

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

ELAT 1995/21

**In the matter of :-**

1. Nouendre Sujeeun
2. Khemraj Sujeeun
3. Shakoontala Devi Sujeeun (born Bunoomally)

**Appellants**

v/s

**District Council of Riviere du Rempart**

**Respondent**

**DETERMINATION**

1. This is an appeal against the decision of the Respondent ["the Council"] for having rejected the application of the Appellant for the construction of a one storeyed residential building at Beau Plateau, St. Antoine, Goodlands, with the necessary site preparation, excavation or landscaping works. The sole ground for refusal communicated to the Appellant via the National E-Licensing System ['NELS'] on 18<sup>th</sup> December 2020 is:  
*"Site not build up."*
2. To the preliminary objections raised by the Respondent all the grounds of appeal raised were set aside save for one, following a ruling of the Tribunal delivered on the 23<sup>rd</sup> May 2022. We shall deal with the sole ground of appeal found at paragraph 9 (vi) of the Statement of Case that *"The Appellants therefore aver that the decision of the Respondent to set aside the application of the Appellants on the ground that "site not buildup", is therefore wrong, unlawful, unreasonable, unlawful, unjustifiable and baseless."*

3. The Appellant no.1, representing all appellants at the trial and Mr. S. Ghunowa, SLS, deponed on behalf of the Appellants. Mrs. Padayachi, Planning and Development Inspector of the Council deponed for the Respondent. The case of the Appellants in essence is that the site is built up in that there are other developments in the vicinity. Mr. Ghunowa produced a context plan, marked Doc A, showing other developments within a 250-metre radius from the subject site. He however explained that save for two residential buildings within that radius the rest were all non-residential development and out of those two houses, one was uninhabited. Mrs. Padayachi explained that the site is 550 metres outside the settlement boundary and the house of the Appellants have already been constructed without a BLUP. She produced two Google Maps, marked Doc B and Doc B1 to show the area surrounding the Appellants' property. She explained that within a radius of 250 metres from the site, there was a guest house, a wedding hall, a shop selling pesticides and a car junk yard and 2 abandoned, dilapidated houses without doors and windows. We have duly considered all the evidence on record and the submissions of both Counsel.
  
4. The subject site being outside the settlement boundary the applicable policy is the **Policy SD4 of the Outline Planning Scheme of Riviere du Rempart ['OPS']**. This policy provides there should be a general presumption **against** proposals for development, including residential, outside settlement boundaries unless the proposal has been shown to follow the sequential approach to the release of land and there are no suitable sites left within or on the edge of the settlement boundaries. This is the main criterion to be satisfied under the policy which from the outset, the application at hand fails to satisfy. The subject site being 550 metres from the settlement boundary, is surrounded by bare land, as noted from Doc A, Doc B and Doc B1. Allowing the release of such site will neither consolidate any gaps nor will it follow the sequential approach. It will be contrary to the clustering principle, which is not allowed due to the fact that it puts undue pressure on the Respondent to further release agricultural land for residential purposes. Appellants' counsel attempted to make it a live issue as regards the location of the site from settlement boundary on the Development Management Map of the OPS. This is not a proper ground of appeal before us and therefore is disregarded.

5. Counsel for the Appellants made it a live issue that there was a house within the 250-metre radius of the site. In cross-examination, Mrs. Padayachi explained that it was the house of one Mr. Kheda which is more than 250 metres away from the subject site and has no BLUP and the house pre-dates 2015, which was information which she managed to gather from Google "History". Irrespective of this evidence, the presence of just one residential building at a distance of around 250 metres away from the subject site does not consolidate the gaps for the purposes of **Policy SD4** nor can it be taken to be an area filled with residential developments. The non-residential buildings in the area are mostly "bad neighbour" developments and commercial ones which are well-located outside the settlement boundary. The Council cannot be said to have faltered for having applied the correct policy to come to the right conclusion that the site is in fact not built up. This simply means that there are too many unconsolidated gaps that are yet to be filled for the area to be ready to accommodate such residential developments. Furthermore, no evidence was adduced on behalf of the Appellants to demonstrate in what ways the decision of the Respondent was wrong, unlawful, unreasonable, unjustifiable and baseless. This ground of appeal therefore fails.
  
6. The Appellant no.1 stated that he did not understand what was meant by the fact that the site was not built up. We believe the onus is on the Appellants to enquire and seek clarifications about it from the Council but there is no evidence on record even suggesting that they had sought any such clarification or information from the Respondent. The literacy of the Appellants which could possibly explain why Appellant no. 1 failed to understand the meaning of "site not build up", was never questioned. Besides, they sought legal representation before lodging the present appeal and if Appellant No.1 did not understand it, there is nothing on record to suggest that the other appellants did not understand it either.
  
7. Counsel appearing for the Appellants seemed to suggest there was a confusion in the mind of the Appellant no. 1 as regards this and he may have taken it to mean that the construction of his house has not yet started. This was not borne out in evidence. Counsel also suggested another alternative meaning "which Mrs. Padayachi confirmed that the site proposed for construction of the residential building is not appropriate."

that the site proposed for construction of the residential building is not appropriate.” It is also not borne in the evidence on record. Infact the record shows simply that Appellant no. 1 stated he did not understand what the phrase meant. We find no merit on this point raised in submission. Since the issue of confusion as to the meaning of that phrase was neither canvassed, nor was it part of the pleadings nor a proper ground of appeal before us, it is disregarded. Counsel appearing for the Appellants submitted an array of cases in support of his point on procedural fairness. This is a ground for judicial review amenable before another jurisdiction, not the Tribunal.

8. For all the reasons set out above, we find that this appeal is devoid of merit and is accordingly set aside. No order as to costs.

Determination delivered on 6<sup>th</sup> February 2023 by

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

**Mr. MOOTHOSAMY**  
Member

**Mr. SEETOHUL**  
Member