

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 1877/19

In the matter of :-

Jumnoodoo Jamanah

Appellant

v/s

District Council of Pamplémousses

Respondent

DETERMINATION

1. This is an appeal against the decision of the Respondent [“the Council”] for having rejected the application of the Appellant for a Building and Land Use Permit [‘BLUP’] for the construction of a storeyed building comprising of ground and first floor to be used as guest house situated at Triolet. The ground for refusal communicated to the Appellant via the National E-Licensing Service [‘NELS’] is as follows:

“The site was far from the touristic area and was not appropriate for the high end clients expected by the applicant.”

2. The 3 grounds of appeal, as per the Notice of Appeal, are as follows:

“a. Because the reasons given by the Respondent in rejecting the Application is unjustified and unwarranted in the circumstances of the case.

b. Because the reason given by the Respondent in rejecting the Application is unjustified the more so because the Proposed Development is situated in a “Designated Growth Zone”

c. Because the Respondent acted illegally and/or ultra vires in considering an objection raised for the first time during the hearing of the 23rd August 2019 and outside the prescribed delay of 15 days.”

3. Both parties were legally represented. Mr. Banjhu, Planning and Development Officer, deponed on behalf of the Respondent. We have duly considered the evidence on record as well as submissions.

I. Under grounds a and b

4. These two grounds are being dealt with together because the issues are related. It is the contention of the Appellant under these two grounds that the reason given by the Respondent for rejecting the application is unjustified given the circumstances of the case and the fact that the proposed development is to be situated within a “designated growth zone”. The evidence reveals that the proposed development will be a storeyed building situated in Morcellement Bhogun, a residential morcellement, and comprising 6 double rooms and 4 parking slots. The case for the Appellant is that the area is a mixed use one with the presence of two Indian restaurants which are within 5 minutes walking distance from the Trou-aux-Biches linkroad. There is no evidence on record to indicate how far the subject site is from the Trou aux Biches link road. From the evidence on record, there is a spa next to the subject site, a hardware shop and a shop to cater for the needs of the local community within Morcellement Bhogun. As far as Morcellement Bhogun itself is concerned, it is a residential morcellement with people residing on both sides of the subject site and they have objected to the proposed development. There are no amenities to cater for tourist activities within the residential morcellement, save for the spa. The Appellant’s intention is to cater for a high-end clientele, namely golfers, being given the fact that there is a golf course, Mon Choisy Golf Estate, less than a kilometre away from the subject site. Trou-aux-Biches public beach and Mon Choisy public beach are both approximately 1.5 kms from the site. From the extract of the Google map, produced by Mr. Banjhu, it is noted that the subject site lies within a morcellement with buildings on both sides of the site as well as a few buildings behind the site but there are none on the opposite side of the road facing the site. The road that runs along the frontage of the site is three parallel roads from the main road, the A4, which is the main artery into Triolet. True it is that the A4 is a main road bearing lots of development, as in most villages, but this cannot be taken to be the vicinity of the site.

5. While the area is basically the village of Triolet, where there are bound to be mixed use developments, the locality of the site is more confined to what surrounds the property *in lite*, and in the present context, it is residential properties which we cannot turn a blind eye to. The morcellement has amenities which will serve the neighbourhood such as a spa, a hardware shop and a grocery shop but these amenities are not sufficient nor conducive to serve high-end tourists who are more likely to enjoy hotel facilities or restaurants by the beach. The application at hand is for the construction of a guest house but the Appellant mentioned tourists such as golfers as his target high-end clientele. We have considered this but fail to see what would offer the golfers any form of amenity for them to enjoy, apart from the spa since the beaches are 1.5 kms away, the Indian restaurants are also within walking distance from the Trou-aux-Biches Linkroad and apart from that there are no other real amenities within the area to keep the tourists entertained.
6. We have considered the evidence as regards the subject site being within the designated growth zone as per the **Pamplemousses-Riviere du Rempart Outline Planning Scheme [‘OPS’]**. This favours development generally but the evidence does not reveal that the site *in lite* within the Tourism Growth Zone, is one where the development of tourism is encouraged. An extract of **Policy CDT1 on Coastal Development and Tourism** of the OPS is hereunder reproduced:
- “On the coast within Tourism Zones identified in the Tourism Development Plan and shown as growth zones on the Development Strategy Map and Development Management Map, clustering of tourism and other employment-generating activities within or adjacent to the existing settlements, resorts and campement sites and utility and transport networks should be encouraged.*
- Major new developments should be focused within the Northern and Eastern Tourism Zones where Tourism Action Area schemes and other Government approved schemes have already been identified and committed. In these Zones and where sites are within or adjacent to existing settlements. Tourist resort complexes or major campement sites, there should be a general presumption in favour of mixed use tourism and other forms of complementary employment creation.” [stress is ours]*

7. It is noted from this policy that although growth zones favour development, as far as tourism is concerned, there has to be a clustering of tourism and other employment-generating activities within or adjacent to the existing settlements, resorts and campment sites. There is no evidence on record to suggest this type of clustering will be favoured in the present case. The proposed development is more likely to be one of its kind in that morcellement and within that area of Triolet. Mr. Banjhu testified that the planning department of the Council had considered the application favourably. He explained that they did not consider whether the proposed development was not in the tourist area but rather considered other aspects such as the amount of parking space being given that it was considered a commercial development. The PBMC subsequently rejected the application on the basis that the site was far from a touristic area and that it was not apt for the high-end clients targeted by the Appellant. The fact of the matter is that if the Appellant is targeting high-end clients, the luxury in terms of venue and amenities is what they will look for, not a guest house in a morcellement where locals reside.

