

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 2107/22

In the matter of:

INAS & Co. Ltd

Appellant

v/s

The Municipal Council of Vacoas/Phoenix

Respondent

IPO:

- 1. Mr. Mohamed Ali Aniff Nazeebun**
- 2. Al Safaazam Hotel Halaal Food Ltd.**
- 3. Mr. Mohamed Anwar Hussein Gorabye Chukoury**

Co-respondents

DETERMINATION

1. The present appeal is against a decision of the Council for having rejected the application of the Appellant for a Building and Land Use Permit ["BLUP"] for the conversion of an existing residential building at ground floor to be used as a dormitory at Royal Road, Phoenix. The Appellant operates the business of supermarket by the name "LOLO HYPER".
2. The ground for rejection communicated to the Appellant via the NELS on 11th May 2022 is set out below:
 - (1) The proposed development will be disruptive to the amenity and character of the residential neighbourhood.*
 - (2) The proposed development is likely to create bad neighbour impact on the residential occupiers in the area.*

3. The 2 grounds of appeal as per the notice of appeal are set out hereunder:

“1. Because the Respondents decision to refuse to grant the application for a building and land use permit, on the basis that the proposed development will be disruptive to the amenity and character of the residential neighbourhood and that the proposed development is likely to create bad neighbour impact on residential occupiers in the area was unfounded and flawed;

2. Because the respondent was wrong to have considered the mere apprehensions of the objectors as being sufficiently probative of the alleged incompatibility of the proposed development with the amenity and character of a residential neighbourhood and/or It being likely to create bad neighbour impact on the residential occupiers in the area.”

4. The Appellant was legally represented and also represented by Mr. Baureek, its administrative officer. Mr. Nasser Jauffur owner of the property [hereinafter referred as the “Dormitory Building”] and also an employee of the Appellant deponed in favour of the Appellant’s case. The Respondent was legally represented and Mr. Cundasamy who heads the planning department of the Respondent deponed on behalf of the Council. The Co-respondent no.3 deponed on behalf of all Co-respondents who were also legally represented by late Mr. Doorga. A site visit was conducted by the Tribunal in the presence of all parties. We have duly considered all relevant evidence placed before us and the submissions all counsel.

I. BACKGROUND AND CONTEXT ANALYSIS

5. From the undisputed evidence on record, the subject site is found off the Royal Road, Phoenix. The property comprises a building, which appears to be more like a house with a small intrinsic unit in its frontal part being used as a florist’s shop. The building is situated behind another storeyed building- which has the Royal Road as its frontage and is currently being used for commercial purposes- and is accessed from the main road by a small passage of 0.60m which is fenced off from Co-respondent no.3’s private access. There are commercial buildings all along Royal Road, Phoenix making

it a commercial centre and generally beyond the commercial premises on the road front lie residential properties.

6. The evidence shows that the building is already being used as a Dormitory to house 18 Bangladeshi workers employed by LOLO hypermarket and the present application is done to render “legal” the land use of the building which is presently illegal as the activity is ongoing without a BLUP.
7. From the evidence of Mr. Baureek, on 18th May 2022 the Respondent instructed that all activities be ceased by the Appellant.

- **Failure to attend PBMC hearing**

8. On the issue of the attendance at the hearing of the Council-which was not an issue contested under a ground of appeal but nevertheless made a live one- the Appellant’s version is that it could not attend the hearing because the letter of convocation was received on the day the hearing was scheduled and that it took stock of only after the hearing. The Council appeared to have proceeded with the hearing as scheduled and objections were heard. The Council did not reschedule the hearing.
9. The Council being a statutory body derives its powers from legislation. The **Local Government Act 2011 [LGA]** as amended in 2017, provided at **section 117 (6) and (6B)**:

s.6. The Permits and Business Monitoring Committee shall process every application for an Outline Planning Permission or a Building and Land Use Permit, having regard to the provisions of the Construction Industry Authority Act 2023, the Environment Act 2024, the Mauritius Fire and Rescue Service Act, the Planning and Development Act and the Town and Country Planning Act and the Planning and Development Act and any guidelines issued under those Acts.

S.6B. In the course of the processing of an application under subsection (6), the Permits and Business Monitoring Committee may request the applicant to attend a meeting of the Committee, within the time limit referred to in subsection (7) or (8), as the case may be, for the purpose of giving such clarification or explanation relating to the application as the Committee may determine.

