

IN THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 471/13

In the matter of:

Rishi Kumar Bundhun

Appellant

v/s

District Council of Riviere du Rempart

Respondent

DETERMINATION

The present appeal is against a decision taken by the Council for having refused an application made by the Appellant for a Building and Land Use Permit (BLUP) to convert part of an existing building to be used for the purposes of manufacturing wooden furniture (employing less than 10 persons) at Buner Lane, Amaury. The decision of the Council was communicated to the Appellant by a letter dated 25th June 2013, which stipulated that the Council rejected the application on 4 grounds, namely:

- “(i). Site is within a residential area.*
- (ii) Activity may give rise to nuisance in the form of noise and dust.*
- (iii) Complaint registered against proposed development.*
- (iv) Building has been put up on the edge of an access road.”*

We have duly considered the evidence placed before us including documents produced and the depositions of all witnesses. The Appellant was not legally represented but chose to call a

witness. The Council was legally represented and Mr. Manoruth, Senior Building Inspector at the Council deponed on behalf of the Council.

It is worth noting that although the letter of refusal is dated 25th June 2013, the Appellant only lodged his appeal at the registry of the Tribunal on the 6th August 2013. This suggests that the appeal may have been lodged outside the delay of 21 days prescribed under **s. 117(14) of the Local Government Act 2011** as amended. However, in view of the fact that this matter was not argued, it will be difficult for the Tribunal to come to a conclusion on the date of notification / date of receipt of the letter, for lack of evidence.

The Appellant's case was essentially based on the fact that he needs to earn to support his family and that there are other such workshops in Amaury which have been granted BLUPs. He stated that this activity was his only source of income, that he was of limited means and he was willing to abide by any condition imposed by the Council and also that the objections received were made by his neighbour in bad faith following a dispute. In support of its contention, the Council referred to **section 2.13 of the Planning Policy Guidance**.

The proposed development is to convert part of a residential building into a workshop for the manufacture of wooden furniture. It is the contention of the Council that the area is a residential one and the appellant's version has been inconsistent on the issue. He stated that there are no houses near his house but when later put to him in cross examination, he stated that he had next door neighbours who must have been the ones objecting to his development. He subsequently stated that he could not understand why he was being denied a BLUP when in other residential areas of Amaury also there were workshops for which BLUPs were granted. He produced photographs in support. We find that we cannot attach any weight to these photographs. One photo of a building does not show any workshop and the others hardly show any kind of activity of workshop and were of no visual assistance. The last photograph produced was that of the appellant's workshop. We are therefore satisfied that the area is a residential one.

This being established, the relevant policies to be consulted for such developments in residential areas are **section 2.13 on Industrial Use under the PPG** which stipulates:

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, vibrations 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 studios, offices such as book keeping, administration etc.

We believe that another policy that finds its application here is **Policy ID2 of the Outline Planning Scheme on Small Scale Enterprises and Home working** which provides

Proposals to operate and extend office/business uses or small scale enterprises from residential properties should only be permitted if the use is ancillary to the principal use as residential.

Criteria should include:

- (i) *Premises are of a suitable size and design to accommodate the additional activity and all its ancillary requirements such as parking, loading area and adequate set backs from neighboring properties.*
- (ii) *No neighbours' objection within a radius of 50 metres.*
- (iii) *No serious/adverse impact on residential occupiers in the area or the character of the neighbourhood particularly in regard to noise, fumes, smells, dust nor excessive vehicle movements or loading and unloading of goods and products;*
- (iv) *Sufficient parking space within the cartilage of the property available to accommodate any staff or visitors;*
- (v) *Safe access from the roadway;*
- (vi) *Storage of materials should be able to be contained within the cartilage*
- (vii) *The operator of the office/business or small scale enterprise should remain at the premises.*

From the photograph produced and explanation given by the Appellant, the workshop that the Appellant has been operating, albeit illegally, is part of his residence and is built in CIS and metal tubes. It is also not contested that the objector is the next door neighbour and that there is a school very close to the subject site. We have taken on board the fact that the neighbour has objected to the development and we believe that the Council was also right to have taken on board the reasons advanced by the objector which was basically due to the nuisance of noise, fumes associated with carpentry, their already poor state of health would be further affected. Documents have been produced by the Council's witness in support. The objector, one Mr. Issury, feared that in addition to the disruption being caused to him and his family in that they will be deprived of their right to a peaceful enjoyment of their property, they would be prejudiced by the nuisance associated with the noise and fumes. In cross examination, the Appellant admitted to using some noise generating equipment such as Circular saw of 240 V, Dicksaw of 240 V, Router of 240 V, Compressor of 240 V, Polishing machine of 250 V, Grinder of 240 V amongst others as per Doc E produced. While the Appellant argued that such objection was made out of spite, we believe it is important to consider how residents in the neighbourhood are impacted by the development. The Appellant also did not deny that fumes would be generated from his activities although it was put to him in cross examination. We are

therefore of the view that when all considered such “bad neighbour” developments, as termed in planning jargon, should not be allowed in residential areas to the detriment of other residents, the more so as the immediate neighbour has objected and the reasons advanced is that it will have an adverse impact on the character with regard to noise, fumes, smells and dust which the objector is not willing to put up with. We believe that the Council’s decisions cannot be said to be flawed in anyway. Having such a workshop in such close proximity to the residences of people is a misallocation. It may generate further issues in future if the business expands in terms of human and vehicular traffic. Due diligence must be exercised when carrying out development which is likely to have an impact on the neighbourhood because a residential area is meant to be such where one can enjoy ones’ property peacefully.

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

Determination delivered on 9th December 2016 by

Mrs. J. RAMFUL
Vice Chairperson

Mr. S. Karupudayyan
Assessor

Mr. B. Kaniāh
Assessor