

IN THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT No. 2295/25

In the matter of:

- 1. Zaida Beghum Ramsahye (born Poomun)**
- 2. Bibi Fazila Khodadin (born Dilmohamed)**
- 3. Yousouf Azad Khodadin**
- 4. Teeromalay Mootien**
- 5. Vishal Ramkissoo**
- 6. Nafisa Husnoo (born Nabeebukus)**
- 7. Abdool Nizam Husnoo**

Appellants

v/s

Ministry of Housing and Lands

Respondent

DETERMINATION

1. The present appeal is against a decision of the Ministry of Housing and Lands (hereinafter referred to as "the MHL"), for having rejected an application made by the Appellants for the subdivision of a plot of land of the extent of 2891 sq.m or 68.48 perches into five (5) lots for residential purposes, situated at Henrietta (Belin).
2. The sole ground of refusal, as per communication on the National E-Licensing System ["NELS"] platform on 24th September 2025, is "A poultry pen is situated at less than 200m from site."

3. The Grounds of Appeal as per the Notice of Appeal are:

- a. The refusal of the Respondent to grant approval for the subdivision of the plot of land into 5 lots, situated at Henrietta (Belin) is frivolous, unwarranted and unjustified in as much as there are existing residential developments situated directly adjacent to and behind the said poultry pen. Those residential premises are barely metres away from the existing poultry pen.
- b. The refusal of the Respondent to grant the approval of the subdivision of land amounts to an abuse of process in as much as there are businesses such as a snack and hardware store ("quincaillerie") operating in the vicinity and are situated less than 25m from the said poultry pen.
- c. The Respondent has erred in refusing approval of the subdivision of the said plot of land, since there have been 3 applications for the subdivision of the same plot of land, and on each occasion, a different reason has been provided for the refusal, thereby indicating inconsistency and arbitrariness in the decision-making process.

4. Both parties were legally represented at the hearing. The Appellants were represented by Appellant no.5 who deponed on behalf of all the Appellants. Mr. Seegolum, Sworn Land Surveyor [SLS] and Mrs. Hema Ramroop, Town Planner of the Municipal Council of Vacoas-Phoenix, were called as witnesses on their behalf, who deponed. The Respondent was represented by Mrs. Chayah Barnasee, OMA and their witnesses were Mrs. D. L. Goolaup, Senior Development Control Officer and Mr. R. Conjobeharry, Health Engineering Officer. We have duly considered all the evidence placed before us as well as the submissions of both Counsel.

I. CONTEXT ANALYSIS

5. By way of background, the subject site is a plot of land of the extent of 2891 sq.m situated at Henrietta (Belin), which the Appellants sought to subdivide into 5 lots for residential purposes. From title deed annexed as **Annex A** to the Appellants' Statement of Case [SOC], it is noted that the subject site is accessed by common and party roads and the presence of a handful of buildings is noted in the vicinity of the site. The aerial Google map produced by Appellant no.5 marked **Doc A**.
6. The undisputed evidence on record is that the subject site lies outside the settlement boundary of Vacoas-Phoenix, as borne out by the extract of the Development Management Map [DMM] of the Outline Planning Scheme of Vacoas-Phoenix [OPS] produced by the Respondent's witness, marked **Doc G**. This is not, in itself, the ground of refusal communicated to the Appellants, but is a feature of the site's location which is relevant to the context of this appeal. It is also undisputed, as per **Doc A**, and confirmed by the Respondent's witnesses, that the subject site lies mostly within the 200-metre buffer zone of the poultry pen. These facts are not contested by the Appellants.

II. APPLICABLE PLANNING INSTRUMENTS

7. **Policy UDS4** of the **Outline Planning Scheme of Vacoas/Phoenix ["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, there is no suitable site available within or at the edge of the settlement boundary or that 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.

8. The **Design Sheet of PPG1 on Bad Neighbour Buffers**, which regulates "Industry Adjacent to Sensitive Uses", provides an indicative buffer distance of 200 metres between a Poultry/Livestock Farm and sensitive land uses, which include housing as well as other developments of sensitive use such as education and health facilities.