From our reading of the above, there is nothing in law that precludes the Council from proceeding with a hearing even in the absence of an interested party. The Permits and Business Monitoring Committee [PBMC] “*may request the applicant to attend*”, implies the PBMC has the discretion to invite the applicant; “*for the purpose of giving clarification or explanation*” means the applicant’s presence is intended to provide information or explanation about the application. The applicant’s presence is not mandatory for the committee to proceed with a hearing. An applicant’s failure or refusal to attend does not preclude the committee from hearing the matter based on the materials available. In any case, the Council did issue a convocation letter duly requesting the applicant to attend the meeting. The absence of the applicant was through no fault of the PBMC. If the applicant wished to challenge the procedural fairness of the hearing, it should have been done before a different jurisdiction.

II. GROUND OF APPEAL

10. Both grounds 1 and 2 will be considered together as the Appellant has in its SOC since they relate to the same evidence and are inter-related. Based on the 2 grounds of refusal, it is the contention of the Appellant that the basis of the Respondent’s decision was unfounded and flawed in concluding that the proposed development will be disruptive to the amenity and character of the residential neighbourhood and that the proposed development is likely to create bad neighbour impact on residential occupiers in the area. Furthermore, the objections were mere apprehensions, not probative to conclude any incompatibility of the proposed development with the amenity and character of a residential neighbourhood and/or any likely bad neighbour impact on the residents of the area.

11. A change of use from residential to dormitory requires prior approval by way of a BLUP. Since the premises are already being used as a Dormitory, it is prima facie unlawful. The Appellant having several big registered businesses including workers dormitory, as evidenced by its Business Registration Card issued on 5th September 2007, annexed as **Doc B annexed to the Statement of Case [Doc B of SOC]**, should have been well aware that operating this activity requires a BLUP by law. The evidence Mr. Jauffur that he was not aware of this does not hold water.

- **Refusal unfounded and flawed**

12. We wish to address the point raised by the Appellant to the effect that the basis for the refusal is unfounded and flawed since a few applications for BLUP in respect of the same development proposal made previously were refused by the Council. The owners of the building in lite, Mr and Mrs. Nasser Mahmud Jauffur had authorised the Appellant back in 2019 to use their premises for dormitory purposes for their workers as noted from letter issued and marked **Doc D of SOC**.

13. Interestingly, the first application for a BLUP for a dormitory to be operated on the premises of the Jauffurs was only made in September 2021. The authorization to apply for a BLUP for their premises to be used as dormitory was given around 7 months later by way of a letter dated 15th April 2022 by the Jauffurs, as per **Doc E of SOC**. This application was rejected on the basis that it contained some discrepancies.

14. A second application was made in November 2021 which was also rejected on the ground that the development will be disruptive to the amenity and character of the residential neighbourhood. A third application was made which was also rejected on the same ground and on the additional ground that it is likely to create bad neighbour impact on residential occupiers in the area. The Council furthermore issued a letter following the third rejection, **Doc J of SOC**, requesting the applicant to stop all activities on the site within 2 weeks.

15. Upon a careful consideration of the evidence and the submissions of the Appellant, the Tribunal is of the view that the Appellant is proceeding on an erroneous premise in asserting a “logical expectation” that the second application ought to be granted solely on the basis that the grounds of refusal in the previous applications have now been addressed and that the third application was identical to the second one therefore a new ground of rejection ought not be added. It must be emphasized that the Council is lawfully entitled to assess each application on its own merits and in accordance with the prevailing legal and factual context at the time. It may well have been that not all reasons of non-compliance with the planning instruments were enumerated, for instance.

16. Be it as it may, the first and second applications are not the subject of the present appeal. Consequently, it does not fall within the remit of this Tribunal to enquire into the merits of those prior applications, nor to evaluate the propriety of the Council’s approach in its assessment or rejection of the earlier applications. This could be challenged by judicial review before the appropriate forum. The Tribunal is to hear and make a determination in relation to the application that is subject matter of the present appeal.

- **Lawfulness of the Respondent’s notice**

17. Furthermore, as regards the question of lawfulness of the notice sent by the Respondent to the Appellant requesting it to stop all activities on site for the reasons enumerated in **Doc J of SOC**, and it being in breach of the Appellant’s right of appeal, we believe that is a purely academic debate. While it is unclear under which section of the law the Council has acted to issue such a letter, the present appeal is proof of the Appellant’s right of appeal not being infringed or curtailed.

