

IN THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 2150/23

In the matter of:

Abedanand Parlackee

Appellant

v/s

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 [“the Ministry”], for having refused to grant a morcellement permit [hereinafter referred to as “residential morcellement permit”] to the Appellant for the subdivision of a plot of land of an extent of 1266.25 m² into 3 lots for residential purposes at Trou aux Biches.
2. The grounds of refusal as communicated by the Respondent to the Appellant via the NELS platform on 14th December 2022 are:

“Site lies outside settlement boundary and lies within the 200 metre buffer zone of a poultry pen”

3. In his appeal, the Appellant raised the following grounds reproduced in *italics*:
- (1) *The Respondent failed to give the Appellant the opportunity for a proper hearing in connection with his application.*
 - (2) *The Respondent was wrong to establish that the proximity between the poultry pen and the proposed morcellement as being within the 200-metre buffer zone of a poultry pen as a reason to reject the permit.*
 - (3) *As a result of the above reason, given the remoteness of the two above-mentioned areas, the Respondent failed to determine that there could be no possible negative impact on either the poultry pen and/or the proposed morcellement.*
 - (4) *The proposed morcellement is for a subdivision of the land, which is only for family use.*
 - (5) *The Respondent failed to take into consideration that there is no substantial proof evidencing that the poultry pen constitutes a nuisance to the proposed morcellement and its users and/or vice versa.*
 - (6) *The Respondent erred in not giving due weight to the fact that there are numerous construction sites and existing developments around the poultry pen and/or plot of land in question.*
 - (7) *The Respondent failed to give its decision within the statutory provision of Section 6(1A) of the Morcellement Act.*
 - (8) *The land in question formed part of a bigger plot, whereby a morcellement permit had already been obtained for 50 perches. It is therefore unfair and unjust that the permit is denied for the remaining 30 perches.*

I. Background

4. By way of background to the case, the Appellant is the owner of 2 contiguous plots of land which formed part of a bigger portion from which there had been a permit for excision granted for residential purposes- as evidenced by the title deed marked **Doc D** produced by the OME of the Ministry of Housing and Lands. A residential morcellement permit has been granted in 2021 for the property adjoining that of the Appellant which belongs to the Appellant's relatives.

II. Respondent's case

5. It is the contention of the Respondent that the subject site is found at a distance of approximately 22 metres outside the settlement boundary. This is evidenced by a map produced by Mr. Juggoo from the Ministry and marked as **Doc G**. This is in fact not contested by the Appellant. The Respondent's case is that the refusal was lawful and well-founded according to the relevant provisions of the Outline Planning Scheme for Pamplemousses/ Riviere du Rempart [**'OPS'**] for several reasons. **Policy SD4** of the **OPS** 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 a ground for refusal of any residential development by reason of biosecurity considerations as per the Planning Policy Guidelines [**PPG**] and **Policy ID 4** of the **OPS**.

6. The Appellant was legally assisted. Mr. Banjoo - Planning and Development Officer of the District Council of Pamplemousses, Mrs. Seetohul- a representative of the Ministry of Housing and Lands, Mr. Koherattee- Land Surveyor. The Respondent was represented by Mrs. Prayag- representative of the Respondent, Mrs. Seenarain- Environment Officer- Ministry of Environment, Solid Waste Management and Climate Change and Mr. Juggoo- Development Control Officer at the Ministry of Housing and Lands. The Council was also assisted by Counsel. The evidence of the witnesses will not be reproduced save for instances where we deem it fit to do so. We have duly considered all evidence placed before us as well as submissions of both Counsel.

III. The Applicable Planning Instruments

7. The subject site being situated in Trou aux Biches, the applicable planning scheme is the **Outline Planning Scheme of Pamplemousses/Riviere du Rempart District Council Area**['OPS'].

8. **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; and

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

Or where

(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.

9. The **Design Sheet of Planning Policy Guidance [‘PPG1’] on Industry Adjacent to Sensitive Uses** provides guidelines on **Bad Neighbour buffers**. According to the guidelines the acceptable buffer distance to be kept from the boundary of a bad neighbour industry such as Poultry/Livestock to a sensitive land use such as housing, is 200 metres.

10. **Policy ID4 of the OPS** regulates and ensures developments that generate nuisance, pollution or other adverse impacts ("bad neighbour developments") are located in appropriate areas and do not adversely affect surrounding communities, sensitive land uses or the environment.

IV. Grounds of Appeal

11. Ground 1 of the grounds of appeal was dropped.

(a) Under Grounds 2, 3 and 5

12. These grounds are treated together as they are interrelated. The Appellant contends under these grounds that the Respondent erred in relying on the alleged proximity of the proposed morcellement to a poultry pen within the 200-metre buffer zone as a ground for refusal, having failed to properly assess the actual circumstances and determine that, given the remoteness between the two sites, no adverse impact would arise either on the poultry pen or on the proposed morcellement. Furthermore, there is no substantial proof that the pen constitutes a nuisance to the proposed development and its users and/or vice versa.

