

IN THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 2290/25

In the matter of:

Residence Floreal Limitee

(represented by Mr. Sooraj Ramrooch)

Appellant

v/s

The Municipal Council of Vacoas/Phoenix

Respondent

DETERMINATION

1. The Appellant, acting through its Director, Mr. Sooraj Ramrooch, has lodged an appeal against the decision of the Municipal Council of Vacoas/Phoenix [“the Council”] for having refused the granting of a Building and Land Use Permit [“BLUP”] for the conversion of an existing residential building into a tourist residence at Royal Road, Bonne Terre, Vacoas.
2. The grounds for refusal, as communicated to the Appellant on 22nd July 2025 via the National E-Licensing System [“NELS”], are reproduced hereunder in italics:
 - ***“The development is not in accordance with the Local Government Act***
 - *Notification procedures have not been successfully complied with since Site Notification Plate has not been affixed as per the specifications of the Building and Land Use (BLUP) Guide.*
 - *Complaints have been received against the development.*

- ***The development is not in accordance with the Town and Country Planning Act***

The development is viewed to be incompatible taking into consideration inter-alia the following: (a) the building setbacks are inadequate; (b) the access road is private, untarred and of limited width, such that undue pressure will be exerted over the said substandard access by an influx of vehicles, and the overall peaceful character of the immediate neighbourhood will be disrupted by the incessant traffic movement generated by the activity expected to be operated normally on a 24-hour basis; (b) the wastewater disposal system is substandard and necessary setbacks have not been observed; (c) the parking facilities are inadequate and are not functional; and (d) provision for on-site disposal of rainwater from the building has not been made.

- ***Required clearances have not been granted***

Clearance from the Wastewater Management Authority [“WMA”] should be obtained, but the application could not be forwarded to the WMA since “No” was selected instead of “Yes” to the question “All projects for hotels, guest houses and the like” under the caption “Site Location” in the Application Form. The Application Form should be revised accordingly.”

3. The grounds of appeal as set out in the Notice of Appeal and reiterated in the Statement of Case [“SOC”] are reproduced hereunder:

3.1 The decision of the Permit and Business Monitoring Committee (PBMC) of Respondent is in breach of the rule of natural justice as:–

3.1.1 the PBMC was chaired by the Mayor, who is also one of the objectors to the application for BLUP made by the Appellant, and as such the application was not assessed in a fair and objective manner; and

3.1.2 the Appellant (then Applicant) should have been heard by the PBMC before deciding the Application, the more so as the Appellant is unaware of the substance of the complaints/objections made by objectors.

3.2 The PBMC failed to objectively assess the Appellant's application in that only accommodation services would be provided to foreigners and not any other activities on a 24-hour basis that would disturb the peaceful character of the immediate neighbourhood. The project excludes the provision of bars, restaurants, breakfast and musical entertainment.

3.3 The onus is on the Respondent to seek clearance or advice from other relevant institutions such as the WMA, and the absence of clearance from the WMA cannot be attributed to the Appellant as one of the justifiable grounds for rejection of its application.

3.4 The PBMC and/or the objectors have misapprehended the Appellant's project in that they mistakenly equated 'tourist residence' with 'Guest House'.

3.5 There are no complaints from inhabitants residing along the access road, the more so as one of them has consented in writing to provide parking facilities on his premises.

3.6 The Appellant has made provision of five parking spaces, which is consistent with the Building and Land Use Permit Guide (one space per three bedrooms) and with the requirement highlighted by the Respondent under ground 3 of its rejection of the Appellant's first application, bearing reference BLP3-MCPV-2025-368.

3.7 Objections received by the Respondent prior to publication of the Notice of Application for BLUP in two daily newspapers, and prior to the affixing of the Site Notification Plate, are not valid objections and ought not to have been considered by the Respondent.

4. The Appellant was represented by its sole Director, Mr. Ramrooch, and was also legally represented. The Respondent was represented by Mrs. Meera Jawaheer, Planning and Development Inspector, and was likewise legally represented. We have duly considered all the evidence placed before us as well as the submissions of both counsel.

5. We note at the outset that the grounds of appeal were not elaborated upon in the SOC and were merely reproduced from the Notice of Appeal, and that Mr. Ramrooch, in examination-in-chief, barely expatiated on the grounds.

