

IN THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT No. 2256/24

In the matter of:

SANJIV MOOCHEET

Appellant

v/s

MORCELLEMENT BOARD, MINISTRY OF HOUSING AND LANDS

Respondent

DETERMINATION

1. The present appeal is against a decision of the Morcellement Board of the Ministry of Housing and Lands (hereinafter referred to as "the MHL"), for having rejected an application made by the Appellant for the subdivision of a plot of land of the extent of 1389.99 sq.m into three lots for residential purposes, situated at Solferino, Bassin.
2. The grounds of refusal, as per communication on the NELS platform on 4th December 2024, were twofold, namely
 - (i) site lies outside the settlement boundary and is not in line with the exceptions of **Policy UDS4** of the **OPS**;
 - (ii) subject site is located partly within the 200-metre buffer of an existing poultry pen.
3. The second ground of refusal, namely that the site is located partly within the buffer zone of a poultry pen, was dropped at the start of the proceedings as the Respondent's stand was that the poultry farm was no longer operational.

4. The sole live issue before us is, therefore, whether the Morcellement Board was right to refuse the application on the ground that the site lies outside the settlement boundary and does not benefit from any of the exceptions provided under **Policy UDS4 of the Outline Planning Scheme of Vacoas/ Phoenix [“OPS”]**.
5. Both parties were legally represented at the hearing. The Appellant was represented by his proxy, Mrs. Lakranee Jeetun [supported by the *procuration generale*- **Doc A**]. The representative of the Respondent, Mrs. Prayag, Office Management Assistant, also deponed. Mrs. Goolaup, Senior Development Control Officer at the Ministry of Housing and Lands [“MHL”], testified on behalf of the Respondent and produced an extract of the Development Management Map [“DMM”], marked **Doc B**, and an aerial photograph from Google earth marked **Doc C**, showing the site, the administrative boundaries of Vacoas/Phoenix and of Quatre Bornes, and the settlement boundary. The Appellant’s representative relied, in addition to her own testimony, on a survey report of a Sworn Land Surveyor, Mr. Seewanan Jhurry, who was not called to depone, but whose report was annexed to the Statement of Case [“SOC”].
6. At the outset Counsel appearing for the Appellant stated that the Appellant would only rely on the Amended Statement of Case, Amended Statement of Defence of the Respondent and the Amended Statement of Reply of the Appellant. We noted, however, that as the case progressed references were made by Counsel for the Appellant to the documents annexed to the initial SOC filed including the report of the SLS, Mr. S. Jhurry.
7. We have duly considered all the evidence placed before us as well as the submissions of both Counsel.

I. APPLICABLE PLANNING INSTRUMENT

8. The subject site being located in Solferino, Bassin, the applicable planning scheme is the **Outline Planning Scheme of Vacoas/Phoenix**. The site being situated outside the settlement boundary, the applicable policy is **Policy UDS4 of the OPS Vacoas/Phoenix**.

9. **Policy UDS4** of the **OPS** which regulates "**Development outside Settlement Boundaries**", provides that there should be a general presumption against proposals for development outside settlement boundaries unless, amongst other conditions, "No suitable site is available within or at the edge of the settlement boundary", or "The proposal is for the re-use or refurbishment of existing buildings set in their own grounds", and unless, having regard to material considerations, locational preferences and socio-economic policies of Government, the proposal has obtained relevant clearances, or there has been a formal commitment given by the relevant Ministry, Municipal or Town Council, or other authority for a Government-approved scheme prior to the approval of the Outline Scheme, duly supported by bona fide evidence. It is common ground that the present application is a fresh proposal for subdivision, and not the re-use or refurbishment of an existing building, and no formal commitment of the kind contemplated by the policy has been canvassed before us.

II. BACKGROUND

10. By way of background, the site in lite is a plot of 1389.99 sq.m situated at Solferino, Bassin, which the Appellant sought to subdivide into three lots for residential purposes. The issue in dispute is the location of the site relative to the settlement boundary as delineated on the Development Management Map forming part of the **OPS of Vacoas/Phoenix**, and whether, even if the site is found to lie outside the settlement boundary, the Appellant's case is that he should be granted a permit in view of the other residential developments in the vicinity and that it is within the purview of the Respondent to do so.

III. GROUND OF APPEAL

11. The ground of appeal in relation to the first ground of refusal is that the Board wrongly concluded that the site to be subdivided lies outside the settlement boundary. Three main points were advanced by the Appellant in support of this ground: first, that the site is surrounded by a number of residential buildings which have been permitted or otherwise tolerated by the Municipal Council; second, that the site being situated at

the meeting point of the administrative boundaries of Vacoas/Phoenix and of Quatre Bornes, the Board could, on a good planning approach, have had regard to the residential character prevailing on the opposite side of the road; and third, that the extract of the **Development Management Map**, marked as **Doc B** and the Google map, marked as **Doc C**, produced by the Respondent bear no seal and it is not known whether, and by whom, these may have been altered. It is to be noted that the last two points were only submitted by Counsel appearing for the Appellant in the course of submissions.

