

IN THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 2247/24

In the matter of:

Geeta Saven

Appellant

v/s

District Council of Moka

Respondent

DETERMINATION

1. The present appeal is against a decision of the District Council of Flacq (hereinafter referred to as “the Council”), for having rejected an application made by the Appellant for a Building and Land Use Permit (hereinafter referred to as “BLUP”) for the proposed construction of a reinforced concrete building at ground and first floor for residential purposes at Le Pouce Road, Roselyne Cottage, Moka.
2. The grounds of refusal as communicated the NELS platform on 8th October 2024 are:

“The development is not in accordance with the:

The Planning Development Act

1. According to ***Policy SD4 of the Moka/Flacq Outline Planning Scheme and the Development Management Map***, the site lies outside settlement boundary whereby there is a general presumption against development and within the buffer zone of a poultry pen.”

I. Grounds of Appeal

3. The Appellant is contesting the decision as per the Notice of Appeal are

“(a) Other residential developments have been undertaken in the surrounding area with the same buffer zone constraints;

(b) My legitimate aspirations to provide a stable and secure home environment for my family;

(c) Compassionate and humanitarian considerations as I have no other option to have my own house;”

4. Other grounds as set out in her Statement of Case [SOC] and annexed to her Notice of Appeal in essence are that:

(a) She has been a longstanding tenant paying rental for years and such arrangement is financially unsustainable given her family commitments and obligations;

(b) The rejection of her application seriously jeopardises her aspirations as a citizen seeking to improve her family's living conditions;

(c) Her application is motivated solely by the desire to provide a secure and suitable home environment for her family;

(d) She pleads that her application be considered on humanitarian and compassionate grounds given her current financial circumstances;

(e) She does not own any other plot of land suitable for residential development and the subject site is the most suitable for the purpose;

(f) The subject plot is not classified as agricultural land; and

(g) She commits to complying with all conditions that may be imposed and undertakes to tolerate any existing surrounding developments.

II. Background

5. By way of background to the case, the Appellant is the owner of a plot of land of an extent of 1,280 m² situated at Le Pouce Road, Roselyne Cottage Moka since 2022. In fact the title deed annexed to the SOC shows that the plot was bought by Mr. Vishnu Saven. This was however not an issue of contest before the Tribunal. The portion of land has been described in the title deed as “*une portion de terrain non batie et inocuppee*”. She seeks to have a residential building built on the said property. Two previous applications for BLUP have been rejected by the Respondent.

III. Respondent’s case

6. The Respondent’s case is that the refusal was lawful and well-founded according to the relevant provisions of the outline planning scheme for several reasons. The subject site lies outside the settlement boundary as defined under the Moka Flacq Outline Planning Scheme, at a distance of approximately 200 metres from that boundary. **Policy SD4** of the Outline Planning Scheme for the Moka/Flacq District Council Area establishes a general presumption against development outside settlement boundaries unless specific and exhaustive exceptions apply, none of which have been met in the present case. The subject site is located within the buffer zone of a poultry pen, which constitutes an independent and absolute ground for refusal of any residential development by reason of biosecurity considerations and applicable Planning Policy Guidelines. This is the third application by the Appellant in respect of the same plot, previous applications having been submitted in 2022 and 2023. One was for residential development and another for goat rearing and this present one again for residential development.
7. The Appellant was duly represented by her husband, Mr. Vishnu Saven, who deponed on her behalf and was legally assisted. The Respondent was represented by Mr. Beenesh Hemrage, Planning and Development Inspector. The Council was also assisted by Counsel. We have duly considered all evidence placed before us as well as submissions of both Counsel.

8. We note that the grounds of appeal as couched by the Appellant do not amount to grounds of appeal as such as they do not seek to challenge the grounds of refusal. At best the grounds that may be taken as grounds of contest as per her pleadings are that there are other residential developments within the same buffer constraints, the land is not classified as agricultural land and that she has no other option.