I. CONTEXT

6. The building, subject-matter of the present appeal, is a ground plus two floor structure comprising eight rooms, each floor having its own kitchen, and intended by the Appellant to operate on a self-catering basis. It stands on a private access road, a cul-de-sac off Royal Road, which services three other residential buildings; the Appellant's property is the second along that lane. Mr. Ramrooch's evidence was that he intends to let the rooms to persons travelling from Rodrigues for medical treatment at the Candos, ENT and Cancer Hospitals, together with their families, and to police officers from Rodrigues posted temporarily in Mauritius. He stated that he has been operating such a business in Rodrigues.

II. GROUND OF APPEAL

For the sake of clarity, we shall keep the numbering of the grounds of appeal as per the SOC.

Under Ground 3.1

7. It was submitted on the Appellant's behalf that the decision-making process was tainted because the PBMC, chaired by the Mayor who had himself objected to the application, could not have assessed it fairly and objectively, and further that the Appellant ought to have been heard before the PBMC prior to its decision. Mrs. Jawaheer's evidence was that the Mayor was not yet Mayor at the time he lodged his objection, and that in any event the decision of the PBMC is a collective one.

8. Whatever the merit of these complaints, we do not consider that the law vests this Tribunal with jurisdiction to adjudicate upon allegations of bias, conflict of interest or breach of natural justice in the Council's internal decision-making process unless these impinge upon the merits of the decision. In the present case, the Appellant has not produced any evidence to show that the Council came to the wrong decision due to the bias of the Mayor. Our jurisdiction under **section 4(1)(a)(ii) of the Environment and Land Use Appeal Tribunal Act 2012** is to hear and determine an appeal against a decision of the Council under **section 117(14) of the Local Government Act 2011** on its planning merits. The Appellant's counsel submitted that **section 5(4) (ab)(iii) and (iv) of the Environment and Land Use Appeal Tribunal Act 2012** provides that a SOC shall contain submissions on any point of law and any other submissions relevant to the appeal. We agree that the Tribunal is entitled to consider and adjudicate on points of law which are within its powers such as a challenge on the Tribunal's jurisdiction. The **2012 Act** does not provide the Tribunal with wider powers than what has been conferred upon it, as Appellant's counsel sought to submit. The Act must be read purposively. The Tribunal does not have a supervisory jurisdiction over the propriety of the Council's internal procedure, which, if impugned, is challengeable before another forum. This ground is accordingly not one this Tribunal can entertain without any further averment that a procedural irregularity resulted in a wrong consideration of the merits. It is therefore set aside.
9. Counsel for the Appellant also relied on the case of **Jaunbaccus & Anor v The District Council of Flacq IPO Jaaz Impex Ltd [2026] SCJ 137** for the proposition that the PBMC is not the decision-maker under the **Local Government Act**, and that it is the Council, not the PBMC, which must take the decision. We have considered the relevant extracts of the judgment whereby their Ladyships set out the process of the issuance of a BLUP. We totally agree on the principle based on what the law has provided and what has not been made provision for.
10. Similarly, we believe that one cannot read more in the law than what has already been provided, black on white. The Tribunal's jurisdiction under **section 4(1)(a)(ii) of the Environment and Land Use Appeal Tribunal Act 2012** is to hear and determine an appeal against a decision of the Council under **section 117(14) of the Local**

Government Act 2011. The present appeal is lodged pursuant to **section 117(14) of the Local Government Act 2011 [“LGA”]** which provides

“Any person aggrieved by a decision of a Municipal City Council, Municipal Town Council or District Council under subsections (7)(b), (8)(b) or (12) may, within 21 days of receipt of the notification, appeal to the Environment and Land Use Appeal Tribunal.”

