

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 1856/19

In the matter of :-

NICOLAS GIOVANNY LALMOHAMED

Appellant

v/s

DISTRICT COUNCIL OF FLACQ

Respondent

DETERMINATION

1. The present appeal is against a decision taken by the District Council of Flacq (hereinafter referred to as "the Council"), for having rejected an application made by the Appellant for a Building and Land Use Permit (BLUP) for the addition of a building at second floor for residential purposes Off Royal Road, Pont Blanc. The decision of the Council was communicated to the Appellant by a letter dated 1st July 2019, which stipulated

"APPLICATION IS NOT APPROVED UNDER POLICY SD4 FOR RELEASE OF LAND FOR RESIDENTIAL PURPOSE AS SITE DOES NOT FOLLOW A SEQUENTIAL APPROACH."

2. The Appellant, legally unrepresented, deponed under oath and was cross-examined. Mr. Bundhoo, Planning Inspector, deponed on behalf of the Council and was cross-examined. We have duly considered all the evidence placed before us including submissions of Counsel.

I. CONTEXT ANALYSIS

3. The proposed development site is land located at Petite Retraite whereby the Appellant had in the past been granted a BLUP to build a watchman's quarters, a store for fruits/flowers and an office on an extent of 6 perches out of 99 perches of agricultural land, as evidenced by Docs H and J, a Land Conversion permit and BLUP respectively. The subject site is off the main road of Pont Blanc, as per site plan, Doc L, produced and it also lies outside defined settlement boundary by 230 metres, which is not contested, as per Doc M, extract of the Development Management Map produced by Mr. Bundhoo, representative of the Council. The site is accessible through untarred accesses, mostly sugarcane track. From the uncontested evidence of both parties, the current use of the land is for the cultivation of fruits and vegetables for the purpose of distribution to big outlets such as Surat. Water is connected to the site and solar panels for electricity will be connected. Clearance from the Ministry of Agro Industry and Food Security has also been granted with respect to the land *in lite* subject to several conditions being satisfied in the eventuality that the Council issues a BLUP to the Appellant. The google map, marked Doc L produced by the Respondent also shows that the area surrounding the subject site is agricultural with the presence of 2 buildings, that is, a temple as can also be seen in photograph marked G5 and a hall that is under construction. There is also a workshop under construction at a distance from the subject site. The uncontested evidence is that the land surrounding the subject site is vastly agricultural and to some extent this can be seen from the photographs marked Docs G, G1, G4 and G7 produced.
4. By way of background, it appears that although the Appellant has a BLUP for an office, a watchman's quarters, office and a store, there seems to also be a first floor to the building that stands on the property for which the Council states that it has no record of a BLUP having been granted. The Appellant was unable to produce any BLUP either but stated that it was built by his mother-in-law. The Appellant now seeks to reside on the property due to a number of thefts occurring there and he wants to protect his crops.

II. THE PLANNING INSTRUMENTS AND THE LAW

5. The site being situated in Pont Blanc, Central Flacq, the applicable outline scheme is **Outline Planning Scheme of Flacq ["OPS"]**. The **Policy SD4** is of relevance and being reproduced in parts:

Policy SD4: Development on land Outside Settlement Boundaries

"There should be a general presumption against proposals for development outside settlement boundaries unless the proposal:

- *Has been shown to have followed the sequential approach to the release of sites identified in SD 1, SD 2 and SD 3 and there are no suitable sites within or on the edge of settlement boundaries; and [stress is ours]*
- *Is for the essential purposes of agriculture, forestry or other uses appropriate to a rural area; or*
- *Is for the re-use or refurbishment of existing buildings set in their own grounds; or*
- *Is considered a bad neighbour development as defined in Policy ID 4; or*
- *In cases of national interest when having regard to material considerations, locational preferences linked to employment creating uses and socio-economic policies of Government, development may have to be outside settlement boundaries and is acceptable on planning, traffic impact and environmental impact grounds; and*
- *Is capable of ready connection to existing utility supplies and transport networks or can be connected without unacceptable public expense..."*

6. The grounds of appeal as per the notice of appeal are reproduced hereunder:

"

(a) A land conversion have already been approved in 2007

(b) Already have an existing approved commercial building on site since 2007

(c) Only asking for a residential permit to reside on the commercial building (existing)"