12. The Amended SOC contains averments that the SLS's report shows that the subject site is surrounded by residential houses and other buildings. Building works were undertaken opposite the subject property and that since there are many other houses around the property existing since long, it cannot be said that the site is outside settlement boundary. The Appellant avers in his Amended SOR that it is admitted that the site is found under the administrative boundary of Vacoas/Phoenix but maintains there are many houses within the same administration surrounding the site. He maintains the site is now within the settlement boundary and avers that the Respondent has relied on a Development Management Map that dates back to 28th May 2015 to reject his application whereas the Municipal Council of Vacoas/Phoenix has issued a number of Building and Land Use Permits ["BLUPs"] to owners of houses in the immediate vicinity of the site and has thus converted the area into a residential one.

(i) The presence of surrounding residential buildings.

13. It is the contention of the Appellant that a fair number of residential buildings are to be found in the vicinity of the site. Reference was made to a photograph, marked as Annex D to the Amended SOR, which purportedly showed an access road which appeared to have been asphalted and which, as per the Appellant's submission, is indicative of the Council having acquiesced in this pattern of development.

14. We believe that such evidence cannot be relied upon in as much as the representative of the Appellant clearly stated in re-examination that the house being shown in the photograph at **Annex D** is not in the same road as the subject site and that the Appellant's property was further away and that she would not be able to tell under which administrative area that property fell.
15. We further note that the Appellant did not adduce evidence that the asphaltting of the road was carried out by, or with the sanction of, the Council. Nor was any BLUP produced in respect of any of the surrounding constructions relied upon, notwithstanding that the Appellant's own pleadings averred, in terms, that permits had been issued by the Municipal Council of Vacoas for these buildings. It was, in our view, incumbent on the Appellant to adduce evidence to that effect- if necessary, by summoning the Municipal Council of Vacoas as a witness. In the absence of such evidence, we are left in the dark as to whether the surrounding constructions are the product of lawfully issued permits, or, as was equally canvassed in the course of the proceedings, of unauthorised or illegal constructions. We cannot, on the strength of unproven assertions and photographs alone, draw the inference that the Council has acquiesced in development outside the settlement boundary and that the area has become a residential zone, still less that such acquiescence, even if proved, would bind the Respondent to depart from the clear terms of **Policy UDS4**.
16. The Appellant also placed reliance on the photocopy of a survey report of the SLS, Mr. S. Jhurry annexed to the Amended SOC, the original which was attached to the initial SOC filed by the Appellant. Counsel appearing for the Appellant had clearly stated at the outset that reliance will be placed only on the amended SOC, amended SOD and amended SOR. Be it as it may, Counsel for the Appellant put questions to the Appellant's representative regarding the report of the SLS. We do not believe any reliance can be placed on this report in as much as it does not in any way purport to locate the subject site in relation to the settlement boundary, the contested issue in this instance. Mr. Jhurry was not called as a witness, his report comprised of 2 context plans which are not self-explanatory in the present context and a photograph was unsigned and unstamped. It is accordingly disregarded.

17. As far as the Appellant's representative is concerned, she could not enlighten the Tribunal in any way. It was put to her in cross-examination that the houses that were shown in the photographs annexed to the Amended SOR purported to show buildings within the administrative area of Quatre Bornes and not Vacoas/Phoenix, that she could not prove that they did not fall within the administrative purview of the **OPS of Vacoas/Phoenix** and that any BLUP issued was by Council not the Morcellement Board. She simply stated that she understands but could not sustain any of the averments of the Amended SOC or Amended SOR. She further even stated in cross-examination that she had not thought of calling the SLS as a witness.
18. We find the evidence adduced by the Appellant on this issue so flimsy, unsafe to rely on and hence untenable that the area within which the subject site lies is a residential one.
19. On the other hand, the Respondent adduced evidence through the testimony of Mrs. Goolaup, who testified that the prevailing **OPS** is that of **Vacoas/Phoenix** and that the subject site lies outside the settlement boundary by approximately 483 metres. She produced **Doc B**, being the relevant extract of the **Development Management Map ["DMM"]** attached to the **OPS of Vacoas/Phoenix**, in support of the Respondent's contention. She explained that, since the property *in lite* falls outside the settlement boundary of the prevailing **OPS**, it is regulated by **Policy UDS4 of the OPS**, which stipulates that no residential development is normally allowed unless the exceptions under the policy apply. She further explained that none of the exceptions applies in the present case. One such exception, she stated, is where the property is situated on the edge of the settlement boundary, in which case it could be considered for development. In the present case, however, the site lies approximately 483 metres away from the settlement boundary. Hence, no permit for subdivision can be granted.
20. As regards the other houses which the Appellant averred were existing in the vicinity, Mrs. Goolaup produced an extract of a Google Earth Map (updated as at 6th January 2025) marked **Doc C**, to which Counsel for the Appellant had no objection. The document was produced to demonstrate that those buildings mostly fall within the

administrative boundary of Quatre Bornes and not that of Vacoas/Phoenix. She subsequently clarified that she was unaware whether those developments had been granted BLUPs but that, even if they had, such permits would not have been issued by the Respondent and the latter would therefore not be aware of them.