- **Zoning**

18. The Council maintains that the proposed development is located within a residential neighbourhood. Mr. Cundasamy explained that the PBMC rejected the application on the basis that the proposed land use, currently operating as a dormitory without a BLUP, is incompatible with the immediate surroundings, which are residential in character. He acknowledged that much of the development along the main road in Phoenix is commercial. However, he clarified that beyond the commercial buildings, approximately 15 to 20 metres from the road frontage, the land use shifts to residential, with residential buildings situated in the backlands. According to him, commercial activity is confined to buildings directly along Royal Road, while the land behind these constructions consists of residential properties, thereby forming a residential neighbourhood. In this context, he referred to the plan, **Doc U of SOC**, noting that the subject site is a long and narrow plot extending about 30 metres from the main road. It features a commercial building at the front, with the proposed dormitory located at the rear. Mr. Cundasamy further explained that the objectors live on either side of the proposed dormitory—one directly adjacent to it, and the other across a 2-metre-wide access path that ends in a cul-de-sac. When questioned by the bench, he added that land parcels in the vicinity are similarly narrow but tend to have greater depth, resulting in a constrained spatial layout.
19. The Appellant disputes the position of the Respondent, arguing that there is no clear indication that the area is purely residential, and that the coexistence of both residential and commercial buildings characterises the area as a mixed-use zone.
20. There has, for some time, been a degree of uncertainty as to the zoning classification applicable to dormitory-type developments, and whether such uses properly fall within the ambit of residential zoning. The Tribunal, given the present context, considers it both appropriate and necessary to undertake a detailed analysis of the applicable zoning provisions, with a view to determining whether the proposed development can be reasonably accommodated within the zone in which the subject site is located.

21. The subject site being located in Phoenix, the applicable planning scheme is the **Outline Planning of Vacoas-Phoenix [OPS]**, and extract of the relevant policies on **Predominant Land Use Zones** which was produced by Mr. Cundasamy with its **Development Management Map [DMM]**, marked as **Doc D1** and **Doc D** respectively. From **Doc D**, it is noted that the subject site lies within the settlement boundary which allows residential development. The yellow circles shown along the Royal Road indicate the commercial core comprising, as per **Doc D1**, the main commercial activities normally associated with a town centre.
22. It further provides, edge of core of the town centre covers *“the area immediately adjacent to the core (within easy walking distance), within which changes in land use are apparent or can be expected.”* It further provides *“Apart from industrial estates and certain areas shown as public facilities, all zones are predominant land use zones, meaning that a range of secondary land uses are permissible subject to various conditions governing the nature and scale of use. In this sense they are mixed use zones with an overall character determined by the predominant use. Applications for secondary land use will be permitted provided that the relevant policies in this outline planning scheme are satisfied and the development complies with guidance given in relevant PPGS.”* The range of permitted secondary uses within the zones are tabulated in table 4.1 of Doc D1. The information presented in tabular form, in essence, shows that all categories of development are permissible provided they are not affected by bad neighbour uses or activities. The Council is classifying the activity of dormitory as a bad neighbour activity here.
23. **Policy CR1 of the OPS** promotes applications for a mix of commercial uses including shops, offices, entertainment and leisure as well as residential in established commercial centres whereas applications for commercial development outside established centres, other than for corner shops or other retail outlets, should not be permitted. The point here being that planning permissions are normally granted for conversion or change of use of existing residential buildings for commercial use where all the criteria in **Policy CR1** are met.

24. Our interpretation of the relevant provision of the **OPS** is that a residential neighbourhood may subsist within a predominantly commercial area, particularly in urban or peri-urban settings where land use patterns have evolved over time. A residential enclave can exist within a commercial area which is not, in itself, inconsistent with the **OPS**.
25. The classification of a particular area as either residential or mixed-use must be determined on the basis of several interrelated considerations. These include the applicable zoning under the **OPS**, the prevailing land use pattern, and the immediate context of the proposed development. In carrying out its assessment, the local authority is also expected to have regard to the surrounding environment, any relevant precedents, the nature of existing developments in the vicinity, and the potential impact of the proposed non-residential use on the character and amenity of existing residential properties. The Council, as the planning authority, has to evaluate the land use dynamics in light of the above factors and determine whether the area ought properly to be treated as residential or mixed-use.
26. In the present context, from the evidence on record-the testimonies of Mr. Jauffur and Mr.Cundasamy, the photographs (**Docs R, S, T and V of SOC**), the plan (**Doc U of SOC**)- and the site visit coupled with the application of the **OPS**, we find that the zoning allows for both residential and commercial activities. The property of the Co-respondent no.3 has shops or commercial activities on the ground floor and a residential unit on the upper storey, rendering that development a mixed-use one. That building, as was noted, extended beyond the dormitory building on the subject property.
27. In terms of the pattern of land use, the area falls within a residential zone which over time has had commercial development mostly along the main road but from the evidence of the head of the Respondent's planning department and which was also noted during our visit, the backlands are predominantly residential. In the present case, the path between the subject property and the Co-respondent no.3's property was a cul-de- sac serving to access a couple of residential buildings beyond the

