

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 2002/21

In the matter of :-

1. Oomila Chuckowree
2. Premila Chunnoo

Appellant

v/s

The Morcellement Board,
Ministry of Housing and Land Use Planning

Respondent

DETERMINATION

1. This is an appeal against the decision of the Morcellement Board of the Ministry of Housing and Land Use Planning [“the Board”], for having refused to the Appellants the granting of a permit for the subdivision of a plot of land of an extent of 3932.80sq.m into 2 lots for residential purposes at La Louise, Quatre Bornes. The Appellants are siblings and co-owners of the land *in lite* which they inherited from their parents, transcribed and registered in volume TV 1501 No.81.
2. The sole ground of refusal of the Board as per their letter dated 4th January 2021 is “since the site is found close to a poultry pen.” The Appellants seek to challenge the decision of the Respondent on the grounds that:
 - (a) The poultry pen is found at a distance of more than 150 metres.
 - (b) The property of the Appellants is located opposite to houses and commercial buildings, school and wedding hall.
 - (c) The poultry pen is surrounded by some 20 houses and partly with an orchard and it contains less than 50 hens.

I. CONTEXT ANALYSIS

3. We have duly considered all evidence placed before us as well as submissions of Counsel appearing for the Respondent, the Appellants being *inops consilii*. The Appellants were duly represented by Appellant no.1's husband, and brother-in-law of Appellant no.2. He explained the need to have the subdivision so that both Appellants can carry out residential developments subsequently on their respective plots. The gist of the Appellants' case is that they do not contest the presence of a poultry pen in the vicinity which is operational except that according to them the poultry pen is some 150 metres from their property wherein only some 50 broilers are being reared. Their contention is that they are being unfairly prejudiced in that there are several residential properties in the vicinity of the poultry pen and that there are developments which are considered to be of sensitive uses such as a school right next to the Appellants' property which has been granted a BLUP. There are also commercial developments in the vicinity of the Appellants' property and a wedding hall.

4. The Respondent called three witnesses to substantiate its case. Mrs. Goolaup, Senior Development Control Officer at the Ministry deponed to the effect that she had been on a site visit for this case on 17th November 2020. The poultry pen was operational and there was odour on the site but she could not check for the number of broilers on the locus since the building was padlocked. The pen is 71 metres from the subject site and the measurement as taken is from boundary to boundary. She confirmed the presence of residential buildings in the vicinity and other developments. From the testimony of Mr. Huryll, the Planning and Development Inspector of the Municipal Council of Quatre Bornes, BLUPs have been granted recently by the Council for residential developments as well as for the operation of a school within the 200-metre buffer of the poultry pen. Mrs. Prayag, Office Management Assistant, at the Morcellement Board, explained the procedure adopted before the Morcellement Board when assessing an application for subdivision will have to take on board the views of several stake holders and that in the present case as per the views of the Council regarding the presence of the poultry pen that the Morcellement Board declined the granting of the application.

II. APPLICABLE PLANNING INSTRUMENTS

5. The Environmental Guidelines on Poultry Rearing for up to 15,000 birds published on the website of the Ministry of Environment Climate change and Waste Management, provide as regards the zoning of poultry farms, *“The site should be at a minimum distance of 200m from the limits of settlement boundary, any nearest residential building outside settlement boundary and other sensitive land uses (including residential, education and health facilities); any domestic borehole and slaughter house.”* The environmental guidelines provide for actions to be taken due to bio-security risks and in case of disease outbreaks and that *“Improper management and disposal of poultry litter/droppings contribute to odour and sanitary nuisances. Run-offs from washing may contaminate surface and groundwater resources. Ammonia and other odour causing agents may impact on air and human health.”* The point we wish to make here is that there are risks associated with the contamination of broilers and spreading of aviary diseases and the likely effect it may have on inhabitants within the vicinity in the eventuality of an outbreak. This, we believe, is the underlying logic for having buffer distances, hence the *raison d’etre* of these guidelines.

