

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 1692/18

In the matter of:

Adriel House of Prayer

Appellant

v.

Municipal Council of Curepipe

Respondent

Determination

The present appeal is against the decision of the Respondent for having refused to grant the application made by the Appellant for a Building and Land Use Permit for the conversion of an existing building to be used as place of worship at Lot 17, Morcellement Ramalingum, Frederic Bonnefin Street, Curepipe. The sole ground of refusal, as communicated to the Appellant in a letter dated 13th August 2018, is that 'the proposed activity is not in compliance with the guidelines of the Planning Policy Guidance 3- Place of worship'. The Appellant has lodged a notice of appeal against this decision on the 20th September 2018, the grounds of appeal are expatiated in the Statement of case (as referred to in the notice of appeal), also dated 20 September 2018. These are as follows:

1. The Appellant has given no specific reasons for the refusal of the BLUP.
2. The non-communication of any specific reasons for the refusal of the permit amounts to no decision at all, leaving the Appellant in the dark as to why his application has been turned down.
3. The decision of the Respondent does not amount to valid refusal and does not reflect due and transparent process.
4. The Respondent failed to give consideration, if at all, to the merits of the application nor has the process been conducted in a fair and transparent manner.

5. The Respondent failed to be consistent with the application of their policies in that they failed to take into consideration that other places of worship exist in the immediate vicinity.
6. The Respondent has failed to consider the immense quantum of resources including money invested by the owner of the building in the said project to make same viable, nuisance free, comfortable and appropriate and this to the express and implied knowledge of the Respondent.
7. The Respondent acting through their preposes and by their conduct and behaviour encouraged and monitored the progress of the works without any protest or reservation, thus amounting to encouragement and therefore should be estopped from treating the project adversely as an afterthought.
8. The Respondent failed to consider that the religious activities proposed to be carried out on the said premises are also carried out through the recognized religious bodies being generally acceptable by the public and particularly appreciated by members in the same and similar manner as applicable for other known places of worship in the same region and elsewhere.
9. The non-communication of any specific reason is oppressive, vexatious, arbitrary and baseless.

We note that some of the grounds of appeal listed above, namely, grounds 1, 2 and 9, these can be taken together, being given that they raise contentions of a similar nature. Grounds 3 and 4 relate to similar points and, likewise, grounds 5 and 8 can be considered together.

The issue of locus standi:

Before considering the grounds of appeal, we find it necessary to address the issue raised in submission by counsel for the Respondent, relating to the locus standi of Mr. Camoin, who deposed at the hearing.

The appeal had been lodged by 'Adriel House of Prayer' represented by George Gaietan Carver, who was the Pastor of the Congregation which proposed to conduct prayers in the premises in respect of which a BLUP is being sought. In the course of the hearing, it has come out that the said Mr. Camoin, is a member of the same Congregation. However, as per the evidence of Mr. Camoin, the entity referred to as 'Adriel House of Prayer' (the Appellant), has moved to an alternative location and the representative of this entity, Mr. George Gaietan Carver, is now preaching in the other location.

Although it could appear to Mr. Camoin that there was nothing sinister in him representing his former Pastor for a matter which involved an application for a permit within the location where he is now practising, the point raised by the

Respondent that the said Mr. Camoin, was neither the Appellant, nor did he show any mandate to represent the Appellant (no document was produced to show that Mr. Camoin had a mandate to depose on behalf of Mr. Carver, nor ‘Adriel House of Prayer’) is a valid one. In fact, Mr. Camoin candidly stated that he represented another association, ‘God’s Grace Ministries’, in respect of which he produced a copy of the certificate of Registration of Association as Document A. It has come out that he proposed to preach in the ‘locus in lite’ in his capacity as Pastor for ‘God’s Grace Ministries’.

We have given due consideration to the explanation given by him that he was also a member of the same congregation as the Appellant at the time when the appeal had been lodged, but it was the delay in the present matter that had caused his ‘confrere’ to move to another place. Yet, as matters stand, the evidence on record shows that Mr. Camoin is representing another association, in the name of which he wants to operate his centre and at the same given address as the application made by the Appellant. For the purposes of the present appeal, he is not the Appellant, nor does he represent him. The activity that his association (God’s Grace Ministries) proposes to run, requires a BLUP for itself. There is no evidence before us that shows that this entity is the same as ‘Adriel House of Prayer’. Although section 5 sub-section (3) provides that proceedings before this Tribunal shall be conducted with as little formality and technicality as possible, the capacity of the person who appeals and/or who depones on behalf of the Appellant goes to the root of the appeal. It is our view that the case for the Appellant falls short of the proper person being present for the purposes of the present hearing. The appeal cannot succeed on these premises.

Having said that, we also wish to make certain observations on the planning merits of the application made by ‘Adriel House of Prayer’.

