

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

**ELAT 2181/23**

**In the matter of:**

**Vinod Leelodharry**

**Appellant**

**v/s**

**District Council of Riviere du Rempart**

**Respondent**

**DETERMINATION**

1. The present appeal is against a decision taken by the Council for having rejected the application of the Appellant for a Building and Land Use Permit ["BLUP"] for the proposed construction of a one storeyed concrete building for mechanical repair of motor vehicles (employing less than 10 persons) at ground floor and a residential building at first floor situated off School Lane, at Cottage. The grounds for rejection by the Permits and Business Monitoring Committee ["PBMC"] communicated to the Appellant on 13<sup>th</sup> July 2023 are set out below:

*"The development is not in accordance with the:*

- *Town and Country Planning Act*

*1. The Proposed development contravenes the provision of the Outline Planning Scheme as the site is in a predominantly residential area and also contrary to Policy SD1 and ID2 of the Outline Planning Scheme. There is a presumption against the proposed development according to*

*the Planning Policy Guidance as such activities are not acceptable uses within a predominantly residential area. Objections have been received from immediate neighbours.”*

2. The 3 grounds of appeal as per the Notice of Appeal are set out hereunder in *italics*:

*(a) The District Council erred when they considered the presumption against the proposed development.*

*(b) There is already development in the same morcellement which the District Council ignored.*

*(c) The Committee failed to consider the undertaking given by the Appellant.*

3. The Appellant, who was legally represented deponed under solemn affirmation and was cross-examined by the legal representative of the Respondent. Mrs. Padayachi, Planning Inspector, deponed on behalf of the Council and was cross-examined by the Appellant’s counsel. We have duly considered all the evidence placed before us as well as submissions of both Counsel.

#### **I. CONTEXT ANALYSIS**

4. The undisputed evidence is that the subject site lies within settlement boundary and is located in a residential area. This is evidenced by the title deed, marked Doc C, which stipulates that the land is “de nature residentielle”. It also shows that the plot size is approximately 695.66sq metres. The subject site is currently bare land with a boundary wall as shown in photograph marked Doc A7. The site, situated at the very end of the road as can be seen from the photographs produced by the Appellant, is accessible through 2 ways: a proper road within the morcellement and an untarred track which also runs past the other properties, some of which are currently undergoing development.

5. As regards the surrounding area, there is one building which is situated behind the property of the Appellant as is noted from Doc A2, which has been put to residential as well as industrial use where a company by the name of Beekhun Blinds Company manufactures blinds. Opposite to the subject site are sugarcane fields. Adjacent to it are uninhabited bare land on both sides, as evidenced by photographs marked A and A1 produced by the Appellant. However, one of these plots is the residential property of one of the objectors.
  
6. The Appellant's case was essentially based on the fact that this activity will not be like the traditional mechanical workshop. He works for a company known as Bamyris Motors where he has acquired the specialized skills of working with sophisticated machinery that does not generate noise or fumes. He explained that these modern mechanical workshops can be compared to laboratories and that the workshop will be enclosed and have air conditioning. The parking area has been described in detail by him to show that repairs will be on an appointment basis and there will very few cars in his compound at any given period of time. According to him, effecting repairs with the new types of equipment will not generate nuisances, fumes and noise pollution. He did not contest the objections raised by his neighbours but states that none of them actually live there at the moment. He believes that his project may have been misunderstood and states that he gives the guarantee that he will not construct the building the way it has been shown in his application.
  
7. The refusal of the Council is grounded essentially on the point that the area is predominantly a residential one and the proposed activity is not acceptable within a predominantly residential area as per the **Planning Policy Guidance [PPG]** and that objections have been received from immediate neighbours.
  
8. To substantiate their contention, the Council has referred to the provisions of the Planning Policy Guidance ("PPG 1") as set out in **section 2.13 of the Planning Policy Guidance on Small Industrial Workshops and Home Working**.