IV. The Applicable Planning Instruments

9. The subject site being situated in Moka, the applicable planning scheme is the **Outline Planning Scheme of Moka/ Flacq District Council Area**['OPS']. It is the contention of the Respondent that the subject site is found outside the settlement boundary. This is evidenced by the extract of the **Development Management Map** ['DMM'] of the OPS found at **Annexure C** of the Respondent's Statement of Defence ['SOD']. Mr. Hemrage also produced 2 maps from Google Earth, marked as **Docs G and H**, clearly showing the location of subject site being outside the settlement boundary. This is not contested by the Appellant.
10. **Policy SD4 of the OPS** sets out the planning framework governing development on land outside settlement boundary and in essence provides that there should be a general presumption against proposals for development outside settlement boundaries unless it "*Has been shown to have followed the sequential approach to the release of sites identified in SD 1, SD 2 and SD 3 and there are no suitable sites within or on the edge of settlement boundaries;*" and, amongst other reasons
- (ii) It is for the essential purposes of agriculture, forestry or other uses appropriate to a rural area;*
- (iii) It is for the re-use or refurbishment of existing buildings set in their own grounds;*
- (iv) It is considered a bad neighbour development as defined in Policy ID4;*

(v) It is in cases of national interest having regard to material considerations, employment-creating uses and socio-economic policies of Government, and is acceptable on planning, traffic impact and environmental impact grounds; or

(vi) It is capable of ready connection to existing utility supplies and transport networks;

(vii) The proposal is from a small owner seeking residential property for themselves and their close kin and can be considered a hardship case, provided that such release would not encourage large-scale removal of land from agriculture.

11. In the present instance evidence has been adduced that the property of the Appellant is very far from that settlement and there is no in-filling of the gap, it is not consolidated. This evidence was not challenged. This reasoning also applies in support of the fact that the proposed development for residential use cannot be accepted under **Policy SD4** since there is no sequential approach to the development. The Appellant's contention that the plot is not classified as agricultural land is not a material consideration to be taken into account in the present instance given that the plot is outside the settlement boundary where residential development is not encouraged unless the exceptions apply justifying a derogation. This ground of appeal therefore fails.

12. We note that the Appellant has provided an affidavit, marked **Doc C**, setting out her present condition and her means. Counsel for the Appellant submitted that the Council could consider the Appellant's case on the ground of hardship. We do not believe that any of the averments contained therein warrants that this case be treated as a "Hardship" case as defined under **Policy SD3 of the OPS** since the plot size exceeds 422 m² and the property was acquired in the year 2022, that is well after 30 September 2005 and no other evidence has been provided in satisfaction of the criteria under this exception. Therefore, a derogation from these policies of the **OPS** is not justified in the present instance. The application of **Policy SD4** in such circumstances is mandatory.

13. Furthermore, the exception on the ground of hardship itself requires that the land be located in an area where development is permissible in accordance with the policies of the **OPS**. A plot of land situated within the buffer zone of a poultry pen, cannot satisfy this criterion.
14. The **Planning Policy Guidance** ['PPG'] on **Bad Neighbour Buffer for Industry Adjacent to Sensitive Uses** provides guidelines on buffer distances "*to mitigate any negative effects of industrial operations*". Sensitive land uses include housing, education and health facilities. According to these guidelines the buffer distance to be kept between a bad neighbor development such as Poultry/Livestock Farm and a sensitive land use such as housing, is 200 metres, as provided in the Design Sheet. There are risks associated with the contamination of broilers and spreading of aviary diseases and the likelihood of it affecting inhabitants within the vicinity in the eventuality of an outbreak. This is the reason for respecting a buffer distance from a poultry pen.
15. The **Sectoral Guidelines** on PER for Poultry Rearing above 15,000 broilers published on the website of the Ministry of Environment, Solid Waste Management and Climate Change also provides an insight as regards the zoning of poultry farms and the risks associated with pens.
16. The undisputed evidence is that the distance between the poultry pen and the Appellant's property is around 180 metres, hence less than 200 metres. Part of the property falls outside the buffer of the pen. In our view, the Respondent was right to have applied the guidelines of the Ministry to refuse the application because approving the extension would imply that the Council is condoning the building being put to residential use when in fact application of the guidelines are clear namely that residential development ought not to be found within the 200-metre buffer from pen. Mr. Hemrage produced a policy decision dated 16 January 2017, marked as **Doc J**, issued by the Ministry of Local Government to the Chief Executive of the District Council of Moka, directing strict compliance to the provisions of the PPG and the OPS and that "*no residential use should be allowed within the 200 metres of the boundary of a poultry farm*".