13. As stated above the **Design Sheet of Planning Policy Guidance [‘PPG1’] on Industry Adjacent to Sensitive Uses** provides guidelines on **Bad Neighbour** buffer distances “*to mitigate any negative effects of industrial operations*”. Sensitive land uses include housing, education and health facilities. According to these guidelines the acceptable buffer distance to be kept from the boundary of a bad neighbour industry such as Poultry/Livestock to a sensitive land use such as housing, is 200 metres.

14. The reason for respecting a buffer distance from a poultry pen is that there are risks associated with the contamination of broilers and spreading of aviary diseases- in such cases, there is a likelihood of it affecting inhabitants within the vicinity in the eventuality of an outbreak.

15. We have considered the report of Mr. Kadafi Koherattee, **Doc A**, in its totality. The report sets out various way of assessing the buffer distance. This has prompted us to bring about certain clarifications regarding the interpretation of the buffer distance.
16. The **Design Sheet of Planning Policy Guidance ['PPG1'] on Industry Adjacent to Sensitive Uses** provides the “acceptable distance of sensitive land use from boundary of bad neighbour industry” (emphasis is ours). One example of bad neighbour use provided therein is poultry/livestock farm. The Oxford English Dictionary defines "boundary" as "a line which marks the limits of an area; a dividing line". In the context of a poultry farm, the boundary therefore refers to the outer perimeter demarcating the entirety of the farm property and not merely the location of individual poultry pens situated within that property.
17. We believe that this distinction is deliberate and logical. A poultry farm is not confined to the physical structures housing the broilers. Rather, it comprises the whole operational area enclosed within the farm boundaries, including circulation areas, feeding areas, storage facilities, service areas and any land upon which poultry may move or be managed as part of the farming activity. In many poultry and livestock operations, broilers are not necessarily restricted at all times to a specific pen and may occupy different parts of the farm premises.
18. Furthermore, the planning rationale underpinning the prescribed buffer distance extends beyond the physical footprint of the poultry sheds themselves. Concerns associated with poultry farming, including odour, noise, flies, dust, biosecurity risks and the potential proliferation of disease, are not necessarily confined to the precise location of the pens. Such impacts may arise from activities occurring anywhere within the farm compound and may affect the surrounding environment from various points within the overall farm operation. By requiring the buffer to be calculated from the perimeter of the farm, the policy ensures that the potential impact area associated with the farming activity, in its entirety, is taken into account. Measuring the buffer

distance from the midpoint of individual poultry pens would defeat the purpose of the guideline, as it would disregard substantial portions of the farm from which impacts may equally originate.

19. This being said, we find that the most correct interpretation of the buffer distance from the poultry farm is depicted at point **W of Page 7 of Doc A**, from the evidence adduced by the Appellant's witness and this is also confirmed by the evidence of the Respondent, **Doc G** -the map produced by Mr. Juggoo. From this evidence, it is clear that the major part of the Appellant's property which is the subject matter of the present appeal, lies within the buffer of the poultry farm.

20. Even if, as per the Appellant's contention, it appears that there is a considerable distance between the subject site and the poultry farm, the buffer must be respected as provided by the relevant planning instruments. **Policy ID4 of the OPS on Bad Neighbour Development** not only regulates but also ensures bad neighbour developments, those generating nuisance, pollution or other adverse impacts, are located in appropriate areas so as not to adversely affect surrounding communities, sensitive land uses such as residential areas, schools, health facilities, tourism developments or the environment. The existence of the buffer is to minimize conflicts with neighbouring uses since poultry rearing carries with it biosecurity risks such as proliferation of diseases including avian flu. It is a source of odour and sanitary nuisance, as rightly averred by the Respondent, and these reasonably attract flies and mosquitoes that in turn are carrier of diseases, bacteria and virus.

21. This policy is also to be read in conjunction with the provisions of the **Design Sheet of Planning Policy Guidance ['PPG1'] on Industry Adjacent to Sensitive Uses**, as set out above. The nuisance or adverse impact in such cases need not be actual, they need to be foreseeable as in the case of avian disease outbreak that may affect human health and safety.

22. We therefore 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 farm. 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. These grounds are therefore set aside.

(b) Under Ground 4

23. The Appellant's contention is that the proposed morcellement is for a subdivision of the land which is only for family use. This is merely a statement as to the intended use of the land. It does not constitute a ground of appeal as it does not challenge any aspect of the impugned decision, nor does it identify any error especially in law, fact or planning judgment on the part of the Respondent. This ground is therefore set aside.

