

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 705/14

In the matter of :-

Feroze Goodun

Appellant

v/s

District Council of Savanne

Respondent

DETERMINATION

The present appeal is against a decision taken by the Council for having rejected the application of Mr. Goodun for a Building and Land Use Permit for the construction of a hardware shop with the right to sell cement, iron and steel bars at Sir Abdool Raman Osman Lane, L'Escalier. The grounds for rejection communicated to the Appellant in a letter dated 5th June 2014 are set out below:

"(i) The site is not suitable for this type of development due to the narrowness of the existing road;

(ii) Unfavourable recommendations from the Traffic Management and Road Safety Unit ie the development is likely to generate the movement of heavy vehicles (carrying cement and iron bars) to and from the development which may cause safety problems to pedestrians, and traffic congestion."

The Appellant deponed under solemn affirmation and was cross-examined by Respondent's counsel. Mr Koonjul, head of Land Use and Planning Department, deponed on behalf of the Council and was cross-examined by the Appellant. We have duly considered all the evidence placed before us.

The refusal of the Council is grounded essentially on the point that the access to the site is unsuitable. From the evidence of the Appellant, the locality is a predominantly residential one,

especially Sir Abdool Raman Osman Lane. The applicable planning policy is **Planning Policy Guidance 1** (PPG 1) relating to developments permitted in residential areas. **Paragraph 2.13** stipulates that developments permitted in residential areas are small industrial workshops and home working.

Part of paragraph 2.13 of PPG1 is reproduced below

"2.13 Small Industrial Workshops and Home Working

Small scale enterprises that are carried out in the home with or without modification of the dwelling may in some locations be acceptable if the use is ancillary to the principal use as residential but surrounding residential amenity is not compromised.

Industrial uses such as panel beating and spray painting, manufacture of furniture and vehicle repairs are not normally acceptable uses within residential areas due to dust, noise, fumes, vibration and other adverse environmental effects. Examples of potentially acceptable small scale enterprises include cooking of sweets and food preparation, sewing and small scale clothing manufacture, repairs to electrical goods, minor car/mechanical and bicycle repairs, artists repairs, artists studios, offices such as book keeping, administration, professional services etc....."

The Appellant wishes to carry out a commercial development in an area which is predominantly residential. The cursum has always been that any commercial or industrial development will not be allowed in a residential area if it is likely to cause a major disruption in the area, be it in terms of overall character of the dwelling or in the surrounding amenity. It stands to reason that the presence of a shop will not only cause a marked rise in human and vehicular traffic in a locality. Having a hardware shop along Osman Lane will in no way be an exception. The question is whether this lane can contain that flow and type of traffic that will be generated through the proposed enterprise.

The Appellant stated that there are some 12 houses in Osman Lane but also agreed that even though the road is meant for two-way traffic the road is so narrow that even 2 cars cannot cross. However he tried to argue his case by giving examples of how there are heavy duty vehicles that use that road on a daily basis. He also stated that any congestion problem can be avoided by road users on Osman Lane by using an alternative route on seeing oncoming vehicle from the main road entering the lane. Even if the version of the Appellant is to be believed on this the converse seems to be unworkable. Vehicles which have just turned into the lane from the main road may find it difficult to back out onto the main road in case of oncoming vehicle from Osman Lane nearer the junction of the lane to the main road. Mr Koonjul gave evidence that the width of the lane throughout is 3.05 metres. However, due to larger road reserves left by some of the inhabitants at the entrance of Osman Lane, he noted that although the road

seemed wider at the beginning of the lane it was infact very narrow throughout. In our view, this will not in any way cure any congestion problem. The very foreseeable traffic constraint will be that the lane will be burdened by not only more vehicles but larger vehicles such as lorries and that in turn may also slow down the movement of traffic generally along Osman Lane as well as the main road. It can be clearly seen from Doc A4, photograph produced by the Appellant that the mirror of the bus is very close to the window pane of one of the houses along Osman Lane. The irresistible inference that can be drawn is that such heavy duty vehicles will have to drive very slowly and exercise due care when driving along this lane to ensure that there is no damage to the property of others. The movement of big lorries carrying long steel/iron bars several times in a day within a narrow road which contains predominantly residential houses is most likely to be unsafe for the road users and disruptive to the overall amenity of such a locality.

The Appellant also stated that loading and unloading activities would be carried out within the premises. We believe that the situation is not likely to render the roads within the residential area any safer. He also gave evidence that the plot size is 56 perches, which is rather sizeable in our opinion. True it is that we cannot surmise on unknown issues such as the scale of the proposed enterprise but suffice it to say that it would be big enough to provide storage for long iron bars and cement bags as well as accommodating the hardware shop itself. We believe that the Respondent was right in its assessment that the site was not suitable for this type of development because of the access. From a planning point of view, the landuse of the access road and of the site are very important considerations. Planning is important for present but more so for the future. Will the road serve as a good access to the proposed development site for now and in the future? The answer is in the negative. The development proposal will, in our view, be incompatible since it will involve the movement of heavy duty vehicles in a residential area thereby creating a negative impact on the traffic conditions as well as the safety of pedestrians. 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 cement and iron/steel bars amongst others. It is only logical that such activities generate, apart from major traffic constraints, nuisance in terms of noise, but a considerable level of disruption to the residential amenity. We are alive to the fact that the Appellant has stated that he already runs a hardware shop at the beginning of Osman Lane and that involves traffic of some big vehicles and that there are a few buses that are stationed everyday in the compound of an inhabitant of Osman Lane. In our view two wrongs cannot make a right and at any rate, in our view, there can be no better reason to avoid more heavy duty vehicles on a road which services a residential locality in view of the high density of human traffic involved on a daily basis.

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For all the reasons set out above, we find that the appeal is devoid of merit. The appeal is therefore set aside. No order as to costs.

Determination delivered on 21st April 2015 by

Mrs. J. RAMFUL

Vice President

Mr.G. SEETOHUL

Assessor

Mrs} B. Kaniah

Assessor