

IN THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

In the matter of:

A.N PRINTING LTD.

V.

MUNICIPALITY OF PORT LOUIS

DETERMINATION:

The present appeal is against the decision of the Municipal Council of Port-Louis to reject the application made by the Appellant for a Building and Land Use Permit. The permit sought was for the construction of a building to be used as a printing workshop and for residential purposes at No. 45, Carambole Street, Vallee des Pretres.

The grounds of refusal as contained in a letter dated 1st October 2010 are as follows:

1. The proposed printing workshop lies within a residential morcellement whereby noise would be a possible source of nuisance.
2. The proposed printing workshop would be a source of traffic nuisance to the neighbourhood.

The grounds of appeal are contained in a letter dated 18th October 2010 sent to the Town and Country Planning Board and are as follows:

1. The Committee was wrong to have acted on a mere possibility of noise as being a source of nuisance
2. Parking facilities have been made available for users of the workshop.

The letter containing the grounds of appeal has also listed out the procedure followed by the Appellant, namely that he has published notice of his proposed activity in the press and that verification of the noise level of his existing activity in a printing workshop in Terre Rouge has been done by the Ministry of Health at the request of the District Council and it was found to be of acceptable level.

Evidence was adduced by the Appellant at the hearing. He explained that he intended to install three machines, namely a letter press of 1.5 H.P, one offset printing machine of 4 Kw and one guillotine of 1.5 H.P. to operate his printing plant. He was already operating a printing plant in rented premises in Terre Rouge but wants to move to his own premises. He proposes to operate the workshop between 8 a.m to 5 p.m on weekdays only. He added that there were other businesses operating in the same area,

namely a panel beater and painter. He had operated a printing workshop in Port Louis before and had obtained clearance for this activity despite the fact that it was in a residential zone. He denied that his proposed activity would cause traffic nuisance and stated that he deals mostly with corporate clients through e-mails and when the need arises he attends to the corporate clients at their premises for dealings instead of the clients coming to his place. In addition he has provided for three parking slots in case of any visits to his workshop. As such, there would be no traffic congestion.

The Respondent called two witnesses to depose. The representative of the Municipal Council, Mr. Mohammad, laid emphasis on the residential nature of the morcellement where the Appellant proposes to set up his printing workshop. He explained that in such an area small types of commercial activities can be considered by the Council whereas in cases of an industrial activity, as in the present application, this is not accepted as it can cause nuisance. It came out in his cross examination that there had been an objection made against the proposed activity but the Municipal Council had not called the objector for a hearing as the application had been rejected at the outset, the reason being that it was not compatible with the nature of the morcellement.

The officer who was the head of the Planning and Land Use Department of the Council at the time of the decision, Mrs. Busgeeth, was called by the Respondent to depose. She explained lengthily the rationale for the decision of the Council, namely that the access road to the proposed site was very narrow and was found in a built up area on both sides of the road where no enlargement of the road would be possible in future. Any intensification of use by way of industrial development would cause traffic nuisance, the more so that the site lies in a residential morcellement. Furthermore, the application made by the Appellant was for the use of electrical engines, which are known to cause noise pollution. These aspects have been considered by the Permits and Business Monitoring Committee in reaching its decision.

We have considered the evidence adduced by both parties. We are of the view that the operation of the printing press in Terre Rouge, as stated by the Appellant, has no bearing on the consideration for operating the same activity in the proposed site at Vallee des Pretres. It is on record that that the nature of the proposed site is different in that it is a **residential morcellement**.

The Design Guidance under the **Planning Policy Guidance** (hereinafter referred to as PPG) issued in 2004, as amended in 2006, in its **Policy 2.13** provides as follows:

“Small Industrial Workshops and Home Working:

Small scale enterprises that are carried out in the home without modification of the dwelling may in some locations be acceptable, but stringent criteria are necessary to ensure that surrounding residential amenity is not

compromised. 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 environment effects...

In the present case, the Appellant proposes to operate his business on the ground floor and reside on the first floor. This does not change the fact that the nature of his activity is an industrial one which may have consequences on the surrounding environment. The determining criteria in the decision taken by the Respondent are the maintenance of the residential nature of the area and the prevention of possible adverse effects on the environment.

The evidence of the witnesses for the Respondent point towards the difference in nature of the two sites, the site of Terre Rouge being a **residential zone** and the site of Vallee des Pretres being a **residential morcellement**. It came out that some commercial activities may be permissible in a residential zone. At any rate, what was permitted in Terre Rouge cannot be imported to proposed site, especially given the spirit underlying the above Planning Policy Guidelines. True it is that the printing activity per se has not been listed in the above PPG. Yet the apprehension of the Respondent is that the nuisance that the operation of the machines which the Appellant proposes to install would be comparable to those generated by the listed activities. The representative of the Respondent has explained the reason why no specific test was carried out, this being the absence of the consultative procedure in determining applications as per the Business Facilitation Act.

Furthermore, it has been submitted on behalf of the Appellant that there are two business units operating in the same area, namely a painter and a mechanic. We are of the view that this does not have a bearing on the present appeal against the decision of the Municipal Council being given that there is nothing on record to show the status of those business units, namely whether they are permitted activities or the conditions of their operation.

In addition to the noise issue, we note that the second ground of appeal in relation to the traffic nuisance has not been addressed except for the provision of three parking spaces. The evidence of Mrs. Busgeeth on the difficulty of access to the proposed site and the adverse effects of an intensification of activities in the area has remained unchallenged.

In view of the above considerations, we have come to the conclusion that there is no basis to interfere with the decision of the Municipal Council in rejecting the application made by the Appellant on the grounds as stated in the refusal letter dated 1st October 2010. The appeal is set aside.

Delivered by:

V. Phoolchund-Bhadain

Chairperson

P. Thandarayen

Member

M.A. Bussawon

Member

Date: 13 June 2013