

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 433/13

In the matter of :-

Anand GHOORBIN

Appellant

v/s

Municipal Council of Curepipe

Respondent

DETERMINATION

The present appeal lodged before the Tribunal on 27th May 2013 is against a decision taken by the Municipal Council of Curepipe (hereinafter referred to as "the Council"), for having rejected an application made by the Appellant for a Building and Land Use Permit (BLUP) for the conversion of the ground floor of a residential building into a workshop for aluminum and metal openings at Engrais Cathan, Rue Ramparsad Ramdin, Eau Coulee. The grounds for refusal were set out in a letter dated 20th May 2013 as follows:

"As site is situated in a highly residential area, proposed development will conflict with provision of the outline scheme coming into force in 17 April 2013 with respect to the following:-

1. It will not comply with policy 4.2 of permissible secondary uses with predominant use zone.
2. As per policy 4.2 of the scheme, bad neighbour users including light industry are not allowed within residential areas.
3. Objections received.
4. Proposed development will constitute a source of nuisance and may affect the residential tranquility of the neighbourhood."

The Appellant deponed under solemn affirmation and was cross-examined by the Respondent's representative, Mr. Chinasamy, planning and development control inspector. Mr. Chinasamy subsequently deposed and was also subjected to cross-examination by the Appellant.

We have duly considered all the evidence placed before us by both parties. The Appellant basically stated as his grounds in the notice of appeal that no hearing was carried out by the Council, that the

Appellant would be an 'occasional operator' and that he is the sole breadwinner of his family. The Respondent in essence maintained their grounds of refusal as per the abovementioned letter of refusal they issued to the Appellant.

CONTEXT ANALYSIS

The proposed development site is located within a residential area a few hundred metres from the Phoenix-Curepipe main road, as per the plan submitted. No title deed has been produced and the property is a one-storeyed residential building, the ground floor of which the Appellant intends to convert into a workshop for aluminium and metal openings. From Document C, produced by the respondent as being the plan that the appellant had produced to the Council as part of his application for a BLUP, no parking spaces nor a loading bay have been provided on the premises.

THE PLANNING INSTRUMENTS AND THE LAW

The site being situated in Eau Coulee the applicable outline scheme is **Curepipe Outline Scheme** and the development is regulated by Policies 4.2 (Land Use Zones) and ID2. The applicable Planning Policy Guidance is **PPG1 on Small Industrial Workshops and Home Working** issued under the **Planning and Development Act 2004**.

Policy 4.2 states: Any secondary development is permitted in a residential area other than

- bad neighbour activity;
- light, medium, heavy and extractive industry and warehousing;
- major commercial activity;
- public facilities;
- major transport and utility infrastructure

Policy ID2: Small Scale Enterprises and Home Working.

In essence, Small Scale Enterprises, home working, small commercial and retail developments are allowed within residential areas so long as it doesn't disrupt the amenities of the residential areas and that the use of the proposed development remains ancillary to the principal use, namely residential. Much emphasis is laid on the fact that the development should NOT be disruptive to the amenity of the surrounding neighborhood. Examples cited under Policy ID2 of developments allowed are small scale enterprises such as cooking of sweets and food preparation, sewing amongst others.

PPG1: Design Guidance for Commercial Developments. Paragraph 3.2.2 deals with *Edge-of-Centre and Out-of-Town Locations*. Certain considerations are set out to determine under what circumstances such

commercial developments are allowed. One of the considerations is where sites are surrounded by housing. In such circumstances, they *"are unlikely to gain planning acceptance."*

For a case of this nature, the question that has to be determined is whether the development proposed is in line with the policies set out above and can therefore gain planning acceptance. The application being for a BLUP for the conversion of a ground floor of a residential development into a light industrial development, it stands to reason that the appellant must first be the holder of a valid residential permit. The representative of the Council gave crucial evidence that the appellant does not hold a BLUP for his residential property and that the appellant's house is in fact an illegal construction. This was uncontested by the appellant. It is only logical that one cannot apply for a conversion from one thing into another, when one does not even possess the "thing" in the first place. Therefore, if the appellant in this case is not the holder of a residential permit in the first place, it would be nothing but a flawed logic on his part to believe that he can apply for the conversion of a permit which he does not hold in the first place. On this very point itself, we believe that there is no merit to this appeal.

Now, true it is that the representative of the respondent stated that the appellant tried to apply for a BLUP for his house but the Council decided in its wisdom not to grant the permit as, according to the representative, the residential development did not conform to planning norms and the application was made after the building was erected. This Tribunal will not embark on premises which are not the subject matter of debate for the purposes of the present appeal, suffice to say that the Council appears to have already taken a decision not to grant a BLUP for the illegally constructed house of the appellant. This being the case, we fail to see in what way the appellant can possibly obtain the BLUP for conversion from residential to commercial development. We believe that the Council was right to have rejected the application of the appellant in this case.

Coming to the planning merits of this case, the area being a residential one, there is a strong presumption against any development that will destroy its overall amenity. The proposed activity is classified as a light industrial development. The very fact that there have been objections from neighbours and that the Police of Environment was alerted on 3 occasions by the neighbours goes to show that the appellant has already started operating his business without a permit. The appellant agreed that since he uses a grinder, cutter and a drill, there is bound to be noise proliferation, the moreso as he carries out the activities under a shelter covered only with corrugated iron sheets and the statutory distances from his house to the common wall and the road edge have not been respected as per Document C. It is to be borne in mind that people who live in residential areas chose to do so predominantly so as to have a peaceful enjoyment of their property. Allowing such a development in a residential area will not only subject the residents of the locality to constant noise pollution but will also generate more traffic in the locality which will not only expose the residents to more noise and dust pollution but will also create safety issues in such a rural locality. The grounds raised by the appellants are devoid of merit. He has not brought any proof to substantiate before this Tribunal that the Council has granted BLUP for other light industrial developments allegedly operating in the vicinity of his premises. He agreed that the activities will generate noise pollution and most importantly he did not deny that he is not a holder of a residential permit in the first place.

For all the reasons set out above, we believe that this appeal is devoid of merit. The appeal is set aside.
No costs.

Determination delivered on 9th October 2014 by

Mrs. J. RAMFUL
Vice Chairperson

Mr.S. Sakurdeep
Assessor

Mr. M. Bussawon
Assessor