

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

Cause No. : 124A/12

In the matter of:

NIRAD DREPAUL & Others

Appellants

v.

GRAND PORT SAVANNE DISTRICT COUNCIL

Respondent

Mrs. PRIYA SARJU

Co-Respondent

DETERMINATION

The present appeal is lodged against the decision of the District Council of Grand Port Savanne to grant a building and land use permit (BLUP) to the Co-respondent. The proposed development of the Co-respondent, as approved, is the running of a business, professional and management consultancy service (showroom for cars). The Appellants, being immediate neighbours, had lodged complaints against this proposed development. The complaints have not been retained by the Respondent and the BLUP has been granted.

The contention of the Appellants as contained in the statement of case of the Appellants is that the spot comprises of a pre-primary school run by Appellant No.3, a primary school as well as a pedestrian crossing nearby, and that the activities of the Co-Respondent will cause a movement in and out of the said showroom which will render the area insecure for the children who attend the schools. They have also raised the point that there is insufficiency of parking facilities in front of the property of the Co-Respondent, which is accentuated by the fact that the latter has erected a staircase in front of their building. The traffic problem as well as the limited access along the

passage leading to the property of the Co-Respondent has been described as being insufficient access in case of fire hazards. Furthermore, the Appellants aver that the operation of a car showroom in the area, which is a highly residential one, will be a source of pollution, both air and sound, which will affect the immediate neighbours and the school children. The Appellants therefore pray for the decision of the Respondent to be set aside.

Mr. Ramkhelawon, who deposed for the Appellants, reiterated the averments as contained in the statement of case of the Appellants. He produced five photographs (Documents A to A5) showing, on one hand, the lack of parking facilities in front of the building (Document A), which has been further reduced by the illegal construction of a staircase in front of the building. On the other hand, Documents A1 to A3 show the nuisance that is allegedly caused by the cars that are parked along the road on the side of the building and Document A4 shows the nuisance that is caused by the visitors to the showroom.

In cross examination of Mr. Ramkhelawon maintained that the activities of the Co-Respondent are a source of nuisance and that no permit should have been granted being given that the area is a residential one.

The head of the land use and planning department of the District Council, Miss Bosquet was called as a witness for the Respondent. She stated that the District Council had given its approval for an application for the conversion of a building into a car showroom and an office for business consultancy services. Objections had been received at the Council which related to noise nuisance. However the Council considered that the activity was not classified as an industrial activity which created pollution such as noise and dust. Approval was given for a car showroom with two parking spaces. The other parking spaces that had been mentioned on the site were not meant for the Co-Respondent, but were in connection with another business, that of tour operator ran by the Co-Respondent's father who holds a permit from the Tourism Authority to run his business.

The witness explained that the objectors had attended a hearing at the District Council which was followed by a site visit of the Business Monitoring Committee. It was considered that the business was along the classified road of New Grove and that there were several commercial activities along the road. The area was not purely a residential one.

It also came out from her cross examination that there is no indication that the cars found behind the house of the Co-Respondent belong to her, the more so that there is a permit issued by the Tourism Authority in respect of a tour operator business which belonged to the Co-Respondent's father, Mr. Ramnauth. The Council also considered

that the parking facilities provided by the Co-Respondent were sufficient. This had been recommended by the planning committee to the Executive Committee of the Council.

After having considered the evidence adduced by the parties, we have the following observations to make:

This Tribunal is called upon to assess the propriety of the decision to grant the BLUP. In this process the Respondent had to have regard to the planning instruments that are applicable. These are contained in the Planning Policy Guidance (PPG) on commercial development and the Outline Planning Scheme and are as follows: *"The basic principles underlying commercial development is the clustered growth principles and the sequential approach where commercial developments should first and foremost be located within traditionally existing commercial centres and to highly accessible growth clusters and sites contiguous to existing developments. Four main locations for commercial developments are favoured: town centres, edge of town and out of town locations, local centres and corner shops. These principles are further embodied in 'Policy CR1' of the Outline Planning Scheme where it is also stipulated that small commercial developments that serve basic local needs can be allowed within fully residential areas.*

The site is in a predominantly commercial area and lies along the main road of New Grove. In this respect, we are not convinced that the complaints of the Appellants as regards the dust and noise pollution should have tilted the decision of the Council in their favour. The impact of noise emanating from traffic along a main road as well as the dust generated from it is a 'normal' feature on such a locus. The Tribunal is not convinced that the activities of the Co-Respondent will have an aggravating impact on this element.

On the other hand, the facilities provided for parking is a factor that calls for attention. The stand of the witness for the Respondent on this aspect is that there will be no such parking difficulties. The Respondent has deemed acceptable that two parking slots are adequate for this business. 'A priori', this raises doubt. Yet, it is on record that the proposed business is a small scale one where the showroom is said to display two cars at any one time! With two additional parking spaces provided for visitors, as per the plan submitted to the Respondent, the Respondent has found this arrangement to be adequate for such a small scale business. We have found no reason to interfere with the assessment made by the Respondent.

The evidence of the Appellants as to the presence of several cars at the rear of the showroom has been rebutted by the witness for the Respondent when she stated that these belong to the father of the Co-Respondent, who holds another permit in respect of a tour operating business. This is not the subject matter of the present appeal.

We have considered the issue raised by the Appellant regarding the nuisance caused by the presence of visitors on the spot at odd hours as shown on Document A4. We are of the view that such types of disturbance should be reported to the competent authorities for necessary remedial action. Similarly the construction of a stair case after the submission of the appeal is a matter to be reported to the appropriate authorities for an assessment of the legality of the construction and the corrective action to be taken if need be. The appeal before this Tribunal dates prior to this element and this only cropped up in evidence at the hearing.

In the light of the above considerations, we find that the Respondent has taken its decision in the light of the existing planning norms as set out in the PPG and Outline Planning Scheme for Savanne. The grounds of appeal raised by the Appellant have been found not to be justified by reality of the locus and we find no reason to interfere with the decision of the Respondent. The present appeal is therefore set aside.

Delivered by:

Mrs. V. Phoolchund-Bhadain

Chairperson

Mr. V. Reddi

Member

Mr. S. Karupudayan

Member

Date: 6th October 2014