

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 2187/23

In the matter of:

Mr. Rajkumar Cally

Appellant


v.

The District Council of Moka

Respondent

Determination

This appeal is against the decision of the District Council of Moka for having rejected the application made by the Appellant for a Building and Land Use Permit (BLUP) for a proposed multi-purpose hall including a wedding hall at Royal Road, Montagne Blanche. The sole ground of refusal, as communicated through the National Electronic Licensing System on the 7 September 2023, is that the "Required clearances have not been granted:1. Detailed clearance from the Traffic Management and Road Safety Unit has not been obtained".

The Appellant lodged a notice of appeal on the 26th September 2024²⁰²³ with the following grounds of appeal: 

1. Because the Respondent erred when it rejected the application on the ground that detailed clearance from the Traffic Management and Road Safety Unit (TMRSU) has not been obtained when in truth and in fact, no clearance was required by the TMRSU in as much as the proposed development does not qualify as large scale.
2. Because the reason put forward by the Respondent is devoid of merit in as much as there is an agreement between the Ministry of Local Government and the Ministry of Land Transport that only BLUP applications for large scale development which should require TMRSU's clearance.
3. Because the Respondent failed to mention the specific reasons as to why it was sending the application to the TMRSU when it was previously requested not to do so.
4. Because the Appellant was wrongly denied the permit on erroneous and invalid reason from the Respondent.

From the Statement of Case filed by the Appellant, it is borne out that the Appellant had made several applications for BLUP for the same proposed development, and they had been

rejected by the Respondent. The present appeal is against the last application which was rejected on the 7th September 2023, the sole ground of rejection being set out above.

In its Statement of Defence, the Respondent made a chronology of its decisions to reject no less than seven applications submitted by the Appellant, for lack of clearance from the TMRSU. The Respondent even mentioned in its decision dated 7 March 2023 (Annex B to the SOD) that “the Council reserves the right not to consider further applications for the same development if there are no material changes in the proposed development”.

The issue of want of clearance from the TMRSU has been central to the concerns of the Respondent, and this is the sole ground of refusal in the present matter.

At the very outset, it is highlighted that the decision subject matter of present appeal is the one dated 7 September 2023 and the earlier applications made by the Appellant are not before the Tribunal and should, in our view, have no bearing on this matter.

As regards the clearance from the TMRSU, the onus is on the Respondent to contact this authority with a view to obtain their input in the assessment, being given that they are the specialist body having the expertise in traffic assessment.

The response of the TMRSU is contained in a letter dated 15 July 2021 produced as Document B by Mr. Joyram, witness for the Appellant, who represented the TMRSU at the hearing. The witness explained that the TMRSU was bound to act in accordance with the said letter (Document B) which embodies a decision reached between the Ministry of Local Government and Disaster Risk Management and the Ministry of Land Transport and Light Rail. The decision relied upon reads as follows:

“...The TMRSU will henceforth assess and advise on traffic matters related to large developments only. Our assessment and advice on traffic and road safety matters in the determination of applications for BLUP are essential to ensure that developments are safe, convenient, accessible and sustainable.

Consequently, only large developments having land use intensity greater or equal to the threshold values given in the table [...] should be submitted by the local authorities to the TMRSU for assessment.”

A table listing down the types of activity and the gross floor area that would be considered as ‘large developments’ is set out in the letter. There is no reference in this table to ‘Multi-Purpose Halls’, *per se*, but witness Mr. Joyram explained that this has been assessed under the category of ‘Leisure [hotels, cinemas, conferences centre]’ which requires a surface area of, or exceeding 1000 square metres of ‘Gross Floor Area’. The position of the TMRSU on the proposed development is as follows:

“In the light of the above and following a TMRSU technical committee held on 15 July 2021, the proposed development is considered to be a small scale and does not satisfy the criteria set in Table 1 as Leisure Land Use Type for this office to give its views, comments and recommendations.”