property of Co-respondent no.3. As a matter of general planning principle, if an area contains a clear and sustained mix of both residential and commercial buildings, especially in close proximity, it is typically considered mixed-use. However, if commercial activity is confined to a main road or frontage, and the backlands are purely residential, planners may still consider the immediate area of the development as residential—particularly if the development site sits within the backlands.

28. There is a fine line to be drawn here, however. While the broader area may exhibit elements of mixed-use development due to the presence of commercial buildings along the main road, the immediate context of the proposed site must be considered. Normally when set within a cluster of residential properties, it retains a residential character, justifying its classification as a residential neighbourhood for planning purposes.

29. We have given due consideration to the land use pattern in the immediate vicinity of the subject property in order to determine the nature of the area—whether it may be properly classified as residential or mixed-use. The subject property comprises a building currently being used as a dormitory. A very small commercial activity in the form of a florist shop, which occupies a limited space within the building is at the entrance. The premises also include a small enclosed compound at the rear which is fenced. This building is located immediately behind another building which faces the main road and is used for commercial purposes.

30. To one side of the subject property lies the property of Co-Respondent No. 1, the front portion of which is also used commercially while the rear portion serves as a residence. It is noted that the residential section of Co-Respondent No. 1's building aligns with the dormitory part of the building *in lite*. On the opposite side of the building, there exists a 2-metre-wide access road. Across this access road is the property of Co-Respondent No. 3 which is a one-storeyed building comprising commercial units on the ground floor and a residential unit on the upper floor. As stated earlier, the footprint of Co-Respondent No. 3's building extends beyond that of the dormitory building.

31. The Council, through the head of its planning department, has argued that although many of the buildings fronting the Royal Road are indeed commercial in nature, the extent of such commercial activity generally spans only the first 15 to 20 metres from the road frontage. According to this reasoning, the backlands which is basically the land situated beyond that 20-metre depth, retains a predominantly residential character. On this basis, it was submitted that the property *in lite* lies within a residential environment and that the proposed use is therefore incompatible with its immediate surroundings.
32. While we acknowledge the planning department's perspective, the land use pattern surrounding the subject site cannot be ignored. The immediate neighbourhood is, in our view, characterized by the co-existence of residential and commercial uses. The buildings directly adjacent to and opposite the property—namely those belonging to Co-Respondents No. 1 and No. 3—both incorporate mixed uses. Commercial activity is not confined strictly to the 15–20 metre zone fronting the Royal Road, as evidenced by the florist shop within the “dormitory building” itself and the extended footprint of Co-Respondent No. 3's building which is being put to mixed-use when considering upstairs and downstairs. This is, in a way the danger of allowing commercial creep into residential zones—it could lead to uncontrolled spread of commercial development, damaging the planning integrity of residential areas.
33. In the Australian cases of **Home Market Pty. Ltd. v. Salisbury City Councils [1973] S.A.P.R 97** and **Peter F. Burns Pty. Ltd. v. Salisbury City Councils. [1973] S.A.P.R 167**, both cases involved applications to use land in a Residential Zone for real estate offices. Both offices were to be located on sites on main roads leading into the town centre. In both cases the Council refused planning permission on the grounds that land in the commercial zones was underused and that it would set a bad precedent to allow commercial uses to spread along the major roads in residential zones. The Board supported the Council's decision.

