

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 2138/22

In the matter of:

Oakdale Primary School, Central Flacq Ltd.

Appellant

v/s

The District Council of Flacq

Respondent

DETERMINATION

1. The present appeal is against a decision taken by the Council for having refused the granting of a Building and Land Use Permit ["BLUP"] to the Appellant for the conversion of an existing concrete building at first floor to be used as primary school, at Ladybird Road, Central Flacq. The reason for refusal was communicated to the Appellant on the National E-Licensing System ["NELS"] as per Doc L annexed to the Statement of Case ["SOC"] on 26th October 2022, which is as follows:

"Intensification of ongoing activity resulting in nuisance in the surrounding."

2. The Grounds of Appeal as per the Notice of Appeal are reproduced below in *italics*:

(a) The purported decision communicated by the Respondent on the 26th October 2022 by email did not amount to a proper decision as no reason was given to the Appellant.

(b) The Respondent was wrong to reject the application as there was no, and nor would there be, intensification of any ongoing activity.

(c) The Respondent was wrong to reject the application as there was no nuisance of a vehicular source would be caused in the surrounding.

(d) The Respondent was wrong to reject the application as there was no nuisance would be caused in the surrounding.

(e) The Respondent was wrong to reject the application as there was no nuisance of whatever nature would be caused in the surrounding.

(f) The Respondent was wrong to reject the application as the context of the premises was both residential and non-residential, such that in the circumstances a primary school was an acceptable activity.

(g) The Respondent was wrong to reject the application in as much as most if not all the primary schools, be it private or public, are situated in a residential and/or mixed area.

(h) The Respondent was wrong to reject the application in as much as the Appellant has been carrying out an activity of similar nature in the form of a Pre-primary for school more than 25 years.

3. We have carefully considered all the evidence placed before us along with the submissions of both Counsel. Only the relevant portions of witness testimony will be referred to where we deem it necessary and only the relevant evidence will be considered. Additionally, a site visit was conducted in this matter, which has significantly enhanced our understanding of the current conditions at the site.

4. The Appellant called as witnesses its representative, Mrs. Ashmita Ramanah, officers from the Ministry of Education, Mr. Bhurosah and Mr. Appadoo and a police officer, PC

Kissoonah. The Respondent called its representative, Mr. Bundhoo and the objectors Mr. Radha and Mr. Soobrayen. Both parties were legally represented and Mr. Radha had retained the services of a Counsel who held a watching brief for the former.

I. BACKGROUND

5. The development is currently being carried out by Oakdale Primary School without a permit on the first floor of an existing building situated at Ladybird Road, Central Flacq where a pre-primary school, Ladybird Pre-Primary School and Nursery, is already in operation on the ground floor of the same building. Ladybird Pre-primary School and Nursery Central Flacq Ltd. received its operating permit in 1996, covering both the ground floor and first floor of the building. The building had been a residential property owned by the Ramanah family. The Appellant has been running a fee-paying primary school by the name Oakdale Primary School on those premises since January 2020. Ladybird Pre-primary and Nursery Central Flacq Ltd and Oakdale Primary School are distinct entities.
6. According to the Appellant's representative this project was carried out after consultations with an officer of the planning department of the Respondent at the relevant time after having obtained all other relevant permits and clearances. She claims that they were advised that a separate BLUP for Oakdale Primary School was unnecessary under the Local Government Act ["LGA"], as both institutions fall within the same educational cluster. However, it appears that after receiving complaints, the Council informed the Appellant that it could not operate on the first floor without a BLUP, prompting the need for a fresh application.
7. The Permits and Business Monitoring Committee ["PBMC"] provisionally approved a BLUP application dated 13th September 2022, subject to the Appellant pulling down the boundary stone wall entirely to facilitate smoother traffic flow entering and exiting the premises, as outlined in Document G on page 42 of the SOC. Instead of removing the

entire wall, the Appellant pulled it down partially due to Central Electricity Board [“CEB”] wiring works thereby creating a drop-off and pick-up area. Notably, the PBMC’s prior approval has no bearing on this new application and appeal since it is a separate case. Additionally, judicial notice is taken of the fact that the Council issued a closing order which is in place and is supported by the Supreme Court.