6. The Planning Policy Guidance on **Bad Neighbour Buffer for Industry Adjacent to Sensitive Uses** provides guidelines on buffer distances *“to mitigate any negative effects of industrial operations”*. Sensitive land uses include housing, education and health facilities. According to these guidelines the buffer distance to be kept between a bad neighbour development such as Poultry/Livestock Farm and a sensitive land use such as housing, is 200 metres, as evidenced by the Design Sheet produced as Doc A2. The undisputed evidence shows that the distance between the poultry pen and the appellant’s property is much less than 200 metres.

7. These guidelines have been issued by the Ministry of Environment but these have to be taken on board by the Morcellement Board for the purposes of the present application since land use has a bearing on the environment and the prevailing activities in the vicinity. Therefore, the Respondent was right to have applied the guidelines of the Ministry and not approved the subdivision for residential purposes

since residential development ought not to be found within the 200-metre buffer from pen, the moreso as the poultry pen has been operating since long in the vicinity with a valid BLUP, as per the evidence of the witness from the Council.

III. GROUNDS OF APPEAL AND DECISION

8. While the Respondent cannot be taxed for having complied with the planning guidelines to reach to its conclusion that the application should be refused, we are alive to the fact that the Council has duly approved several BLUPs for residential development and other developments of “sensitive use” in the vicinity. We do understand the plight of the Appellants. From the testimony of Mr. Huryll, it appears that the Council issued BLUP for residential developments as well as for the operation of a school within the 200-metre buffer of the poultry pen upon legal advice given to the Council with a condition being that the permit holders will have no claim against the operation of the poultry pen. Since we are not sitting to hear and determine a decision of the Council, we shall not comment on the decision taken by the Council in its wisdom to issue BLUPs for developments of sensitive uses within the buffer zone of a bad neighbour development which was legally implanted there years ago. However, we cannot help but observe that this does bring about an undesirable state of affairs in that in some cases two institutions are adopting approaches which lead to inconsistent decisions. Ultimately it boils down to the issue of what would be the land use of the subject site where there are already several houses with legally obtained BLUPs standing in the buffer area of a Poultry Pen which also has a legally obtained BLUP from the same Council. Guidelines of the Planning Policy Guidance, albeit soft laws, have to be abided by unless there are good grounds for departing from them. It would appear that had the Appellants tried another avenue which would lead them to the Council, their application for a residential development on the subject site may have gained planning acceptance. In the case of **Bibi Hematally v Municipal Council of Vacoas-Phoenix [ELAT 1298/16]** the Tribunal allowed an appeal so that the Council had to grant a BLUP to the Appellant whose property was found within the buffer distance of a poultry pen on the basis that the Council had acted inconsistently and

unfairly in having granted other BLUPs for residential developments within the buffer zone of the pen but had rejected the application of the Appellant which was also residential development.

9. The Tribunal will only intervene if the decision of the Respondent was wrong on planning principles or if it wrongly applied the law or both. This is not the case here. The planning principles were correctly applied by the Respondent. As far as the grounds of appeal are concerned, the first ground fails since the evidence that the subject site is found within the 200-metre buffer zone of the poultry pen has remained undisputed. The context plan of the Outline Planning Scheme produced by Mrs Goolaup, Doc A, shows that the Appellants' property is approximately 71 metres from the boundary of the poultry pen. As regards the second and third grounds of appeal which relate to the developments in the vicinity of the poultry pen which are already of sensitive use, this does raise issues of land use of the subject site but not through inconsistent decision making by the Morcellement Board. From our appreciation of the evidence before us, the Morcellement Board, has applied the correct policies and therefore its decision is not wrong. These grounds, since directed towards this Respondent, fail.

10. For all the reasons set out above, we find that the Respondent was not wrong in its decision. However, we will direct the Morcellement Board of the Ministry of Housing and Land Use Planning and the Council and other stake holders to align their respective approaches to the land use of properties such as that of the Appellants so that there is more consistency in the applications of guidelines and policies. The appeal is otherwise set aside. No order as to costs.

Determination delivered on 13th December 2021 by

Mrs. J. RAMFUL

Vice Chairperson

Mr. P. MANNA

Member

Mr. S. BUSGEETH

Member