the fact that the applicants are in any way affected by these contraventions, if that is what they are. The applicants' strategy has been to object on the basis that their views and privacy were being compromised. They were misguided in that regard. In a determined effort to stop or delay the construction they employed a professional town planner to go through the plans with a fine tooth comb, which resulted in objections which were mostly technical and argumentative, and even as frivolous as a complaint about the dimension of a sewer pipe. This is probably explained by the fact that the applicants' attorney of record was one of the applicants, the deponent to the founding affidavit and the driving force behind the application. In consequence of their interference the construction was stopped at a time when building plans had been approved, delaying the project by many months and no doubt costing hundreds of thousands of rand in wasted interest, escalation and so on.

[33] I do not consider that in these circumstances, and at the instance of the applicants, it would be just and equitable to set aside the local authority's decision to grant its approval.

[34] The application is dismissed with costs, including those consequent on the employment of senior counsel and, where applicable, two counsel. Such costs will include those reserved by Vahed J.

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Ploos van Amstel J

Appearances:

For the Applicant	**:**	Adv. M B Pitman
Instructed by	**:**	Shahir Ramdass & Associates Durban
For the 1st Respondent	**:**	Adv. P A C Rowan SC/ Adv. W S Kuboni
Instructed by	**:**	Linda Mazibuko & Associates
For the 2nd, 3rd & 4th Respondent:		Adv. G D Goddard
Instructed by	**:**	Bobat & Associates Durban
Date of Hearing	**:**	21 May 2014
Date of Judgment	**:**	17 June 2014