## II. PLANNING LAWS AND INSTRUMENTS

9. Having established that the subject site lies within a residential area, the relevant policies to be consulted for such developments in residential areas are **section 2.13 in the Planning Policy Guidance on Small Industrial Workshops and Home Working**, which includes certain types of industrial development which would not normally amount to “bad neighbour” developments as termed in planning jargon, and which stipulates:

*Industrial Uses such as panel beating and spray painting, manufacture of furniture and vehicle repairs are not normally acceptable uses within residential areas due to dust, noise, fumes, vibrations and other adverse environmental effects. Examples of potentially acceptable small scale enterprises include cooking of sweets and food preparation, sewing and small scale clothing manufacture, repairs to electrical goods, minor car/mechanical and bicycle repairs, artists’ studios, offices such as book keeping, administration etc.*

10. The Policy that finds its application here is **Policy ID2 of the Outline Planning Scheme of Pamplemousses – Riviere du Rempart on Small Scale Enterprises and Home working** which provides

*Proposals to operate and extend office/business uses or small scale enterprises from residential properties should only be permitted if the use is ancillary to the principal use as residential. Criteria should include:*

- 1. Premises are of a suitable size and design to accommodate the additional activity and all its ancillary requirements such as parking, loading area and adequate setbacks from neighboring properties.*
- 2. No neighbours’ objection within a radius of 50 metres.*
- 3. No serious/adverse impact on residential occupiers in the area or the character of the neighbourhood particularly in regard to noise, fumes, smells, dust nor excessive vehicle movements or loading and unloading of goods and products;*
- 4. Sufficient parking space within the cartilage of the property available to accommodate any staff or visitors;*

5. *Safe access from the roadway...*

**III. GROUNDS OF APPEAL**

**(i) Under Ground of Appeal (a) and (b)**

**11.** The first and second grounds of refusal being interrelated will be addressed together.

The first and second grounds of appeal are that the Council erred when considering the presumption against the proposed development. The main contention of the Appellant is that the Council did not pay heed to the fact that there is a non-residential development right behind the Appellant's property. The Appellant argues that he informed all the neighbours and provided several assurances regarding his operation. He committed to using advanced, low-noise equipment, including a silent rotary screw compressor and tyre gun, and to operate within a closed environment with modern tools. The work hours would be strictly by appointment, from 8:30 am to 5:00 pm, and jobs would be carried out inside his yard, with no vehicles kept on the road or causing obstructions. The premises would remain gated during working hours, and access would be through the sugar cane plantation side, not the morcellement side. He also pledged to follow all Council conditions and create employment.

**12.** The title deed mentions that the land use of the property is residential and it is not disputed that all those properties situated along the access road that leads to the subject site are meant to be for residential use. As a form of general application, **Policy SD1** which regulates development within the Settlement Boundary is applicable. We have borne in mind the wide experience of the Appellant in the field as well as the development proposal as described by him and the various undertakings he is ready to give and the fact that the Appellant wishes to reside on the first floor. Whilst these factors are in his favour, we cannot ignore the fact that the nature of the proposed development is heavy industrial and the site with the surrounding properties are residential in nature. This automatically triggers the application of **Policy ID2** and **2.13 of the PPG 1**. Having a mechanical workshop is by its very nature a bad neighbour development which will change the character and amenity of a residential area as

regards the inflow of human and vehicular traffic. These create disturbances in the daily lives of residents of the locality and compromise their right to the peaceful enjoyment of their property. A residential area is normally characterized as being quiet and serene, family-oriented. The safety aspect is also influenced by the kind of appeal that an area has when neighbours are the usual faces seen as opposed to having strangers in the vicinity of their homes on a regular basis. This also raises issues of loss of privacy.

13. We bear in mind that the application of the above-mentioned policies do allow for some light industrial development which are only on small scale and ancillary to the main residential use of the property and which will not change its residential character. In fact, from the evidence of the representative of the Council, it appears that the business being operated by the blinds company is light industrial activity and is confined within the building. It does not generate noise, fumes, excessive vehicular movement and it has been operating since long without any evidence of inconvenience to the neighbourhood. Its presence does not render the area a mixed use one, the area is still considered to be predominantly residential.
14. There is no doubt that the extent of the Appellant's property is sufficiently large and therefore space and setbacks should not be an issue. However, being given that the land use of all the lots of the morcellement have the common destination of being residential, it gives the adjacent property owners the right to object because ultimately they may choose to reside over there. This is one of the criteria under **Policy ID2 of the OPS**, which the Council considered and was duty bound to consider. The Council cannot therefore be said to have erred in concluding that the area is a predominantly residential one nor was it wrong in its application of the 2 policies which are of relevance here.
15. True it is that the Appellant has in good faith contacted the neighbours and was willing to give all the various assurances. His application, however, as submitted to the Council did not reflect the way he intends it to be nor the way he purported to explain to the Tribunal which gave the impression that it would almost be a state of the art