Planning considerations:

The representative of the Respondent has elaborated on the planning instruments that were applied in relation to the subject site. Reference was made to the Planning Policy Guidance 3: Places of Worship. This provides, among other things, the following:

Paragraph 4.1: Context and Location

“No place of worship should be allowed adjoining a restaurant/bar or place of public entertainment. Conversion of existing buildings will be allowed provided it meets all the criteria as laid down in the Design Sheet”.

Paragraph 4.3: Setbacks and Height

“A minimum of 3 metres on rear and side boundaries should be complied. Front setbacks will be those prescribed with respect to road category”.

Paragraph 4.4: Parking

“It is essential that off-street parking be provided to ensure minimum disturbance to local residents and for road safety. A rate of one car space per 8 square metres of public floor area should be provided”.

From the evidence on record, the proposed development is situated on the first floor of a building which houses a restaurant/bar on the ground floor, which is not compliant with paragraph 4.1 (supra) as contained in the Design Guidance for Places of Worship.

Evidence from the representative of the Respondent is to the effect that the setback from the side boundary and from the rear part of the building is extremely close to the neighbouring building (being one metre on one side and 1.2 metres on the other side), whereas a minimum of three metres from the rear and side boundaries have to be provided (paragraph 4.3 supra).

Furthermore, the provision for parking is far from being adequate for the activity proposed. For the type of activity proposed, based on paragraph 4.4 (supra), parking facilities for eighteen to nineteen vehicles have to be provided but the proposal is for only four parking spaces, one of which is in relation to the general retailer's shop. We note also that Mr. Camoin attempted to explain that he had taken measure to mitigate the potential noise from the activity.

With reference to grounds of appeal 6 and 7, we note that there is no evidence in support of the averment of encouragement on the part of the 'preposés' of the Respondent during the progress of the works apart from the 'ipse dixit' of the witness.

The proposed activity may be a laudable one based upon the explanations given by Mr. Camoin, who elaborated on the positive impact that it can have on the community. Nonetheless, the planning parameters have to be observed for such activity, and it transpires from the evidence adduced by the Municipal Council that the provisions of the PPG relating to places of worship have not been observed.

We have also addressed the point raised that there has been non-communication of the specific reasons for the refusal of the permit. The reason for refusal is spelt out in the refusal letter. True it is that the Appellant may not be aware of the

planning provision that was referred to by the Council, which, in his opinion, amounted to an oppressive, vexatious and arbitrary decision (as per ground 9 of the grounds of appeal). He also raised at ground 4 that the process has not been conducted in a fair and transparent manner. These grounds amount, in our view, to seeking to review the process by which the decision was taken, thus seeking for a Judicial review remedy, which is not within the jurisdiction of this Tribunal. This Tribunal assesses the planning merits of the decision taken by the Municipal Council. The sole reference to the planning instrument that guided the Respondent in its decision is not, *per se*, a ground to render the decision invalid. We agree that, as a matter of policy, there should be communication with the applicant, although there is no requirement that a hearing be done for each application. The Council cannot be taken to task for rejecting an application which, outright, shows non-compliance with the planning instruments.

Reference has been made to the presence of other places of worship which exist in the vicinity of the proposed development. We refrain from addressing this point, being given that we are not in presence of any element that confirms same, nor has any evidence been adduced in respect of the planning compliance of those places and, more importantly, the relevance of this information in the assessment of the planning merits of the present case. Similarly, we do not find that the ‘immense quantum of resources including money invested’, as raised by the Appellant in its grounds of appeal are matters that are relevant for the purposes of the appeal.

It has been submitted that the PPG relied upon by the Respondent is merely a guidance. Despite its appellation, the Planning and Development Act makes it mandatory for local authorities to comply with the PPG. Section 13 of the Planning and Development Act 2004 provides that:

- (1) The Minister may issue planning policy guidance to any local authority on any aspect of land use planning and development and their relationship to, and impact on, economic and social development, (including certain other criteria as listed in sub-sections (a) to (g))
- (2) Every local authority to which planning policy guidance is issued shall comply with such guidance.
- (3) A planning policy guidance shall prevail, to the extent of any inconsistency, over a development plan whether the development plan was made before or after the planning policy guidance.

The Planning Policy Guidance 3 (PPG 3) on places of worship was issued by the Ministry of Housing and lands and became effective on the 26th July 2007. It also provides that the PPG 3 (supra) has to be used with the PPG 1 Design Guidance- first issued in November 2004 and revised in September 2006.

The Planning considerations referred to above (paragraphs 4.1, 4.3 and 4.4) have been rightly relied upon by the Respondent in its assessment, as required by law.

In view of all the above considerations, we find no reason for us to interfere with the decision of the Respondent in this matter.

The appeal is therefore dismissed. No order as to costs.

Delivered on 6th February 2023

Mrs. V. Phoolchand-Bhadain, Chairperson

Mr. P. Manna, Member

Mr. S. Moothoosamy, Member