II. PLANNING LAWS AND INSTRUMENTS

8. The subject site lies within settlement boundary as per the **Moka-Flacq Outline Planning Scheme [“OPS”]**. It is important to note that there is no specific provision for Primary Schools. However, the two relevant policies of the OPS that may be considered are **Policies SC 1 and SC2**.

Policy SC1 of the OPS, set out in *italics* below, is in relation to Pre-Primary schools:

Proposals for the provision of pre-primary centres should be favourably considered if the development meets the following criteria in order of preference:

- (a) Purpose- built centres on separate suitable sites within settlement boundaries;*
- (b) the use of appropriate community buildings such as village halls, social/community centres, religious buildings;*
- (c) the use of part of a private residential building or plot within settlement limits provided that:*
 - i. the premises are of a suitable size and design to accommodate the maximum number of children enrolled;*
 - ii. there is sufficient space for off-street car parking for staff;*
 - iii. no traffic or safety hazards should be created by the parking of vehicles depositing and collecting children from the site; and*
 - iv. no environmental or other nuisance should be caused to detract from residential amenities of the area. [underlining is ours]*

Justification: It is the Government's aim to offer the opportunity of pre-primary education to all children in the 3 to 5 year age group. Ideally, such education facilities should be attached to all primary schools but financial constraints mean that for some time provision will have to continue to be made in other premises by both public and private sectors. A considerable contribution is made by small private pre-primary centres on residential plots and this should continue to be permitted provided that specified criteria are met.

Policy SC2 of the **OPS** in relation to location of schools, reproduced hereunder in *italics*, provides –

“Sites selected for schools should follow the sequential approach outlined in Policies SD1, SD2 and SD3 and be either within or on the edges of settlements where large vacant sites, utility networks and public transport services are available or can be provided at acceptable public cost. In appropriate cases, new District-level public sports and recreational facilities should be considered for location adjoining major school sites where a high level of accessibility especially by public transport can lead to a more efficient provision through shared use.”

Justification: *The Ministry responsible for Education has been actively constructing new schools especially secondary and sixth form colleges to address the shortage of high school places throughout the country. The Outline Scheme seeks to enable the education authorities to plan for new schools in areas of growth or deprivation consistent with its aims and development principles. Ideally, all primary school children should be able to walk to their nearest school and all school aged children should have access to a choice of travel modes including public transport. In well-accessed locations, especially by public transport, consideration should be given to provision of district level public sports and recreation facilities where shared use of facilities by students, staff and the community can lead to efficiency in provision and use of expensive Government social infrastructure.*

III. GROUNDS OF APPEAL

Under ground (a)

9. It is the contention of the Appellant under this ground that the decision communicated by the Respondent on the 26th October 2022 by email did not amount to a proper decision as no reason was given to the Appellant. We note that there was an email sent by the Respondent on 26th October 2022, **Doc L**, found at pages 51 and 52 of the Brief, issued on behalf of the Chief Executive of the Council which makes reference to the application of the Appellant and states, “I regret to inform you that the Permits and Business Monitoring Committee has not granted the permit for the following reasons: REJECTED IN PBMC 21.10.22 1. Intensification of ongoing activity resulting in nuisances in the surrounding..”

10. It is evident to us that the PBMC, hence the Council, rejected the application because a pre-primary school was already operating on the premises. The Council decided not to grant the BLUP on the grounds that adding a primary school-Oakdale Primary School-to the same premises would intensify the schooling activity, causing nuisance to the surrounding environment. Whether the Council’s decision is correct or well-founded is another matter. However, we are satisfied that the Council, exercising its discretion, considered the application and provided a reason based on planning principles to justify its decision. This ground is therefore set aside.

Under ground (b)

11. The Appellant contests any intensification of an ongoing activity. From **Policy SC1 OPS** it appears that residential buildings or plots can be used for pre-primary schooling, as in the present instance, if they meet requirements for size, parking, safety, and minimal nuisance to neighbours. In the present case, it appears that as long as the school was functioning as a pre-primary school, the neighbours had no objection to its operation

and the Respondent had granted it a BLUP for the activity since it hinged on the application of **Policy SC1**.

