

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 1235/16

In the matter of :-

Maya Luxmi Ramdhonya

Appellant

v/s

Municipal Council of Beau Bassin/ Rose Hill

Respondent

DETERMINATION

1. The present appeal is against a decision taken by the Municipal Council (hereinafter referred to as “the Council”), for having rejected an application made by the Appellant for a Building and Land Use Permit (BLUP) for the use of part of an existing residential building for an automotive workshop employing less than 10 persons, at Robertson Street, Beau-Bassin. The decision of the Council was communicated to the Appellant by a letter dated 29th July 2016 which stated that the Council rejected the application on the ground that
 - (i) The proposed development is not in compliance with the **Design Guidance (as per Section 2.13)** for industrial development of the **Planning Policy Guidance** which provides that industrial uses such as panel beating and spray painting, manufacture of furniture and vehicles repairs are not normally acceptable uses within residential areas due to dust, noise, fumes, vibration and other adverse environmental effects.
 - (ii) The proposed development is incompatible with the predominant residential use of the area where it is being proposed and as such will be contrary to **Policy UDS1**

of the Outline Planning Scheme for the Municipal Council of Beau Bassin/Rose Hill as it is likely to adversely affect the local amenity of existing sensitive use (Housing).

- (iii) The plate notification affixed/display on site do not comply with the specifications of the Building and Land Use Permit Guide which provides that one plate notification must be put up on different street frontages on particular sites serviced by more than one access road and the same should not be more than 3 metres from roadside boundary of the site and should be clearly visible. In this present situation, the plate notification is visible from a common private access only but is not visible from Robertson street.
- (iv) Objections have been received against the proposed development from property owner(s)/occupier(s) of the area.

2. The Appellant has challenged the decision of the Council under 3 grounds of appeal. Each ground relates to one or more ground of refusal of the Council. The owner of the plot of land is the father-in-law of the Appellant who in turn wishes to apply for the BLUP so that her husband can work therein for the maintenance and repairs of motor vehicles. The Appellant and Respondent were both legally represented. We have duly considered all the evidence placed before us as well as submissions of Counsel.

I. CONTEXT ANALYSIS

3. The development site is of the extent of 334 sq. m and is a corner plot between a private access road serves as access to a few dwellings and Robertson Street in Beau Bassin, which ends in a cul-de-sac. The site comprises of a residential building and is enclosed by boundary walls. It is being proposed that the development be carried out within the compound of the Appellant under a CIS structure which is annexed to the house. The site can accommodate some 3-4 cars. The area is almost fully residential and is densely built.

II. PLANNING INSTRUMENTS

4. The development being proposed is a small scale industrial workshop which would be regulated by **Policy ID1 of the Outline Scheme of Beau Bassin/Rose Hill [‘OPS’]** where it is stipulated that *“Applications for Small and Medium Enterprises (SMEs) and small scale workshops that are unsuitable in residential areas should seek sites in SME zones and Small Scale Business Industrial Workshop zones”*. The **Planning Policy Guidance 1 [PPG 1]** paragraph 2.13 on Small Industrial Workshops and Home Working also applies. Furthermore, table 4.1 of the OPS summarizes the permitted secondary uses within predominant land use zones where light, medium, heavy and extractive industries are not allowed within residential zones.

(i) Under Ground 1

5. It is the contention of the Appellant under this ground that by providing these first two reasons of refusal it was clear that the Respondent erred in turning down the Appellant’s application as it failed to apprehend and therefore misconstrued the nature and character of the Appellant’s proposed project. We have understood the project of the Appellant’s husband to be essentially involved in the diagnosing and repair of electric and electronic components of motor vehicles through a computerized system. The Appellant’s husband produced photographs of the equipment he is likely to use and all the qualifications that he possesses in the field. While we have been satisfied that the method likely to be used by the Appellant’s husband is computerized the fact of the matter remains that the area is a highly residential one and with that comes several issues. Firstly, the access along which the Appellant’s property can be accessed is a private access road. This is also the access used by many other residents of the locality to get to and from their homes and the record does not show that they have given their consent. Annex 2 to the Statement of Defence provided by the Respondent shows a plan of the locality and there are some 10 dwellings along the access road, with the names of the owners. This evidence was not contested.

6. It is a matter of law and settled planning principles, that anyone whom without consent uses a private property will be committing a trespass. A BLUP cannot be granted where the access to the proposed development is through a private access road for which the other owners of property found therein have not given their consent. Although this is not set out as one of the grounds of refusal, the Tribunal is entitled to assess the application anew. Furthermore, the Council's position, through the testimony of Mrs. Teeha, is that the only type of development that may be allowed in a private access road is one of residential nature and so even if the proposed activity would have been outside a residential area, a BLUP would still not have been granted due to the private nature of its access.

