

**BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL**

**ELAT 1914/19**

**In the matter of :-**

**Best of Breed Dogs Ltd.**

Appellant

v/s

**District Council of Moka**

Respondent

**DETERMINATION**

1. The present appeal is against a decision of the District Council of Moka [“the Council”] for not having granted a Building and Land Use Permit [“BLUP”] to the Appellant for the conversion of an existing building at ground floor to be used as dog kennels [4 units] at Bois Cheri, Moka. The reasons for refusal as communicated to the Appellant on 28 November 2019 is that the Permits and Business Committee of the Council [“P BMC”] has not granted the BLUP due to

*“The apprehensions expressed by the immediate neighbours are viewed to be valid in as much as both the Ministry of Environment, Solid Waste Management and Climate Change and the Ministry of Health and Wellness have highlighted the form of nuisance by way of noise, dust, odour or otherwise being caused by such bad-neighbour development to the surrounding environment..”*

2. The Appellant was represented by its Director, Mr. Jayakrishna Busawon. Witnesses called on behalf of the Appellant were Mrs. Mundookissoory and Mr. Arvin Ramudit, from the Animal Welfare Unit of the Ministry of Agro Industry and Food Security, Mr. Salman Mahadoo from the District Council of Savanne, and Mr. Wazeem Ahakam from the District Council of Moka. The Council, also legally represented, was represented by its Planning and Development Inspector, Mr. Hemrage. We have duly considered all the evidence on record as well as submissions of both counsel.

## I. BACKGROUND

3. The background to the case based on undisputed facts is that the activity of dog breeding has been practised on the premises in lite for some 13 years with a valid Dog Breeders Licence which had been renewed yearly up until 2021 when a legal requirement was enforced for the first time so that a BLUP be obtained for the premises as a pre-requisite for the renewal of the Dog Breeder's Licence wherein the activity was being carried out. The undisputed evidence, as per the testimony of Mr. Busawon, reveals that the site in lite is infact 2 contiguous plots of land owned by the father of the Appellant's Director. The property sprawls over one and a half acres of land wherein stands the house of the Director and the 4 kennels with their respective attached pathways for the dogs. The kennels are situated behind the house far from the property of the neighbours and closer to the river reserve which is found at the back of the Director's house.

## II. GROUNDS OF APPEAL

4. The grounds of appeal as set out in the Notice of Appeal appeared to be incomplete, we have thus sought reliance on the grounds of appeal set out in the Statement of Case since the grounds are mostly replicated and they are reproduced hereunder:

*"5. Apprehensions expressed by immediate neighbours/objectors are unjustified and unfounded as such the Respondent is wrong to have acted upon the apprehensions expressed to reject the decision.*

*6. The apprehensions expressed by the immediate neighbor and/or objectors have been made in bad faith.*

*7. The respondent was wrong to have rejected the decision based on nuisance highlighted by the Ministry of Environment, Solid Waste Management and Climate Change and the Ministry of Health and Wellness.*

*8. This business has been operation since 2013 with all the relevant licenses and clearance from the Animal Welfare unit of the Ministry of Agro Industry and Food Security.*

*9. The conditions for the renewal of a breeding permit changed in 2019 insofar that clearance is now required from the district council where previously it was not the case.”*

**(a) Under the 1<sup>st</sup> Ground of Appeal**

5. The Appellant’s contention that the Respondent’s decision is wrong for having been based on the “apprehensions” of the objectors which are unfounded and unjustified. In essence the Appellant’s case is that the Council failed to verify the distance between the kennels and the houses of the objectors, there is no evidence of odour or noise nuisance, that the activity of dog breeding did not produce dust, the objectors have given their authorization to the dog breeding activity previously as and when it was required for the renewal of the Appellant’s license. The Council rejected the application on the basis that the apprehensions of the objectors were viewed as being valid in the light of the views of the Ministry of Environment, Solid Waste Management and Climate Change and the Ministry of Health and Wellness as regards the nuisance caused by such types of development to the surrounding environment. Mr. Hemrage did not produce any evidence by way of document or otherwise to substantiate these views expressed by the Ministry of Environment, Solid Waste Management and Climate Change and the Ministry of Health and Wellness. He explained that there was a letter from the Ministry of Environment on the activity of dog breeding, but not relating specifically to the Appellant’s case, which the Council took note of on the basis that it was for the same type of activity and can create the same type of nuisances. The Council thus adopted the same reasons to reject the application. According to him, there is a letter dated 24<sup>th</sup> May 2019 from Ministry of Agro Industry, which he did not produce before the Tribunal, specifying that prior to issuing a BLUP the Council must verify if there is no objection from the people residing in the vicinity of the breeding site. He candidly stated that there is no evidence in support of the rejection except the complaints.