Section 117 (7) LGA provides *“With the exception of an application under subsection (8) and subject to subsection (9), the Permits and Business Monitoring Committee shall, within 14 working days of the effective date of receipt of the application, –*

(a) approve the application where it is satisfied –

(i) that the application is in accordance with the Acts and the guidelines referred to in subsection (6); and

(ii) in the case of an application for a Building and Land Use Permit relating to a scheduled undertaking, that there is, in relation to that undertaking, an approved preliminary environmental report or EIA licence under the Environment Act 2024; or

(b) notify the applicant in writing that the application has not been approved and give the reasons thereof.” [underlining is ours]

11. From our reading of the above extract of **section 117(7)(b) of the LGA**, it is incumbent upon the PBMC to assess the application and where it has not been approved, to also notify the applicant giving reasons of refusal. No evidence was adduced by the Appellant to show that the decision to refuse the application, subject matter of this appeal, was not a decision of the Respondent. In fact there were no grounds of appeal or averments in the SOC to that effect. We are of the considered view, going by the wording of the law, the communication of the refusal issued to the Appellant via the NELS as evidence by **Annex G of the SOC** is legally in order. It is a decision of Respondent. The notification of this decision of refusal was done by the Chief Executive who is a member of the PBMC.

12. Counsel further contended that no hearing was afforded to the Appellant and the objectors, to which the Respondent's answer was that the convening of such a hearing before the PBMC is a matter of its discretion. In this instance no hearing took place because there were other factors beyond the objections which weighed against the application. **Section 117 (6B) of the Local Government Act 2011** provides

"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."

13. It is clear from the above provision of the law that there is a discretion which vests within the PBMC to request the applicant to attend a meeting at the Council for clarification and explanatory purposes regarding the application, as the PBMC may determine. Whether the Appellant is aggrieved by the manner in which the Council acted in this particular instance by not affording it such an opportunity is a matter for judicial review before another forum. This ground therefore fails.

Under Grounds 3.2 and 3.6

(a) Setback

14. It was put to Mr. Ramrooch that his building does not observe the setback prescribed by the **Design Sheet on Individual Household Development in Planning Policy Guidance 1 ["PPG1"]**, namely 2 metres on the side and 3 metres at the front, for a building falling within the minimum height category of 7.5 metres fronting a road classified as an "other road" – a classification which is not disputed.
15. The Appellant's site plans submitted with its BLUP application, marked **Doc B**, was also put to the Appellant's representative, showing the building falling on the boundary line of the access road at one point, with side setbacks as low as approximately 900 millimetres in one place. Mr. Ramrooch did not dispute this but stated that he

purchased the building, which is eighteen years old, as it stood, and was unaware of the setback requirement. In re-examination he suggested there was “more than one metre” of setback around the property, but produced no documentary evidence to that effect.

16. Whether the building did not conform to the planning norms from the time it was built, is beyond the scope of this appeal. The Appellant seeks a BLUP for the proposed development and for that reason the building structure and the way it sits in an area with regards to the residential context and its proximity to other residential buildings and the road are relevant, hence the relevance and observance of building setbacks. On the evidence before us, and in particular on **Doc B**, we find that the building does not observe either the required 2-metre side setback or the 3-metre front setback. This ground of refusal is made out.

(b) Access road

17. Mr. Ramrooch accepted, with only minor qualification as to the exact surfacing, that the access road is a private cul-de-sac of limited width – some 10 feet by his account, 3.05 metres on the Council’s uncontested evidence, which we accept – without a pavement, along which two vehicles cannot comfortably pass, and which is intended to serve only the residents of that lane. He suggested, in essence, that his prospective clientele would be a discrete niche market of Rodriguans attending hospital appointments, and would not generate the kind of disruptive footfall the Council fears.
18. We were not referred to any evidence in the application restricting the use of the premises to that market. The application before the Council was, on Mrs. Jawaheer’s uncontradicted evidence, an open application for a tourist residence. We accept the Council’s position that, whatever the Appellant’s present intention, a tourist residence by its nature generates a constant and unpredictable flow of human and vehicular traffic, with guests arriving and departing at all hours, and that such a use is incompatible with a private, substandard cul-de-sac designed to serve only the residences along it. This is not, in our view, mere apprehension on the Council’s part.

The local authority is entitled, indeed obliged, to have regard to the character of the neighbourhood and the impact on it of a use operating on a 24-hour basis. This sub-ground of refusal is accordingly made out.

(b) Wastewater disposal

19. We note that this sub-paragraph was also, possibly mistakenly, marked as (b). This aspect of the refusal was not canvassed in evidence by either party before us, it is accordingly disregarded.

