

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 779/14

In the matter of :-

Bibi Afroze Lowtun

Appellant

v/s

Minister of Environment and Sustainable Development

Respondent

DETERMINATION

1. The present appeal is against the decision of the Respondent for having refused the granting of a Preliminary Environmental Report [“PER”] Approval for the setting up of a poultry slaughter house at L’Avenir, St Pierre. The letter of refusal dated 15th September 2014 under the signature of Mrs. NG YUN WING, the then Director of Environment, stipulated “...*The Application has been duly examined in accordance with section 16(6) of the Environment Protection Act (EPA), and you are hereby informed that the PER **has been rejected**. The subject site does not satisfy the required locational criteria as per the Planning Policy Guidance (500 m from sensitive land use and 200m from poultry rearing activity).*”

2. The Appellant’s son who was also her representative and was legally represented, deponed under solemn affirmation and was cross-examined by the Respondent’s Counsel. A witness, Mr. A. H. Soobrattee, Sworn Land Surveyor was called on their behalf. The representative of the Respondent, Mrs. Chuckhorry, as well as Mr. I. Subratty, Head Planner at the Council of Moka, deponed on behalf of the Respondent and were both cross examined by the Appellant’s counsel. We have duly considered all relevant evidence placed before us as well as submissions of Counsel. Collateral issues which have no bearing on the merits of the case have been disregarded.

3. The grounds of appeal are reproduced hereunder in *italics*:

Ground 1

The Respondent was wrong to reject the Appellant's application for a Preliminary Environment Report Approval in respect of her proposed Poultry Slaughter House development in as much as the locational criteria, as prescribed in the Planning Policy Guidance, in relation to sensitive land uses and the poultry rearing activity in question have been satisfied.

Ground 2

The Respondent was wrong to set aside the Appellant's aforesaid application for a Preliminary Environmental Report Approval in as much as

*(i) the principle of **flexibility**, as consecrated in the Planning Policy Guidance, was not applied by the Respondent in the processing and determination of the said application;*

(ii) the site proposed to accommodate the Poultry Slaughter House occurs outside settlement boundaries; and

(iii) the subject site is not adversely affected by South East Trade Winds.

(i) Under Ground 1: Site does not satisfy the locational criteria

4. The first ground of appeal relates to the reason provided in the letter of refusal, that is that the site does not satisfy the locational criteria. It is the contention of the Respondent as per their refusal letter and their statement of defence, a buffer of 500m should be observed between the proposed slaughter house and sensitive land uses and a buffer of 200 m between the proposed slaughter house and a poultry rearing activity as per the Planning Policy Guidance of the Ministry of Housing and Lands. The distance between the proposed slaughter house and the nearest settlement boundary of L'Avenir is 493m and the distance of poultry farm of the Appellant from the nearest boundary of the proposed slaughter house is 155m which is borne out by the Appellant's own land surveyor's report.

5. The Appellant's land surveyor, Mr. A. H. Soobrattee, solemnly affirmed to the veracity of his report. He agreed that the distance between the boundary of the proposed poultry slaughter house and La Laura village is 459 metres and that the distance from the boundary of the slaughter house to the village of L'Avenir is 493 metres. He also testified that the distance between the proposed slaughter house and the boundary of the existing poultry farm is 155 metres. However, he stated that the distance between the boundary of the slaughter house and the actual poultry pen within the farm is 213 metres. He also stated that the distance from the boundary of the proposed slaughter house to the existing place of worship is 222 metres. Mr. Lowtun, the Appellant's representative, confirmed that the existing poultry farm has been operating since 2003 and that its current capacity of production is 5000 heads but when confronted in cross-examination, he confirmed that their production can go up to 16000 heads following the extension to their poultry farm.

6. The Design Sheet of the **Planning Policy Guidance 1** ['PPG'] makes provision for "Industry adjacent to sensitive uses" and provides 500 metres as an acceptable distance of sensitive land uses from the boundary of a slaughter house. We note that the guidelines also provide for special considerations to be given to buffer zones between sensitive land uses and bad neighbour industries. Mrs. Chuckhorry for the Respondent stated that the buffer distance of 500 metres must be strictly applied. We have considered the table of indicative buffer distances between bad neighbour industry and sensitive land uses as provided in the abovementioned Design Sheet. We believe that since a slaughter house is considered a bad neighbour industry which carries with it odour and sanitary nuisances as well as bio-security risks, the prescribed buffer distance of 500 metres from sensitive land uses will have to be observed and so must the distance of more than 200 metres prescribed from a poultry farm. A comparison is to be made with provisions of up to 1 km as an acceptable distance of sensitive land uses from the boundary of a "Quarry, Stone Crushing Plant, Asphalt Mix Plant, Concrete Batching Plant" in the same Design Sheet. We note that there the indicative buffer distance of up to 1 km will be accepted. It can be less than 1km depending on the external factors and circumstances. In the case of the slaughter house the buffer distance provided is specified.