6. There is not an iota of evidence adduced by the Respondent to suggest upon receiving the written complaints from the objectors it investigated the matter. It appears that the Council took these complaints at face value, without investigating whether they were justified or not. What we read from Mr. Hemrage's testimony is that it is clear that the moment the application was met with complaints, it was sent to the PBMC with a pre-conceived idea that the application had to be rejected. Upon questions put to the witness by the bench, it was clear that the complaints were accepted without their veracity being ascertained. In so doing the Council may well have been acting in accordance with the directive from Ministry of Agro Industry, but this certainly cannot be taken to mean that any complaint or objection becomes a tick-box exercise so that those application for dog breeding activities which have received objections will automatically have to be rejected.
  
7. The Council in its rejection letter did not mention objections or complaints but rather referred to "apprehensions". The minutes of proceedings of the Hearing that took place at the seat of the Council on Friday 22 November 2019 shows that there were 2 objectors both of whom were next door neighbours. Mr. Lotun, one of the objectors, complained about the notification plate, the fact that it is a residential area and that such activity cannot be carried out there, that he made complaints to other authorities about bad smell and noise nuisance, that the fencing was removed on the site and dogs accessed his premises which was dangerous and that the applicant never asked for authorization to carry out such activity. Mr. Surendra Busawon, the second objector, also complained that Moka being a residential area, dog breeding activity was not allowed, the activity creates odour and noise nuisances and that he had to move elsewhere to have peace.
  
8. We have carefully analysed the objections put forward by the neighbours before the PBMC. We would categorise them as complaints and apprehensions. As regards Mr. Lotun's complaint about the notification plate, Mr. Ahakam from the Council carried out a site visit and found the notification and infrastructure to be in order He was satisfied with what he saw. He did not mention anything about the fence on Appellant's

premises being damaged or broken, as per Mr. Lotun's complaint, although he was on the locus to check the infrastructure.

9. We pause here to make an observation. We take note that in Mr. Ramudit's report, Doc B, it is mentioned "*there is a concrete wall separation on the side between the breeding site and one neighbour's compound which has not yet been completed but the breeder has informed that construction is already being undertaken by the abovementioned neighbour to complete the separation.*" This issue was not canvassed when this witness testified. Hence, this cannot by any means be taken as corroborative evidence of Mr. Lotun's complaint. In any event Mr. Lotun was never called as a witness before the Tribunal for the veracity of his complaints to be tested, nor was Mr. Surendra Busawon.
10. Neither did Mr. Ahakam nor Mr. Hemrage make any assessment as regards odour, noise or dust save that both stated that the dogs were barking. This, in our view, is not abnormal since dogs are meant and trained to bark on seeing unfamiliar faces which are perceived by them as threats, as explained by the Appellant's representative. As per Mr. Hemrage's explanations, it would appear that the officers of the Council are not mandated to assess odour and dust. It would have been for the Ministry of Health to do so, but there is no evidence on record to suggest that such an assessment was made by this Ministry. No evidence of dust generation through the activity of dog breeding has been adduced before the Tribunal by the Council. We therefore find no basis on which the Council is acting to find that the apprehension of objectors on this issue is justified.
11. As far as the neighbours' apprehensions are concerned, both stated that the activity of dog breeding causes odour and noise nuisance and is not conducive to a residential area. It appears that the complaints letter dated 13<sup>th</sup> March 2019 sent by Mr. Surendra Busawon to the Animal Welfare Unit, Doc A, were with regards the sanitary conditions of the sewage pits on the Appellant's premises used for the breeding dogs, bad smell and barking dogs. There is no evidence of odour nuisance adduced by the Respondent. In fact, quite to the contrary, Mrs. Mundkissoory, Agricultural Superintendent at the

