

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 511/13

In the matter of :-

SK Heerah Fadil Hussen Muhammad

Appellant

v/s

Municipal Council of Curepipe

Respondent

DETERMINATION

The present appeal 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 extension of an existing building to be used as automotive workshop at Tout Court Lane, Eau Coulee, Curepipe . The grounds for refusal were set out in a letter dated 23rd September 2013 as follows:

- "1. The proposed development is a non permitted secondary use within a predominantly residential area as per our draft Outline Planning Scheme.
2. The access to serve the proposed development is substandard for such type of activity."

The Appellant testified under solemn affirmation and was cross-examined by the Respondent's representative, Mr. Chinasamy, Acting planning and development officer. Mr.Chinasamy subsequently deponed and was also subjected to cross-examination by the Appellant's counsel, Me. N. Pillay.

We have duly considered all the evidence placed before us. The starting point is, we believe, to make an assessment of the type of locality we are dealing with.

(i) Proposed development not allowed in residential area

It is the contention of the council that the area is a predominantly residential one. An extract of the draft Outline Planning Scheme was produced to show the settlement boundary. In planning jargon, when a property lies within settlement boundary it simply means that a residential development therein is most likely to gain planning acceptance. The Appellant, in order, to disprove the Council's contention produced as annexure to his statement of case, a Google map of his locality in which he plotted other automotive workshops, garages, spare parts shops within a radius of 500 metres from the subject property, some of which are less than 200 metres away. The Council's representative replied that the Council is aware of the existence of these businesses in the vicinity but being given that the property in lite is situated within a residential morcellement, they have assessed the area as being a predominantly residential one. According to him, the businesses could have been operating before the Planning Policy Guidance came into force in 2004. He had however no information concerning these businesses nor did he carry out any enquiry on them at the level of the Council despite the fact, we note, the statement of case was on record for some months prior to this hearing. No evidence was adduced by the Respondent to show that the area is a predominantly residential one. Infact it was borne out in the evidence of the Appellant that his cousin owns a handicraft shop on the premises next to his own. The evidence placed before us by the Council being rather scant, and the Google map not being very clear, we are not ready to make a finding on the character of the whole area. However, what the Tribunal can appreciate is that the area is a residential one but also contains a number of light industrial developments.

As per **Section 2.13 of PPG1** which sets out the **Design Guidance for Industrial Development** in residential areas, the key consideration is whether the overall character of the dwelling and surrounding amenity will change as a result of the proposed use. It emerged in evidence that the appellant resides on the premises and he has been carrying out the business, albeit illegally, for ten years without any problem from his neighbours. Even as he made the present application, there were no objections from the neighbours and this was not denied by the Council. From the evidence adduced, the Tribunal can appreciate that the Appellant's property is bounded by the property of very few neighbours since it is located in a cul-de-sac at the end of an access road and he also stated that behind his property is agricultural land.

Being given the context in which the appellant has been operating, the length of time he has been operating this business without objection and especially as there are no objections to the proposed development, we believe that the character and amenity of the area will not be adversely affected by the proposed development nor will it cause additional nuisance. Operating an automotive workshop of this nature, whereby mainly hand tools are used, is considered a light industrial development. These may be allowed in a residential area provided certain conditions are met. We are aware that the appellant stated that he wishes to intensify his business. The premises are, in our view, of a suitable size to accommodate the additional activity. We believe that on the facts of this case, the proposed development will not bring about any major detrimental change to the existing character of the area.

(ii) Access is substandard

Section 2.13 of the PPG and Policy ID2 of the Curepipe Outline Planning Scheme (on deposit) set out certain factors to be taken into account for such developments. We are alive to the fact that the road access to the site must be adequate to serve the traffic generated by the activity carried out by the Appellant. Infact it must not create traffic jams, aggravate the flow of traffic or create additional risks to road safety or nuisance on the road leading to the site. While there appears to be adequate parking space within the premises, which is not an issue in the present case, the Council has raised concerns about the access to the site being substandard.

It was borne out in evidence that the access road being of a limited width of only 3.05 metres, does not allow for a free flow of traffic in both directions. Infact the access road can only accommodate the width of one vehicle at a time. This being the case, the stand of the Council is that since 2 vehicles will not be able to cross at any given point this will create a nuisance in terms of traffic in the locality.

From the photograph produced by the Appellant, it can be seen that the road that runs perpendicular to the access road, is a wider, tarred and well-maintained road. Judging by the long stretch of it, it appears that this road services a substantial part of the morcellement. Conversely, the access road which leads to the premises of the Appellant seems to provide access onto the wider road to only 4 houses including that of the appellant, if not 2 (since 2 of the houses also have direct access onto the wider road). The length of the access road, as per the testimony of the Appellant is approximately 20 to 25 metres. We do not believe that a short stretch of road which provides access to a handful of houses would either cause traffic congestion or road safety hazards for that matter. While it is undeniable that 2 vehicles will not be able to cross each other on the access road, we believe that the trip along the access road for any vehicle is so short that there will neither be any saturation in the volume of traffic either

on the access road or on the wider road connected to it. It was incumbent on the Council to prove to us in what way the access road would not be adequate for such type of activity since this was one of its grounds for rejection. It failed to convince us in what way the size of the access road would be problematic in the current context. Even if the road size were to be inadequate, bearing in mind the types of vehicles that are serviced by the Appellant, we believe that this so-called defect can be cured with the imposition of conditions on the permit of the Appellant which he will have to abide by.

For all the reasons set out above, we allow the appeal. We order the Council to grant the Appellant with the relevant Building and Land Use Permit with the conditions attached to it. The Council may wish to impose conditions to ensure that the number of vehicles allowed on the premises at any given time is restricted to the capacity that the premises can accommodate, that the Appellant abides by the hours of work prescribed for workshops and that the access road is always kept free. There should be no parking problems created on the access road and the connected wider road and there should be no nuisance of any nature caused to the surrounding and also there should be proper disposal of waste. The Council may also wish to impose other conditions for the Appellant to abide by, a failure of which will result in the BLUP being revoked.

Determination delivered on 16th April 2015 by

Mrs. J. RAMFUL-JHOWRY

Vice Chairperson

Mr. S. Karupudayyan

Assessor

Mr. P. Thandarayan

Assessor