

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 2046/21

In the matter of:

NBCC (India) Ltd.)

Appellant

v.

The Municipal Council of Curepipe

Respondent

Determination

The present appeal has been lodged against the decision of the Respondent taken on the 13th August 2021, for having refused to grant a Building and Land Use Permit to the Appellant company for the construction of a building at basement, ground, first, second, third, fourth and fifth floors comprising of 42 apartments to be used for residential purposes, to operate at Victor de la Faye Street, Floreal.

The grounds of refusal put forward by the Respondent in the email generated by the National e-licencing system on the 31st August (although the Permits and Business Monitoring Committee took the decision on the 13th August 2021) are as follows:

1. The site is accessible through a tarred access road of width ranging from 3 M to 4.2 M which is not suitable to cater for a larger traffic generated by the proposed development.
2. The proposed development does not comply with the Planning Policy Guidance (PPG) on tall buildings as follows: (a) The design, bulk and density of the development does not respect the character and appearance of the surrounding area taking into consideration that the site is surrounded mainly by block, (b) The development is detrimental to the privacy, day lighting and amenity of the neighbouring dwellings, (c) The access road is not suitable to cater for additional traffic arising from the development.
3. Layout of drains and discharge point details are not certified by a RPEM.
4. All other layout plans for basement and ground to fifth floors have been deleted from the application for further assessment.
5. As per views obtained from Wastewater Management Authority the site cannot be sewerred by gravity and the proponent needs to provide information regarding the peak volume of wastewater that shall be generated from the project to enable the WMA to determine possible connection point.

The Notice of Appeal lodged on the 13th September 2021 also lists out the particulars of the decision against which the present appeal is made but restricts the appeal to the following three grounds:

- (a) Another block of apartments on Strudwick lane, Floréal, has been built and permit has been granted. The road is around 3.2 metres and attached photos are proof of the statement. (Annex 3). A location plan showing our proposed site along with the site having the block of apartments is attached (Annex 5 and Annex 6).
- (b) Another block of apartments on the same avenue at a distance of 180 metres from the proposed site is under construction presently. The block is for Ground plus 4 floors (Annex 7 and Annex 8).
- (c) Regarding the point raised concerning the privacy, day lighting and amenity of the neighbouring dwellings, the same does not hold at all as the prescribed setbacks with respect to road and neighbours have been fully complied with.

At the hearing, objection was raised by counsel for the Respondent (and sustained) to evidence being adduced on any matter outside the grounds of appeal, so much so, that no less than four of the above grounds of rejection have not, and could no longer, been addressed in the course of the hearing, leaving those grounds unchallenged.

It is appropriate at this stage to reproduce the planning policies that need to be considered for an application of this nature.

*The design sheet in the **Planning Policy Guidance (PPG 1)** of the Outline Planning Scheme for the town of Curepipe sets out as follows:*

Tall buildings in Residential Areas:

Proposals for tall buildings located within residential areas, particularly on small sites, need careful consideration in order to ensure that it takes place without detriment to the character and amenity of surrounding properties and the local scene. Criteria to consider include:

- *The design, bulk and density of development should respect the character and appearance of the surrounding area*
- *The development should not be a detriment to the privacy, daylighting and amenity of neighbouring dwellings nor will there be a reciprocal impact on the proposed development and*
- *The development should provide adequate access and car parking and where appropriate, on-site turning facilities to serve proposed and existing properties.*

Two relevant policies contained in the Outline Planning Scheme (OPS) for the town of Curepipe are:

Policy TB 1: Tall Buildings:

There should be a presumption in favour of applications for tall buildings that incorporate a residential component in the town centre (commercial core and edge of core) in pre-designated sites along the motorway and urban expansion zones. Applications for tall buildings in residential zones should not normally be permitted in accordance with Policy TB 2.

Policy TB 2: Tall Buildings in Residential Zones:

There should be a presumption against applications for tall buildings of more than four floors (G+3) in predominantly residential zones where more than 90 percent of the existing housing is limited to two floors (G+1) in the relevant street block.

