

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 1851/19

In the matter of :-

Mrs. Bedwantee Ghoolet Girdhar

Represented by Mr. Rakesh Ghoolet

Appellant

v/s

Ministry of Housing and Land Use Planning

Respondent

AND

ELAT 1852/19

In the matter of :-

Mrs. Ramsurn Madree born Ghoolet

Represented by Mr. Rakesh Ghoolet

Appellant

v/s

Ministry of Housing and Land Use Planning

Respondent

AND

ELAT 1886/19

In the matter of :-

Mr. Rakesh Ghoolet &

Mrs. Dhunmunnee Ghoolet

Appellant

v/s

Ministry of Housing and Land Use Planning

Respondent

DETERMINATION

1. The three appeals, which have been consolidated, are against the decision of the Respondent [“the Council”] for having rejected the applications of the Appellants for the subdivision of a plot of land (TV 7457 No.43) of an extent of 1350 sq.m into two lots at La Rosa, for residential purposes. The application was rejected on the grounds that:

“(i) Development in close proximity to the subject site does not follow the sequential approach under Policy SD4 Development on Land Outside Settlement Boundaries, the subject site would not be qualified for development under Policy SD4 of the prevailing OPS; and

(ii) site is located outside settlement boundary and within the Conical Surface, as per the SSR International Airport Safeguarding Area Restrictions Inset Plan and is also in close proximity of a multipurpose/wedding hall.”

2. The Grounds of Appeal in all the appeals are as follows:

“1. There cannot be any sequential approach in the absence of several developments nearby and in the area.

2. The Akloo family has obtained clearance and her subdivision has been approved. Her subject site is situated in the same area.

3. Subject site is situated 15.5m from a morcellement.

4. One Mr. Akloo Rajesh Khanna has obtained permission for excision of a plot of land of an extent of 422m² from 1693.48 m² for residential purposes.

5. It is unjust and unfair that the application for subdivision be refused only on the basis of a Wedding Hall nearby. The Wedding Hall should be subservient to residential development.

6. The SSR International Airport Safeguarding Area Restrictions Inset Plan was as per the Airport Master Plan 2004 which is no longer applicable.”

3. The case for the Appellants is based on the contention that the property in lite belonged to their late mother and the heirs no longer wished to be in a state of indivision and hence their application for subdivision. It is their main contention that there is existing development in the vicinity and that there are 2 residential properties belonging to the Akloo family near the subject site. The case for the Respondent is essentially based on the fact that the proposed development for residential purposes being outside settlement boundary will offend policy SD4 of the Outline Planning Scheme of GrandPort /Savanne [“OPS”] and that the subject site lies within the Conical Surface as per the SSR International Airport Safeguarding Area Restrictions Inset Plan as per the OPS and is also in close proximity to a Multipurpose/Wedding Hall. The Appellants were all represented by Mr. Rakesh Ghoolet. The Respondent was represented by Mrs. Prayag, OMA and the witness for the Respondent was Mr. Jugmohun, Development Control Officer. Both parties were legally represented. We have duly considered the evidence on record and submissions of both parties.

I. Under Ground 1

4. It is the contention of the Appellants under this ground that *“there cannot be any sequential approach in this area in the absence of several developments nearby”*. Evidence, a google map marked Doc E, has been adduced through the representative of the Respondent, Mr. Jugmohun, that the subject site located in La Rosa is found outside settlement boundary as per the prevailing Outline Planning Scheme of Grand Port/Savanne [‘OPS’]. This is not disputed by the Appellants. The site is also accessible through the old railway track and is a few hundred metres away from the Gros Bois Link Road as can be noted from the maps in Doc C and in Doc E. It is also noted that there are 3 residential developments in the vicinity of the subject site. Mr. Ghoolet produced photographs, marked Doc B, to show that there are residential buildings within 15 metres of the subject site. We also note however from Doc E that there are large unconsolidated gaps of several metres of bare land all around the site with the exception of 2 residential buildings which defies the sequential approach as required under Policy SD4 of the OPS. There are 2 residential VRS morcellements over 260 metres away from the site which are serviced by the Gros Bois Link Road.

5. A relevant part of Policy SD4 is reproduced hereunder:

“SD 4

Development on Land Outside Settlement Boundaries

There should be a general presumption against proposals for development outside settlement boundaries unless the proposal:

- ***Has been shown to have followed the sequential approach to the release of sites identified in SD 1, SD 2 and SD 3 and there are no suitable sites within or on the edge of settlement boundaries; and***
- ***Is for the essential purposes of agriculture, forestry or other uses appropriate to a rural area; or***
- ***Is for the re-use or refurbishment of existing buildings set in their own grounds; or***
- ***Is considered a bad neighbour development as defined in Policy ID 4; or***
- ***In cases of national interest when having regard to material considerations, locational preferences linked to employment creating uses and socio-economic policies of Government, development may have to be outside settlement boundaries and is acceptable on planning, traffic impact and environmental impact grounds; and***
- ***Is capable of ready connection to existing utility supplies and transport networks or can be connected without unacceptable public expense...”*** [stress is ours]