7. The area being highly residential, its amenity and character is likely to be compromised if there is a marked rise in traffic within the area with the proposed development. The width of Robertson Street, as per the testimony of Mrs Teeha, is only 4.88 metres and is a cul de sac and it is difficult for cars to cross each other on that cross. She also stated the private access road has no provision for cars to turn around. If the development is allowed, it will cause daily inconveniences to the residents of the vicinity with unusual activities taking place should cars that are attending the premises of the Appellant have to park outside. The proposed activity will not by virtue of its nature but rather through its operation result in associated inconveniences that will be detrimental to the character of the residential area. There will be a marked rise in traffic and people calling at the premises of the Appellant. As a result more vehicles will be driving in and out of that area thereby not only resulting is a more noise nuisance but also there will be an increasing risk of safety hazards since the roads are narrow and with the associated difficulty in manoeuvring in case of cars having to park outside the premises of the Appellant. The subject site being a corner plot, will not have the required kerb radius for vehicles to turn bearing in mind the narrowness of the roads. The visibility splay is also thus compromised and not conducive for activities which will attract more vehicles. There is no evidence of pedestrian facilities on those roads. We agree with the application of **Policy UDS1** by the Council that applications for developments within settlement boundaries should only be permitted if they do not adversely affect the local amenity of existing sensitive uses such as housing.

8. We have addressed our minds also the **Policy ID1 of the OPS** as well as the table 4.1 of the OPS as set out at paragraph 4 above, and we are of the view that they find their application here. The **PPG 1, at paragraph 2.13 on Small Industrial Workshops and Home Working** also applies since it is an industrial activity that is being proposed in a residential area. We have addressed our minds to the submission made on behalf of the Appellant to the effect that “Industrial uses such as panel beating and spray painting, manufacture of furniture and vehicle repairs are not **normally** acceptable uses within residential areas due to dust, noise, fumes, vibration and other adverse environmental effects”. Emphasis has been laid on the word “normally” in an attempt to show that these activities may be accepted. We agree with this proposition provided that it is not disruptive to the character and amenity of the residential area. In the present context, we have come to the conclusion that the operation of the proposed activity will lead to associated inconveniences and disruption in terms of noise and safety hazards due to the marked rise in traffic within that rather narrow and confined space. He is proposing the use a welding machine as well as a crippling tools which may generate their own noise and which may also escape since operation of the proposed activity will take place in an open space under CIS. The operation of illegal activities in the vicinity cannot be taken as excuse to grant planning permission in the application before us. Whether the Appellant’s husband decides to work only in the afternoons or very rarely is not a consideration either that will tip in his favour. To a point made in submission on behalf of the Appellant, we do not believe that the Council was under any legal obligation to offer a hearing to the Appellant. The application of the policies renders the present application devoid of planning merits.

(ii) Under Ground 2

9. It is the contention of the Appellant that the 3rd ground of refusal is not a substantive issue but rather a procedural flaw in the application of the Appellant. We agree with the Appellant on this ground. While not putting up the notification plate in an apt place to invite for objections is a breach in the procedure, it does not *per se* render the application devoid of planning merit. It is a mere procedural flaw which can be rectified by the Appellant at any point.

(iii) Under Ground 3

10. The Appellant's contention is that under the last ground of refusal, the Appellant is informed that there was only one objector who appeared to be a fictitious one as there is no one by that name living in the area of the subject- site and that the neighbours are supportive of the proposed development. The record shows that there are some 4 people who have signed a consent form, out of whom 2 bear the same surname as the Appellant. There is nothing on record that suggests the rest of the inhabitants of the area have consented to the present application. Furthermore, in order to substantiate their case the Council called one of the objectors whom the Appellant's counsel has the opportunity to cross-examine, Mr. Seedonya. He stated that he has been living at 17, Robertson Street Beau Bassin since his birth and that he knew the Appellant. He stated that he had no grudge against the Appellant, however, he objected to the development of the latter mainly because the road where he lives is a narrow one and the development will cause an increase in traffic causing inconvenience. He further stated that it is difficult for 2 cars to pass by in the private access road. He also stated that most of the people who have cars in the neighbourhood and park them on the private access road. The witness also confirmed the point made by Mrs. Teeha that cars cannot cross each other when he stated that when there are cars on the road, he has to find out whose car is it and ask the owner to move it out of the way and that it becomes more of a problem when one is short of time. We have been convinced by the credibility of this witness. Objections otherwise received after the deadline of 14 days are not to be taken on board provided the notification procedures have been properly complied with.

11. For all the reasons set out above, we find that the present appeal is devoid of merit and it is accordingly set aside. No order as to costs.

Determination delivered on 16th October 2020 by

Mrs. J. RAMFUL
Vice Chairperson

Mr. B. RAJEE
Member

Mr. P. MANNA
Member