(c) Under Grounds 6 and 8

24. These 2 grounds are dealt with together as they are related. It is contended that the Respondent erred in not giving due weight to the fact that there are numerous construction sites and existing developments around the poultry pen and/or plot of land in question and that the land in question formed part of a bigger plot, whereby a morcellement permit had already been obtained for 50 perches. It is therefore unfair and unjust that the permit is denied for the remaining 30 perches.

25. The Appellant adduced evidence through Mrs. Seetohul that a residential morcellement permit has been granted in 2021, as per **Doc B**, to the property

adjoining that of the Appellant and belonging to the Appellant's relatives, three bearing the same surname as the Appellant out of the five as can be gauged from the plan marked **Doc C**. Mrs. Seetohul explained that although the property was in fact outside the settlement boundary and within the buffer zone of the poultry pen, there were no remarks made to that effect when processing the application. She stated that the subdivision for residential purposes was approved in 2018. Mr. Banjoo produced three (3) Building and Land Use Permits ['BLUPs']- marked **Docs E, E1 and E2**, as evidence of the fact that 3 residential buildings have been authorized by the Council in the vicinity of the poultry farm. However, he stated both in examination in chief and cross-examination that he did not check whether these buildings are located within the buffer of the poultry farm.

26. While we understand the point that the Appellant seeks to make here is that there is no fairness in the decision of the Respondent due to similar cases (subdivision and requesting permit for residential development) being treated with disparity, it is important to note the general legal principle is that a wrongful or unlawful decision does not create a right to further unlawful decisions. Therefore, the Appellant cannot claim a legitimate expectation. A public authority must act according to law and if there had been an error in a previous decision, their practice must be corrected rather than allowing the error to perpetuate. Legality must prevail over consistency. Equality demands that like cases be treated alike in accordance with the law, not that an illegality be repeated for the benefit of others. There can be no claim for equality in illegality.

27. The relevant issue is whether the application satisfies all the legal requirements governing the grant of the permit, and not whether someone else may have benefited from an erroneous decision in the past. In the present case, the poultry farm was established in that area well before the Appellant made his application. The farm is well placed outside the settlement boundary where residential development is not generally allowed. The subject site is not only situated within the buffer zone of the poultry farm but also outside the settlement boundary as stated above, where there is a presumption against residential development as regulated by **Policy SD4 of the**

OPS. There should be no derogation from the application of the relevant laws. The **OPS**, as provided under **s.14 of the Town and Country Planning Act 1954**, and the relevant planning guidelines demonstrate that the proposed development does not qualify for residential uses. The application of the guidelines is prescriptive: see **Beau Songe Development Ltd v UBP** *supra*. Furthermore, the Appellant does not qualify under any exception to the policy as he is not a small owner in that the plot exceeds 10 perches, he did not acquire the property before 30 September 2005 and this cannot be considered as a Hardship case within the meaning of **Policy SD3 of the OPS**. There is, therefore, no justifiable ground to derogate from the application of the laws and planning policies. The fact that there are residential developments around or that the Appellant's land formed part of a bigger lot whereby 50 perches have already been granted a morcellement permit for residential development does not automatically render the Appellant's property eligible to gain one too. These grounds therefore fail.

(d) Under Ground 7

28. It is the contention of the Appellant that the Respondent failed to give its decision within the statutory provision of **Section 6(1A) of the Morcellement Act**.

29. **Section 6 and 6 (1A) of the Morcellement Act**-reproduced in *italics* hereunder-provide

6. Authority to develop

(1) Where, after consideration of an application, the Board is satisfied that-

(a) the proposed morcellement satisfies all planning requirements; and

(b) the plan submitted makes adequate provision for the infrastructural works, the Board shall subject to subsection (1B) (a), within a period of 6 weeks from its effective date, forward the application, with its recommendations, to the Minister.

(1A) Every member of the Board shall convey his stand on the application within 4 weeks of the effective date referred to in subsection (1), failing which he shall be deemed to have no objection to the issue of the letter of intent under subsection (2).

(underlining is ours)

The definition of “effective date” is provided under **section 2 of the Local Government Act 2011** -to mean *“the date by which all the information, particulars and documents specified in the application form are submitted”*.

30. The Appellant has adduced no evidence demonstrating that all the information, particulars, and documents required by the Respondent had been duly submitted that would enable the determination of the effective date of the application. In the absence of such evidence, the Tribunal is unable to ascertain when the statutory time limit started to run and, consequently, whether the Respondent’s decision was taken outside the prescribed period.

31. This is not a matter that can be approached lightly or on the basis of mere assertion. In the absence of clear and cogent evidence establishing the effective date of the application, this ground of appeal cannot be sustained. It is therefore set aside.

32. For all the reasons set out above, we find that the Respondent took the right decision. The appeal is accordingly set aside. No order as to costs.

Determination delivered on 16th June 2026 by

Mrs. J. RAMFUL-JHOWRY
Ag. Chairperson

Mr. BAUREEK
Member

Mr. SUFFEE
Member