“laboratory” to use the Appellant’s words. Unfortunately, his undertakings and the design of his building, upon his own admission, were not clearly reflected in his application. Therefore, if the Council has not been in a position to gauge the nature of project, it cannot be blamed: the Appellant was given the right to put in plans and documents with his application as well as the opportunity to explain his project before the Permits and Business Monitoring Committee [“PBMC”]. Therefore, these 2 grounds fail.

**(ii) Under Ground of Appeal (c)**

**16.** The contention of the Appellant which is in relation the ground of refusal that objections have been received from immediate neighbours, is grounded on the premises that there have been several undertakings given by the Appellant. While we note that the Appellant does not seem to be denying the merit of those objections, his approach is more towards offering assurance as regards the possible qualms that the objectors have. However, the issue at hand here is whether the objections are valid and if they are, whether the undertakings offered would suffice.

**17.** Firstly, we note that despite the point made by the Appellant that he had written to the objectors in good faith, the fact of the matter remains that objections were received implying that either the neighbours did not agree with the project in view of its nature or that they possibly did not agree with it because they did not understand it. Be it as it may they have objected and the Council was duty bound to take them on board in compliance with the **Policy ID2 of the OPS**. A hearing was scheduled during which the Appellant had the opportunity to expatiate on his project to the Council and to the objectors. Despite this, the objectors maintained their objections.

18. Application of **Policy ID2 of the Outline Scheme** provides that the proposed development should not adversely affect the residential amenity and there should not be objections from neighbours within a radius of 50 metres. These have not been satisfied here. According to Mrs. Padayachi, planning inspector of the Council, approximately 3-4 objections have been received against the proposed development. The Council's representative explained that the objections raised were concerns about potential harm to health, disturbance to the peaceful residential area, noise and air pollution, lack of control over road users, and fears for their security. Residents are worried about theft, especially as many leave for work and return late, as well as general inconvenience and annoyance.

19. This evidence justifies the application by the Council of the provisions of the policy under **paragraph 2.13 of the PPG1** and **Policy ID2** *supra*, there should be "*no neighbours' objection within a radius of 50 metres*". The Council was fully entitled to consider the nature of the complaints and were justified in upholding the objections which do not in our view seem unreasonable or disproportionate. One of the objectors intends to live next door. Some of the objections raised against the activity of the Appellant is the noise generated by not just the activities of repairing vehicles but also its associated commotion in terms of traffic and the inconveniences generated are incompatible with a residential area where the inhabitants expect to enjoy the serenity of being away from the hustle and bustle of the main road. The objections also raised the safety aspect regarding the neighbours' properties. There will be strangers visiting the neighbourhood every day because of the Appellant's business, this will raise safety issues with regard to other property owners and road users which will be beyond the control of Appellant. Therefore, the undertakings given by the Appellant do not mitigate these possible dangers. The neighbours have a constitutional right to enjoy their property, which has been shown to be of residential nature. They have a legitimate expectation to enjoy their residential property and this should not be compromised by one person's wish to deviate from the agreed destination unless there was no objection from the neighbours within a 50-metre radius. This ground therefore fails.



20. We have a duty to apply the settled principles and policies that define the parameters of development unless the situation is such that a derogation is justified. When all evidence is weighed up, the Tribunal is of the view there is no reason to derogate from the application of the policies. The subject site being within the settlement boundary, the area is predominantly residential, numerous neighbouring property owners have raised objections and despite being given opportunities the Appellant could not explain his project with sufficient clarity nor did he provide sufficient evidence, for the appreciation of the Tribunal, to show the manner in which the workshop would be state-of-the-art thereby reducing or eliminating noise, pollution and other inconveniences. In addition, scant information was furnished on the proposed structural closed-off nature of the workshop which according to him would result in little or no nuisance to neighbours.

21. For all the reasons set out above, we uphold the decision of the Council. The appeal is set aside. No order as to costs.

Determination delivered on 26<sup>th</sup> September 2024 by

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

**Mr. R. SEEBOO**  
Member

**Mr. S. BUSGEETH**  
Member