III. GROUNDS OF APPEAL

- **Under Grounds (a) and (b)**

9. These 2 grounds are dealt with together, as was done in the SOC of the Appellants, since they are related. It is important to note at the outset that the Appellants do not contest that the subject site lies outside the settlement boundary, nor that it lies mostly within the 200-metre buffer of the poultry pen. Their contention, rather, is that the amenity of the area has since changed in that there are a number of residential and commercial developments in the vicinity amounting to "sensitive uses" within the meaning of the **Design Sheet of PPG1**, which have been lawfully granted Building and Land Use Permits ["BLUPs"] by the Municipal Council of Vacoas-Phoenix notwithstanding the fact that they also fall within the buffer of the poultry pen and outside the settlement boundary.
10. In support of this contention, the Appellants called Mr. Seegolum, SLS, who produced a map marked **Doc B**, on which he had drawn a 200-metre radius around the poultry pen, and stated that some 25 houses fell within that radius. He referred, in particular, to the title deeds of Mrs. Ally Rashini Ghoorah (TV 2015/02/000271) and of Mr. Rousseau, both residential properties, but conceded in cross-examination that both fall within the settlement boundary, unlike the subject site. He referred to a third property, belonging to one Bava Saib Yousouf, which he conceded in cross-examination falls outside the buffer zone altogether. He did not know whether any of these three properties held a valid BLUP,

and he agreed, on further cross-examination, that most of the houses he had identified within the 200-metre radius in fact fall within the settlement boundary. He estimated the distance between the poultry pen and the Appellants' site at 215 metres, which he calculated by measuring from the centre of the poultry pen to the centre of the site.

11. Mrs. Hema Ramroop, Town Planner of the Municipal Council of Vacoas-Phoenix, was also called on behalf of the Appellants. She confirmed that the Council had indeed previously granted BLUPs, for both residential and non-residential developments, in the vicinity of the poultry pen between the years 2013 and 2025. She produced a list of these, marked **Doc E**. Of these, she identified two residential developments — RESI 214/2013 and BLP1 MCBP 2021654 — which, like the subject site, fall both outside the settlement boundary and within the buffer of the poultry pen. She explained that this practice of granting BLUPs within the buffer zone of the Poultry Pen was adopted following a communiqué from the Ministry of Local Government upon which the grant of these BLUPs was based, but she did not produce it.
12. Mrs. Ramroop, however, produced two letters marked **Docs F and F1**, whereby the Minister had approved the BLUPs of two residential buildings notwithstanding their proximity to the poultry pen, subject to the condition that the applicant be informed of the likely nuisance and health hazards that may arise from that proximity. She also stated that the poultry pen had been granted its permit by the Council in 1989 and is itself situated within the settlement boundary.
13. From the undisputed evidence before us, the site in lite is found outside settlement boundary and lies mostly within the 200-metre buffer of the poultry pen. This is established by **Doc A** and confirmed by the evidence of Mrs. Goolaup, Senior Development Control Officer at the MHL, called on behalf of the Respondent, that some 75% of the site falls within the buffer. It is also consistent with Mrs. Ramroop's own estimate of a distance of approximately 160 metres between the poultry pen and the site, and was also expressly accepted by the Appellant no.5 at the hearing.

