

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 37/12

In the matter of :-

P&P International Co. Ltd

Appellant

v/s

Municipal Council of Vacoas/Phoenix

Respondent

DETERMINATION

The present appeal is against a decision taken by the Council for having rejected an application made by Mr. Pritam Dabydoyal on behalf of the appellant for a Building and Land Use Permit for the conversion of part of an existing residential building situated at 21, Couvent de Lorette Street, Vacoas to be used as a wholesale store and to operate as a merchant or wholesale dealer. The grounds for rejection were communicated to the Appellant as represented by Mr. Dabydoyal vide a letter dated 26th January 2010 and are set out below:

“(i) The proposed activities will give rise to movement of heavy vehicles which will worsen traffic conditions on the road.

“(ii) The proposed activities will affect the residential amenities of the area given that the site is located in an essentially residential zone.”

The appeal was lodged before the Town and Country Planning Board but was subsequently forwarded to this Tribunal after the enactment of the Environment and Land Use Appeal Tribunal Act 2012. The appellant deponed under solemn affirmation and was cross-examined by respondent's counsel. Miss Ramroop, Planning Officer, deponed on behalf of the Council and was cross-examined by the appellant.

We have duly considered the evidence placed before us by both parties as well as pleadings filed. We believe that the issue at hand is rather straight forward and can be narrowed down to

whether the proposed development can gain planning acceptance in that locality bearing in mind its nature, the character of the area and the type of road that services that locality. In this respect, we believe it is important to analyse the context of the development site to enable us to come to an informed decision.

CONTEXT ANALYSIS

(i) Nature of business and type of road

According to the version of the appellant, there are 6 containers that are permanently in the yard and as per his statement of case the storage done on site is mainly for foodstuff such as rice, canned foods and powdered milk. Miss Ramroop produced evidence that one of the containers lying in the compound of the appellant at the time that she carried out a site visit contained wooden planks. It stands to reason that loading and unloading of such wooden planks can generate a lot of nuisance especially noise. The appellant admitted in cross-examination that the Couvent de Lorette Street is made a one way road at certain points in the day because of the school- going children. He denied that the road is densely utilized and in his defence he also argued that there are big lorries carrying petroleum that run along the same road.

In considering the present application the Council classified the proposed development as an 'Industrial development' as per the **Business Facilitation Act 2006** and hence applied **Policy 4.2 of the Outline Planning Scheme for Vacoas-Phoenix**, which regulates the **Sites of Industry** and reproduced below:

"Site for industrial development will be favorably considered only if the development will cause no nuisance to adjoining residential neighbours by virtue of noise, dust, smoke, fumes, smells or parking or loading problems or through the appearance or scales of proposal."

Miss Ramroop gave evidence that the width of Couvent de Lorette Street varies from 4.2 metres at Loreto Convent School, to 5.2 metres near the appellant's premises and down to 4.7 metres nearer the junction of Emmanuel Gerard Lane and Couvent de Lorette Street. While the appellant could not successfully challenge this, in our view, this will be a major traffic constraint within a residential area for the movement of big lorries especially for loading and unloading activities. This situation will render the roads within the residential area unsafe and disrupt the overall amenity of such a locality. Unsurprisingly, objections were received against the

proposed development, which infact has already been operational for a number of years. Indeed the appellant's statement of case addresses the issues presumably raised by the objectors. He deponed to the effect that for the purposes of the trading activities of the appellant company only a total surface area of approximately 200 sq. metres is used as compared to the 300 sq. metres he averred in his statement of case. According to him, there cannot be much traffic generated by the lorries since the scale of activity is small. We are of the view that the appellant is using the wrong criterion, here, to make a judgment. From a planning point of view, it is the impact that activities of such nature on the residents of the neighbourhood that should be considered and not the size of the warehouse. In this case the development proposal will, in our view, definitely be incompatible since it will involve the movement of heavy duty vehicles with containers in a highly residential area thereby creating a negative impacton the traffic conditions as well as the safety of inhabitants within the area.

(ii) Character of area

The site consists of a building with a sizeable compound, as per photographs produced, wherein some big containers laid in the yard. It is located along Couvent de Lorette Street, in Vacoas and falls within the settlement boundary as per the **Vacoas-Phoenix Outline Scheme**. This essentially means that such types of zones are favorable for residential development. The Council's stand is that the locality is a highly residential one especially along Couvent de Lorette Street. Similarly the proposed development would be a mislocation from this angle since it is classified as an 'Industrial development'. The appellant disagreed that the area is a residential one on account of the fact that there are other trading activities found in the vicinity. He gave a few examples such as "La Maison des Motors", a Pastry shop, Engen and SBM. In reply to this contention Miss Ramroop stated that she had effected a site visit and had neither noticed any workshop for motorcycles nor as per the Council's records has any BLUP been granted for any commercial development except for a cobbler who has a small corner shop. The Pastry shop is along Club Road. Engen and SBM on the other hand, being situated along Avenue de L'Independence, fall within the Central Business Designated Area of Vacoas, which is the main area where mostly commercial activities take place. The Council has satisfied us that the site lies within a residential locality and that it does not fall within the Central Business Designated Area nor are there any commercial/industrial developments along Couvent de Lorette Street, with the exception of a small cobbler's shop catering for the needs of the local inhabitants. Even if the version of the appellant is to be believed, that there exists a workshop for motorbikes in the vicinity, the fact that the Council's records show that no BLUP has been granted indicates that it has not gain planning acceptance. A residential area depicts imagery of a locality with minimalistic nuisance such that inhabitants can have peaceful enjoyment of

their property. The appellant's business activities entail loading and unloading of containers and their contents. It is only logical that such activities generate a considerable level of disruption associated with the big lorries that transport these containers into the compound of the Appellant's premises and parking the lorries, loading and unloading them is likely to constitute not only nuisance in terms of noise but is also likely to create major traffic constraints which will most likely be disruptive to the residential amenity. We are alive to the fact that the presence of a school in the locality most likely burdens the traffic along Couvent de Lorette Street but that is likely to be restricted to two times in the day and only on school days. At any rate, in our view, there can be no better reason to avoid heavy duty vehicles on a road which services a school in view of the high density of human traffic involved on a daily basis.

For all the reasons set out above, we find that the appeal is devoid of merit. The appeal is therefore set aside.

Determination delivered on 4th March 2015 by

Mrs. J. RAMFUL

Mr. P. Thandarayen

Mr.S.Karupudayyen

Vice President

Assessor

Assessor