7. We believe in the strict application of soft laws unless there is justification for any derogation. There is undisputed evidence that the proposed development albeit outside settlement boundary, is only 155 metres from an existing poultry pen whereas the prescribed buffer distance in the PPG is that a poultry farm should be more than 200 metres from a slaughter house. The Appellant's argument is that from the pen to the proposed slaughter house the distance is 213 metres and that if need be the slaughter house can be moved to satisfy the required distance. We are not comforted by this proposition. The Design Sheet provides for distances from the **boundary** of the bad neighbour industry and this is found to be less than 200 metres as per the Appellant's surveyor's evidence as well as the Head Planner's evidence from the GIS map. Even on other scores, the buffer distance is not respected in that the proposed slaughter house would be less than 500 metres from the settlement boundary of L'Avenir village and is only 459 metres from La Laura village. The Respondent has also provided evidence and produced a map, Doc R, to show that the proposed development would be only 470 metres from an existing VRS residential morcellement and there is uncontested evidence of the existence of a place of worship some 220 metres from the subject site. When the location of the proposed slaughter house from residential areas, place of worship and from the poultry pen, is considered, these distances demonstrate the fact that the proposed development does not satisfy the locational criteria from several sensitive land uses. Irrespective of whether the proposed development is moved slightly to keep the required distance from the poultry pen, it would still offend the buffer distance from the other sensitive land uses. This gives a clear indication as to the wrong location of the proposed slaughter house. This ground therefore fails.

(ii) Ground 2: Respondent did not apply the principle of flexibility and did not consider the site is outside settlement boundary and is not affected by South East Trade Winds.

8. One must not lose sight of the fact that a buffer zone is after all a protected area which has its own raison-d'être and compromising this protected area has to be justified. As stated above, the operation of a slaughter house carries with it the burden of certain

associated nuisances and risks. Irrespective of whether the subject site is affected or not by the South East Trade Winds or that it lies outside settlement boundary, having come to the conclusion that that the buffer distance will not be respected on several scores if the proposed development is to be carried out on the subject site, this Tribunal finds no reason to justify a flexible approach. Furthermore, no reason has been provided by the Appellant in terms of factors or circumstances applicable to the present case that would justify a derogation from the strict application of the policies as regards buffer distance.

9. In **Beau Songe Development Limited v The United Basalt Products Limited and Anor**[2018]UKPC 1, their Lordships analysing the issue of flexibility in application of the 1 km buffer distance of sensitive land uses from a stone crushing plant in a local case, quoted Lord Reed in the case of **Tesco Stores Ltd v Dundee City Council** [2012] UKSC 13 where he spoke of development plans under the Scottish planning system and made clear that there were no special rules for planning policy documents: “... *in this area of public administration as in others ... policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context.*”

10. Their Lordships disagreed with the overreliance placed by the Tribunal on the testimony of the technical experts over the clear wording of the policy document, observed at paragraph 37,
“However, the Tribunal were wrong, with respect, to regard the interpretation of the approved policy documents in that light. It is not clear whether they were referred to the guidance in the Tesco case. It would or should have led them to understand that their first task was one of legal interpretation of the planning documents to be decided by reference to “the language used, read as always in its proper context”, not on a choice (as they put it) between the approaches of lawyers and planning practitioners. It seems clear that they allowed themselves to be unduly influenced by the evidence of Miss Koo and others as to the supposed thinking within the Ministry, rather than the analysis of the documents themselves.” The law Lords in this case agreed with the conclusion of the Supreme Court that the Tribunal should have applied the provision

of the PPG to observe the 1km buffer distance. This being the approach of the Privy Council, this Tribunal finds it to be of sound reasoning and has no reason to derogate from it.

11. On a point of procedure, we note that although in the Statement of case of the Appellant and the Grounds of Appeal is directed against the correct party, that is, the Minister of Environment and Sustainable Development who is the decision-maker, the Notice of Appeal and the Statement of Defence refer to the Ministry of Environment and Sustainable Development as Respondent. We accept that the Appellant has directed her case against the relevant party, that is the Minister of Environment and Sustainable Development.

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

Determination delivered on 1st December 2020 by

Mrs. J. RAMFUL- JHOWRY

Vice Chairperson

Me. A. JEEWA

Member

Me. V. REDDI

Member