Animal Welfare Unit explained that following the complaints of Mr. S. Busawon and those of Mr. Lotun, the Animal Control Officers of the Animal Welfare Unit accompanied by the Senior Veterinary Officer, Dr. S. Timol, made 2 surprise visits on the premises of the Appellant. The spot check by the relevant authority would in our view have addressed the fears of these neighbours. It was noted as per both their reports, Doc B and B1, that no bad smell was detected on both occasions. In the report of Dr. Timol, Doc B, it was noted that the sanitary conditions of the sewage pit used for the dogs seemed to be according to norms and that there was no excessive barking that was noted.

12. This leads us to the next point regarding any noise nuisance. Evidence was adduced through the Appellant's Director that the kennels are located 25 metres away from one neighbour's house and 50 metres away from the other neighbour's house and the subject site extends over approximately one and a half acres of land. These were not disputed. Mr. Hemrage and Mr. Ahakam did mention, as already addressed above, that the dogs were barking in their presence, but this is not as a consequence of the dog breeding activity. Even if those dogs were merely pet dogs, they would have barked as a natural instinct on seeing strangers. No evidence was adduced by the Respondent on which it grounded its refusal to find that apprehensions of the objectors either justified or founded more so as the relevant authorities checked and were satisfied that all was according to established norms. It would seem that the Respondent has rejected the application on the basis of considerations it either did not check or it is not mandated to check.

13. On a final point with regard to the complaint of Mr. Lotun that the Appellant did not ask for his permission, this is hearsay and since Mr. Lotun did not testify before the Tribunal, his complaint cannot be taken to be the truth. This point was not successfully canvassed. It is accordingly disregarded. We believe that this ground of appeal is meritorious.

**(b) Under the 2<sup>nd</sup> Ground of Appeal**

14. The contention of the Appellant under this ground is that the apprehensions expressed by the immediate neighbours were made in bad faith. It is of no relevance the faith with which they expressed such apprehensions. What matters is the substance of the complaint, which would justify the Council making an assessment of the application on planning grounds. The jurisdiction of the Tribunal is to hear and determine an appeal on the impugned decision pursuant to **section 117(14) of the Local Government Act**. The Appellant's neighbours are neither witnesses nor parties before the Tribunal. This ground is therefore set aside.

**(c) Under the 3<sup>rd</sup> Ground of Appeal**

15. The Appellant's case under this ground is that the Respondent was wrong in basing itself on the nuisance highlighted by the Ministry of Environment, Solid Waste Management and Climate Change and the Ministry of Health and Wellness to have rejected the application. The Appellant also submitted that there is no conclusive report from these ministries submitted by the Respondent with regard to the application at hand and that according to the Animal Welfare Unit of the Ministry of Agro Industry and Food Security, the surprise visits revealed that there was no bad smell detected, the dogs were well cared for, no excessive barking was noted and the sanitary conditions of the sewage pits were as per norms.

16. Mr. Hemrage explained that the Council took into consideration a letter from the Ministry of Environment on dog breeding, not specifically relating to the Appellant's case, but since it is for the same type of activity it can create the same type of nuisances. Hence, the Respondent adopted the same reasons to reject the application. He stated clearly that there is no evidence in support of the rejection except the complaints. As highlighted earlier, the Respondent outrightly rejected the application the moment complaints were received. We do not subscribe to such rubberstamping practices which may increase the risks of uninformed decisions being taken by the Council. The veracity of complaints must be assessed.

