

**BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL**

*JS*

**ELAT 1033/15**

**In the matter of:**

**Caroux Joelle Sharon Shane**

**Appellant**

**v/s**

**District Council of Black River**

**Respondent**

**DETERMINATION**

1. The present appeal is against a decision taken by the Council for having rejected an application by the Appellant for a Building and Land Use Permit (BLUP) for the conversion of an existing building into a Kindergarten and Pre-primary School at Morcellement Bismic in Flic-en-Flac. The two grounds for refusal as set out in a letter dated 30<sup>th</sup> November 2015 are

*"1. The location of the proposed school behind a residential building, within a residential morcellement and amidst exclusively residential dwelling is inappropriate;*

*2. The site plan submitted is misleading as parking space cannot be accommodated as shown."*

The appellant, *inops consili*, deponed under oath and chose not to call any evidence in her favour but was cross-examined by Respondent's Counsel and Mr. Ahmadi from the planning department of the Council deponed on behalf of the respondent and was cross examined by the Appellant. We have duly considered all the evidence adduced.

2. The proposed development is regulated by **Policy SC1 of the Outline Planning Scheme of Black River ['OPS'] on Pre-Primary Education**. Such type of development is to be located within the settlement boundary and can also be allowed as part of residential buildings provided that certain criteria are met. **Policy SC1**, which is a replica of **Policy ED1 of the National Development Strategy**, is reproduced hereunder

***"Policy SC1: Pre-Primary Education***

***Proposals for the provision of pre-primary centres should be favourably considered if the development meets the following criteria in order of preference:***

- (a) Purpose-built centres on separate sites within settlement boundaries;***
- (b) The use of appropriate community buildings such as village halls, social/community centres, religious buildings;***
- (c) The use of part of a private residential building or plot within settlement limits provided that :***
  - (i) The premises are of a suitable size and design to accommodate the maximum number of children enrolled;***
  - (ii) There is sufficient space for off-street car parking for staff;***
  - (iii) No traffic or safety hazards should be created by the parking of vehicles depositing and collecting children from the site; and***
  - (iv) No environmental or other nuisance should be caused to detract from residential amenities of the area.***

*Justification:* It is the Government's aim to offer the opportunity of pre-primary education to all children in the 3 to 5 age group. Ideally, such education facilities should be attached to all primary schools but financial constraints mean that for some time provision will have to continue to be made in other premises by both public and private sectors. A considerable contribution is made by small private pre-primary centres on residential plots and this should continue to be permitted provided that specified criteria are met."

3. The Appellant substantiated her case by essentially giving evidence that there are a number of existing commercial activities in the vicinity and that the area is not strictly a residential one as stipulated by the Council in its refusal letter. She produced photographs in support of her testimony. She also produced photographs to show that behind the subject site where she proposes to have the development, there is no residential building but in fact there is a tennis court, thus contradicting the reason for refusal given by the Council in its letter. Under cross-examination, the Appellant agreed that the Morcellement where the development is being proposed is mainly but not exclusively a residential one. She stated that her project plan was to have some fifteen kids in the nursery and twelve children in the kindergarten.
  
4. The case of the Respondent is that the morcellement being predominantly a residential one, objections were received regarding the nuisance and safety issues and that the plans submitted by the appellant showed 4 parking slots but that in fact a site visit on the locus confirmed that there are flower beds on parts of the so called parking slots which in essence do not make them functional, contrary to what the plans submitted by the appellant to the Council purport to show. Mr. Ahmadi, representative of the respondent, also explained that parking slots, as they are on the site will not be functional because at the entrance of the premises there is a space of only 3.5 metres for vehicles that are entering the premises to turn, which then makes it impractical for vehicles to park in the compound, the more so with the existence of some steps leading into the building which add to the hindrance. Mr. Ahmadi explained that within such parameters it would be practically impossible for vehicles to park and turn around to leave the premises, they would have to reverse out of the compound and this may prove to compromise the safety of children attending the school. He also explained that the Planning Policy Guidance makes provision for setback of 6 metres whereas on the subject site the set back amounts to 3.5 metres only.

5. **Policy SC1 of the OPS**, as mentioned above, stipulates in very clear terms that proposals for pre-primary centres should be favourably considered provided that they comply with the criteria set out in the Policy. The criterion at paragraph © (iii) *supra* provides ***“No traffic or safety hazards should be created by the parking of vehicles depositing and collecting children from the site”***. We have been able to reconcile photographs marked A2, A8 and A9 which give an indication of the entrance, the green space and the parking slots in front of the steps within the premises with the plan, all of which were produced by the appellant. We fail to see how on a normal school day with the vehicular and human traffic generated when parents of twenty seven children would be dropping off the children in the compound of the school, reversing out or even turn their vehicles around, and in view of the limited space, how this whole process will run smoothly on a daily basis. We have been convinced by the testimony of the respondent’s representative that the safety of the children will be compromised. In fact it will not only be a safety hazard for the small children but also for the vehicles driving in and out of the premises not just in the mornings but also in the afternoons, everyday.
  
6. Although the issues revolved around the alleged not-strictly-residential nature of the Morcellement, we believe that the real issues which would have enlightened this Tribunal have hardly been touched upon, let alone canvassed. For the Tribunal to consider whether the proposed development can gain planning acceptance, it was incumbent on the Appellant to provide us with more evidence on the project and the premises to be used. The number of classrooms, an assessment of the traffic conditions in an area, an assessment of the impact of the proposed development on the traffic in the area, the width of the roads within the morcellement, and leading to the premises, safety conditions to be taken into account to minimize the risk of accidents; the moreso as there are objections regarding her project. These are all issues which would have assisted the Tribunal to come to an informed decision. It is a matter of common sense that with the school accommodating over two dozen small kids including toddlers, the

level of noise generated as well as human and vehicular traffic will increase proportionately.

7. This situation is likely to be a source of nuisance for inhabitants of a morcellement which is predominantly a residential one. It is not sufficient for the Appellant to simply state that there are other commercial enterprises in the area which equally generate noise and traffic, therefore the Council should have also approved its application. The objections of neighbours, especially if they are contiguous, are relevant considerations to be taken into account. The Council, when considering the planning merits of each case is duty bound to take into account the interest of those who will be impacted upon by the development. It is only fair to take on board any representation made by the neighbours who feel their right to enjoy their property is likely to be curtailed. However, in view of the fact that the Appellant testified that there is a tennis court behind the premises which she supported by photographs and that there are a few empty houses around except for the house of one Mrs Balajee, whom the appellant herself stated had objected to the proposed development, we are ready to give the benefit of the doubt to the appellant on this specific point regarding the location of the proposed development being inappropriate, the more so as neither in cross-examination was her version disproved nor did Mr. Ahmadi for the respondent contradicted her version.
8. For all the reasons set out above, especially regarding the safety hazards that are likely to generate from the proposed development for small children as well as adults, we believe that the appeal is devoid of merit and therefore set aside. No order as to costs.

Determination delivered on 19<sup>th</sup> October 2018 by

**Mrs. J. RAMFUL-JHOWRY**

**Vice Chairperson**

  
**Mr. CHEONG**

**Assessor**

  
**Mr. GUITON**

**Assessor**