

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

**ELAT 2126/22**

**In the matter of :-**

**Roshan Nekitsing**

Appellant

v/s

**Ministry of Housing and Land Use Planning**

Respondent

**DETERMINATION**

1. The present appeal is against a decision of the Ministry of Housing and Land Use Planning [“the Ministry”] for not having granted a permit to the Appellant for the subdivision of a plot of land of an extent of 406.1m<sup>2</sup> into 2 lots, situated at Indira Gandhi Road, Petit-Raffray, for residential purposes. The reasons for refusal as communicated to the Appellant via the National E-Licensing System [“NELS”]

*“Presence of an operational poultry farm at less than 200m (75m) from the site. The site does not comply with the setback 200m of sensitive land use from a poultry farm as stipulated in PPG.”*

2. The Grounds of refusal as per the Notice of Appeal are as follows:

*“(a) proof of residential permit of neighbours: RESI/0825/09 and RESI/0671/10*

*(b) Proof of water bill of neighbours- A/C 161000855*

*(c) residential house exist in the surrounding less than 15m*

*(d) District Council of Riviere du Rempart have given permit to build houses there*

*(e) Electricity and Water supply is available there.*

*(f) People are doing construction.”*

3. The Appellant who was *inops consilii*, deponed but called no witnesses. The Respondent chose to call its representative, Mrs. Prayag and a Planning and Development Inspector of the District Council of Riviere du Rempart, Mrs. Padayachi, as well as an Environment Officer from the Ministry of Environment, Miss Ramful. We have duly considered all the evidence on record. No submission was offered by the State Counsel appearing for the Ministry who chose to leave the matter in the hands of the Tribunal.
  
4. We shall consider all the grounds of appeal together as they are related in that we understand the Appellant's contention to be there the Respondent treated his case with disparity since there are other residential developments in the vicinity of the subject site. The Appellant produced 5 photographs to show houses next to his property as well as in the vicinity of his property. He also purported to show us through these photographs that there was a motorable track to serve as access to these houses including his property and that the place is also serviced with electricity. He showed from photograph no.5 there are new constructions coming up not too far from his plot of land and also showed the access. He also annexed to his statement of case a CWA bill purporting to show that water connection is available in the area although no weight can be attached to this document as the address is Pamplemousses and we have no indication as to the identity of the person on whose name the CWA bill is. The Appellant also annexed 2 BLUPs for construction of residential building at Petit Raffray issued by the then District Council of Pamplemousses/ Riviere du Rempart in 2009 and 2010 respectively. He stated that there are other houses which are closer to the Poultry Pen.
  
5. At the very outset we note that the Appellant has not been very clear about his application because although he showed us the various residential developments in the vicinity of the subject site, he stated that he did not wish to make an application for subdivision of the land for residential purposes but that he simply no longer wanted to remain in a state of indivision with the other heir. In cross-examination he stated that he did not intend to have any residential development at the moment but he just wanted the plot of land subdivided.

6. He does not dispute the proximity of his property to the poultry pen, which is operational but his contention in essence is that this should not be a bar to his application since there are several other residential properties in the vicinity of the Poultry pen, with some having even been duly granted a Building and Land Use Permit by the District Council of Riviere du Rempart.
  
7. The undisputed evidence on record is that the subject site lies outside settlement boundary and within the buffer of a Poultry Pen at a distance of approximately 80 metres from it, as per **Doc B**, Google Map produced by Miss Ramful. The poultry pen is operational. As per the **Design Sheet on Bad Neighbour Buffers** in the **Planning Policy Guidance 1 [“PPG 1”]**, the indicative buffer distance that may be allowed between poultry pens and sensitive land uses, such as residential properties, is 200 metres. The *raison d’être* of a buffer zone between a poultry pen and an area of sensitive use is for biosecurity and safety reasons, to mitigate the proliferation of any infectious diseases that may emanate from birds just as was the case when there was an outbreak of avian flu. **Policy ID4** of the **Pamplemousses- Riviere du Rempart Outline Planning Scheme** confirms that a poultry farm is a bad neighbour development which needs to be away from residential developments and other developments of sensitive use for health and safety reasons.
  
8. In view of the above clear provisions of the planning policies, we find that the Ministry was right in its decision not to allow any subdivision for the purpose of residential development since no residential development can be allowed within the buffer zone of a poultry pen. To a question put by the Bench to the representative of the Ministry, it would appear that even if the application were not for residential purposes, the Ministry would not allow any subdivision since the extent of the land *in lite* is approximately 10 perches and a subdivision into 2 lots would end up into 2 lots of 5 perches, which would then not be legally compliant. As regards the presence of other residential development within the buffer of the Poultry Pen, Mrs. Padayachi explained that in the past the Council had allowed a few residential developments in the buffer zone of poultry pens and therefore those houses with BLUPs were long standing ones.

9. Mrs. Padayachi's testimony was clear however that the practice of granting BLUPs within such buffer zones stopped since around 2018-2019 when those residents started complaining about nuisance, especially smell, due to the poultry pens and health hazards. She stated the stand of the Council has since then been to not grant residential BLUPs within such buffers. In cross-examination, she confirmed also that the subject site is outside the settlement boundary and not within a residential area. Mrs. Padayachi also stated, to a question put to her by the Bench, that there was one more poultry pen sharing the 200-metre buffer of the one close to the subject site. This can be noted from the Google map she produced, marked **Doc A**.
10. We therefore find that the Ministry was right in its decision on several scores. The proposed subdivision is not compliant with the relevant provisions of the **PPG1**. There is no evidence on record to even suggest that Ministry has treated the Appellant's case with disparity in not granting him with the relevant permit. If at all, it was the Council of Riviere du Rempart that had in the past granted BLUP for construction of residential buildings within poultry pen buffers but this practice has stopped on grounds of being bad planning decisions on its part. The plot size of the land is too small for the Ministry to even consider it for subdivision.
11. For all the reasons set out above, we find that the appeal is devoid of merit. It is accordingly set aside. No order as to costs.

Determination delivered on 25<sup>th</sup> April 2023 by

**Mrs. J. RAMFUL-JHOWRY**

**Vice Chairperson**

**Mr. S. BUSGEETH**

**Member**

**Mr. R. SEETOHUL**

**Member**