17. The Respondent's representative hinted that the Council is aware of some property dispute between the Appellant's director and one of the objectors, Mr. Lotun. We are also given to understand that the property of the other objector, Mr. Surendra Busawon is being used as a store and the Council is aware of this. In the face of such happenings, we believe the Council was wrong to have accepted these objections "de facto" for rejection but should have ascertained their veracity instead. The Respondent's officers from the planning department went on the locus to check for procedural compliance but these officers, as admitted by Mr. Hemrage, are not mandated to, nor did they, make any assessment of nuisance being caused in terms of smell, dust, noise. Yet the basis for rejection of the application by the Respondent was because of apprehensions of nuisance being justified. In our view, there is a total misalignment between the Respondent's assessment of the application including its application of the planning criteria and reasons for rejection.

18. It is apposite, in our view, at this point to make an assessment on the category of development that the dog breeding activity falls. It can be gauged from the ground of refusal that the Council identifies this type of development as a "Bad Neighbour" development, which is referred to in **Policy ID4** of the Outline Planning Scheme of Moka-Flacq ["**OPS**"]. This policy falls under the category of **Industrial Development** for which the **OPS** provides a more general application

"Those industries which are unlikely to adversely impact upon adjoining development should be accommodated within settlement boundaries and make use of available land and sites in existing industrial estates. For medium and large scale industries, sites on the edge of and out of settlement boundaries are likely to be more appropriate."

19. Our understanding from the above extract is that if large scale and medium industries are better accommodated on the edge and outside the settlement boundary, small scale industries may be accommodated within settlement boundary provided they do not adversely impact adjoining development. It is agreed that the subject site is located in a predominantly residential area with some commercial development. In the present case, there are 4 kennels accommodating 4 female dogs for breeding purposes on the subject site of a large surface area where it has been operating legally from 2013 up



until 2019 as evidenced by licences Doc D-D3. This qualifies as a small-scale operation of first category of breeding allowing up to a maximum of 5 breeding dogs.

20. The Respondent's Counsel made it a live issue the fact that the licence was not initially issued in the name of the Appellant. The representative of the Appellant explained that it was issued in the name of one Mr. Rajcoomarry who used to work for the business before. We note that Doc D, D1 and D2 all bear the name of Mr. Rajcoomarry; as Dog Breeder in Doc D, and as Director of the Appellant in Docs D1 and D2. In Doc D3, the name of Mr. Jayakrishna Deenesh Busawon has been inserted as the Director of the Appellant but the licence number, the licence type and the address have all remained unchanged. We are therefore satisfied that these relate to the same business except that the business was being operated as occasional breeder and as from 2015 it was a registered business.

21. The **Policy ID4** provides specifically for those industrial developments which are of a bad neighbour type and these are defined "*to include quarries, stone crushing plants, concrete batching plants, asphalt mixing plants, power stations and tank farms, animal-rearing uses including piggeries and poultry farms, sewage treatment works, sites for landfill and other forms of solid waste disposal, waste transfer stations, civic amenity sites, scrap yards, recycling and composting facilities...Acceptable uses within buffer zones may include agriculture, forestry, non-intensive animal-rearing, grazing and pastures and some leisure and recreation facilities. Certain other uses such as storage, warehousing and distribution industries may also be appropriate at varying distances from a bad neighbour cluster. The buffer zones for particular uses should form part of the EIA licence and be determined by the relevant statutory authority." [underlining is ours].*

22. The Respondent's case is that the activity of dog breeding is being categorized as an animal-rearing activity under this policy. The meaning of "rearing" is the process of raising, feeding, breeding and taking care. Therefore, in our view, "animal rearing" may not be synonymous with "breeding", which is a sub-set of "rearing". Breeding is the production of young ones, in this case the production of litters. There are guidelines

issued by the Animal Welfare Unit to be followed especially once a female dog has given birth to a litter of puppies. Animal rearing includes breeding as part of that process. In the case of poultry farms, from the breeding, to the raising and feeding and nurturing until they become mature broilers is the process of rearing and the same is applicable for piggeries.