12. The policy suggests that typically, a primary school can accommodate a pre-primary school. An examination of the facts reveals a departure from this framework. The situation was now reversed—a new primary school was being added to the same plot and building area already occupied by a pre-primary school. The plot and building in question, initially having received planning approval for a pre-primary school, have since been repurposed to accommodate a primary school in addition to the pre-primary facility. The neighbours in the area objected to this, and the Council rejected the proposal due to concerns about intensifying the existing activity.
13. In the year 2023, there were 124 students in the primary school, as per the records of the Ministry of Education produced by Mr. Appadoo, **Doc F**, and 123 students in the pre-primary school. The Appellant argues that the student population has remained, on average, unchanged. However, this argument is not persuasive, as student populations are inherently dynamic. There is always a possibility that, once a BLUP is granted, additional students could be enrolled, resulting in further intensification.
14. The objections raised by neighbors and the refusal by the Council on the grounds of intensification underscore valid issues. The **Policy SC1** emphasizes that activities on residential plots should not cause environmental or other nuisances or detract from the residential amenities of the area. The introduction of a primary school, given the constraints of plot size and building capacity, necessitated a reconsideration of the contextual development proposal on its planning merits for which a fresh application for a BLUP should imperatively have been made by the Appellant. The development would have been assessed on the applicable policy by the Council. It appears to breach the principles set out in **Policy SC1** by overburdening the premises and intensifying its use beyond acceptable limits. The policy's objectives are to maintain a balance between facilitating education and preserving neighbourhood harmony.

15. The Appellant's representative stated that they were advised by an officer of the Council that there was no need to make a fresh application for Oakdale Primary School but this does not in anyway tilt the balance favour of the Appellant's application. The objective of **Policy SC2**, on the other hand, favours large vacant sites for location of new schools. Introducing a primary school on an existing site, where older students, more students, more staff, and additional amenities is likely to require significant space, will lead to an intensification of activity. This is because the available space, surface area, and existing buildings will remain unchanged, resulting in higher demand on limited resources and higher frequency in locus visits. Therefore, we believe, independent of the outcome of its decision the Council was right in its consideration regarding intensification. This ground therefore fails.

Under grounds (c), (d), (e) and (f)

16. These 4 grounds are considered together as they are related. It is the contention of the Appellant that the Respondent was wrong to reject the application as no nuisance of any nature, be it vehicular or otherwise, would be caused in the surrounding area. Furthermore, the context of the premises was both residential and non-residential, such that in the circumstances a primary school was an acceptable activity.

17. The Ladybird school site has a private, one-way access connecting it to the main Constance Link Road and Ladybird Road. This access is primarily used by school vans and parents to drop off children directly within the school grounds, reducing traffic buildup on Ladybird Lane according to the Appellant's case. Document B, found on page 68 of the first brief's statement of case, includes a map detailing these access points and other key landmarks.

18. The case of the Appellant is that there is no issue of traffic congestion. Mrs. Ashmita Ramanah testified on the following: Students are brought to school by private vehicles, school vans, or on foot; Parents either park nearby to drop off their children or use the

private access road to enter the school grounds, where staff assist with a valet system for drop-offs; Student arrival times are staggered with drop-offs starting at 7:30 a.m. and continuing until around 9:00 a.m. to further ease congestion; There is a designated parking area. The Ladybird Pre-primary Schoolday ends at 2:00 p.m., while Oakdale Primary School ends at 3:00 p.m., with staggered dismissals. Additionally, she clarifies that not all students continue from Ladybird Pre-primary to Oakdale Primary, as it is a private institution. She also stated that a mechanic frequently parks vehicles for clients along Ladybird Road, contributing to congestion, as it's a busy route for hospital visitors.

19. Ladybird Road supports two-way traffic, while the private access road operates as a one-way. Mrs. A. Ramanah stated that they had requested that the Central Supplies Unit (CSU) consider placing double yellow lines on both sides of Ladybird Road to manage congestion and improve flow, particularly given lateral side roads.

20. The complaints raised by the neighbours, upon which the Respondent acted, concern nuisance and especially road congestion during peak hours. This issue arises primarily because both Ladybird Road and Ladybird Lane are narrow two-way roads that do not easily allow for the crossing of two vehicles. During the site visit, it was observed that the roads are 12.6 feet and 10.6 feet wide, respectively, making it difficult for vehicles to pass each other. Additionally, the presence of single yellow lines along both sides of the roads was noted.