The TMRSU therefore did not deem it necessary to make an assessment on the present application given that it is a small-scale development. A further request for the expert opinion of the TMRSU was made by an email dated 8 March 2023 from the planning department of the Respondent (Document C), to which the TMRSU, through an email from Mr. Joyram, requested for specific details and reasons for which the technical input of the TMRSU is required. The specific details were communicated to the TMRSU by a mail from the Planning

registry of the Respondent on the 18 December 2023, to which the TMRSU declined to respond for the reason that there is an ongoing case before the ELUAT (Document D).

Witness Mr. Joyram was lengthily cross examined on the location, namely on the presence of bends on the road near the proposed development. It is noteworthy that the plan of the locus has not been produced, so much so that the clarifications sought from the witness were being done for the first time in cross examination. The witness maintained that the TMRSU did not provide technical expertise on the assessment of the proposed development and the reasons for this. No specific information had been requested by the Respondent prior to the appeal which could have warranted the intervention of the TMRSU/ or justified a departure from the policy decision of the relevant Ministries.

The Appellant deposed and explained that he had made several applications to the Respondent for the proposed development and had complied with the requirements that had been set by the latter on each occasion. The last application that he made had been declined based on the absence of clearance from the TMRSU. He enquired from the TMRSU and, as per information that he had received, they had no problem with the setting up of a wedding hall as proposed by the Appellant.

The representative of the Respondent explained that the council had requested for the views of the TMRSU because of the specific characteristics of the location, namely, the fact that the proposed activity was likely to generate a heavy traffic flow on the classified road of Montagne Blanche and it is close to a junction. Given the potential danger that the increased traffic flow could cause as the proposed development catered for a parking space of a hundred and ten vehicles, the input of the TMRSU was required. The representative added that the Council wanted to have the expert view of the TMRSU on mitigating measures that the Appellant needed to take and the conditions that the local authority could impose in the permit.

Yet, it came out in the cross examination of the representative that with regards to the application subject matter of the present appeal, there had been no request made to the TMRSU for any clearance whatsoever. The explanation given for this is that the council had informed the Appellant in earlier rejection letters that any new application is not necessary if there are no new elements in the application. By this, the witness presumably referred to the clause in the rejection letter which stated that *"The Council reserves the right not to consider further applications for the same development if there are no material changes in the proposed development"*.

We do not condone this procedure followed by the Council, the more so that the onus is on the Council to seek clearance or advice from other relevant institutions (here, the TMRSU). Had the Council not been satisfied with the standard assessment based on the scale of the project done by the TMRSU, it had the duty to submit specific requests to the TMRSU that could assist it in its decision making. The Council cannot rely on replies given in earlier applications, the more so that the reply given had not shed light on the concerns that the Council has with regards to the traffic implications at the spot.

This, the Council failed to do.

As a consequence, the absence of clearance from the TMRSU cannot be attributed to the Appellant as a justifiable ground for the rejection of the application. Had the steps been taken to secure the technical expertise that the Respondent deemed necessary for it to assess the application objectively, it ought to have done so.

On the other hand, we have to make some observations as regards the stand of the TMRSU. This unit, being the expert unit on traffic related matters, ought to be guided by its purpose and taken a more collaborative approach (to say the least) when specific requests are made by other authorities, like the Respondent in this matter. The unilateral policy decision to restrict their intervention to a certain scale of development only can have serious consequences if traffic matters are not regulated.

Be that as it may, the decision of the Respondent to reject the application based on the reason that has been given does not hold, especially because, as per the TMRSU, there was no requirement for a clearance at all (albeit our observation made above).

For the reasons given above, we uphold the grounds of appeal raised by the Appellant. The appeal is allowed and we remit the decision back to the Respondent for it to grant the BLUP and to lay down the conditions that it deems necessary for a development of this nature and scale.

No order as to costs

Determination delivered on the 27th June 2024 by:

Mrs. Vedalini Bhadain, Chairperson

Mr. Radhakrishna Acheemootoo, Member

Mr.Suffee Ismet M. Suffee, Member

For Appellants: Mr. Bhavesh Dowlot, together with Mr. Dhanraj Sharma Nobin

For Respondent: Ms. Ackburally, together with Mr. Z Rajani, instructed by Mr. P. Lallah