23. Be it as it may, even if we were to take it as an animal rearing activity, the Policy refers to the requirement of an Environment Impact Assessment [“EIA licence”] for such bad neighbour developments as listed in the **First Schedule (Section 15(2)) Part B of the Environment Protection Act 2002** as amended [“EPA”]. The activity of dog breeding nor animal rearing falls under that list, although it is noted that “rearing of monkeys” does require an EIA licence. We note under **Part A of the First Schedule** “rearing of livestock including cattle, goat, pig and sheep” and “rearing of poultry above 15,000 heads” are amongst those activities which require a Preliminary Environmental Report [“PER”]. “Animal rearing” is not a listed activity under any part hence not one requiring a buffer nor considered to be carrying such high impact on the surrounding environment in terms of nuisance. True it is that there is no clear definition in the policy of what is “animal rearing” as opposed to “non-intensive animal-rearing” but what is known is that not all animal rearing activity are of the same intensity. Some are much less intensive and that is why they can be done even within the buffer of another bad neighbour development or settlement boundary if they are on a small scale, or light industrial. We fail to see from which angle having 4 breeding dogs can even be considered as an industrial development. It is apposite to note that pet dog ownership on the other hand, regardless of the number, is allowed in residential areas.

24. The Respondent’s Counsel submitted before us the case of **Lackpatia v Moka District Council [ELAT 1924/20]** and the case of **Chokupermal v District Council of Moka IPO Futhee and Anor [ELAT 1903/19]**, the Tribunal has accepted that the breeding of dogs was accepted as bad neighbour development and the appeals were both set aside. These are highly persuasive authorities but we believe that, here, we are not in presence of the type and quality of evidence as those produced by the Council in those 2 cases. The objectors did not depone before us so that the veracity of their complaints

could be tested and we could make an assessment of the impact, if at all, on them of any nuisance generated by the activity. The Council has most importantly, before us, failed to lay to foundation on which it has grounded its refusal by not producing any letter or directive emanating from the Ministry of Environment, Solid Waste Management and Climate Change and the Ministry of Health and Wellness with regards to nuisance being caused by dog breeding activity. We cannot surmise on the contents of these letters nor can we pass judgment on something that is not before us or take it for granted that their contents have been correctly interpreted.

25. We have sought guidance from other jurisdictions such as Victoria, Australia from which the majority of our Planning Instruments have been imported and the UK. In Victoria, breeding and rearing are treated as distinct: <https://agriculture.vic.gov.au/livestock-and-animals/animal-welfare-victoria/domestic-animal-businesses/breeding-and-rearing-businesses> and the legal framework for animal breeding, including breeding of dogs is found in the **Domestic Animal Act 1994 (the DA Act)**, the **Domestic Animal Regulations 2015** and **Code of practice for the operation of breeding and rearing businesses 2014 (revision 2018)**. The purpose of the **Code of Practice** is to provide *“the minimum standards of accommodation, management, breeding and care that are appropriate for the physical and behavioural needs of dogs and cats housed in businesses operating as breeding or rearing domestic animal businesses”*. Under the “Definition” **section 1(1)**, “Small business” has been defined to mean *“a domestic animal business that consists of 5 or less adult fertile dogs or cats.”* Under the **section 6(5)** on “Housing” which provides the *“housing requirements for keeping dogs and puppies in a breeding business,”* mention is made that the display emergency evacuation procedures must in and near the animal housing facilities and *“For small breeding businesses this may be near the front door of a place of residence or near the kennelling areas.”* [underlining is ours]. This demonstrates that in Victoria such dog breeding activities are considered small business when it comes to breeding 5 dogs or less and that such small-scale breeding can take place in the private residence of the breeder. Incidentally, the **Code of Practice** also lays a lot of emphasis on the socialization aspect in the breeding and rearing of domestic animal businesses and that it *“must include exposure to humans through daily*

*handling.*” In the case of puppies, it must start as from 7 days of age. Interaction with humans on a daily basis is very important and this is much enhanced when the dogs are bred in residential properties.