Applications for the development of buildings up to four floors (G+3) should be favourably considered in predominantly residential zones if the development is in compliance with the requirements for:

- *Setbacks*
- *Onsite/offsite sewage disposal and storm water drainage*
- *Parking space and manoeuvring*
- *Landscaping*

In locations which are about main roads and junctions or where cluster of high-rise buildings has already been established that has changed the character of the area, there should be a presumption in favour of high-rise development.

The evidence adduced by the representative of the Council has shed light on the planning assessment done by the Respondent of the proposed development. His stand is that the proposed development does not comply with the PPG on tall buildings. As per his evidence, the general environment in the area surrounding the proposed development comprises of buildings which are at ground floor or ground plus one or two floors. A proposal for ground plus five, as in the present application, could have been considered in an area with a low-density residential settlement and where the footprint of the building, as compared to the yard, be in the range of 10% to 15% of the plot coverage. This is not the case in the present application. Furthermore, being given the height of the buildings, the occupiers of the proposed apartments would have a 'vue directe' on the neighbouring properties, thus encroaching on their privacy. The high building would have a negative impact on the day-lighting on the neighbouring buildings as well as the amenities of the neighbours and would not be in line with the PPG. He also referred to the narrowness of the access road to the site. Reference was made by the Appellant to a construction approved and done next to the proposed development. It came out that the developer had enlarged the access road by using a part of its own land to do so, and could, thus, not be used as a precedent.

As regards the grounds of appeal raised by the Appellant, the witness for the Respondent, while conceding in cross examination that he has no knowledge of the timing of the construction of the block of apartments that is used as reference by the Appellant, nor the PPG that was applicable at the material time, maintained that the Appellant's proposed development is not compliant with the PPG applicable as at this date. As such the presence of the other block of apartment brings no support to the appeal.

We note that the Appellant's representative has conceded that a construction of a building of ground plus four or five floors would lead to a view in the neighbouring properties.

The evidence on record, as detailed above, has amply shown the non-compliance of the proposed development with the planning policies for tall buildings (Policies T1 and T2) that are applicable by virtue of the Outline Planning Scheme for Curepipe.

The issue of inadequacy of the access road for the larger traffic that could be generated by the proposed development is also a matter for concern, as highlighted by ground (I) of

the refusal. This is not being addressed here because, as pointed out at the outset, this ground has not been appealed against in the Notice and Grounds of Appeal. Based on the grounds raised and the evidence on record, we find ample justification in the decision of the Council and there is, in our view, no reason to interfere with the decision taken by the Respondent.

We however wish to place on record the following observations:

There seems to have been an absence of avenue for communication between the Council and the Appellant on issues that could have been addressed and thrashed out, more particularly as regards grounds III, IV, V of the grounds of refusal (which are procedural matters like signature of a RPEM, or layout plans having been deleted or even communication of the stand of the Wastewater Management Authority, which the Appellant claims not to have been made aware of. He rightly pointed out that he would not be able to remedy any lacuna in his proposal if he is not made aware of them). This appears to be directly connected to the National e-licencing system which does not cater for a consultation between the authority and an applicant, nor a possibility of uploading missing documents or updated documents in order to meet the requirements of the Council. The decision to refuse, or the criteria for refusal could have been a better reflection of the acceptability, or not, of the proposed development, had there been adequate consultation. The platform for consultation ought to be made available in spite of, or incorporated in, the e-licencing system. Absence of consultation leads to delay and matters which could have been thrashed out at the level of the Council are laid before the Tribunal, by way of an appeal, for it to decide.

The appeal is otherwise set aside for the reasons given above.

No order as to costs.

Delivered by:

Mrs. V. Phoolchund-Bhadain, Chairperson

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Mr. S Busgeeth, Member

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Mr. S. Moothoosamy, Member

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Date:

1st December 2022
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