21. On the basis of the evidence before us, it is clear that, the site being situated in Solferino, the **OPS** applicable in the present case is that of Vacoas/Phoenix. The location of the subject site must therefore be considered in relation to the settlement boundary falling within the purview of the **OPS of Vacoas/Phoenix**. It is clear from the **DMM** that, in relation to the settlement boundary of Vacoas/Phoenix, the subject site falls well outside that boundary, as is evidenced by **Doc B**. True it is that the site appears to be on the edge of the settlement boundary of Quatre Bornes, as per **Doc B**, but that would not be the correct analysis in the present case since the prevailing **OPS** is that of Vacoas/Phoenix.
22. Furthermore, even if the Appellant's version is accepted that there are houses in the vicinity of the subject site, this, in itself, does not, under the prevailing planning laws and policies, alter the nature of the area so as to render it a residential area or have the effect of shifting the settlement boundary. It would appear from the Appellant's averment in the amended SOR, *"Appellant maintains that his property is now within the Settlement Boundary"* that there may have been a misunderstanding as to the concept of a settlement boundary. The Appellant, in our view, has not been able to challenge this ground. In fact, in this country, the technical delineation of settlement boundaries under the various Outline Planning Schemes is undertaken by the Ministry of Housing and Lands.
23. Similarly, we are of the view that, even if some developments falling outside the settlement boundary have been granted BLUPs by the Council, a wrong decision, or indeed an unlawful state of affairs, cannot of itself justify compounding the error by permitting further development contrary to the planning policies in force. The Respondent cannot be challenged, either for correctly applying the prevailing policies

or for the erroneous application of those policies by other authorities. This limb of the ground of appeal accordingly fails.

(ii) The site's location near administrative boundary of Quatre Bornes

24. It was put to Mrs. Goolaup by the Appellant's counsel that since the site lies on the edge of the administrative boundary of Quatre Bornes and with the Morcellement board having an overall island-wide jurisdiction and since a number of houses are to be found on the opposite side of the road to the subject site, the Morcellement Board could have exercised its discretion in the Appellant's favour. We do not find merit in this contention. Mrs. Goolaup, whose evidence on this point was not shaken in cross-examination, explained clearly that the area on the other side of the road falls within the administrative boundary of Quatre Bornes, while the site *in lite* falls within the administrative boundary of Vacoas/Phoenix. Therefore, it is the **OPS of Vacoas-Phoenix**, and **Policy UDS4** in particular, which governs the present application. We agree.

25. The contention that the DMM dating back to May 2015 and the extract produced was unsigned with the suggestion that it may be outdated falls well short of establishing that the DMM is inaccurate. In any event this is not the proper forum to challenge the accuracy or validity of the DMM. The contention by the Appellant that the application could have been considered under a different Outline Planning Scheme is also flawed. The mere proximity of a site to the boundary of an administrative area does not entitle an applicant to invoke, selectively, whichever planning regime he considers more favourable to his case nor does it allow the Morcellement Board to cherry-pick the OPS. Only the prevailing OPS should be applied. This limb of the ground of appeal also fails.

(iii) **The reliability of the DMM and the Google earth map**

26. The Appellant's final point is that the extract of the DMM and the Google earth map relied upon by the Respondent bear no seal, and that it is not known whether, or by whom, these documents may have been edited. We are not persuaded by this submission, for more than one reason. First, we note the inconsistency in the Appellant's own position: while inviting the Tribunal to disregard the Google map on the basis that it is unauthenticated or edited, Counsel for the Appellant nonetheless relied on that very map, and on his own appreciation of it, to submit that the site lies contiguous to the settlement boundary. Counsel did not object at the relevant time after taking cognizance of the document before its production during the hearing. The Appellant cannot, in our view, ask the Tribunal both to disregard a document and to accept a conclusion drawn from that same document, according to what suits his case at any given point.
27. Furthermore, the extract of the **DMM, Doc C**, is not an unsourced document. It forms part of the **Outline Planning Scheme** prepared and approved pursuant to the **Town and Country Planning Act**, and its contents were explained by Mrs. Goolaup, a Senior Development Control Officer of the MHL, whose evidence on the location of the site relative to the settlement boundary was not successfully challenged. In contrast, the report attributed to the SLS, Mr. Jeetun, was found to be unreliable for being of very low probative value. Greater weight must be given to an official planning document explained by an expert witness who has come forward to depone than a partly unsigned surveyor's report unsupported by the testimony of its maker.
28. On the evidence before us, therefore, we find that the site lies well outside the settlement boundary of Vacoas-Phoenix. Based on the evidence before us, none of the exceptions under **Policy UDS4 of the OPS** have been made out.

29. We further bear in mind the clustering principle and the sequential approach which underpin the **OPS** and we find no valid justification based on the evidence adduced in the present case to derogate from the clear terms of **Policy UDS4** of the prevailing **OPS** of Vacoas/Phoenix.

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

Determination delivered on 10th August 2026 by

Mrs. J. RAMFUL JHOWRY

Vice Chairperson

Mr. C. K. F. CHEUNG KAI SUET

Member

Mrs. M. D. UTILE

Member