III. THE ISSUES

7. The Appellant's grounds of appeal as per his statement of case and the notice of appeal are not well defined. Under the first and second grounds of appeal it would appear that in essence that the Appellant's case is that since he has been granted a Land Conversion Permit in 2007 and that the building that stands on his property at the moment has a BLUP for commercial development, a permit for construction of residential building should be given to him.
8. The crux of the matter is whether in the present case the residential development can be carried out on agricultural land. We start with the application of **Policy SD4 of the OPS** which is the applicable policy for development outside settlement boundary as is the case here. Being given that he is practising farming, the Appellant explained that he wishes to build a house and live on the property so that he is better able to protect his property against theft. He has produced evidence of entries made to the Police for theft. He does not demand to be connected to the utilities.
9. The Tribunal is here to assess the planning merits of the development proposal on the subject site and will have to apply the planning instruments as they are. There is, infact, no Government policy that currently exists in the planning laws of this country that makes provision for the construction of residential buildings on agricultural land, even if it is for the purposes of carrying out agricultural and/or farming activities. That is why there are no farm houses in Mauritius. The existing **policy A1**, under the OPS, simply makes allowance for buildings on agricultural land which are 30 sq. metres in terms of surface area for a watchman's quarters-cum-store which are used solely in relation to the farming activities. This policy is applicable only for plots of 1 arpent or more. This explains why the Appellant was granted a Land Conversion Permit in 2007 solely for the purpose of converting 6 perches of agricultural land into non-agricultural development as specified in the Land Conversion Permit, for building a watchman's quarter and store. That Land Conversion Permit was specifically for that issue and does not cover the whole extent of the land.

10. As regards ground 3, the fact of having been granted a BLUP for a commercial development previously does not have any bearing on the application for a BLUP for residential development. Issues should not be mixed. The subject site is surrounded by agricultural land with gaps that require infilling. Sequential approach as per planning principles essentially means allowing development in certain locations where the gaps are filled in before others. A google map, Doc L, was produced by the representative of the Council clearly demonstrating mostly agricultural or waste land around the subject site with no built-up area save for the existing temple, a workshop and a hall that are under construction. The proposed development would thus not follow the sequential approach which is the pre-requisite when applying **Policy SD4**. The justification of this policy is that there is sufficient land available within settlement boundaries for residential development and this sequential approach is adopted to conserve remaining land in the district, especially land required for long term agriculture. The subject site being well outside defined settlement boundary by 230 metres and from the evidence of the Respondent and the photographs produced, it does not seem likely, in our assessment, to be the case that the surrounding land will anywhere in the near future be seen to be accommodating residential development. This adds to the uncertainty of the land in the area being released for residential development in the foreseeable future. Infact allowing residential development within non-residential areas will set a bad precedent as it will put a lot of pressure, including financial, on the Council for maintenance of roads, street lighting and refuse collection where a BLUP has been granted. To prevent theft, a watchman is allowed to be on the premises 24 hours a day and a watchman's quarters on the premises is precisely meant for that.

11. The case for the Appellant is also that he was given clearance from the Ministry of Agro-Industry and Food Security. The purpose of granting clearance by the Ministry of Agro-Industry is simply recognition by the Ministry that the River Francoise will not be affected by any construction work. The planning merits of an application as regards any development still rests with the Council, the sole authority, which can decide whether the development is permissible in accordance with the OPS and other planning instruments.

12. The Appellant's contention is the impracticality of having to travel from his father's place in Curepipe where he currently resides and to his farm and also the fact that there has been a number of thefts on the subject site. This, in our view, is not a planning ground that can tip the balance in favour of the Appellant. Infact if the argument is to protect his crops, or to "have a better control on" his business activity (orchard activities) as the Appellant put it, we note that in none of the DB entries produced by the Appellant or annexed to his statement of case as regards the items stolen was anywhere mentioned theft of the crops.
13. If the contention of the Appellant were to be accepted under **Policy SD4**, since the land is outside defined settlement boundary, and the application granted so that ultimately a residential building was to be allowed on the subject site, this would set a bad precedent in that it would amount to an isolated development, thus resulting in an "island" development. Such a development would flout the principle of clustering and sequential approach. The comparable used by the Appellant as regards the construction of a workshop and a hall are considered bad neighbour developments which are best located outside residential areas hence their location being outside the settlement boundary is always favoured.
14. As regards the Appellant's contention that the refusal letter was received from the Council well after 14 working days, we agree with the submissions of learned Counsel appearing for the Respondent on the issue. There was no evidence produced by the Appellant before the Tribunal as to whether the particulars requested by the Council was produced. From the evidence before us, it would appear that the Appellant was required to produce a BLUP for the first floor of the building that exists on his property, his evidence was far from clear, rather flimsy infact, as regards whether he did submit a BLUP for the first floor and whether all the documentation requested by the Council as part of the request for particulars were provided to the Council or Mr. Bheekaji. He stated however in cross-examination when it was put to him that there was no BLUP in his mother-in-law's name since he had stated that it was his mother-in-law who had caused the first floor to be built, that the BLUP for the first floor would have to be in his name. Strangely however in an attachment dated 28.07.2019 to his notice of

appeal, the Appellant avers at paragraph 3 that he is asking for a residential permit for the first and second floors be granted. The evidence of the Council is that these particulars were not provided and consequently an effective date could not be provided. In the face of the clear evidence from the Council, the version of the Respondent is accepted. The argument that a decision was not communicated within 14 working days from the effective date, therefore, does not hold.

15. For all the reasons set out above, we find that the appeal is devoid of merit and is accordingly set aside. No order as to costs.

Determination delivered on 1st July 2021 by

Mrs. J. RAMFUL

Mr. S. BUSGEETH

Mr. S. MOOTHOSAMY

Vice Chairperson

Member

Member

