

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 694/14

In the matter of :-

Uppadoo Erranah

Appellant

v/s

District Council of Riviere du Rempart

Respondent

DETERMINATION

1. The present appeal is against a decision taken by the Council for having refused the application for a Building and Land Use Permit ["BLUP"] to the appellant for the conversion of an existing building to be used as Social Hall and Wedding Hall at School Road, Riviere Du Rempart. The appellant was informed of the decision of the Council by way of a letter dated 26th May 2014. The reason for refusal set out in the letter are as follows:

"As per guidelines of the Ministry of Environment, Multipurpose Hall should be found outside defined settlement boundary."

2. Both the appellant and the respondent were legally represented. We have duly considered the evidence before us as well as submissions of both counsel. The appellant raised 3 grounds of appeal as per his notice of appeal, namely:

"(a) All my neighbours are my relatives and they have no objections

(b) The building would be made soundproof according to law

© All facilities for parking will be provided."

I. CONTEXT ANALYSIS

3. The uncontested evidence is that the subject site lies within a residential area, therefore within settlement boundary, opposite a primary government school at Le Ravin, Riviere du Rempart. This is substantiated by the evidence on record such as the documents produced by the appellant marked Docs C, E, E1 and E2 which are plans and photopraghs respectively. The subject site is bordered by 3 roads namely Schoenfeld Road, which is a subsidiary road to the main road of A6 that relays Mon Piton to Riviere du Rempart, Le Ravin School lane which is a small lane that runs perpendicular to Schoenfeld Road between the subject site and the SAJ primary government school, and perpendicular to this small lane is another lane that runs to the side of the site. There are residential buildings are found in the immediate vicinity of the subject site including within a radius of 50 metres from the site. There also exists a temple in very close proximity of the site.

II. APPLICABLE PLANNING INSTRUMENTS

4. The proposed development being the operation of a multipurpose hall within the settlement boundary in the district of Riviere du Rempart, the applicable planning scheme is the **Pamplemousses-Riviere du Rempart Outline Planning Scheme. Policy ID 2** of the **Outline Planning Scheme ["OPS"]** regulates development such as small scale enterprises and homeworking provided that the use is ancillary to the principal use as residential. However, a number of criteria have to be observed, including the following:

"...-No neighbours' objection within a radius of 50 metres.

-No serious/adverse impact on residential occupiers in the area or the character of the neighbourhood particularly in regard to noise, fumes, smells, dust nor excessive vehicle movements or loading and unloading of goods and products;

-Sufficient parking space within the cartilage of the property available to accommodate any staff or visitors;

-Safe access from the roadway;"

5. The **Planning Policy Guidance [PPG1]** which also regulates commercial development as per the *General Guidelines in the Design Guidance-Commercial Development* is also applicable as far as parking requirements are concerned. The **Environmental Guideline No.7**, issued by the Ministry of Environment, which regulates Multi-purpose Hall including wedding hall will also be addressed.

III. THE ISSUES

(a) No objection from neighbours

6. The appellant produced a document, marked Doc A, a clearance from the then Ministry of Environment, Sustainable Development and Disaster and Beach Management as it was called, dated 29 September 2015, wherein it was stated that the Ministry had no objection to the proposed development of operating a Multipurpose Hall with six conditions attached. The first condition is that it should comply with the Environmental Guideline No.7 and the 4th condition is that it has to be subject to the consent of the neighbours.
7. The **Environmental Guideline No.7** which regulates Multi-purpose Hall recommends that as far as the location of such developments are concerned “the multipurpose hall shall be away from residential areas”. The evidence shows that the site is within a residential area, as stated above. There is also sufficient evidence on record to show that the Council has received a number of complaints with at least one within and some beyond the 50 metre radius from the proposed development site. The appellant was thoroughly cross-examined on the issue and it came out in his evidence that he got mixed up with the roads in the plan that he produced before the Tribunal, marked Doc B. He was unclear and contradicted himself regarding the neighbours who had objections and those who did not. However, he did not contest the objections nor the identity of the objectors as being people living in his neighbourhood. The appellant in fact sought to adduce evidence to show that there were several people in the neighbourhood who had no objections to the proposed development in the locality.

