

**BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL**

**Cause No. : ELAT 241/12**

**In the matter of:**

**MRS. CALLYCHURN CHANDANEE**

**Appellant**

**v.**

**MUNICIPAL COUNCIL OF VACOAS PHOENIX**

**Respondent**

**DETERMINATION**

The Respondent has refused to grant a Building and Land Use Permit (BLUP) to the Appellant for the manufacture of structural metal products (doors, frames, shutters, metal frame works) at Callychurn Lane, Candos, Vacoas. The grounds for refusal, contained in a letter issued by the Respondent on the 31 July 2012, are as follows:

1. That the proposed workshop would be at 1 metre from Callychurn Lane with no onsite parking
2. That the access road is narrow and inappropriate for such type of activities
3. That the proposed development would be in a predominantly residential zone and as such, a metal workshop would constitute an incompatible use and a general nuisance of the area.

The Appellant initially appealed against this decision to the Town and Country Planning Board (TCPB) and the appeal was transferred to the Environment and Land Use Appeal Tribunal (ELUAT) in accordance with section 9(3) of the ELUAT Act 2012. The grounds of appeal, which had been formulated for the purposes of the appeal to be heard by the TCPB are the following:

1. The Appellant has onsite parking facilities
2. The road is wide enough since heavy vehicles often make use of the lane such as concrete laying slab lorries
3. The neighbours have no objection and have given their consent.

Evidence adduced by the Appellant has disclosed that there was provision for only two parking spaces (Document A) and the pictures produced by her to indicate that the road was wide enough showed the presence of a big lorry for the use of casting slabs (Documents B and B1). Furthermore, what unfolded from the evidence of the Appellant is that the proposed development is to take place in the garage of the Appellant, which can accommodate two vehicles at any one time. The building is in a small lane which is a 'dead end'. The photograph showing the big lorry turned out to be one used for casting slabs, which is an activity which can be qualified as an isolated one, the casting of slabs is not an activity that is done on a regular basis. Besides, the Appellant conceded that the lane does not usually accommodate much traffic. The area is a residential one where the houses are very close to each other and the Appellant's house is at about the second one in the row of houses along Callychurn lane. Despite the fact that there has not been any complaint registered from the neighbours (who are described as 'relatives' by the Appellant), the location of the proposed activity will certainly cause noise and fumes by the cutting and welding of metal frames by machines. The Appellant attempted to establish that there were other commercial activities in the vicinity of her proposed development, namely a tailor's workshop. Yet it came out that the frontage of this activity is along the main road which is a classified road.

On the other hand, the statement of defence filed by the Respondent have highlighted that the proposed development would be in a predominantly residential area and the establishment of a metal workshop there would constitute an incompatible use and general nuisance to the area. The Respondent relied on the following planning policies in its decision making process:

(i) Section 2.13 of the Design Guidance on Industrial Development which provides the parameters in which small industrial workshops and home working can operate. This section limits industrial uses as not being normally acceptable within residential areas due to dust, noise and fumes, vibration and other adverse environmental effects that such activities can generate,

(ii) Policy 4.1 of the Outline Planning Scheme of the Municipal Council of Vacoas Phoenix which lists out the conditions for the setting up of small scale industrial premises. These include the conditions on access road being of a minimum of 4.0 metres, acceptable environment impact and the development should not cause nuisance to adjoining residential neighbours by virtue of noise, dust, smoke, fumes, smells or parking or loading problems.

In the light of the evidence of the Appellant, it has been clear that the premises where the proposed development is contemplated is inadequate for such an activity and would not be compliant with the above-mentioned planning policies. We find that the basis for

the refusal of the Municipal Council is justified. There is no reason for this Tribunal to interfere with its decision in this matter.

The appeal is accordingly set aside.

Determination delivered by:

**Mrs. V. Bhadain, Chairperson** .

**Mr. V. Reddi, Assessor**

**Mr. M. A. Busawon, Assessor**

Date:

31 May 2017