26. In the UK, as per the “**Dog breeding licensing: Statutory Guidance for Licensing authorities, updated on 6<sup>th</sup> April 2023**”, which must be read in conjunction with **The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018**, provision is made for dogs that are bred at home. Provision is made under **section 1.0 - Licence display**

*“A copy of the licence must be clearly and prominently displayed on any premises used for the licensable activity.*

*The address of the licensed premises must be displayed on the licence.*

*The licence must be displayed in a public-facing area of the premises such as the entrance or animal introduction area. In a home environment, the licence should be shown to any potential purchasers.” [underlining is ours]*

The above provisions have fortified our view that dog breeding on such a small scale cannot automatically be taken to fall under the category of industrial development wherein **Policy ID4** of the **OPS** is to be strictly applied. Breeding dogs on such small scale seems to be apt and convenient in a home environment on the basis of their daily need for human interaction so that they do not become socially aggressive. Had it been on a large scale, then it would have been a different matter. But rather than mechanically applying any reasoning *highlighted* by the ministries, a preferred approach would have been for the Council to treat each case on its own facts and circumstances, such as its scale and if need be, place additional restrictions on the numbers of domestic animals that can be kept on the premises, as well as further requirements or restrictions around use of land for the purposes of breeding. The relevant authorities should also be making assessments and taking measurements in respect of any nuisance suspected such as dust, odour and noise amongst others. The Council may, thus, have more leverage in arguing in what way a dog breeding activity within a residential area would be prejudicial to the locality and how it is differentiated from simply keeping dogs as pets. The Council has not demonstrated in what way

having these 4 dogs for breeding as an activity creates more nuisance in terms of noise, dust and smell as opposed to having them simply as pets on the subject property.

27. On the facts before us as per the evidence, the small-scale dog breeding activity has been carried out on the property since 2013 without any complaint, especially not from the relevant authorities. The Appellant has been operating its business legally and the Animal Welfare Unit has always renewed its licence save in 2019 when the exigencies of the law required that a BLUP be obtained for the Appellant to carry on operating the same activity. No breaches of the Animal Welfare Act were noted by the officers of the Animal Welfare Unit despite their unannounced site visits. In fact, Mrs. Mundkissoory, produced the 2 letters from complaint from Mr. Lotun and Mr. Sourendra Busawon, Doc A and Doc C, to explain that her Unit had to investigate these complaints which were mainly regarding the sanitary conditions of the sewage pits used for the breeder dogs, bad smell and barking dogs. The officers of her unit reported, as per Doc B and B1, that the sanitary conditions of the absorption pit used for the dogs seemed to be according to norms, no bad smell and no excessive barking were noted. These together with the steps to secure its premises with fencing and provided the walking space within each kennel shows the willingness of the Appellant to be legally compliant. In fact, we are fortified in our view since Mr. Hemrage's visit on the locus after the appeal had been lodged confirms that the Appellant had in fact halted the dog breeding activity with the impending court case. The Appellant's representative also stated that the officers of the Animal Welfare Unit would visit at any time for inspection and there has never been any issue of concern. On the issue of smell, he also explained that the kennels are well kept and a record of how often they are washed is also checked by the AWU. The director explained that have invested in high quality dogs, such as German Shepherd, Chocolate Labrador with the intention of selling their pups, hence the breeder's licence. He explained that one can be a breeder by having just one dog but he has applied for 4 female breeder dogs, which falls in the first category of breeding 1 to 5 dogs. No complaint was ever received from any authority from 2013. The only complaints ever received are from the two neighbours, in 2019.

28. By way of context analysis, there are currently 4 female dogs being used for breeding, each having her own kennel, as confirmed by evidence of Mr. Ahakam and in his report marked Doc H, on one and a half acres of land where the residential building of the Appellant's director is also found. The kennels are medium sized, 2m x 2 m with each having the same dimension of fenced area serving as walking space for the breeder dog. The subject property is also wooded and approximately 97 metres of the land is bordered by river reserves. The distance of kennels from each objector's property is around 25 metres and 50 metres respectively. The version of the Appellant's representative on these matters has not been rebutted. The subject site is within the settlement boundary and the area is a predominantly residential one with some commercial development.