17. We agree with the decision of the Respondent. They have correctly applied the provisions of the PPG in not allowing the development proposal since it falls within the buffer of a poultry pen and which is in compliance with directives of its parent ministry. In the case **Beau Songe Development Limited (Appellant) v The United Basalt Products Limited and another (Respondents) (Mauritius) [2018] UKPC 1 Privy Council Appeal No 0002 of 2017**, it was decided that such distance provided for buffer zones from bad neighbour development are to be taken as being prescriptive. There should be no derogation from the application of these soft laws unless there is a clear justification for such derogation, which we do not find in this case.
18. The Appellant is in fact not disputing that her property falls outside the settlement boundary and within the buffer of the poultry but her case is that there are other residential units within the same buffer zone constraints- some as close as 53 metres from the poultry pen- and that the Respondent is being inconsistent with its own previous decisions. Mr. Saven produced photographs, marked as **Doc B**, and some photographs were also annexed to her SOC to support this contention. He also produced a BLUP for residential development granted to one Mr. Ramjeet, marked as **Doc E**.
19. The Respondent adduced evidence to show that the house found at 53 metres from the poultry pen is in fact an illegal construction for which no BLUP was issued. The Respondent's stand in relation to other BLUPs for residential development granted in an established settlement around another poultry pen further away from the subject site, as shown in **Doc H**, is that those were justified under **Policy H1** and in some cases under **Policy SD3** of the **OPS**. One Mr. Jogannah was also granted a BLUP for residential development under **Policy SD3** for being a plot excised from a larger plot and it followed the sequential approach. As for Mr. Ramjeet, Mr Hemrage explained that he was granted a BLUP in 2015 and a later application was made which was granted in 2024 under **Policy H1 of the OPS**. He admitted in cross examination to there being no legal basis to this decision of the Council, just that it exercised its discretion.

20. Whether the Council's previous decisions to grant BLUPs within the buffer zone of a poultry pen were justified or not, those decisions are not the subject matter of an appeal before the Tribunal. In any event as general rule, we are of the view that previous wrong decisions cannot form the basis of future decision making where fresh applications are made. If the Appellant wishes to challenge the manner in which the Council proceeded with regard to assessing her application vis-à-vis other applications, it would have to be before another forum by way of judicial review. As per planning norms, Appellant's property is mostly within the buffer zone of the poultry pen, as agreed by Mr. Saven, and outside settlement boundary- both being unfavourable for residential development and it does not fall within any exception to allow for derogation. This ground of appeal therefore fails.
21. As regards the multiple applications made by the Appellant on the subject site, in our view, this is irrelevant for the purposes of the subject matter of the present appeal.
22. The Tribunal is not unmindful of the personal circumstances of the Appellant. Her desire to secure a permanent home for her family is understandable. Her husband stated that they have been living in a rented property for 15 years. However, the Tribunal's jurisdiction is to determine appeals on the basis of law, established planning policy and material planning considerations. It is not open to the Tribunal to override mandatory planning restrictions on the basis of personal circumstances alone, however compelling they may appear.
23. It is a fundamental principle of planning law that the system operates in the public interest and not merely for the benefit of individual landowners. The restriction imposed by the poultry pen buffer zone exists to protect public health and biosecurity at a community level.
24. To grant an exception in favour of any individual on compassionate grounds alone, in the absence of a clear legal basis, would be to undermine the integrity of the planning system and would set a precedent that could not be sustainably applied.

25. For all the reasons set out above, the appeal is set aside. No order as to costs.

Determination delivered on 5th June 2026 by

Mrs. J. RAMFUL JHOWRY

Ag. Chairperson

Mrs. Y. HIMAMALEE

Member

Miss. F. MONTY

Member