

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

ELAT 1932/20

**In the matter of:**

**Mr. Vijay Sharma Bekail**

**Appellant**

**v.**

**The District Council of Riviere du Rempart**

**Respondent**

**Determination**

The Appellant applied to the District Council of Riviere du Rempart (the Respondent) for a Building and Land Use Permit (BLUP) for the conversion of an existing ground and first floor residential building to be used as a tourist residence at Calodyne. The application was rejected by a decision of the Permits and Business Monitoring Committee on the 5<sup>th</sup> February 2020, the sole ground of refusal being that: *“The site is found within predominantly residential area. Approval of a tourist residence is likely to change the character of the area by means of intensive use of the building by visitors, the peaceful and residential character of the area will be impaired”*.

A Notice of Appeal was lodged against this decision on the 20<sup>th</sup> February 2020, where two grounds of appeal were raised as follows:

1. Ground 1: The Respondent has acted unfairly, unreasonably and wrongly in refusing the application for a BLUP for the conversion of an existing ground floor and first floor residential building to be used as a tourist residence on the basis that the site is found within predominantly residential area in as much as:
  - (a) Approval of a tourist residence does not automatically change the character of the area by means of intensive use of building by visitors;
  - (b) The Council could have imposed such conditions as it would have deemed fit upon issue of the BLUP; and
  - (c) There is a limited number of space to be occupied in the building.
  
2. Ground 2: The Respondent has wrongly, unfairly and unlawfully refused the application of the Appellant (the Applicant) on the ground that the peaceful and residential character of the area will be impaired when in truth and in fact there is no such evidence to substantiate the purported apprehension of the Respondent.

Evidence adduced in the course of the hearing unveiled that the Council’s decision was mostly based on the fact that there had been objections received by it from neighbours. The objections were to the effect that the Appellant had been renting the premises and the

occupiers caused disturbance to the neighbourhood by playing loud music and partaking drinks, which often led to misbehaviour and fights on the road. This version came from one Mr. Ramchurn, who is the closest neighbour to the site. This witness referred to complaints made to several authorities and the intervention of the 'Police de l'environnement' to put a stop to the disturbance. The response to these averments from the Appellant is that the said neighbour is acting out of jealousy and that there was already a guest house almost opposite to his premises. The Appellant added that he was the one occupying the building along with his family members and denied the occurrence of any such disturbance. We note that no supporting evidence from the 'Police de l'environnement' was adduced on the issue and that no evidence of contraventions nor fixed penalty notices served to the Appellant was put in despite the letter produced as Document K, which purported to establish same.

Whatever be the case, we observe that the issue of disturbance has not been a ground for the decision of the Council to decline the application. The sole ground of refusal is related to the zoning of the site, namely, the fact that the area is a residential one and the approval of a tourist residence is likely to change the character of the area by means of intensive use of the building by visitors and the peaceful and residential character of the area will be impaired.

Evidence adduced by the representative of the Respondent confirmed that there was a hotel that operated closer to the sea and at a distance of 600 metres from the site. It is also not denied that there is a guest house that has been advertised opposite the site, yet the two site visits effected on behalf of the Respondent were not conclusive as the premises of the said guest house were closed. The witness was unable to enlighten as to whether the guest house had been issued with a BLUP.

The representative of the Respondent went on to explain that, as per the planning instruments and based on the guidelines issued by the Ministry for Tourism (Document H), guest houses are not allowed to operate in residential areas. As opposed to that, tourist residences can be located within settlement boundary. The Development Management Map produced as Document J shows that the site belonging to the Appellant is located within settlement boundary.

The decision of the Council to reject that application is based on the objections that were received from neighbours on the potential disturbance that the tourist residence activity would generate and its impact on the neighbourhood. The representative of the Respondent conceded in cross-examination that the application is otherwise compliant with planning parameters and that site visits effected on the site did not show any evidence that the house was occupied. When cross examined on the application of guidelines on coastal development zones to the site of the Appellant, the witness conceded that these guidelines had not been referred to being given that tourist residences were allowed within residential or coastal zones. She maintained that the Council has no objection to grant a BLUP for tourist residence within a residential area. In this particular application, the objections raised by the neighbours have been the determining factor in the decision of the Council despite the fact that from a planning or zoning perspective the proposed activity is allowed in such area.

It is clear that the first limb of the ground of refusal is in contradiction with the stated policy to allow tourist residence within residential areas. The Appellant does not dispute that the

site is in a residential area. It is the second limb of the ground of refusal that is questionable, namely that the proposed activity is likely to change the character of the area by means of an intensive use of the building by visitors, the peaceful and residential character of the area will be impaired. The location of the site in a residential area is not, *per se*, a hindrance to such development from a zoning perspective.

The impact of the intensification of activities is causing a disruption in peaceful and residential character of the area has been raised in the refusal letter. The sole evidence on this is the version of witness Mr. Ramchurn, and the Council acted on this version. Yet, as rightly pointed out, this evidence, which is disputed, is not corroborated by any evidence from the relevant authorities, namely, the Ministry of Environment, Police de l'environnement nor the Ministry of Health. Two site visits were done by the Council and they did not yield any confirmation of same. Besides, the intensive use of the building is questioned being given that there is limited space to be occupied for the activity proposed. The plan submitted in the application (Document E) and the evidence adduced by the Appellant is for a building comprising of six rooms.

Be that as it may, we are of the view that the Council could have imposed conditions for the operation of the activity, being given that the proposed development was compliant with the planning parameters, in particular, the zoning of the site. Had the Council considered the complaints on the disturbance as a ground to refuse the application, this should have been notified to the Appellant in the letter of refusal.

We cannot uphold the decision to decline the application for BLUP based on residential character of the site and the impact of such development on it when the Respondent stated in no unequivocal terms that tourist residences are allowed in residential zones. There is a glaring variance between the ground of refusal and the evidence adduced on behalf of the Respondent at the hearing.

For all the reasons given above, we uphold the grounds of appeal raised by the Respondent and allow the appeal. We remit back the decision to the Respondent for it to consider the conditions that it deems appropriate to impose for the proposed activity.

Delivered by:

Mrs. Vedalini Phoolchund-Bhadain, Chairperson .....

Mr. Rishiraj Seetohul, Member .....

Mr. Radhakrishna Acheemootoo, Member .....

Date: 22<sup>nd</sup> March 2022