

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 1843/19

In the matter of:

Mrs. Ahsiana Bibi Bilkis Adoh & Mrs. Zahirra Bibi Adoh

(Represented by Mr. Mohammad Feezaal Sairally)

Appellants

v.

Ministry of Housing and Land Use Planning

Respondent

Determination

The issue before the Tribunal is whether the Respondent was right to reject the application of the Appellant for a subdivision of a plot of land of the extent of 422 square metres into two lots for residential purposes situated at Vallée des Prêtres. The ground of rejection, as contained in the letter dated 11th June 2019, is that the site is affected by a slope of greater than 20% and according to the provisions of PPG 9, development on sites with slopes above 20% is not allowed.

The planning instruments that are applicable to this application are the Outline Planning Scheme for the Municipal City Council Area of Port Louis, dated 23 May 2015 and the Planning Policy Guidance 9, issued by the Ministry of Housing and Lands on 28 March 2016. The relevant provisions are as follows:

1. Outline Planning Scheme Policy EC2: Building on Steep Slopes:

“There should be a general presumption against development on very steep slopes (a gradient of 20% or 1 in 5, or above) other than structures supporting necessary telecommunications equipment and essential utility services or uses in the national interest.

There should be a presumption against most forms of development on land which is determined by on-site assessment to be moderately sloping to steep (between 10% and 20%) unless it complies with PPG Design for Sloping Sites.

2. Planning Policy Guidance 9: Development on Sloping Sites and Landslide Hazard Areas:

“Development on slopes may be allowed (underlying is ours) on:

- *Slopes below 20% where the integrity of existing slopes is retained on submission of information as per checklist at Annex 1.*
- *Development on slopes of average gradient of more than 20% with pockets below 20% exceptionally where the steep sections are limited to horizontal run of less than 10 metres and provided that there is a slope stability analysis by a qualified geotechnical engineer, creative design solution, risks to public safety mitigated and supported by the submission of information as per check list at Annex 1.*

“Subdivisions on Sloping Sites:

Subdivision and site design on slopes is expected to respond to the unique characteristics of each site, avoiding significant disruption of the natural terrain as much as possible. For planning new subdivisions on sloping sites, the following principles should be considered in addition to the other underlying principles guiding development on slopes:

- *When calculating lot area for subdivisions, steeper portions of site with slope of 20% or greater should be excluded (underlying is ours).*
- *Each single parcel created by the subdivision must have a plot size of not less than 1000 square metres excluding steeper portions exceeding 20% and must show the proposed building footprint.*
- *Three other principles are listed out in this PPG (which are not relevant for this case and hence not detailed here).*

The evidence adduced by the Appellant is that there are several other constructions erected in the vicinity and they have been granted building and land use permits for their construction. He produced photographs of these (Documents A1 to A6). The representative of the City Council was called as a witness and his evidence is at a tangent with the position of the Respondent. He stated that the City Council had indeed granted building and land use permits to other land owners in the vicinity of the Appellant’s property, being given that the zone is situated in a ‘predominantly moderate slope (10%- 20%)’. In cross examination however, he explained that he had neither been on site to assess the Appellant’s application, nor is the City Council equipped to conduct an assessment on the slope of land. The Council normally rely on the plan submitted by the sworn land surveyor of the respective applicants, showing the contour of the land to determine the slope level. Nonetheless, he unequivocally expressed that the Appellant’s land is situated within the 10% to 20% slope. This is why the Council has granted permits in that location.

The Appellants’ representative deposed to the effect that the land *in lite* is not situated within a slope that exceeds 20%. He produced photos of houses constructed in the vicinity of his property and the slope is visible in the photographs produced as Documents A to A6. He added that this was the sole property owned by the Appellants, namely his wife and his sister-in-law, whom he represented. He felt that the decision of the Respondent caused injustice to him and his family. He was presently living as a tenant. In cross examination he initially conceded that, being situated on a slope, there could be potential danger for a construction to take place there. He then added that he would undertake certain mechanical works on the

spot to mitigate this danger. Besides the City Council had granted permits to other land holders and they have proceeded with construction of their houses, as shown on the photographs.

The Respondent's case rested on the evidence of the representative of the senior development control officer posted at the Ministry of Housing and Land Use Planning. She stated that she had been on the site of the proposed development at Vallée des Prêtres, a plot of land of 422 square metres, situated within settlement boundary. She went on to explain the topographical plan produced as Document B1, which she unequivocally described as having a slope of above 20% gradient. Only a small part of the land, namely a surface area of 21 square metres which fell within a slope of less than 20%, remained where construction would be permissible. She quantified it as a surface area of 83.7% of the land as being of a slope gradient of more than 20% and 17% as being less than 20%.

In the light of this topography of the land and based on the provisions of the Planning Policy Guidance 9 (PPG 9), the Respondent did not approve the application for subdivision. The witness also referred to the policies of the newly created Land Drainage Authority which does not allow development in areas above a 20% slope gradient and she highlighted the hazards that exist due to potential soil erosion and landslide if construction is done on such a slope. She conceded in cross examination that she had seen the constructions that existed in very close proximity of the Appellant's land, for which building and land use permits may have been granted by the local authority.

We have considered all the evidence adduced.

At the outset, it is noted that the evidence adduced by the Respondent on the gradient of the slope of the Appellant's land is not rebutted. The Appellant's representative made a statement that the gradient is below 20%, yet there is no scientific basis for his assessment. The same reasoning applies to the evidence of the representative of the City Council, whose evidence has been very unreliable. He had not visited the site (irrespective of the explanations given by him on the late service of the summons on the City Council). His assessment was based on the information imparted to the Council by the applicants for permits. There is no indication of the basis on which the Council makes its assessment for the granting of BLUP's.

We are alarmed by the absence of concertation between the different authorities that grant permits for land development. We have found that the evidence of the senior development control officer of the Ministry of Housing and Land Use Planning is based on scientific data, which justifies the position adopted by the Respondent. The gradient of the slope and the provisions of PPG 9 on the subdivision on sloping sites, as well as the risks associated with landslide in rainy seasons, which are now more accentuated with climate change, are all matters that justify the decision of the Respondent in this matter. It has been submitted that injustice is being done to the Appellants as there have been permits granted to their neighbours for construction. Yet, the decisions taken by the City Council, the rationale for which is only known to them, are not in accordance with the planning instruments as referred to above. These decisions cannot set precedents for other authorities in their decision-making. The Respondent rightly acted within the parameters of these planning instruments. The subdivision of the land within such level of slope which covers the wider extent of the

land is not permissible. We therefore find no reason to interfere with the decision of the Respondent to reject the application of the Appellants. The appeal is accordingly set aside.

Delivered by:

Mrs. V. Phoolchund-Bhadain, Chairperson

Mr. P. Manna, Member,

Mr. R. Acheemootoo, Member

Date:

..... 21st February 2022