

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 615/14

In the matter of :-

Anoop Kumar Luchoo

Appellant

v/s

Municipal Council of Curepipe

Respondent

IPO:

Hurreba Rajaram

Co-Respondent

DETERMINATION

The appeal is against a decision taken by the respondent for having granted a Building and Land Use Permit ("BLUP") to the co-respondent for the conversion of part of an existing building situated at Loreto Convent Street, Curepipe, to be used as Hardware shop at ground floor but without the right to sell cement, iron and steel bars and to be used as store on the mezzanine floor.

In his notice of appeal, the appellant raised 3 grounds which are in relation to noise pollution, insufficient parking space and that the decision taken by Council was in his absence.

In the course of the hearing, the appellant stated that he wished to drop the first ground of appeal which related to pollution. He did not adduce any evidence in relation to his third ground of appeal, regarding the decision of the Council being in his absence, which is deemed to have been dropped. He, however, maintains that parking space is a live issue. He called as witness his son, Mr. Mevin Luchoo, who produced to the Tribunal 3 photographs and was subjected to cross examination.

We have duly considered the evidence of all the parties. The uncontested evidence is that the building is situated at the intersection of two roads, one of them being Loreto Convent Street, near a roundabout. The building already accommodates a hair dressing salon, which is operational. The appellant is the immediate neighbour to the proposed development.

The appellant's main concern, based on his testimony, relates to the fact that in view of insufficient parking space, the loading and unloading of vehicles are not being done in appropriate places consequently vehicles are often parked in a manner which may potentially lead to accidents, and consequently this now poses a danger to their personal safety as vehicles often park outside his house. In support of this contention, the appellant's witness produced photographs, one of which shows a small lorry parked outside the house of the appellant and the other two photographs of a heavy duty lorry parked in the parking lot of the building *in lite*. These two photographs give a clear picture of the heavy duty lorry with its container being within the parking slot but the whole cabin of the lorry rested on a road reserve at the roundabout where it is shaded in white to show a clear demarcation where one is neither supposed to drive on nor park. Surprisingly, the co-respondent while cross-examining Mr. Mevin Luchoo suggested that the shaded road reserve was a lay-by. He even stated the lorry did not go overboard onto the road and furthermore, asked the witness to state in what way that was an inconvenience to the appellant. Although this is not part of his testimony but rather questions put by him to a witness, it reflects the lack of concern on his part to serious issues such as safety and security of the surrounding environment and the people living therein. This is further confirmed when he went on to say that if vehicles park in front of the entrance of the neighbours, he cannot be held responsible. This very point was addressed by the TMRSU in its letter dated 10 July 2013, a copy of which was produced and marked "Doc B", addressed to the Council to state that on street parking shall strictly not be allowed. It is surprising that annex E to the statement of defence of the respondent, which is infact a copy of the BLUP granted to the co-respondent shows that this has not been attached as a condition to the permit and it is pertinent to note that no conditions have been attached to this permit, as per the evidence placed before us.

We pause here to analyse the content of the BLUP granted to the co-respondent. It states "...a Building and Land Use Permit is hereby granted to MR HURREBA RAJARAM for the development referred to hereunder and *as shown on approved plans accompanying this permit...*" (the stress is ours). It emerged in the evidence of the respondent's representative that in fact the BLUP was granted to the co-respondent without the approval of amended plans which, in our view, were of utmost importance since the understanding was that the arrangement for the parking slots was to change from perpendicular parking to parallel parking so that cars can drive in and out of the parking slots in forward gear. Therefore, based on the size of the frontage, there can be only 2 cars parked at a time in the slots parallel to the road that runs in front of the building.

Mr. Chinasamy, for the respondent, could not explain why the Council did not request amended plans for approval. In our view, the evidence of the Council is in clear contradiction with what has been set out in the BLUP. The Council should have asked for amended plans and it is only upon approval that the proposed parking arrangement was satisfactory and in line with the PPG that the Council should have granted the BLUP, provided all other conditions are satisfied.

Another contention of the appellant is that the co-respondent is subletting his store to another company. This is outside the ambit of this appeal and as such no evidence was adduced on this issue. What is of concern is the way the parking is being utilized. The representative of the Council relied on a letter emanating from the Traffic Management and Road Safety Unit to state that the latter had given its clearance. On close inspection it appears that several apt conditions have been suggested by the TMRSU but none were inserted in the BLUP of the co-respondent. Although there is no legal obligation upon the Council to do so, it would in our view been most desirable to incorporate those conditions which would have mitigated the risk of accidents due to poor visibility caused by on street parking, the moreso as the proposed development is actually situated at a roundabout. The risk of invasion of privacy in view of the residential dwellings in the surrounding would also be minimized with the adequacy of parking space.

For all the reasons set out above we believe that the ground raised by the appellant is a valid one. While the appellant did not seem to have any serious objections to the proposed development and his concern was mainly geared to the issue of insufficiency of parking space, we believe the objective of this appeal will be met if strict conditions are imposed and attached to the permit. We, accordingly, order the Council to impose appropriate conditions to the BLUP of the co-respondent as follows:

- (1) Conditions which are in line with Doc B
- (2) On street parking, including in front of the appellant's premises, is strictly prohibited at all times
- (3) Any loading and unloading is to be done only in the underground parking
- (4) Encroachment by any parked vehicle on the shaded road reserve is strictly prohibited at all times.
- (5) Failure to comply with the above and any other conditions that the Council deems fit to impose, will result in the BLUP being cancelled or revoked.

It is the duty of the Council to carry out ex-post control to ensure compliance with the parking and loading conditions, especially in case of complaints being received. The appeal is otherwise set aside.

Determination delivered on 12th February 2015 by

Mrs. J. RAMFUL

Vice Chairperson

Mr. S. Karupudayyan

Assessor

Mrs. B. Kaniah

Assessor