

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

Cause No. : 939/15

In the matter of:

HEIRS SAHEDA BHOLAH

Appellant

v.

DISTRICT COUNCIL OF PAMPLEMOUSSES

Respondent

DETERMINATION

The Appellants had applied to the Respondent for a Building and Land Use Permit for the subdivision of a plot of land situated at Mon Gout into eight lots for residential purposes. The Respondent has in a letter dated 6th July 2015, refused to grant the BLUP on the following grounds:

1. The site lies outside the defined settlement boundary by some 240 metres
2. According to policy SD4 of the Pamplemousses Outline Planning Scheme, there is a general presumption against development outside settlement boundary except for bad neighbor development as defined in policy ID4 of the Outline Planning Scheme.
3. The subject site lies within the 200 metre buffer from an existing poultry pen.

The Appellants have appealed against this decision on the grounds that:

- (a) The District Council has already issued a permit within 80 metres of the same buffer zone for residential purposes
- (b) Water and electricity supply already exist near the site and clearance certificate has already been obtained from the Ministry of Agriculture.
- (c) All infrastructure works will be done by the heirs.

In its statement of defence, the Respondent denied the averment made by the Appellant and maintained that policy SD4 has been put into place to respect the Outline Planning Scheme, such scheme having been created to maintain 'not only good neighbourhood but also good planning development for the District'. It is also stated that policy SD5 has no relevance in this case.

We have considered the evidence adduced by the respective parties and have the following observations to make:

1. The Appellant has referred to two permits where approval of the District Council had been obtained, firstly, in 2014 for the sub-division of land (Document H dated 29 December 2014) and subsequently the excision of a plot (Document J dated 12 February 2015), where the subject plot was located at a distance of less than 200 metres from a poultry pen. The District Council had granted the application with conditions that the applicant should observe. We draw attention to the fact that firstly, this decision is not before this Tribunal and we are not aware, nor are called to assess the rationale of this decision. Secondly, although the applicant (now Appellant) may nourish the expectation that the Council would apply the same standard in deciding on the present application, there is no basis for this to be a legitimate expectation.
2. The evidence adduced by the representative of the Respondent shed light on the first permit referred to by the Appellant, namely that the subject property was outside the settlement boundary by a distance of 35 metres whereas in the present application the distance is of 240 metres outside settlement boundary. There were also other criteria, namely the proximity with built up areas among other considerations.
The assessment of the decision of the Respondent in relation to the present appeal by this Tribunal is not dictated by the considerations given in prior applications. The first ground of refusal, namely that the subject site is outside settlement boundary, has remained undisputed (albeit that the Appellant contends that it was 167 metres as opposed to 240 metres).
3. It was submitted by the Appellant that a land conversion permit had been granted in respect of the land. Document D produced shows that the Ministry of Agro Industry and Food Security had in fact issued a clearance to the effect that the land was exempted from an application for land conversion (in accordance with the provisions of the Sugar Industry Efficiency Act). This exemption was however conditional to the said land being located in an area where development is permissible in accordance with the Outline Planning Scheme among others.
4. We note from the cross examination of the representative of the Respondent that the Appellant had initially submitted a first application and the ground for refusal differed from the grounds as contained in the decision under appeal. We agree that this erratic approach taken by the District Council is a matter of concern, being given that, as a local authority, the Council should show consistency in its decision making process. Yet, this inconsistency which the representative could not account for, cannot be considered in the present proceedings as the only decision under appeal is that dated 6th July 2015. What this Tribunal has to decide is the propriety of this decision.

5. Policy SD 4, relied upon by the Respondent in reaching its decision, sets a general presumption against proposals for development outside settlement boundaries. The policy sets down certain exceptions which are listed therein, the capacity for ready connection to existing utility supplies being one of those exceptions. However it is not a 'stand alone' exception, this exception is to be read in conjunction with the exception that the 'proposal has been shown to have followed the sequential approach to the release of sites identified in SD1, SD2 and SD3 and there are no suitable sites within or on the edge of settlement boundaries'. In the present case, there is no evidence that a sequential approach has been followed.
6. Furthermore, we are not in presence of evidence that disputes the presence of a poultry pen at a distance of 170 metres from the subject site. The governing principles whenever there is a 'bad neighbor development', are laid down in Policy ID 4. This policy sets out that the location of bad neighbor development should follow the sequential approach and that buffer zones are required when potential nuisance would be caused by bad neighbor developments. Thus in the case of poultry pens, the buffer zone required to be observed is 200 metres. This being the objective criteria followed by the Respondent, we find no reason to interfere with this ground of refusal which is in line with policy ID 4.
The Appellant laid emphasis on the fact that approval has been granted for an application where the distance from the poultry pen was 80 metres. However, for the reasons mentioned above, at paragraph 1, the Council is not bound to reach a similar decision. Should the Appellant feel that the inconsistency of the decisions of the Respondent causes him prejudice, he can contemplate other avenues. The present jurisdiction has to assess the propriety of the decision of the Respondent within the planning considerations that are taken.
In this respect, we find that none of the grounds of appeal can be upheld. The appeal is therefore set aside.

Delivered by:

Mrs. V. Bhadain, Chairperson .

Mr. V. Reddi, Assessor ..

Mr. Busawon, Assessor ...

Date: ...14th July 2016