(c) Parking- also dealt with under ground of appeal 3.6

20. Mr. Ramrooch's evidence on the issue of parking lots was inconsistent. He first spoke of two parking lots within his building premises and three on a neighbour's property taken on rent, before stating that he had six in total – which does not add up. We note that the two parking lots meant to be within the building's premises do not appear on his own set of plans submitted to the Council in support of the application, **Doc B**. The **Tourism Authority's guidelines for tourist residences**, produced and marked as **Doc E**, prescribe a slot of 2.5 by 5 metres, one slot per three rooms, clearly demarcated and independently accessible at all times, with off-site parking permissible only where accompanied by the relevant authorisation. Given our earlier finding that the building's setbacks are substandard, and in places as low as 900 millimetres, there is insufficient space within those margins as shown in **Doc B** around the building *in lite*, to accommodate a parking bay with slots as per the dimensions provided in **Doc E**. As regards the three off-site parking spaces, an authorisation letter from the neighbour was provided to the Council as per the evidence of Mrs. Jawaheer but it neither specified the duration of the arrangement nor the precise portion of land concerned, and no lease agreement was produced.
21. On this evidence we cannot find that adequate, functional and properly authorised parking area has been demonstrated with regard to the application at hand. This ground of appeal 3.6 fails and the ground of refusal in this respect is made out.

(d) Rainwater disposal

22. Mr. Ramrooch accepted in cross-examination that no on-site provision for rainwater disposal had been made at the time the BLUP application was submitted. His evidence is that this has since been rectified. This averment by the Appellant's representative was not supported by any documentary evidence before us. This sub-ground of refusal is accordingly made out.
23. As to ground 3.2 itself, we accept that the project as described by Mr. Ramrooch does not include a bar, restaurant or musical entertainment. That, however, does not meet the substance of the Council's concern, which is not confined to entertainment-related nuisance but extends to the disruption inherent in a lodging use operating around the clock on a substandard, private access road not designed to carry such traffic. For the reasons given above, the absence of ancillary entertainment facilities does not, in our view, render the development compatible with its surroundings. Ground 3.2 therefore fails.

Under Ground 3.3

24. It is not disputed that the online application could not be forwarded to the WMA because "No" was selected, rather than "Yes", against the question whether the project was one of a class "hotels, guest houses "and the like"", requiring WMA clearance. The Council produced evidence of having duly notified the Appellant of this omission via NELS as per the "missing information" part of **Doc F**. Mr. Ramrooch's evidence was that his sewage disposal is by way of an absorption pit and that an officer of the WMA informed him that no clearance was required and he could not say whether he ever communicated this to the Council. No document from the WMA confirming this position was produced.
25. We are not satisfied, on this evidence, that the Appellant has shown the WMA clearance requirement to be inapplicable to his project, still less that the onus fell on

the Council, rather than the Appellant, to pursue the WMA of its own motion notwithstanding an incomplete application. The NELS process, as explained in evidence, depends on the applicant correctly identifying the nature of the project so that the appropriate referral can be triggered. Where, as in the present case, that step was not correctly completed, the Council cannot be taxed for the omission of the Appellant. **Doc F** in fact supports the evidence of Mrs. Jawaheer that this was brought to the attention of the Appellant via the NELS platform. Counsel for the Appellant sought to raise an objection regarding the production of **Doc F**. It is important to note that such documents are uploaded as part of the NELS application process, accessible to any applicant wishing to track their application on the portal. The duty rests squarely on an applicant to keep track of any information imparted to him by the Council via the NELS platform. This ground fails.

Under Ground 3.4

26. It is the contention of the Appellant under this ground that the PBMC and/or the objectors have misapprehended the Appellant's project in that they mistakenly equated 'tourist residence' with 'Guest House'. This ground was not elaborated upon in the SOC, was not addressed by Mr. Ramrooch in his evidence, and no submissions were addressed to us upon it. In the absence of any clear evidential or legal basis, this ground is set aside.

Under Ground 3.5

27. Mr. Ramrooch's evidence was that he does not know any of the objectors to the application. He was unaware whether his immediate neighbour objected and that four of the thirty-three objectors were residents of the same private access lane as his property. This evidence directly contradicts the premise of this ground of appeal that there are no complaints from inhabitants of the access road. Mrs. Jawaheer explained that she managed to locate the objectors from the information available at the Council

and she gave evidence regarding the families who lived in the vicinity of the Appellant's property.

