

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

**Elat 99/12**

**In the matter of :-**

**Goparlen Mauree**

**Appellant**

v/s

**Pamplemousses/Riviere du Rempart District Council**

**Respondent**

**DETERMINATION**

The present appeal dates back to 22<sup>nd</sup> April 2001. It is against a decision taken by the Pamplemousses/Riviere du Rempart District Council, as it was known back then (hereinafter referred to as the Council), for having rejected an application made by the appellant for a Building and Land Use Permit with respect to the conversion of part of an existing building into an automotive (paint) workshop at Le Hochet, Terre Rouge. The ground for rejection was "*The proposed development is likely to cause nuisance in as much as objection has been received from immediate neighbours*". The decision of the Council was communicated to the appellant by a letter dated 14<sup>th</sup> April 2011.

The appeal was initially lodged before the Town and Country Planning Board (TCPB). It was subsequently forwarded to the Tribunal in October 2012, which explains the presence of a bundle of documents already in the file, namely copies of the Assessment Form, the Application Form, Objection letter from Mr. Lindsay Valerien, Refusal letter and a letter from the Appellant addressed to the secretary of the TCPB settling out his grounds of appeal, amongst others. The appellant chose not be legally represented nor to file any other documents but to go only by the grounds of appeal contained in his letter to the TCPB. A statement of defence was filed by the respondent's counsel on the day of the hearing of the appeal. The appellant deponed under solemn affirmation and was cross-examined by respondent's counsel. The respondent did not call any witness.

The Tribunal has duly considered the evidence before it. The property in lite lies in Lois Street, Le Hochet, Terre Rouge opposite Dhanush Stone Products Ltd, therefore it falls within the Pamplémousses-Rivière du Rempart Outline Scheme. Unfortunately, no witnesses were called by the respondent to show whether the site lies within or outside the settlement boundary. The appellant, however, stated in examination in chief to questions put to him by the tribunal about the property in lite, that he lives there and that there are other houses, he lives in front and that his neighbour lives at the back and that Danush Stone Products Ltd and another Aluminium factory are found in close proximity of his house. In cross examination he conceded that Dhanush Stone Products Ltd and the Aluminium factory had existed for a long time before people came to reside in that locality and that his house is a residential property which he is renting. This is indicative that the site is found in a built up area where there is development. And fact that the area is a residential one went uncontested by the appellant in cross-examination.

This having been established, the applicable planning policy is Planning Policy Guidance 1 (PPG 1) relating to developments permitted in residential areas. Paragraph 2.13 stipulates that developments permitted in residential areas are small industrial workshops and home working. Paragraph 2.13 of PPG1 is reproduced below

#### ***"2.13 Small Industrial Workshops and Home Working***

*Small scale enterprises that are carried out in the home with or without modification of the dwelling may in some locations be acceptable if the use is ancillary to the principal use as residential but 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 environmental effects. Examples of potentially acceptable small scale enterprises include cooking of sweets and food preparation, sewing and small scale clothing manufacture, repairs to electrical goods, minor car/mechanical and bicycle repairs, artists repairs, artists studios, offices such as book keeping, administration, professional services etc.....*

*...For both the use of home as office or other small scale enterprise the key consideration is whether the overall character of the dwelling and surrounding amenity will change as a result of the proposed use. If the answer to any of the following questions is 'yes' then the proposed enterprise, by reason of its nature or scale is likely to be unacceptable:*

- *Will the home no longer be used mainly as a private residence?*
- *Will the enterprise result in a market rise in traffic or people calling?*
- *Will the enterprise involve any activities unusual in a residential area?*
- *Will the enterprise disturb your neighbours at reasonable hours or create other forms of nuisance such as noise, dust, fumes or smell?"*

The appellant has admitted to using the premises not only as spray painting workshop but also to operating as a panel beater, which we find, was not set out in his application form to the Council. He also admitted to using chemicals like thinner and that he operates his business in an open terrace which he claims to be covered with corrugated iron sheet. He answered in the affirmative when it was put to him in cross-examination that the use of thinner has a strong smell and that panel beating generates a lot of noise and that someone following psychiatric treatment would not be able to bear that type of noise. It was not contested that there was an objection from an immediate neighbour, one Lindsay Valerien via a letter dated 28<sup>th</sup> February 2011 to the Chief Executive of the Pamplemousses/Riviere du Rempart District Council, which is on record. We pause here to make an observation that the appellant tried to mislead the tribunal by stating at the outset that the neighbour who objected to his permit being granted was one lady by the name of Mrs Valerien who had passed away and that since then, no one has been residing in that house. However, in cross-examination he stated that infact the person who made the complaint was Mr. Valerien who still resides there and is his immediate neighbour.

The main complaint of the objector is that the noise generated due to, and the smell of paint and other products which the appellant is using for, his business as a panel beater and painter were a source of nuisance to him and his family in as much as he is following psychiatric treatment and his son is allergic to thinner used in paints. He has been living there for more than 50 years without such inconvenience.

The appellant has been unable to successfully challenge any of the objector's contention. The answer to last question relating to the nuisance such as noise, dust, fumes or smell, as per PPG1 above, which the appellant's enterprise is likely to create thus seems to be in the affirmative. Mr. Valerien who has lived in peaceful enjoyment of his property for over 50 years and is following psychiatric treatment seems to have reasonable grounds to object, the moreso when balancing it against the fact that the appellant is only renting the house at Le Hochet where he is currently living and using as his workshop. It is always open to the appellant to rent elsewhere and relocate his business to somewhere far from a residential area, where such industrial activities are permissible.



This being said, the tribunal is alive to the fact that appellant made representations regarding the presence of other industrial activities being carried out in the vicinity of his house and that some of them are fairly similar to his own business in that the same types of chemicals such as thinner and paint are being used and spray painting is being done. The appellant has not brought forward any evidence to support these contentions and the Tribunal questions the credibility of his testimony. The testimony of the appellant contains a number of contradictions. He first misled the tribunal in examination-in-chief about the identity of the objector to later very voluntarily state in cross-examination, *"Oui. Pou complaine sa meme tapaz la la, c'est monsieur la kine faire complainte tapaz la la..."* meaning Mr. Valerien. Although, the letter of objection by the neighbor was on record, since it was signed "Lindsay Valerien", it could either be a male or a female person. We believe that the appellant induced the Tribunal into error. Furthermore, he extrapolated it onto another lie when he stated *" Mais voisin la li pas la aster, line decédé. Pena personne ki reste la bas."* He later conceded, upon a few questions put to him by the tribunal on the issue, that Mrs Valerien's husband was infact still residing in the house in his neighborhood. At some other point, he stated that it's all a conspiracy amongst the neighbours but in the same breath he stated that he didn't have any neighbour, they had all left. The Tribunal also notes that the appellant applied for the "conversion of an existing part of a structure into an auto-motive (paints) workshop" as per his application form which is on record but infact he testified that he was already operating as panel beater as well as painter. The tribunal is weary of acting upon the testimony of such a witness.

For all the reasons set out above, the Tribunal finds that this appeal is devoid of merit. Appeal is set aside. No order as to costs.

Determination delivered on 17<sup>th</sup> June 2013 by

**Mrs. J. RAMFUL**

**Vice President**

**Mr.G. SEETOHUL**

**Assessor**

**Mr. M.A.BUSAWON**

**Assessor**