21. Mr. Radha and Mr. Soobrayen, who live at opposite sides of the junction of Ladybird Lane and Ladybird Road, both testified about the daily inconveniences caused by the traffic situation near their homes, and they consistently maintained their accounts of the issue. One neighbour stated that at times they cannot take their car out of the garage because the congestion is so severe, requiring them to wait for the traffic to ease before accessing the road. Concerns were also raised about the safety of elderly residents in the area, who feel endangered as road users, and the degradation of the local environment due to the behaviour of school van drivers. The latter were reported to drive recklessly and use abusive language toward the elderly.

22. We have also had the opportunity to visit the premises on a weekday during school hours and have had an appreciation of the state of affairs on site when children of the pre-primary school were being picked up around half past two in the afternoon. During the site visit, we observed the current conditions firsthand. The presence of other traffic-generating commercial and other activities in the vicinity, such as Flacq Hospital and a car mechanic, as well as operations by the Central Electricity Board, cannot be overlooked. It was not disputed that individuals visiting Flacq Hospital occasionally park their vehicles along Ladybird Road, a short distance from the school. This situation, in our view, could pose challenges for drivers exiting the school premises and attempting to turn left onto the main Constance Link Road.
23. We also noted two bus stops, one situated before the private entrance to the school and another on Constance Link Road, which could potentially contribute to congestion along Ladybird Road and Ladybird Lane. Furthermore, a section of Hospital Road, which connects to Ladybird Road and provides access to the school, is restricted to one-way traffic.
24. Counsel for the Appellant submitted that parents dropping off their children at the school would typically use the safest and most practical route via the private entrance from Constance Link Road, which leads directly into the school premises. However, based on our site visit and the evidence presented by the Respondent, it appears that the congestion issue primarily arises when vehicles exiting the school premises attempt to access Ladybird Road and then return to Constance Link Road via Ladybird Lane. Many drivers may find this route quicker, contributing to the congestion. Therefore we cannot assume parents would typically use the route stated by counsel.
25. Mrs. Ashmita Ramanah has produced a series of videos demonstrating that traffic around the Ladybird Pre-primary School and Nursery site flows smoothly, with no significant congestion. This evidence was challenged by learned Counsel appearing for the Respondent and the Tribunal ruled in favour of its admissibility. The videos suggest that traffic remains constant on all surrounding roads, countering concerns about

blockages or disruptions. She points out that her neighbour, Mr. Radha, has been a source of tension with whom relations are strained. A stone boundary wall separates the subject site from Mr. Radha's property.

26. We must weigh the conflicting accounts of the Appellant's representative and the objecting residents regarding the issue of congestion. Although the videos submitted by the Appellant provide some insight into the traffic situation, we believe they are self-serving. The footage was filmed at specific times and locations chosen by Mrs. Ramanah, which may not offer a complete and accurate picture of traffic patterns in the area on most days. Evidence from an independent source, expert or authority, with data ideally collected in the presence of all parties concerned, would have carried significantly more weight. Ladybird road is mostly where the congestion arises as per the Respondent's case whereas Mrs. Ramanah's videos show traffic along Ladybird lane and Constance Link Road. We therefore cannot attach much weight to this evidence.

27. As such, this Tribunal cannot rely solely nor primarily on the video evidence. Instead, we must assess all the evidence holistically, including independent contextual analysis and planning appraisals. Mr. Bundhoo, the representative of the Council, also stated in his affidavit that he frequently observes congestion in the area. On this issue, we find merit in the objections raised by the residents of the area. The neighbours, Mr. Radha and Mr. Soobrayen, clarified that they had no issues with the operation of the Ladybird Nursery and Pre-Primary School. However, they indicated that the intensification of activities at the school has exacerbated the congestion problem.

28. Considering the narrow roads near the school, the proximity of Flacq Hospital, the presence of other commercial activities in the area, and the factors mentioned above, it is highly plausible that the increased activity at the school will worsen the traffic situation. During our site visit, we observed vehicles, including a school van, exiting the school premises. It was evident that the van struggled to manoeuvre out of the school's private access to turn right onto Ladybird Road. This difficulty stemmed largely from the

narrowness of the road, which compromises the visibility splay and limits the turning radius.

