

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

**In the matter of:**

**Cause No: ELAT/303/12**

**MRS. QUAMAR JAHAN ESMAEL-JOOMUN**

**V.**

**BLACK RIVER DISTRICT COUNCIL**

**DETERMINATION:**

The present appeal is in respect of a decision of the District Council of Black River where an application for a 'Building and Land Use Permit' has been rejected. The application was for the conversion of an apartment situated at Flic en Flac into a 'Tourist Residence'. The ground for refusing this application as communicated to the Appellant in a letter dated 30 November 2012 is that the 'site is restricted to residential use as per the title deed.

The grounds of appeal against this decision are contained in a letter dated 7<sup>th</sup> December 2012 and are that the apartment will not be used as an office or shop or for any commercial activity. It will be solely used as residence to lodge guests from abroad, thus it will be solely for residential purposes in accordance with the title deed. An application has already been made to the Tourism Authority. The Tourism Authority has approved the application subject to a favourable report from the Fire and Health Departments and a clearance from the District Council. The clearance from the Fire and Health Departments has been obtained already. Secondly, there has been notification of the proposed project and no objection has been recorded from the neighbours and the public in general. Thirdly, many of the owners of other apartments in the complex are being rented.

The representative of the Appellant, Mr. Aktar Joomun, deposed under oath and reiterated the grounds for appealing against the decision of the District Council. He explained that the activity that the Appellant proposes to do is not incompatible with his understanding of the clause in the title deed, namely that the site is for residential

purposes. The licence sought from the Council is for renting the premises to tourists for residential purposes.

The title deed in respect of the property was produced as Document A. This document contains a provision that describes the property purchased as being "a usage habitation exclusivement bourgeoise". It was submitted on behalf of the Respondent that in view of this clause, the District Council had no alternative than to reject the application made by the Appellant.

We have considered the version of the representative of the Appellant and the submission of Counsel for the Respondent. The clause in the title deed describes the nature of the property, as being a purely residential one. The restrictive clause in the contract governs the status of the property. We have given due consideration to the explanations given by the representative of the Appellant. However, the mere fact that he proposes to let the property to tourists and will be in receipt of rent for these periods renders the activity a commercial one. This will cause a departure from the original 'destination' of the property which is a 'lot a usage habitation exclusivement bourgeoise'. The first ground of appeal does not stand and is set aside.

The second ground of appeal, namely the absence of any objection, has no relevance being given that the basis on which the District Council has rejected the application is the restriction contained in the title deed. This ground is also set aside.

As regards the third ground, it is noted that the letter from the Tourism Authority contains conditions that the Appellant has to meet before clearance is obtained, one of those being a licence from the District Council. It is this very decision that is the subject matter of the appeal. In addition, the fact that other apartments in the complex are operating has no bearing on the present appeal as there is no indication as to the conditions in which they are doing so, nor whether they have obtained the required authorizations. The third ground is therefore set aside.

In view of the above, the appeal is set aside.

Delivered by:

  
Mrs. V. Phoolchand-Bhadain

Chairperson

  
Mr. Seetohul

Assessor

  
Mr. Sakurdeep

Assessor

Date: 21 June 2013