

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

**ELAT 2135/22**

**In the matter of:**

**Avantibio Ltd. represented by Mr. Pardoomun Babooa**

**Appellant:**

**v.**

**The Municipal Council of Quatre Bornes**

**Respondent**

**Determination**

The issue to be determined in the present appeal is whether the Respondent rightly insisted on the need for a written consent from the syndic in order to consider an application for a BLUP made by the Appellant to start a medical laboratory in the premises which was so far used for residential purposes. The said premises are situated at St Jean Road, Quatre Bornes. The reason for conversion of the residential premises, as explained by the Appellant in his examination in chief, is that the proximity of the metro line to his apartment and the removal of the hand rail that separated his apartment from the road for the purposes of the metro has resulted in a lack of privacy, so much so that the apartment situated at ground floor level can no longer be used for residential purposes. He put forward two more grounds in support of his appeal, firstly, that the development of the subject site, a medical laboratory, will be beneficial to the health of the residents of Quatre Bornes in that it will be a service to the neighbourhood and to the community at large, secondly there were two other apartments in the same building that are used as business premises and operating commercial activities.

The representative of the Respondent attempted to lay the onus on the Appellant to establish whether those two entities had been granted permits to operate commercial activities in the residential premises. Our observation to that is that the Respondent, being the local authority having the jurisdiction to grant or refuse such applications, is better placed to ascertain that. Furthermore, should they be operating without a permit, the onus is on the local authority to act accordingly.

That being said, counsel for the Respondent has stated that there is no planning issue that is restraining the council from granting the permit, the only issue being the lack of written consent from the syndic for the matter to be taken and approved by the Permits and Business Monitoring Committee.

A chronology of the matter before the Tribunal shows that the Appellant sought it appropriate to call the syndic, one Mrs. Aissha Joomun, to depone as regards her stand to the proposed



development. She deposed stating that the syndic has no objection provided the required amendments to the project are made so as not to disturb other residents. Besides, the owners of apartments can take decisions as regards the '*destination*' of their property in so far as they do not disturb other property holders. She added that there had been no objection made to her in her capacity as syndic, nor to the council (as per information gathered by her) to the proposed development. Question was put to her whether she would be willing to give a written consent should the Appellant need to submit a fresh application, and she agreed.

On a procedural level, the Respondent required a fresh application to be made because, as stated by counsel, the National Electronic Licensing System (NELS) cannot issue a permit under the same application if it has been rejected initially. Counsel also stated that there would be no 'planning issues' to be considered in this matter, the sole consideration being the written consent from the syndic to be made available.

It subsequently came out that the Appellant had been unable to obtain the written consent from the syndic, the latter having stated that she had already communicated her position *viva voce* before the Tribunal. We observe that this is a syndic who is making an abuse of her authority as syndic, given her stand, as communicated *viva voce* before the Tribunal, and her subsequent refusal to give a written document as per the evidence of the Appellant.

On the other hand, we are flabbergasted by the position of the Respondent, which is a public body, by their refusal to consider the record of the Tribunal, which is a quasi-judicial body, for the purpose of a decision. Authority has been given by the syndic under oath before the Tribunal. This should suffice for the Respondent to act.

It has been suggested that the statement made by the syndic under oath is not a consent that can be considered for the purposes of the fresh application, being given that the syndic had been called for the purpose of the appeal lodged against the initial decision to reject the application. The written consent was necessary for considering the fresh application.

We remind the Respondent that the section 5 sub-section 3(c) of the ELUAT Act 2012, as amended, provides that "*Any proceedings of the Tribunal shall ...not preclude an endeavour by the Tribunal to effect an amicable settlement between the parties*". The Tribunal, thus, conducts mediation in matters which it considers can be disposed amicably. This is what has been done in the course of the sitting of the 6<sup>th</sup> April 2023, when the syndic deposed under oath and gave her consent. Now, if for some reason connected to the computer system used by the Respondent, the latter cannot reassess a decision based on the outcome of a mediation, this is a matter for the Respondent to resolve. The limitations of the NELS system to be in compliance with the mediation process that is done before the Tribunal and the implementation of the outcome of the mediation cannot be laid at the door of the Tribunal nor the Appellant. By requesting for a fresh application to be submitted, the Respondent is not given a 'second bite at the cherry'. Procedurally, the fresh application (done solely to meet the requirements of the NELS) is meant to be considered in the light of the outcome of the mediation.

In the present matter, the Respondent has clearly stated that there is no planning consideration that has caused the approval to be withheld and the only missing element was the consent of the syndic. This consent is part of the official records of the Tribunal dated 6<sup>th</sup> April 2023, a certified copy of which can be made available to the Respondent.

For all intents and purposes, this amounts to a consent that meets the requirements for considering the application by the Respondent. The insistence of the PBMC to be in presence of the written position of the syndic may be the normal cursus that the local authority follows.

Yet, the official record of the Tribunal containing the consent of the syndic is the authority '*par excellence*' on which the PBMC can act.

Being given that the Respondent has stated that there is no planning issue that is in dispute, we find no need to address the other points raised. The grounds of appeal as contained in the Notice of Appeal have been amply supported in the course of the testimony of the Appellant.

In addition to the above, it is amply clear that the immediate proximity of the metro to the premises of the Appellant has impacted on the ability of the Appellant to reside there. We take judicial notice of the fact that the residential characteristic of the premises has changed. This brings support to the Appellant's application.

We accordingly allow the appeal and refer the matter to the Respondent for it to issue the BLUP applied for with the conditions that it deems necessary for such an activity.

Determination delivered on the 30 January 2024 by:

**Mrs. V. Phoolchund-Bhadain, Chairperson** .....

**Mr. Radhakrishna Acheemootoo, Member** .....

**Mr. Suffee Ismet Mohamad Suffee, Member** .....

For Appellant: Mr. Ashok Jugnauth of counsel.

For Respondent: Mrs. Tawheen Z. Choomka of counsel.