14. We pause here to make an observation. The admission of the Appellants is fatal to the reliability of the evidence of Mr. Seegolum, SLS, who was the only one stating that the distance between the site and the poultry pen was 215 metres. We find, in any event, that Mr. Seegolum's evidence on this point cannot be relied upon as it proceeds from an erroneous methodology of measuring from the centre of the poultry pen to the centre of the site, which is contrary to the **Design Sheet of PPG1** which prescribes measurement from the boundary of the bad neighbour development. This approach was confirmed by both Mr. Conjobeharry and Mrs. Goolaup.
15. The site being outside the settlement boundary, **Policy UDS4 of the OPS** is applicable, which generally does not favour residential development outside the settlement boundary unless certain conditions are satisfied. Mrs. Goolaup, produced **Doc G**, the extract of the Development Management Map of the OPS, and **Doc G1**, its legend, confirming that the site lies outside the settlement boundary, albeit by only some 50 metres.
16. From the evidence of Mrs. Goolaup that the site's location might, in principle, be capable of being considered as falling within an exception under **Policy UDS4**, having regard to its proximity to existing development and services. That, however, does not address or resolve, the issue of the presence of the poultry pen. The policy set out in the **Design Sheet of PPG1 on Bad Neighbour Buffers**, which regulates *"Industry Adjacent to Sensitive Uses"*, provides that there should be a buffer distance of 200 metres between a Poultry/Livestock Farm and sensitive land uses, which in this case is the residential usage.
17. The issue of contention is whether a derogation of these policies is justified on the facts of the present case. After analysing the evidence of the Appellants' witnesses in the light of the evidence of Mrs. Goolaup, we find that none of the three properties referred to by Mr. Seegolum replicates the position of the subject site, which lies outside the settlement boundary but within the buffer zone of the poultry pen. He was unable to confirm whether any of these properties held a valid BLUP.

18. The communiqué supposedly allowing the practice of granting BLUPs for developments within the buffer zone of the poultry pen was never produced by the Council's representative, Mrs. Ramroop. The two letters, **Docs F and F1**, as evidence of BLUPs issued, were granted by the Council, not the Respondent, following the decision of the Minister of Local Government. Even these two BLUPs were granted subject to conditions requiring the applicants to take measures to abate the nuisance associated with the poultry farm.
19. The Respondent's position is that it must abide by the applicable planning policies. As regards the 200-metre buffer distance, it cannot depart from such a policy notwithstanding the practice adopted by the Council, as this is provided for biosecurity reasons, as per the evidence of Mr. Conjobeharry, Health Engineering Officer posted the Ministry of Health. He stated that the application was not recommended by the Ministry of Health because the subject site lies within the buffer zone of the poultry pen, and that his Ministry adopts a consistent stance in respect of such developments for biosecurity reasons, given the risk of illnesses such as avian and bird flu.
20. We do not accept Mrs. Ramroop's evidence that the 200-metre buffer prescribed under the **Design Sheet of PPG1** is merely indicative rather than prescriptive. We agree, on this score, with the submission of learned counsel for the Respondent, on the authority of the Privy Council decision in **Beau Songes Development Ltd v UBP Ltd and Anor [2018] UKPC 1**, that such a distance is to be treated as prescriptive unless strong justification is shown for departing from it. No such justification has been made out on the evidence before us. Nor do we accept the submission made on behalf of the Appellants that concrete evidence of actual health hazard or illness arising from proximity to the poultry pen was required before the buffer could be relied upon. Judicial notice can be taken of outbreaks such as avian and bird flu and of their impact on human health as was demonstrated. In any event, planning control of this kind is inherently a preventive exercise that needs to be assessed by reference to foreseeable risk in the light of past experiences and not one that awaits harm that has already been caused.

21. We find that no derogation from the 200-metre buffer prescribed under the **Design Sheet of PPG1** is justified on the facts of this case. Even if there were such a directive of the Ministry of Local Government, which is the supervising authority of the Municipal Council, the practice of the Council to issue BLUPs within the buffer zone of a poultry pen, whether correct or not, does not bind the Respondent nor does it convert the subject site into one where residential development is compatible with its surroundings. In fact, the Respondent cannot be taxed for applying the policies correctly and abiding by the prevailing planning policies merely because another authority decides to depart from such application of the planning instruments. The Tribunal will only intervene if the decision of the Respondent was wrong on planning principles, or if it wrongly applied the law or both. This is not the case here. The planning principles were correctly applied by the Respondent: see Oomila Chuckowree and Anor v/s The Morcellement Board, Ministry of Housing and Land Use Planning [ELAT 2002/21].
22. We bear in mind that each case is to be decided on its own merits and specificities. In this case, any prospect of a future merging of settlements in the area as mentioned by both Mrs. Ramroop and Mrs. Goolaup, remains entirely speculative, with no recommendation yet made and no timeframe officially identified. The evidence establishes, without any real contestation, that the subject site lies substantially within the 200-metre buffer of an existing and operational poultry pen, that this buffer is to be treated as prescriptive in the absence of any strong justification to depart from it, and that no such justification arises on the facts before us. The fact that there are other houses or sensitive land uses within the buffer zone does not negate or abate the biosecurity risks nor its associated health hazards and no measures have been put forward to allow for such an assessment of effective abatement to be made in case of an outbreak. Grounds (a) and (b) accordingly fail.