29. Furthermore, we believe that the congestion is incidental to the bigger picture which is that the student population has doubled. The evidence revealed that at present there are 247 students in the pre-primary and primary sections of the school. According to Mrs. Ramanah, the primary school currently accommodates about 124 students. Document F, submitted by Mr. Appadoo for 2023, confirms these figures. Staffing numbers remain below 20, with a few trainees from MITD. It appears that the population of the pre-primary students is approximately 123. This figure has not only doubled in terms of student population with the development and has increased to more than 150% when taking into account the additional staff members. This proportionately will inevitably lead to a marked rise in human and vehicular traffic converging to the school and out of the school at peak times.

30. In this context, we cannot lose sight of the fact that this was initially a residential building situated in an area where there exists a cluster of some 5-6 houses, converted into a small-scale undertaking and now moving to a medium-sized one contrary to the planning policies for primary and secondary schools. The non-compliance with the planning policies have been addressed lengthily. Primary schools may be located in residential areas, as addressed underground of appeal (f), provided certain criteria are met such as adequacy of infrastructure, favourable road networks and amenities and it is in accordance with the relevant planning policies, which is not the case here. We are alive to the fact that this matter involves the education of some 124 students and which we would be wary of disrupting. However, the Appellant has already been operating without a BLUP and this was a risk that it had unfortunately been willing to take. Now it is essentially seeking to fit in a development where it does not fit. The Appellant's representative stated that they were wrongly advised by an officer of the Council but the officer was not called as witness to substantiate this averment. The fact that the Council had previously granted a conditional BLUP does not have any bearing on the present appeal which relates to fresh application hence a fresh look at the merits. In any

event, even with the conditional BLUP granted, it appears that the Appellant nevertheless took the added risk of not fully complying with the conditions imposed by the Council by not contacting certain authorities in an attempt to fully explore every avenue available to it, which may have saved the day for the Appellant.

31. Furthermore, the Oakdale school operates with six classrooms on the first floor and five on the ground floor, with class sizes ranging from 6 to 30 students. Granting a BLUP to it will not restrict the class sizes because the Appellant will be at liberty to increase its intake since some classrooms currently only have 6 students. This number can be increased by the Appellant should students seek admission-there has already been an increase of over 150% in the population to start with. This does amount to an intensification of the schooling activity.
32. We have taken on board that there is now a parking area at the school but according to Mr. Bundhoo, it can only accommodate around 8 cars easily, but not 12 as per the version of the Appellant's representative. We agree on the size of the parking area with appreciation of the Council's representative and do not believe that it greatly alleviates any traffic congestion problem.
33. It follows therefore in our view that any intensification of the schooling activity would increase traffic flow and parking issues, thereby potentially affecting the safety and convenience of all but especially elderly residents. Mr. Soobrayen explained that there were elderly people living in every house along Ladybird Lane and because of previous bad experiences, their safety is at stake. This is a legitimate concern in our view especially as it does not seem that the existing road network around the subject site can handle the additional traffic from parents, staff and even service vehicles especially with people attending the Flacq Hospital already parking their cars at times along ladybird Road. These grounds of appeal therefore have no merit.

34. The claim that Mrs. Soobrayen was hit by a school van cannot be substantiated due to an absence of any supporting proof.
35. Counsel for the Appellant referenced the testimony of a Police Officer, PC Kissoonah, who was asked to visit the premises to look into an odour allegedly emanating from the toilets of the Appellant's property, the issue of traffic and noise. While he did not observe congestion during his visit and stated there was sufficient space to park as that seemed to be the primary purpose of his inspection. We cannot take his evidence to mean that congestion never occurs in the area although he said he has never noted traffic jams.
36. He stated that there was no smell emanating from the toilet at the time of his site visit. In this context, we, however, did not note any issue of a foul smell emanating from the Appellant's premises. The toilets were not directly in line with the premises of Mr. Radha and there seemed to be some setback that would serve for buffer. The report of Mr. Bhurosah from the Ministry of Education, Doc A, also offers supporting evidence as he and Mr. Appadoo also did not note any bad smell emanating from the toilets.
37. On the issue of noise pollution, we have made an assessment on whether the increased noise from older children during school hours, breaks, and extracurricular activities could significantly disrupt the peace of the elderly residents. We believe that none of Mr. Radha's claims seem substantiated, although we can appreciate that having a school can lead to some level of noise pollution to be borne by the next-door residential neighbours. The playground is in fact at some distance from the house of Mr. Radha with the school building acting as a buffer between the two.
38. The area behind the school which aligns with the property of Mr. Radha along Ladybird Road, as noted in the course of the site visit, is very restricted in terms of space and cannot accommodate a large gathering which could potentially create noise nuisance over prolonged periods although we are ready to believe that any vehicular traffic

