

IN THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 2091/22

In the matter of:

Ramdani Ashok Coomar

Appellant

v/s

District Council of Moka

Respondent

DETERMINATION

1. The present appeal is against a decision of the District Council of Moka (hereinafter referred to as "the Council"), for having rejected an application made by the Appellant for a Building and Land Use Permit (hereinafter referred to as "BLUP") for the excision of a plot of land of an extent of 260 m² from an original plot of 844.20m² as per title deed but found to be 520m² after survey for Residential purposes at L'Escalier Road, Nouvelle Decouverte. The grounds of refusal are set out in a mail received by the Appellant on 17th February 2022 on the National E-Licensing System:

"1. As per Policy SD4 of the Moka Flacq Outline Scheme since the site lies outside Settlement Boundary wherein there is a general presumption against development.

2. The site lies within the buffer of an existing poultry farm."

2. The Appellant was represented by his son, Mr. Lamesh Ramdani. The Respondent was represented by Mr. Hemraj, Planning and Development Inspector. We have duly considered the evidence before us as well as submissions of Respondent's counsel.

3. The Appellant lodged 5 grounds of appeal as per his notice of appeal:

"1. As a consequence of my growing family due to my eldest son, Ramdani Yudhistir, being married now and his wife expecting a baby, my actual residence barely accommodates all my family members.

2. My Youngest son, Ramdani Lamesh, who is now 26 years of age and will be getting married in about one year time, needs to build a separate house to start his own family. His current monthly income allows him to cater for the construction of his house but is not sufficient to actually buy a residential plot of land to afterwards erect the house.

3. My eldest son, Ramdani Yudhistir, and I wish to happily give my youngest son, Ramdani Lamesh, a helping hand financially in building his house. Thus having the Building and Land Use permit approved beforehand will clearly pave a way for us to accomplish our project.

4. The plot of land in question also holds much value at my heart for me to even consider selling it as it has belonged to my family for generations and since we have been using this land to sustain my family.

5. I wish that my youngest son, Ramdani Lamesh, continues the heritage of his grandfather's once plot of land by building his house on it and grow his family."

4. We have considered all the grounds of the Appellant, who was not legally represented, together. We note that these grounds, as couched, do not seek to challenge the decision of the Council in anyway. However, the main contention of the Appellant is that, while he is not contesting that his property is found outside of settlement boundary and within the buffer of a poultry farm, his personal circumstances are such that his family is growing and will not be comfortable staying in the same house and the main reason for which he intends to have the excision is so that his younger son, to whom he intends to give the excised lot, can only financially afford the construction of a house, not the purchase of a new plot. The Appellant's son also testified that the utilities were present on the site and that it was also serviced by the main road leading to Quartier Militaire. He also stated that there were two houses that were only 30-40

metres from the poultry pen, one of which was only built last year or the year before. He stated they will have no grievance against the poultry pen if a BLUP is granted and that an affidavit has been filed to that effect.

5. The Respondent's case is that the land *in lite* is an agricultural land as per the title deed and that no Land Conversion Permit has been obtained. This is not disputed by the Appellant. The Respondent case is also that the house that the Appellant referred to albeit within the buffer of the poultry pen, is also within settlement boundary hence the development was allowed as opposed to the case of the Appellant whereby the subject site is within the buffer of a poultry pen and outside settlement.
6. As per the **Outline Planning Scheme of Moka-Flacq ['OPS']**, the subject site is found outside the settlement boundary. This is also indicated in the map produced by the Respondent's representative, marked DOC A. The site, being outside settlement boundary, the applicable policy is **Policy SD4 of the OPS**. As per this Policy there is a presumption against development outside settlement boundaries unless the proposal follows the sequential approach so that there are no gaps. From the evidence before us, Doc A, the subject site is surrounded by undeveloped bareland save for an illegal store, a greenhouse and the poultry pen found in the vicinity of the site. These are considered bad neighbour developments, unlike residential developments, which are infact permissible outside the settlement boundary. The proposed development will not only be a misfit but it will also offend the provisions of **SD4** in that it will not consolidate any gaps thus flouting the principle of sequential approach.
7. Furthermore, as per the **Design Sheet of PPG 1**, the indicative distance between poultry pens and sensitive land uses, in this case a residential development, is 200 metres and the reason for this buffer is for biosecurity, health and safety reasons in order to mitigate the propagation of any infectious diseases which may emanate from birds. The Appellant has put in an affidavit stating that he has no objections to having a house built near the poultry pen. The proposed development still does not make it a sound development under the planning instruments.

8. We agree with submissions of learned counsel for the Respondent that the Appellant's case does not fall within any of the exceptions under **Policy SD4 of the OPS** that will justify a derogation from the provisions of the OPS. We find that the Council was justified in its decision based on the planning policies.

9. For all the reasons set out above, the appeal is set aside. No order as to costs.

Determination delivered on 22nd December 2022 by

Mrs. J. RAMFUL-JHOWRY

Vice Chairperson

Mr. R. SEETOHUL

Member

Mr. R. SEEBOO

Member