- **Under Ground (c)**

23. It is the contention of the Appellants under this ground that, on the various occasions on which an application has been made in respect of the land in *lite*, the ground of rejection has differed, thereby demonstrating a flawed and inconsistent assessment on the part of the Respondent. We believe that this ground, as couched, does not have much merit. The Tribunal has to hear and determine an appeal before it and not make an assessment of applications that were not before it nor on the manner in which these previous assessments of other applications for the same development proposal were made. Be it as it may, for the sake of completeness we shall deal with this ground.

24. The evidence before us establishes that four applications have, in fact, been made in respect of the land *in lite*. The first, made in 2001, was an application to the Ministry of Agriculture, Food Technology and Natural Resources for the conversion of the land from agricultural to residential use, refused by that Ministry by letter dated 17th June 2002 [**Annex C to the SOC**]. This was neither an application to the Respondent nor an application for subdivision. The second was an application to the Respondent for subdivision of the land in *lite*, made in January 2019, refused on the ground that the site lies within the 200-metre buffer of the poultry pen. This is similar to the ground of refusal as in the present application, subject- matter of this appeal. The third, made in 2023 and prepared by SLS Mr. Nuckchady, was again an application for subdivision, refused on the ground that the site falls within a flood prone area. It was rejected by the Land Drainage Authority and was found to be agricultural land; on that occasion, the Ministry of Health raised no objection, subject to confirmation from the Council as to whether the poultry pen was licensed. The fourth is the present application, refused on the sole ground that the site lies within the 200-metre buffer of the poultry pen.

25. We do not find that this ground is made out on the evidence. The first application was made to a different Ministry and was of a different nature. It was an application for land conversion, not for subdivision. The second and fourth applications were refused on the

same ground, that is that the site is found within the buffer of a poultry pen, hence consistently applied on both occasions.

26. As for the 2023 application, Mrs. Chayah Barnasee explained that the zoning of the site was agricultural but its location, as assessed by the Land Drainage Authority, was in a flood-prone area. This, according to her testimony, was the decisive factor for the Respondent, without having to consider the poultry pen buffer issue since the Ministry of Health had raised no objection at that time subject to a certain condition that had to be satisfied.

27. The land *in lite*, on the evidence before us has been said to be agricultural land upon Appellant no.5's own admission and as per the Appellants' title deed it has been described as "terrain vague". The Appellant stated that he was well aware of the presence of the poultry pen at the time that he purchased the property and that it was agricultural land. He was therefore well aware of the constraints of this property yet he made the application on the basis that he saw others in the vicinity building houses and he thought he would also be entitled to build. He stated that he had started the construction but had to stop due to a notice received from the Council, hence the application for subdivision. He confirmed that at this stage the status of the land is still agricultural as no land conversion permit was obtained. Each application made by the Appellants once rejected was not pursued, except for the last application. We do not find evidence of arbitrariness or inconsistency on the part of the Respondent. Ground (c) accordingly fails.

28. We have addressed our minds to the land use of the area since there are developments, residential and non-residential, in the vicinity of the poultry pen which itself is found to be within the settlement boundary. Even though, regrettably, there seems to be inconsistency in the application of the policies between the Morcellement Board of the MHL and the local authority, the evidence shows that decision of the Morcellement Board has been consistent in applying the law and prevailing policies correctly. The issue of land use, therefore, cannot be attributed to any inconsistent decision making by the MHL.

29. For all the reasons set about above, we find that the Respondent's decision to refuse the application for subdivision of the land *in lite* for residential purposes was correct.

30. The appeal is accordingly set aside. No order as to costs.

Determination delivered on 28th August 2026 by

Mrs. J. RAMFUL JHOWRY

Mr. S. BEEHUSPOTEEA

Mr. R. K. JUGROO

Ag. Chairperson

Member

Member