From the above extract, it is clear that for an application to be considered as falling within the exception of Policy SD4, which is the policy that regulates development proposals situated outside settlement boundary as is the case here, it should satisfy the sequential approach to the release of land and that there is no suitable land either within or on the edge of the settlement boundary. That is the first and main exception allowed under the policy and the other exceptions are supplementary as can be gauged from the use of the word “and” at the end of the first bullet point under Policy SD4. We find that since the subject site is to be found well outside the settlement boundary and there are unconsolidated gaps between the settlement boundary and the subject site, the main criterion for treating the application under the exception has not been met. From Doc E, it is also noted that the electric pole lines are

approximately 100 metres away from the site. No evidence has been adduced as regards the utilities. We find that there are no grounds for considering this application as falling under the exceptions set out in Policy SD4. Witness Jugmohun explained that for gaps to be consolidated under the sequential approach there has to be development in a systematic way in the form of blocks. The evidence reveals that the only 2 houses, that belong to the Akloo family, found some 15 metres away from the subject site, appear to be random stand-alone developments. The vast extent of the surrounding properties is otherwise under sugarcane cultivation, as per Doc E. The Respondent rightly applied the appropriate policy in rejecting the application as per the first ground of refusal on the basis development cannot be done when it does not satisfy the sequential approach in the first instance. This ground therefore fails.

III. Under Grounds 2 and 4

6. It is the contention of the Appellants under these grounds there are other residential developments which have been approved by the authorities in the vicinity of the subject site and in essence they are being prejudiced. They contend that the Akloo family whose property is in the same area has obtained clearance and their subdivision has been approved, as per title deed, Doc C, and another member of the Akloo family has obtained permission for excision of a plot of land of an extent of 422m² from 1693.48 m² for residential purposes, as per title deed, Doc D and that a building is actually under construction thereon. Counsel for the Respondent cross examined the Appellants' representative to clarify that two title deeds emanated from the District Council of Grand Port and not from the Respondent and the latter also agreed that the 2 title deeds made reference to a letter emanating from the District Council of Grand Port were not in regards to subdivision of those respective properties. Although witness Jugmohun agreed that the Ministry and the Council have the power to give permits for subdivision and that both authorities apply the same OPS as regarding subdivision of land and follow the same approach, he stated when faced with the disparity in the treatment of the case of the Akloo family and the present case, that he did not know under which condition the BLUP was granted by the Council.

7. We agree with Counsel for the Appellants that there seems to be a disparity in the approach of the two authorities for subdivision of properties which are in the same area. The properties of the Akloo family are also outside settlement boundary surrounded by unconsolidated gaps of sugarcane cultivation and Mr. Ghoolet testified that those properties are even further away from the Gros Bois Link Road compared to his. This being said, we find that on the facts of this case the Ministry has correctly applied the provisions of the SD4 of the OPS and rejected the application as the sequential approach would not be satisfied under the Policy. The Respondent cannot be taxed for applying the relevant policies correctly. We have no visibility of the circumstances under which the District Council has approved the subdivision in the case of the Akloo and therefore we will not surmise on the issue. However, we are satisfied that the Respondent has adopted the correct approach in the application of the policy to the case given its context and that just because in some cases the Council has allowed the subdivision, this approach cannot simply be rubber stamped by the Respondent. The release of land for residential use outside settlement boundary may defeat the concept of clustering and the sequential approach of the OPS since it can pressurize the planning authorities into releasing land in the vicinity for other land owners. These grounds therefore fail.

III. Under Ground 3

8. The Appellants' contention is that there is a morcellement at 15.5 metres from the subject site. As per the Statement of case of the Appellants, reference is being made to the morcellement situated on the other side of the railway track. However no clear evidence has been produced by the Appellants' representative as regards this ground. This ground therefore fails.

IV. Under Ground 5

9. The case for the Appellants under this ground is that it is unjust and unfair that the application for subdivision be refused only on the basis of a Wedding Hall nearby since this will serve the residents. A wedding hall is considered a "bad neighbour"

development due to the noise generated by the activities carried out within and both the human and vehicular traffic. It is, thus, desirable to have such types of development outside the settlement boundary as they may disrupt the peaceful character of a residential area. If the Respondent were to condone developments which are residential in nature near a wedding hall, this would put pressure on the authorities to deal with objections in case of residents complaining of nuisances generated by noise and traffic. Mr. Ghoolet in fact testified that there were 3 wedding halls in the vicinity of the site. It is our view that the Respondent was therefore right in also considering the presence of the existing wedding hall in rejecting the applications. This ground therefore fails.

V. Under Ground 6

10. It is the contention of the Appellants under this ground that the SSR International Airport Safeguarding Area Restrictions Inset Plan was as per the Airport Master Plan 2004 which is no longer applicable. The Respondent admits this but states in its Statement of Defence at paragraph 3(iii) *“the provisions of Policy IA2 of the OPS which stipulate that for Conical Surface, restriction varies according to location and that a No Objection Certificate from the Director of Civil Aviation is required for any new development in this zone, are also applicable in the present case.”* This ground was not made a live issue before the Tribunal and no evidence was adduced to substantiate this ground of appeal and no evidence was adduced as regards whether a no objection certificate was obtained from the Director of Civil Aviation. This ground of appeal therefore fails.

11. For all the reasons set out above, we find that the Respondent correctly applied the relevant policy to reject the applications. The appeals are set aside. No order as to costs.

Determination delivered on 19th August 2022 by

Mrs. J. RAMFUL-JHOWRY
Vice Chairperson

Mr. S. BUSGEETH
Member

Mr. S. MOOTHOSAMY
Member