34. In the case of **Trumble and Stone Pty. Ltd. v. Salisbury City Council and Alan Hickinbotham Pty. Ltd.[1974] S.A.P.R 1** , the applicant sought to construct a supermarket and several smaller shops on multiple allotments in Salisbury East. The site was located within a residential zone. According to the Council’s policy, neighbourhood-scale shops were encouraged only within the centre of each neighbourhood precinct, alongside other community facilities. For broader retail needs, the town centre was considered the appropriate location. Two such neighbourhood centres already existed, and a third was being planned. The proposed development was situated on a main road, at the edge of one of the neighbourhood precincts. There were objections especially from a previous developer. The Board upheld the Council’s decision, saying that the appellant’s proposal goes against an important planning principle that the Council has followed and has required other developers to follow. Approving this proposal would harm the existing neighbourhood shopping centres and disrupt the carefully planned development of the area. It would also undermine the way the area has been consistently and thoughtfully planned in the past.
35. In the present case, we did not find the pattern of development reflecting a clear or consistent residential enclave or precinct beyond the commercial frontage, more especially along the access road between the Appellant and the Co-respondent no.2 and no.3’s property. Rather, it reflects a transitional urban zone where commercial and residential functions are integrated within the same or adjacent premises, as has been described in **Doc D1** as the edge of core where “changes in land uses are apparent or can be expected” and are also categorized as “mixed use zones”. This mixed-use character is not unusual in the outer zone peri-urban or urban corridors where development has occurred organically over time.
36. In light of the above, we are of the view that the area in which the “dormitory building” is situated cannot be properly classified as purely a “residential neighbourhood” as used in planning jargon. The site lies in a commercial-to-residential transitional zone. Despite the Council’s assertion regarding the backlands,

the present context points to a mixed-use environment, both functionally and physically, where dwelling houses exist.

37. Having reached this conclusion by no means can be taken to mean that the Council's whole assessment was wrong. Planning merits of applications rest not on mere technicalities but on an analysis of a plethora of factors.

- **Character, Amenity and Impact**

38. We are mindful that, had the surrounding context been otherwise, a different conclusion might have been warranted. Councils have the discretion to decide where community and commercial facilities should be located. Such discretion becomes pertinent where these facilities are permitted within residential zones, since orderly and proper planning recognises that residential use cannot exist in isolation but requires supporting amenities. In mixed-use areas, buildings may have the potential to revert to residential use. It is not uncommon either in such areas for houses originally constructed as dwellings to be subsequently converted partly or fully into small businesses or commercial premises. Nevertheless, it is generally expected that such localities may continue to exhibit characteristics of a residential area.

39. When considering such mixed-use areas, the focus shifts to the characteristics of the residential precinct. The proximity of the property in lite with the surrounding residential properties should be contextualized to assess those impacted by the proposed development. When considering the planning principles, proper planning requires that land uses be compatible with their surroundings in terms of adequate provision of infrastructure, sanitation, parking space, for instance. In mixed-use zones, the amenities expected are in some aspects 'lower' than in wholly residential precincts because of the level of noise, traffic, and late-night activity are expected in such transitional contexts. This does not mean to say these aspects must be ignored or totally diluted.

40. The residential element arises progressively towards the rear of the plots, and therefore the amenity of the residents in the immediate neighbourhood must be considered. In this respect the objections raised by a few neighbours at the hearing of the Permits and Business Monitoring Committee [PBMC] of 21st January 2022, as per its minutes, marked **Doc C**, have been duly considered, bearing in mind these were not mere apprehensions, since the dormitory has been operating illegally. The site visit has also shed light on some of the objections.

41. We wish to open a parenthesis here. The Appellant's counsel raised an objection regarding the objectors who voiced their objections before the PBMC stating that the Appellant was not made aware of these objectors. The Appellant's representative had not attended that hearing for reasons considered previously and it was the Appellant that chose to join these specific objectors as co-respondents. Furthermore, the Appellant did not avail itself of the opportunity to move for a disclosure of documents, a procedure provided in the Rules of the Tribunal at the pro-forma stage. Had it done so, it would have been in a better informed as to the objectors to be enjoined as Co-respondents. We will therefore consider all the objections raised at the PBMC in relation to this development as we believe that they cannot be ignored due to the lapsus on the part of the Appellant.

42. What cannot be ignored is that bad neighbour development come with its associated nuisances, which is why it is not tolerated in most types of areas, be it residential, social or commercial. This is evidenced by the **Table 4.1 of Doc D1 *supra***. A "Dormitory" falls in the category of development that is ancillary to the predominant industrial use, the underlying reasoning most likely being that workers of a factory are likely to be housed near the factory. But when this is done in a commercial area, problems may arise. The Dormitory is a bad neighbour development due to the associated nuisances which the residents have had first hand experience as per their objections before the PBMC. Mr. J. Nuzeebun, objector, expressed at the PBMC meeting that he had already produced photographs of the activities of the dormitory to the Inspector of CSU and that he was also producing copies of them to the PBMC for their appreciation. These photographs were not produced before us.