29. The Council only took on board the objections of the neighbours made at the Council and at the CSU, marked Doc A, Doc C, Doc C1 and Doc K. It failed to address the Tribunal in what way the development would create, or created dust, smell and noise being given that it has been in operation since 2013. In the face of reports from the AWU to the effect that there is no bad odour and that there are no breaches to the Animal Welfare Act, the Council produced no evidence before us to prove otherwise. No measurements were taken by any relevant authority to counter the veracity of the reports emanating from the AWU. No evidence was produced with regards to dust being generated with the dog breeding activity. With the houses of the neighbours being so far from the site the chances of dust, dander and fleas affecting them seem remote. The Council failed to also produce any evidence in relation noise pollution being generated by or as a consequence of the activity of dog breeding. The barking of dogs upon seeing the officers of the Council cannot amount to evidence of noise nuisance. Dogs bark because that is what they are meant to do. There is no evidence of excessive barking or that it was being heard from the neighbours' properties. The reports B and B1 state no excessive barking was noted, that was in spite of being in the presence of strangers. The still picture of a dog was produced by Mr. Hemrage, Doc L. He could not identify the dog except that it was a dog on the premises of the Appellant. It is not evidence of noise nuisance by a breeder dog. We therefore find that no weight can be attached to this evidence.

30. We also take noted that no evidence was produced of the nursery, its size, its scale, its location from the neighbours' properties except that we are given to understand that it is in a room inside the house of the Appellant's director. No evidence was produced as regards any letter or directive emanating from the Ministry of Environment, Solid Waste Management and Climate Change and the Ministry of Health and Wellness with regards to nuisance being caused by dog breeding activity. Mr. Hemrage made mention of such a letter but due to procedural laches it was not produced. We view these as serious lapses in the Respondent's case. We believe that the Council should have thoroughly investigated whether on the facts of this case, the activity of dog breeding amounted to a bad neighbour development, which it failed to do.

31. To a point raised by the Appellant's counsel, we find that the activity of "animal rearing" is non-exhaustive under **Policy ID4** and also under the sub-heading "Justification" of this policy it is provided bad neighbour developments can also be those which can potentially cause nuisance to adjoining residential neighbours:

*"Bad neighbour developments are defined to include those uses requiring an Environmental Impact Assessment licence as listed in the First Schedule (Section 15(2)) Part B of the Environment Protection Act 2002 as amended and/or are considered a potential nuisance to adjoining residential neighbours by reason of noise, dust, smoke, fumes, smells, abnormal hours of operation or parking or excessive loading problems or through the appearance and scale of the proposal. Bad neighbour developments are required to be distant from residential and other sensitive uses for health and safety reasons and require buffer zones which may preclude certain forms of development within a specified distance."* [underlining is ours]

**(d) Under the 4<sup>th</sup> and 5<sup>th</sup> Grounds of Appeal**

32. It is the contention of the Appellant under these 2 grounds that the business has been operational since 2013 with all the relevant licenses and clearance from the Animal Welfare unit and that the conditions for the renewal of a breeding permit changed in

2019 insofar as clearance is now required from the district council where previously it was not the case. These grounds as couched do not in our view amount to any ground of appeal because they do not seek to challenge the impugned decision and amount to mere averments. They are accordingly set aside.

33. We believe that the Council may have tried to adopt a cautionary approach in this case but this kind of approach is justified when proper assessment ground work has been done on the specific case including the veracity of the complaints having been verified so that the Respondent can take an informed decision. This was far from accomplished in the present case. We also wish to point out that the parameters and approach to large or medium scale animal rearing cannot be equated nor assessed in a same way as small-scale specific activities such as dog breeding. We believe this has led to some prejudice being caused to the Appellant in terms of maintenance costs for the high-quality dogs, food, veterinary services including the maintenance of the yard and kennels with no possible mitigation since there was no breeding.

34. For all the reasons set out above, we find the appeal to be of merit. The appeal is allowed. Bearing in mind the provisions of the Business Facilitation Act, we direct the Council to issue a BLUP to the Appellant in the least possible delay, with such conditions as it deems fit. No order as to costs.

Determination delivered on 19<sup>th</sup> April 2023 by

**Mrs. J. RAMFUL-JHOWRY**  
Vice Chairperson

**Mr. MOOTHOSAMY**  
Member

**Mr. ACHEMOOTOO**  
Member