generated by the development is likely to cause noise and hence be disruptive to people who wish to have a peaceful enjoyment of their property. The evidence of PC Kissoonah adds no value here as the students were in class at the time of his site visit.

Under ground (g)

39. The Appellant's contention under this ground is that the Respondent was wrong to reject the application because primary schools are generally situated in a residential and/or mixed area. This ground of appeal as couched is legally unfounded in that it is an irrelevant comparison with no valid basis for contesting the impugned decision in this particular instance. Planning applications are required to be evaluated on a site-specific basis in accordance with the applicable planning laws and guidelines. The location of primary schools, without addressing the particular circumstances of the application site, is not an appropriate nor sound comparison to make. The argument relies on a generalized comparison that does not account for the unique factors of the site in question, such as specific physical constraints or contextual considerations.
40. As previously mentioned, **Policy SC2 of the OPS** primarily applies to areas with large plots designated for secondary and primary schools or primary schools that already have sufficient site areas for smaller-scale schools. In this context, the current situation involves a smaller school site being required to accommodate a larger school population, using the same infrastructure. Simply arguing that primary schools are generally located in residential or mixed-use areas is a generalised and irrelevant point when considering the broader implications of this case.
41. Furthermore, it does not demonstrate any substantive error in the Respondent's decision with respect to this specific application, making it legally unsustainable. This ground of appeal is therefore set aside.

Under ground (h)

42. The Appellant challenges the decision of the Respondent on the ground that the Appellant has been carrying out an activity of similar nature in the form of a Pre-primary for school more than 25 years.
43. The Appellant in this case is Oakdale Primary School, Central Flacq Ltd. which has only been incorporated as a registered private company on 22nd May 2019 as per **Doc E** and acquired its own Business Registration Number [C19164730] on the same day as per its Business Registration Card, **Doc F**. Additionally, the documents marked Doc B, B1 and C also annexed to the SOC are evidence to the fact that Oakdale Primary School, Central Flacq Ltd and Ladybird Pre-primary School & Nursery Central Flacq Ltd. are separate legal entities. Therefore, it would be legally incorrect to state that the Appellant has been carrying out an activity of similar nature in the form of a Pre-primary for school more than 25 years.
44. Furthermore, each application is decided on a case-to-case basis. The ground of refusal acknowledges that there is an ongoing activity and adding on the activity of having a primary school would amount to an intensification. The fact that there was a pre-primary school operating for more than 25 years has no legal nor planning incidence supporting the application. It does not render the activity in itself more “acceptable” to the amenity of the area, as can be evidence by the various objections raised by the neighbours. In fact, quite the contrary, it supports the ground of refusal in our view. Therefore, this ground of appeal is set aside.
45. For the reasons outlined above, we find the Council’s decision justified. However, as this case involves the education of children at an important stage in their academic life, any disruption could affect their well-being. If the Appellant addresses traffic congestion by ensuring free vehicular flow in and out of its premises without using Ladybird Road and Ladybird Lane during drop-off and pick-up, thereby reducing neighbour complaints, the

Council may wish to reconsider a fresh application. Any approval should include conditions to prevent further intensification of activity.

46. The present appeal is otherwise set aside. No order as to costs.

Determination delivered on 13th December 2024 by

Mrs. J. RAMFUL-JHOWRY
Vice Chairperson

Mr. R. ACHEEMOOTOO
Member

Mr. S. BUSGEETH
Member