43. The objectors expressed noise nuisance. In the case of **Ramguttty and Co. Ltd. v Hanumanthadu [1981] SCJ 32**, a case based on nuisance under the Civil Code, the Court recognised that there exists certain “types of nuisances” which become the normal inconveniences of the daily lives of the local inhabitants and which they have got accustomed to. The type of noise nuisances associated night traffic, traffic due to commercial activities become almost part of the ambient noise of the area.
44. The objectors complained of nuisance caused by the workers’ lifestyle such as noise at unusual hours from cooking, washing, phone conversations, and even loud music which required police intervention and created tensions. Mr. Jauffur confirmed that the workers start work as early as 7.30 a.m. and finish as late as 9 p.m. on weekdays, and around 6 p.m. on weekends and holidays. This evidence supports the objectors’ version. The workers’ demanding schedule leaves them a short window of only the late-night or very early-morning hours to carry out household activities. These are precisely the times when residents in the neighbourhood expect a quiet environment and rest. Thus, the residential expectations of tranquillity, which is not normally disturbed by the commerce around (since it is after business hours) are directly at odds with the workers’ practical need to cook, wash, and socialise outside of normal hours. In such circumstances, the noise cannot simply be regarded as ambient noise or the “troubles normaux d’avoisinage”. Instead, it reflects an incompatibility between the workers’ “residential use” of the premises and the surrounding residential amenity. We agree with Mr. Cundasamy’s observation that this creates “different residential dynamics” which is not compatible with the rest. These objections were substantiated by Co-respondent no. 3, who represented all co-respondents. He gave detailed accounts of the disturbances, and his version stood the test of cross-examination on the main points.
45. The Co-respondent no.1, residing directly adjacent with only a fence as separation, is likely to be particularly affected by noise and disturbance due to lack of a buffer. His amenity interest deserves significant weight. He has a commercial building on the Royal road but his dwelling house is separate building and in line with the dormitory building as was noted during the site visit and in photographs, **Docs R and S of SOC**.

The objectors expressed that there were no adequate setbacks with boundaries, absence of open space or recreation area, lack of parking, inadequate waste disposal system with no space to install new septic or drainage facilities due to lack of space. Mr. Cundasamy stated that the prescribed building setback of 0.9m was not met and that there was no adequate provision made for sanitation system. The site visit allowed us to make a physical assessment of these planning constraints of the site and the general state of the building, whereby it was noted that there was in fact a manhole but no adequate drainage or sewage connection for one of the discharges but relied on ground absorption, which was confirmed by Mr. Jauffur. Cockroaches were noted around that discharge. In fact Mr. Jauffur pointed out the discharge from the toilets on the opposite side of the building was connected to the sewerage network. These features within the sub-standard setbacks on the site cannot be deemed compliant with planning norms. When it comes to environmental and health concerns, the Tribunal adopts a prudent approach as it then becomes an issue of public interest.

46. Mr. Cundasamy explained that by the sheer number of people, there is more activity and more waste generated. The setbacks, sanitation, drainage, and waste disposal remain key weaknesses of the dormitory site especially in the light of the cramped conditions due to inadequate setback from Co-respondent no.1's property and with 18 housemates living in a 4-bedroom house, as evidenced by the health clearance of the employees' accommodation dated 23 June 2021, **Doc P of the SOC**. Inadequate waste disposal and sanitation could prove to be problematic not only for the residents of the neighbourhood but also to the business activities.
47. From the evidence of Co-respondent no.3, his house and that of Co-respondent no.1 accommodate standard- sized families. The cul-de-sac also served as access for a handful of other dwellings which we have noted during the site visit to be fairly standard-sized houses. In this context, housing 18 people within an area of 127.30 sq.m, as shown in the plan at page 4 of **Doc K to the SOC**, amounts to overcrowding. What happened here was that there was a change in the character of the residential use - by converting a dwelling designed for 5 persons into housing for 18 people. Such

material change may possibly have otherwise been allowed in a different type of mixed-use area but not the present one. It is a bad-neighbour development but particularly so in the present context raising amenity concerns given the narrow and elongated plot sizes in the area, which leave little side setback between properties and provide no buffer, especially between the site and the house of Co-respondent no.1.