8. A right balance has to be struck between what the proposed development will bring to the neighbourhood and how it will impact the residents in the vicinity. The Appellant submitted that there will be only 6 bedrooms and that he wanted to have the guest house in order to cater for a market of high-end tourists who come to play golf. It would seem that the Appellant is targeting a particular type of crowd. The planning principle is however that the activities proposed must not affect the area where people live, which include disturbance to neighbours. Mr. Banjhu explained that there were 7 objections received but that at the Council's hearing only 4 objectors were present and they include the contiguous neighbours. Although initially the neighbours thought that the application was for a dormitory, once their confusion was clarified, they maintained their objection. Therefore, we do not agree that the basis of the objections was wrong since it was a clear choice on their part to object to the proposed development even after they came to know that it was an application for a guest house instead. An error as to the technical description of the proposed development by the objectors cannot impact or undermine any legitimate concerns they may have.

9. The complaints from the neighbours were mostly regarding disturbance in terms of noise, and people walking naked as such a situation has arisen because of the presence of “outsiders” in the morcellement. In the present case, the BLUP applied for is in respect of a building of 6 units, the nature of the business of Guest House is still considered a commercial one which involves human traffic in other words “outsiders” calling in and going out of the premises at any point in the day and night since it offers sleeping and lodging facilities. A marked rise in such human traffic can be disruptive to the neighbours as well as to the residential character of the small community in the vicinity where the inhabitants have an expectation to live in peaceful enjoyment of their property. There is evidence on record, Doc F, minutes of hearing before the Council, to show that the complaints received from neighbours are mainly due to nuisance in terms of unsocial behaviour as they have had previous unpleasant experiences before within the morcellement with strangers loitering around naked with the previous operation of a dormitory in the vicinity and they feared this could compromise security within their morcellement. We believe that whether the guest house is used to shelter tourists, golfers or even locals, the local inhabitants will not be comforted as far as their safety and security is concerned especially if they are to have “new faces” every weekend in their residential neighbourhood. These grounds therefore fail.

10. It is also apposite to consider the guidelines issued on Guest Houses. The operation of a guest house is an activity subjected to the granting of a Tourist Enterprise Licence from the Tourism Authority. This authority is therefore entitled to regulate tourism activities within the local context on specific matters, guest houses being one of them. From the testimony of Mr. Banjhu, it appears that since 26th October 2019, after the processing of the present application, guidelines with respect to Guest Houses have been issued by the parent ministry of local authorities, the Ministry of Local Government, Disaster and Risk Management, stating that except for existing guesthouses and those located in the Central Business Area, guesthouses should not be allowed in residential areas. It may well be that the policy or guideline came into existence after the application was determined but we must take the policy into account since it is meant to regulate an issue which was hitherto unregulated. This

being said, in our view, the application is not meritorious planning wise as mentioned above and in addition we would also consider the guidelines of the Ministry of Local Government as approved by the Tourism Authority to reject the present application.

II. Under ground c

11. It is the contention of the Appellant under this ground that the Respondent acted illegally and/or ultra vires in considering an objection raised for the first time during the hearing of the 23rd August 2019 and outside the prescribed time frame of 15 days. This ground of appeal, as couched, seeks to challenge the Council's decision on the basis that it acted in excess of its powers by considering objections outside its mandate, which is in fact a ground for judicial review to be challenged before another forum, not this Tribunal. In any event, as far as the notification is concerned, the neighbours objected. The Council set up a hearing where both applicant and objectors made representations and they were heard. The Appellant is raising this as a ground of appeal to challenge the decision of the Council. We believe that the Council cannot be taxed for the objectors having misunderstood the notice. The Council was right to have brought it to the attention of the objectors about the nature of the development and given them the opportunity to decide if they approved of such development next to their homes so that no prejudice is caused to anyone, after all that is the whole purpose of having a notification procedure. What matters is ultimately the objectors were given a date for hearing at the Council whereby they were adequately informed of the mistake they had made in their initial understanding of the nature of the proposed development and within the same hearing, without any further delay caused, they took cognizance of the development proposal and decided they still did not want it and in essence, the nature of their objections remained the same in that they feared their security and that there would be "outsiders" within their locality on a regular basis and unsocial behavior. We fail to see any prejudice caused to any party. The timeframe of 15 days, as provided in the BLUP guidance, is a matter of policy adopted by the Council. Even if the objectors made a mistake as regards the nature of the development, this in itself cannot be taken to be a reason for which the Appellant is aggrieved by the decision of the Council. The Council refused the application on

planning grounds, that the site was far from tourist area being given the nature of the development that was being proposed by the Appellant. This ground therefore fails.

12. For all the reasons set out above, we find that the Council was right in its decision. The appeal is set aside. No order as to cost.

Determination delivered on 21st June 2022 by

Mrs. J. RAMFUL-JHOWRY

Vice Chairperson

Mr. SUFFEE

Member

Mr. SEETOHUL

Member