8. The representative of the respondent initially testified that one of the objectors lives within the 50 metres radius but later stated that the residence of some objectors could not be identified. We do not believe that this either makes the development proposal acceptable within the area nor that it strengthens the case of the appellant in anyway. In a residential area, what should prevail is its character and amenity as one needs to be able to have a peaceful enjoyment of one's property at any given point. Afterall no one can put a price on one's right to enjoy his property in peace. This is also the spirit of **Policy ID2 of the OPS**. The Council may not have applied this Policy but the Tribunal has the power to assess the planning merits of the case before us on the basis of the planning instruments.
9. The rule is to preserve the residential amenity of an area and exceptionally some types of developments may be allowed which will not cause disruption. It therefore stands to reason that simply on the basis that some people have no objections to a "bad neighbor development" being within a residential area, that it renders the proposed development conducive to such an environment. For any type of development to be allowed in a residential area, it has to be on small scale and serve the needs of the locality and it has to blend with the character and amenity of the area.
10. A multipurpose hall by its very nature is a source of noise pollution in terms of the noise associated with music played, human traffic, human interaction, vehicular traffic, disturbance being caused due to long hours of operation as well as late hours, sometimes both. A multipurpose hall can accommodate various activities such as wedding ceremonies, receptions, social gatherings, religious activities and workshops amongst others. These are recognized in the Environmental Guideline No.7. Having a multipurpose hall in a residential area would be, in our view, a serious misfit in siting being given that the associated noise and disturbances would have an adverse impact on the character, environment and traffic on the surrounding neighbourhood if allowed. This leads us to the next point.

(b) Soundproof building

11. It is the contention of the appellant that the building will be made soundproof so that this would mitigate any escape of noise when the hall is occupied. This is in fact one of the conditions set out in the clearance letter from the Ministry of Environment at paragraph 5, *"The multipurpose hall shall be rendered sound proof with double door system. The noise level shall be within the permissible limits as per the Standards for Noise promulgated under the Environment Protection Act."* Having considered the evidence, even if the appellant were to incorporate sound proof door, we do not believe that such a measure will conduce for a hall or mitigate the associated noise pollution. As discussed above, a multipurpose hall can accommodate various activities. The flow of human traffic in and out of the hall cannot be controlled. People attending functions would most likely be not only talking, but also laughing, clapping, dancing, singing, moving in and out of the hall. Thus, in our view, given the environment where the development is being proposed especially its proximity to habitation, it would be unrealistic to call it a soundproof hall.

12. The traffic implications related to vehicular movement as well as accessibility issues and the honking of vehicles in and out of the parking area during wedding functions are factors that have to be taken into account. The development needs to be looked at holistically. The noise pollution that will be generated as a direct consequence of having a noise generating activity implanted within a residential area has to be assessed. In our assessment, even with the sound proof doors, nuisance especially in terms of noise will imperatively affect the surrounding environment. A multipurpose hall will not be a conducive development within a residential area and the disruption that will be caused to the people living in the vicinity will deprive them of their right to a peaceful enjoyment of their property. They are likely to be prejudiced by the nuisance associated with the noise and traffic. In planning, it is important to consider how it is being impacted upon in the neighbourhood. It will also raise serious safety issues.

(c) Parking facilities

13. The parking requirements for Wedding Halls, as per the PPG 1 under the *General Guidelines in the Design Guidance-Commercial Developments* is 1 car parking space per 4 sq.m public floor area for wedding halls. This issue was not disputed by the Respondent and we therefore do not deem it necessary to go into any analysis of the matter but to accept that the appellant's property has the required parking space.
14. 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 18th February 2020 by

Mrs. J. RAMFUL
Vice President

Mr. A. BUSAWON
Assessor

Mr.S.KARUPADAYAN
Assessor