

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 2035/21

In the matter of :-

Dhunraj Ujoodah

Appellant

v/s

Ministry of Housing and Land Use Planning

Respondent

DETERMINATION

1. This is an appeal against the decision of the Respondent ["the Ministry"] for having rejected the application of the Appellant for the excision of a plot of land of an extent of 436 sq.m from a larger plot for residential purposes, situated at Kashinath Temple Road, Poste de Flacq. The grounds for refusal posted on line via the National E Licensing System ["NELS"] are:
"Site situated in a flood prone area. Site is also found in a low-lying area based on the data generated."
2. The grounds of appeal as per the Appellant's statement of case are as follow:
 - "(a) Intend to sell the 436 m² of land to my daughter rather than to any stranger.*
 - (b) My daughter has been staying at the same address for 17 years now.*
 - (c)Over the years she has been staying at the address, only in the year 2008 that flood affected the plot of land.*
 - (d) Under my authorization my daughter has been occupying the plot of land whereby many fruit trees have been planted.*
 - (e) since I had no intention to sell the plot of land to any outsider, I had authorized my daughter to build her chapel (Puja Ghar) in the fence. "*

3. The Appellant was *inops consilii* but was represented by his wife at the hearing. The Respondent's Counsel called the representative of the Respondent, Mrs. Prayag, to testify as to the grounds of refusal as well as a witness from the Land Drainage Authority ["LDA"]. We have duly considered all the evidence placed before us.
4. The Appellant's representative in essence stated that the plot of land, which was occupied by her daughter for over 17 years, needed to be sold as they are in financial difficulty and that they need the money to be sent to their son in the UK and that he is not in good health. She also stated that her daughter had been cultivating fruits and vegetables on the plot and that she had authorized the latter to build a shrine for prayers thereon. She disagreed that the area where the Appellant's plot is situated is low-lying and prone to floods although she does admit that once in 2008 the area did get flooded but never after, according to her.
5. The Respondent's case is that it took on board the views of the LDA to reject the present application. The Respondent's witness from the Land Drainage Authority, explained that the LDA uses a digital elevation model 2019 for Mauritius which identifies the topography of regions in Mauritius. From that they could identify Poste de Flacq as a flood prone area which means that it poses a risk to life and infrastructure. A map from the National Development Unit ['NDU'] prepared as part of a Preliminary Design Report by a consultant and annexed to the Statement of Defence, shows that the subject site is found in a flood prone area. He added that as per records, the area *in lite* has been affected by floods in 2008, 2012, 2017 and 2019 whereby the water level in that region reached more than 30cm during heavy rainfall. He explained that in 2008, prior to the existence of the LDA, from the records kept at the NDU and local authorities, they were aware that the water level reached up to 1m in the region where the subject site is found and the surrounding areas. The witness testified that the site *in lite* will certainly be flooded if there are flash floods in the region and hence, from a land drainage perspective, to avoid any risk, they did not recommend the application. He explained that no clearances have been given by the LDA in the area for applications received since it came into existence in 2019 but that there may be projects by the NDU in the area of Poste de Flacq in the future.

6. In cross-examination the witness maintained his stand as regards the grounds of refusal and stated their information system on those areas is accurate and the surveys done in those areas have yielded similar information as per the system and that as per the topography of Poste de Flacq and from their data, it can be seen that the land is a low-lying area.
7. Development proposals on sites found within settlement is regulated by **Policy SD 1** of the **Moka-Flacq Outline Planning Scheme** which permits such developments provided a sequential approach and clustering principle is applied. No evidence was adduced as regards whether the subject site is found within settlement boundary. From the map of the NDU annexed to the Statement of Defence, it is noted that there are a number of houses in the area near the subject site. The witness from the LDA explained that the houses in the surrounding area may have obtained permits a long time ago before the LDA's existence but that since the creation of the LDA no clearances have been given in the area. As far as the Respondent is concerned, as a permit authority it has aligned its decision to the views of the LDA since the area is prone to flooding, which it believes is a planning issue of utmost importance since the country does experience flash floods. The *Technical Sheet* on Drainage in **PPG 1** refers to the need for drainage provision for new development proposals.
8. We take onboard that, as per the Statement of Defence, the NDU has been investigating the area with respect to carrying out works to mitigate the effects of flooding in the area of Poste de Flacq and the area where the Appellant's property is situated, has been declared "High Risk Flood Prone Area" under Directive 41 of the Public Procurement Office whereby "life or the quality of life or environment may be seriously compromise in the event of another downpour" as per the Statement of Defence. We believe that since it could literally be "a matter of life and death", the Respondent was right in taking on board the views of the LDA to reject this application since the proposed development would ultimately be for residential purposes. The LDA, which derives its powers under the **Land Drainage Authority Act 2017**, is the only authority to declare a region flood prone and it does so upon analyzing up to date information available which include matters such as High Resolution natural drainage

path of water, rivers, connected drains around Mauritius as at September 2019, natural drains, feeder canals, flood prone areas, low lands and catchment amongst others.

9. We are alive to the fact that there appear to be many houses around and the Appellant's wife also testified to that effect. However, if the subject site is within settlement boundary and provided all the policies for residential development are complied with, once measures that have been taken to rehabilitate the area by the authorities so that inhabitants of the locality and their houses are safe from floods, the Appellant may then seek appropriate approvals to develop his land in the future.
10. For all the reasons set out above, we find that the Respondent was right in its decision. The appeal is set aside. No order as to costs.

Determination delivered on 28th February 2022 by

Mrs. J. RAMFUL-JHOWRY

Vice Chairperson

Mr. SUFFEE

Member

Mr. ACHEEMOOTOO

Member