28. On the other hand, the Appellant did not bring any evidence to show that people in the vicinity were in favour of the proposed development. We were not addressed on, and the evidence does not clearly establish, whether the neighbour said to have consented in writing to the provision of parking facilities actually consents to the proposed development or whether he is one of those objecting residents of the vicinity or a distinct party. In any event, the consent to use someone's property does not answer the fact that other residents of the same lane did object. This ground fails.

Under Ground 3.7

29. It is the contention of the Appellant under this ground that objections made prior to publication of the Notice of Application for BLUP in two daily newspapers and prior to the affixing of the Site Notification Plate, are invalid. The **BLUP Guide** requires that a Site Notification, in the prescribed format, be posted along all access roads bordering the site 15 days before submission of the application. According to Mrs. Jawaheer's evidence, on her first site visit no notification plate was found either at the entrance to the access road or on the subject site, that she informed workers on site of the requirement, and that on a second visit a plate had been placed on the subject site but not properly affixed, and none at all had been placed at the entrance to the access road. Mr. Ramrooch stated that he had placed the plate on the ground rather than affixed to the gate, for his own convenience in opening it. This, in our view, confirms that the notification on site was not done as it should have been. Counsel for the Appellant sought to make the point that the objectors must have seen the notification to be able to appeal. This does not answer the fact that the Appellant could not prove that notification plate was fixed in the 2 places as per the requirement set out in the BLUP guide.

30. Ground 3.7 proceeds on the premise that a valid notification exercise fixes a point in time before which objections do not count. The whole notification exercise is done so that those living in the vicinity take note of the proposed development and object if they so wish. For this purpose a time frame of 15 days prior to the submission of the application has been stipulated.
31. It stands to reason that if an application for a BLUP had previously been rejected and the self same application is subsequently renewed without any new element to the application and within a reasonable time frame of about a couple of years, the Council is entitled to consider the objections previously received to the same application, more especially where there had been a relatively large number of objections or objectors to the proposed development. The underlying reasoning being that if the objectors are from the locality, it is more likely than not that they would still feel aggrieved by that type of development in their environment and their objections would remain unchanged.
32. From the evidence on record, apart from the fact that it is undisputed that this appeal relates to the second BLUP application made by the Appellant, no evidence has been placed for us to come regarding whether the second application was any different from the first application. The state of the evidence of this score is very flimsy for us to come to a decision as regards the proposition that the objection letter was not made in relation to a specific application.
33. Bearing in mind that the evidence of Mrs Jawaheer that the notification plate was not affixed at the entrance of the private access road nor properly affixed on the gate at the time of the site visit hence it may not have been visible to all and on the other hand, the Appellant did not manage to prove to us that the notification plates were affixed correctly, we are of the view that Council was entitled to consider the previous objections received since there was a consequential number of objectors, some were from the immediate vicinity of the subject property, and the second application was made in quick succession to the first one thereby diminishing the likelihood of the objectors having changed their intent. Whether the Respondent found any merit in the objection is a different issue which falls outside the ambit of this ground of appeal as couched. This ground therefore fails.

34. We do not doubt the social utility of such a venture, the question is whether the development, as applied for, meets the planning norms and statutory requirements applicable to a BLUP application for a tourist residence. We must also record a reservation as to the reliability of certain aspects of Mr. Ramrooch's evidence. He testified that he had owned the building for approximately three years, yet the title deed at **Annex E to the SOC** establishes that the property was acquired only on 14th February 2025. We further note that a complete copy of that title deed was not placed before the Council at the material time. On the parking slots available within his premises but not in his plan, his evidenced seemed doubtful, as was his evidence on the communication of the clearance of the WMA to the Council.

35. For all the reasons set out above, we find that the decision of the Council was well taken. The appeal is dismissed. No order as to costs.

Determination delivered on 17th August 2026 by

Mrs. J. RAMFUL JHOWRY

Ag. Chairperson

Mr. C. K. F CHEUNG KAI SUET

Member

Mr. V. BISSESSUR

Member