48. In the case of **Clarke v Minister of Housing and Local Government (1966) 18 P & CR 82**, a lodge that was initially part of a large private house (which was converted into a hotel) was used for the purpose of accommodating waiters employed by the hotel. The District Council served an enforcement notice on the occupier alleging that there had been a material change in the use of the lodge which was being used to provide living accommodation for the hotel staff. The occupier appealed to the Minister who, in dismissing the appeal, accepted the conclusion of the planning inspector that a material change in the use of the lodge had taken place from that of a use by a single family into that of multiple accommodation by staff of the hotel. The decision of the Minister went on appeal to the High Court. In dismissing an appeal, lord Parker CJ said

"I see no reason to criticise the minister's decision... It seems to me that he was perfectly entitled to say here that there was a single family unit occupation before; that that ceased and that the change to staff accommodation was a material change of use. It is a case, as it seems to me, that does not involve a change by intensification, but by reason of totally different character of the user. I cannot see anything in law which prevented the Minister from saying that there was a change, and that that was a material change from the planning point of view."

49. The area, while containing dwellings, does not, in our view, retain the typical character or amenity that planning principles seek to preserve in residential precincts. It does not exhibit the kind of spatial quality or peaceful environment that would be typically associated with a residential neighbourhood. But the fact of the matter is that there are residents living in that commercial-residential transitional zone. These residents have been living there from before, they did not choose to live within the

buffer of such a bad neighbour development which comes with its own baggage of associated pollution. We again refer to the general principles of planning as set out in **Table 4.1 of Doc D1** *supra*- from which we understand that no area (of the category residential, social or commercial) should be subjected to nuisances associated with bad neighbour development. There may be exceptions to these principles if it contextually so justifies.

50. The Tribunal is alive to the fact that there is a growing need to accommodate foreign workers. However, this should be assessed in the context how the surrounding environment will be impacted upon by such development. When a new development is introduced into a locality, the development and the existing character and amenity of the area should not clash. Instead, they should complement each other. The goal is balance — the new project should integrate smoothly, in a manner that fosters harmony and maintains the overall balance of the area.

51. The Appellant also owns a foreign worker accommodation in Valentina, as evidence by its business permit marked as **Doc B of the SOC** which is known to be a more industrial zone and unobjectionable.

52. **Franzon v. Campbelltown City Council and Wyndarra Developments Pty. Ltd[1973] S.A.P.R 339.** is a case in which professional offices were permitted by the Council in a Residential Zone and where the Council's decision was confirmed on an appeal brought by an objector. The land was on the Main North-East Road, a major arterial road. Facing this road on either side of the land there were single residential dwellings but also in the locality facing the road there were many shops and a service station. A major hospital was clearly visible from the land. The Board considered that the offices would preserve the amenity of surrounding sites at least as well as flats and that traffic noise meant that the land was not particularly suitable for residential development of any sort. As the area had a mixed development the proposal would not introduce a commercial intrusion into a residential zone.

53. **Patsouris v. Unley City Council and Flinders Trading Co. Pty. Ltd [1973] S.A.P.R 207.**

is a case turning solely on amenity considerations. The applicant proposed to demolish a house on the allotment behind its retail premises and establish a car park for employees. The land to be so developed was in a Residential Zone. The residents of the property adjoining the proposed car park objected. The Council approved the proposal on the basis that it would decrease street parking and that fencing and planting would preserve the amenity of the adjoining land. The Board confirmed this decision and strengthened the fencing and planting requirements.

54. An analogy can be drawn in the present case based on the principles of *Patsouris* of what would be of public interest. Mr. Cundasamy explained there are existing issues of parking shortage in the commercial nodes of Phoenix, the dormitory had no parking facilities and that whereas commercial developments are important to serve the larger community, a dormitory being a standalone development would not and would exacerbate the parking difficulties. The Council has a duty to look at the wider public interest and in this case it appears the dormitory is an incompatible use as it fails to integrate with the wider public interest, intensifies the existing parking shortages, which also puts pressure on local infrastructure, as confirmed by the Co-respondent no.3 that the workers' van keeps blocking his private access.

