

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 502/13

In the matter of :-

Dhaneshwar Ochit

Appellant

v/s

Municipal Council of Quatre Bornes

Respondent

DETERMINATION

The Appellant is appealing against a decision of the Respondent for having refused him an Outline Planning Permission (hereinafter referred to as the 'OPP') for the construction of a one storeyed building at Bassin Road, Quatre Bornes.

The proposed development is meant to be used on the ground floor as

- (i) General Retailer Foodstuff (excluding Liquor) and Non Foodstuff (Foodstuff predominant),
- (ii) Retail sale of hardware in stores N.E.C (having the right to sell cement, iron and steel bars),
- (iii) Real estate activities on a fee or contract basis; and

on the first floor, for residential purposes.

The two grounds of refusal set out in a letter from the Council dated 27th August 2013 are that the common access road leading to the site is not tarred and is not suitable for vehicular access and that according to the Quatre Bornes Outline Scheme under modification, commercial developments outside established centres, other than for corner shops or small retail outlets should not normally be permitted (Policy CR1).

We have duly considered the evidence of the Appellant and the representative of the Respondent.

CONTEXT ANALYSIS

The proposed development site is located around three hundred metres off the Phoenix- Beau Songes Link Road after the roundabout. From the evidence which is undisputed, the road access leading up to the site is not tarred and its width is about 3.66 metres. According to the layout of the ground floor as per site plan produced, the proposed development will contain two commercial units and a store having a total ground floor area of 204.86 sq.m and a first floor of corresponding size.

THE PLANNING INSTRUMENTS AND THE LAW

The site being situated in Quatre Bornes, the applicable outline scheme is the **Planning Scheme of Quatre Bornes** and the applicable Planning Policy Guidance is **PPG1** issued under the **Planning and Development Act 2004**.

THE ISSUES

(I) ROAD ACCESS NOT TARRED

It is the contention of the Council that since the road leading up to the site is not tarred, it will be difficult for pedestrians and vehicles to have access to it. The representative qualified it as a sugarcane track and therefore inappropriate to serve as an access to a commercial building. The appellant agreed that the road was not tarred and that when it rains the road becomes muddy but stated that a car and even lorry can have access to the site.

The Design Guidance for Commercial Developments in the Planning Policy Guidance 1, which addresses the issue of access, amongst others, lays emphasis on the fact that in the case of commercial developments, the developer should demonstrate that existing and proposed accesses are capable of adequately serving the traffic generated by the proposed activities.

It stands to reason that if the objective of the developer is development of certain commercial activities which will adequately meet the needs of the community then inadequate access to the site can only have a negative impact on the development. A key component to strategic planning when it comes to siting of commercial activities is access to streets, parking and public transportation. Investment in commercial space would not make any economic sense if the area is not within pedestrian or vehicular circulation. The appellant did not enlighten the Tribunal on the issue of accessibility. He simply stated that the site was accessible by vehicles. His main argument was that with the coming into existence of the new motorway, meaning the

Phoenix- Beaux Songes Link Road, he is confident that new buildings will come up in the vicinity and that will create good business for him. This argument appears to be based on wishful thinking. In a country like ours where there exists legislation to regulate town and country planning, commercial buildings cannot be allowed to mushroom in a haphazard manner. Guidelines have been issued to ensure strategic development and one example of such strategy is the sequential approach which favours development in a sequence, one after the other geographically. The appellant's site is 300 metres off the main road when going towards Bassin village. He agreed that his plot is surrounded by bare land save for a handful of houses and a poultry pen. Another important concept in planning when it comes to commercial developments that it should seek to intensify land use around public transport. The appellant's site being where it is, is neither easily accessible on foot (save for the very few local inhabitants) nor by public transport. It is located on a substandard road and the site is not visible from the main road. The appellant, in his grounds of appeal, stated under this ground that the Council's decision was inconsistent for having granted permits to the few houses in the vicinity. No evidence was adduced by him to support this contention.

(II) Commercial development against Outline Scheme

The Council stated that as per the Quatre Bornes Outline Scheme the site lies within settlement boundary. This in essence means that should the appellant wish to apply for a Building and Land Use permit for a residential building, the Council would normally consider it favorably provided all other considerations are satisfied.

The appellant sought approval for commercial development. The two policies of particular relevance here are **Policy CR1 of the Quatre Bornes Outline Scheme** which provide for the promotion of commercial development in established centres and **SP5 of the National Development Strategy**, which essentially provides guidance on the location of retail stores. In this context the city, town centres and to a lesser extent edge-of-centre locations are considered most favorable. It appears that the Council has assessed the application and rejected it for non-compliance with **Policy CR1 of the Outline Scheme**.

Policy CR1 essentially states that applications for a mix of commercial uses as well as residential should be promoted in established commercial centres. Priority should be given to mixed use, mixed density developments that incorporate proposals for improvements to the public realm, public transport services and facilities for pedestrians, cyclists and the disabled. Applications for commercial development outside established centres, other than for corner shops or small retail outlets, should not normally be permitted. The underlying reasoning is that small retail

commercial developments which serve the local neighbourhood can be allowed within residential areas as they do not negatively impact on the overall amenity of the residential neighbourhood. Development should also conform to the design practices as provided for in **Policy SD5** for commercial development. Under this policy proposed out-of-centre retail stores will only gain planning acceptance under certain conditions, one of them being that the site is well related to the highway network and readily accessible by choice of means of transport and has been assessed by way of a Traffic Impact Assessment.

The question that has to be determined is whether the development proposed is in line with **Policy CR1 of the Outline Planning Scheme?**

As per the evidence, the site is predominantly surrounded by bare land and accessed only via a substandard untarred access road which is a few hundred metres away from the main road. Allowing commercial development in that area will neither be a compatible land use nor will it positively impact the surrounding environment since the area has such few inhabitants. The appellant stated that there are commercial developments such as hardware shops some 200 metres on the opposite side of the link road when going towards La Louise village. He however had to concede that the access to the shops was through tarred roads. It would not be sound reasoning, in our view, to compare development along a two-way tarred road which has served as arterial street running through various villages and important towns like Quatre Bornes to hypothetical developments that may be brought about in the future to localities without proper infrastructure, public facilities and transportation. We believe that the Council was right in not granting planning acceptance to the proposed commercial development. We are alive to the fact that the planning instruments should be applied with some flexibility, but one should also bear in mind that there should be reasonable and logical adherence to planning instruments which have been devised in the first place so that there is a proper structure and planning for the various types of developments within a country. In order to avoid any negative impact in the future due diligence must be exercised when carrying out development.

For all the reasons set out above, the Tribunal finds that this appeal is devoid of merit. Appeal is set aside.

Determination delivered on 4th February 2015 by

Mrs. J. RAMFUL

Vice Chairperson

Mr. S. Karupudayyan

Assessor

Mr. V. Reddi

Assessor