

**BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL**

ELAT 1822/19

**In the matter of :-**

**Soobeena Narainsamy**

**Appellant**

v/s

**District Council of Riviere du Rempart**

**Respondent**

**DETERMINATION**

1. This is an appeal against the decision of the Respondent ["the Council"] for having rejected the application of the Appellant for the construction of a reinforced concrete building at ground floor at Off Forbach Road B42, Esperance Trebuchet. The sole ground for refusal communicated to the Appellant vide letter dated 29 April 2019 is:  
"SITE LIES WITHIN BUFFER OF AN EXISTING POULTRY"
  
2. The grounds of appeal as per the Appellant's notice of appeal are as follow:  
*"1. Just last year one Resident was given permission (Mr. Satish). His residence is 27 mts from poultry.  
2. This is my only residence and can't afford to buy another plot of land for construction of a house.  
3. We have been living in our house sine 2003 and we had no problem living next to the Poultry Pen."*
  
3. The Appellant was represented by her husband, Mr. Kentish Narainsamy but was not legally represented. Mrs Padayachi, Planning Inspector, deponed on behalf of the Respondent. We have duly considered the evidence on record as well as submissions.

## (I) BACKGROUND

4. By way of background to the Appellant's case, the Appellant's representative submitted that they have been living in a house on the subject site at Mahatma Gandhi Road, Esperence Trebuchet since 2003 and it is undenied that the site is found at around 35 metres within the 200m buffer of an operational poultry pen. He produced a copy of the development permit for the construction of a one storeyed house on the site which belonged to the Appellant's mother, one Satibhama Ramjeetoo, Doc A. He explained that the family had planning permission for the construction of a first floor to house but it was not built. The Appellant's representative, after the case was closed, filed a copy of the BLUP obtained by the said Satibhama Ramjeetoo in 2014 for the addition of the first floor in support of the Appellant's case. The Appellant now seeks a BLUP for the construction of another house on the subject site next to the existing house, which is the subject matter of the appeal before us. In support of the Appellant's case reference has been made to several residential developments that have taken place within the buffer of the poultry pen including the operation of a restaurant and photographs have been produced.
5. The stand of the Council in essence is that the Council will not allow any residential development within the 200-metre buffer of a licensed and operating poultry pen. As regards the houses found in the vicinity, some are illegal constructions which have not been granted BLUP by the Council whereas others are longstanding developments which existed prior to the coming into force of the Outline Planning Scheme. As far as the operation of the restaurant is concerned, the Council's representative stated that it has been assessed as a commercial development by the Council and therefore allowed a BLUP since activities falling within the commercial cluster are not considered "sensitive use" under planning law.
6. According to the Design Guidance on Industrial Development adjacent to sensitive uses found in **Planning Policy Guidance ['PPG 1']**, the acceptable distance of sensitive land use, such as houses and schools, from the boundary of a bad neighbour industry, such as a Poultry Farm, is 200 metres.

## **(II) GROUNDS OF APPEAL**

### **UNDER GROUND 1**

7. It is the contention of the Appellant that someone was granted a BLUP for residential development last year within 27 metres of the Poultry Pen. What we have understood the Appellant's case to be is that others have been allowed to reside within the buffer of the Poultry Pen and therefore she should also be allowed to do so. The Appellant's representative produced a photograph marked as annex 5 to the Statement of case showing a new construction and he explained that it was the residential property of one Mr. Satish Ramkurrun which is some 27 metres from the Poultry Pen. According to the Council, no BLUP was granted by the Council for the residential development despite an application having been made by Mr. Ramkurrun who is hence being prosecuted before the appropriate forum for illegal construction. The Appellant's representative also produced a photo to show the house of one Mr. Daby and a map to show the house of one Dr. Luchmun who have their residential properties at 130 metres and 32 metres from the boundary of the Poultry Farm respectively. The Council's stand is that the development of Dr. Luchmun dates back to 2004 when the policy guidance was not yet in force and that after the coming into force of planning policies, the Council did not allow any residential development within the buffer of the poultry farm as numerous complaints regarding the operation of the pen were received by the Council. The Council is justified having applied the correct planning policy and criteria in assessing the present application and having thus rejected the application. The explanation of the Council demonstrates that the Appellant is not being prejudiced in comparison with others. The Appellant's representative stated that the residence of Mr. Daby is a recent development but the Council failed to address specifically this issue. We will not surmise on the matter. This ground therefore fails.
  
8. As regards the operation of one Vishal Snack, a restaurant in the vicinity of the pen, the Council's representative stated that the restaurant is assessed as a commercial development, and not as being of sensitive use, was therefore allowed. While we do

not agree with this interpretation of the planning guidance, one has to understand the rationale behind having a buffer zone around an operational poultry farm, namely the biosecurity risks and the risks of disease or contamination, by having any type of outlet bearing human consumables cannot be a sound planning decision. However, an unsound planning decision cannot be the yardstick to take wrong decisions thereafter simply for the sake of consistency in decision-making.

#### **UNDER GROUND 2**

9. It is the contention of the Appellant under this ground that the proposed development is her only residence and that she cannot afford to buy another plot of land for the construction of a house. No evidence was adduced on this issue in the course of the hearing nor was it addressed in the statement of case. This ground therefore fails.

#### **UNDER GROUND 3**

10. The Appellant's contention under this ground is that she has been living on the subject site since 2003 without issues having a poultry pen in close proximity. The Appellant's representative explained that they had been living on the subject site in a single storeyed house and that now they have constructed a house next to the existing one despite the fact that they do not have a BLUP since the process of getting one was taking long, a previous application for BLUP having been turned down by the Council. The Appellant's contention is also that a BLUP was granted for an extension of a first floor to their house that existed on the subject site since 2003.
11. The fact that the planning guidelines which have been in force since November 2004 and should therefore be applied, coupled with Mrs. Padayachi's testimony that the Council has been receiving a lot of complaints from inhabitants in the vicinity regarding the operations of the pen, has encouraged the Council to apply the guidelines with more rigidity in not granting residential BLUPs. This is a plausible reason as to why the Council may have granted to the Appellant a BLUP for extension of first floor in 2014 but is not now willing to allow any new residential developments. In any event even if

the Council decided to be more rigid in its approach to granting BLUP in the buffer zone of a pen, this change in approach is not appealable before this jurisdiction. We hence find no basis in the contention that the application has been treated unfairly or that the rejection by the Council is biased and unjustified. The Council has explained the rationale behind its decision in respect of every BLUP granted or rejected. This ground therefore fails.

12. For all the reasons set out above, the appeal is set aside. No order as to costs.

Determination delivered on 18<sup>th</sup> April 2022 by

**Mrs. J. RAMFUL-JHOWRY**

**Vice Chairperson**

**Mr. S. MOOTHOSAMY**

**Member**

**Mr. P. MANNA**

**Member**