55. Had it been a question of mere visual intrusion, since the Co-respondent no.3 testified that the workers could be seen when they were sleeping- although one could argue that it would be more of a question of him avoiding looking into the premises of the Appellant- the Council could have considered a conditional BLUP be granted with measures imposed on to mitigate overseeing. However, the present case displays aspects of more fundamental principles of planning concerned with orderly and proper planning especially concerning setbacks, lack of buffer, environmental concerns due to drainage issues, noise levels which cannot be tolerated and have degenerated into fights possibly due to cultural practices and differences (as alleged by an objector at the PBMC meeting). The Council had to factor in the lifestyle and cultural differences of foreign workers because, as explained by Mr. Cundasamy,

several such complaints have been received at local authorities when it comes to dormitories.

56. It was argued that the Ministry of Labour has issued a lodging accommodation permit for the premises, **Doc M of the SOC**. In fact, clearances were obtained from the Ministry of Health, Waste Water Management Authority and Fire Department. In our view, these only lend official recognition in relation to the building structure- namely that it can accommodate a certain number of beds and housemates for a dormitory use, its sanitary condition and its adaptability in case of a fire outbreak. These, although important, are not equivalent to planning authorisation nor does it override or substitute planning requirements. It is for the local authorities to independently assess land-use compatibility of development proposals and compliance with the standards of the planning norms. Whether that type of activity can be carried out in that particular building found in that location is the prerogative of the Council.
57. The Co-respondent no.2 already contributes to late-night commercial activity through its fast-food business which, in our opinion, dilutes the strength of some of the objections to disturbance from the dormitory. Being a company that operates a business activity within set hours, it cannot demonstrate much negative impact by this bad neighbour development causing it prejudice except on issues affecting its environment such as poor sanitation, drainage and discharge.
58. Co-respondent No.3 resides only a block away from the Royal Road, a major arterial road carrying two-way traffic into and out of Phoenix. The immediate surroundings include a public car park on the opposite side of the road, a bus stop directly in front of the Appellant's property, and a fast-food business operated by Co-respondent No.2, which remains open late into the evening. These features together establish a locality characterised by a high degree of public activity, movement, and noise. Against this background, Co-respondent No.3's expectation of residential amenity is inevitably lower than what would typically be attached to a dwelling situated in a conventional residential neighbourhood. His decision to occupy the upper floor of a building and accommodate commercial activities fully in the ground floor reflects his

acceptance of the mixed-use nature of the area. Co-respondent No.2's property is wholly commercial at both ground and upper levels, while Co-respondent No.3's own commercial building extends beyond the footprint of the dormitory building which itself accommodates a small florist shop, reinforcing the mixed-use character.

59. The Tribunal accepts that the Co-respondent No.3's expectation of tranquillity has been diluted by the commercial activities within his building and by the wider character of the area. However, this does not mean that his amenity rights are extinguished altogether. His vehement complaints regarding sanitation, obstruction and unauthorised use of his private access road by workers' van cannot be disregarded. We believed his testimony especially so after examined the lay out of the place during the site visit, whereby there was no convenient on-site parking for the dormitory building was noted. This presents both legal and planning difficulties. While the locality is properly characterised as mixed-use, some protection against undue nuisance or loss of amenity remains, due to the residential occupation.

60. In Quin v. West Torrens City Council and Lockyer. [1973] S.A.P.R 89 the applicant proposed to erect stables for two ponies and a manure pit and feed store at the rear of his house in a residential zone near a racecourse. There were many stables in the area erected prior to the enactment of planning regulations. The Council granted approval. The Board upheld the appeal on the basis of the detriment to amenity.

- **Mere apprehension**

61. The Tribunal is unable to accept the contention that these objections are based on mere apprehensions. We are not to lose sight of the fact that the dormitory has already been operating well before the application was made for a BLUP and therefore the objectors fears cannot be outrightly rejected for being baseless since they may have been living in those conditions for some time. The Council was right to consider the objections of those who are likely to be impacted by the development with the duty to assess the veracity of same before taking them into account together with the planning principles to come to an informed decision.

62. For all the reasons set out above, the Tribunal finds that both grounds of appeal fail. The area is of mixed-use, developments must satisfy the fundamental requirements of proper planning which the proposed development fails to satisfy in the present case. The Council's overall assessment was correct in not having granted the BLUP. The appeal is set aside. No order as to costs.

Determination delivered on 21st August 2025 by

Mrs. J. RAMFUL JHOWRY
Vice Chairperson

Mr. S. MOOTHOSAMY
Member

Mr. S. BUSGEETH
Member

