

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 701/14

In the matter of :-

Jeewanraj Lochman
u
A

Appellant

v/s

District Council of Savanne

Respondent

DETERMINATION

1. The present appeal is against a decision taken by the Council for having rejected the application of the Appellant for a Building and Land Use Permit for the construction of a house for residential purposes at Camp Rafia, Chamouny. The ground for rejection communicated to the Appellant in a letter 2nd June 2014 is that

"Buffer distance of 200m from an existing poultry pen will not be observed."

2. The Appellant who was legally represented deponed under solemn affirmation and was cross-examined by the Respondent's Counsel and the representative of the Council, Mr Saddul, also deponed and was cross examined by the Appellant's counsel. We have duly considered the evidence placed before us.

I. CONTEXT ANALYSIS

3. The development site is an agricultural land of an extent of 1038sq.m situated at Camp Rafia, Chamouny, which the Appellant purchased from St. Felix Sugar Estate on 15th October 2013. At the time of the hearing of this case the Appellant had not been exempted from a Land Conversion Permit and this was raised by the Council, not in its statement of case but not as a ground of refusal in the latter dated 2nd June 2014, and was subsequently dropped. It is undisputed that the site is located outside settlement boundary as per the Grand Port- Savanne Outline Planning Scheme and is within the buffer of 200m from the existing Poultry Pen which belongs to one Mr. Sathen Jugnarain who has an EIA licence for the rearing of broilers. As per Doc E, there are no residential buildings within a buffer of 200m from this poultry pen save for a structure under CIS which has no BLUP.

II. THE EVIDENCE

4. The case of the Appellant in essence is that he does not dispute that his property is within the 200 metre-buffer from the Poultry Pen which is operational. He has no qualms about living there and the report from the Planning Department of the Council, Doc E, shows that he has already started construction of his building for which he has been served with a notice by the Council. He stated that he needed a BLUP as he was about to get married and needed to build his house and that he had no other property. Counsel for the Appellant essentially rested his case on the fact that there was no obligation imposed by law on the Appellant to observe a buffer of 200 m from an existing poultry pen.
5. Evidence of Mr. Saddul is that the site falls outside settlement boundary which is not favourable to residential development and that the subject site lies within the buffer of 200 m from the Poultry Pen which is fully operational. The Council's position is that the

Council has refused the permit because it would not satisfy the provisions of the PPG regarding a buffer of 200m between the residential property and the Poultry Pen.

III. THE LAWS AND PLANNING INSTRUMENTS

6. The real issue at hand is should the burden of observing a buffer distance of 200 metres between the Poultry Pen and a residential building rest on the one who applies for a BLUP of the Poultry Pen or the one who applies for a BLUP of the residential property. It is the contention of the Appellant that the Technical guidelines of the Council provides that *"a distance of 200m from the existing residential areas"* should be observed for animal rearing activities, which includes Poultry Pen, and this is reproduced in the BLUP guide. The Appellant, in his statement of case, also referred to the Sectorial Guideline No.2 On the content of Preliminary Environment Report (PER) for the Rearing of Poultry above 5,000 Heads.
7. The Planning Policy Guidelines on Bad Neighbour Buffer for Industry Adjacent to Sensitive Uses provides guidelines on buffer distances *"to mitigate any negative effects of industrial operations"*. Sensitive land uses include housing, education and health facilities. According to these guidelines the buffer distance to be kept between a bad neighbor development such as Poultry/Livestock Farm and a sensitive land use such as housing is 200 metres. The undisputed evidence shows that the distance between the poultry pen and the appellant's property is less than 200 metres. The appellant stated that he did not measure the distance but the Council put in supporting evidence to show that there is approximately 160m from the Poultry Pen to the subject site. This evidence is therefore accepted.
8. The **Planning Policy Guidance** ["PPG"] is a material consideration while assessing developments according to planning norms. The **Design Sheet –Bad Neighbour Buffers** in **PPG 1** under the sub-heading of **"Industry Adjacent to Sensitive Uses"**, it has been provided, as regards Bad Neighbour Buffers, *" Special consideration should be given to*

the particular requirements for buffer zones between sensitive land uses and bad neighbor industries. Buffer zones may need to extend upto 1km distance. Sensitive land uses include housing, education and health facilities." The acceptable distance that has been provided as per the planning policy guidance of sensitive land use from the boundary of bad neighbour industry is 200 m from Poultry or livestock farm and the considerations to be taken into account are that it should not be within an irrigation zone, it should be located within an agricultural area, as is the case here, and it should be more than 200m from any slaughter house.

9. It was the contention of the Appellant that the burden of observing this buffer does not fall on the shoulders of the Appellant who is applying for a BLUP for residential building. Counsel for the appellant referred us to the BLUP guide at Annex F of the brief. This guide clearly stipulates that these are "Guidelines for Industrial Development/Sui Generis", in other words these are guidelines to be observed when someone is applying for a BLUP for an industrial activity. These guidelines in an attempt to offer guidance to applicants set out the documents to be submitted and the general guidelines that the Council will bear in mind when assessing their application so that these matters are considered when the applicants submit their application. At paragraph 2 © of the guidelines, it is provided that "*For animal rearing activities, a distance of 200m from existing residential area [is to be provided]*" This burden is obviously on the applicant who is applying for BLUP for animal rearing activity. But the question remains as to whether there is no burden on an applicant who subsequently wishes to apply for a BLUP for a development of sensitive use to abide by any guideline regarding buffer zones?
10. The provision of the PPG as set out above talks of "Indicative Buffer **Distances between** Bad Neighbour Development Industry and Sensitive Land Uses" and of "Acceptable **Distance of** Sensitive Land Use **from** Boundary of Bad Neighbour Industry" [stress is ours]. We fail however to see in what way that would absolve or dispense any subsequent applicant for a sensitive land use with a pre-existing bad neighbor

development within a buffer of 200m from being subjected to such guidelines or vice versa, for an applicant applying for a BLUP for a bad neighbour development from being subjected to guidelines of observing a buffer of 200m when there is a pre-existing development of sensitive land use in the vicinity. We believe that the provision of the PPG in this respect is clear and its application should be in a logical and common sense way. There should be a buffer of 200 m between a bad neighbor development, as in this context, and a sensitive land use development.

11. **Section 117 (3) Local Government Act 2011** emphasizes the fact that an application for a BLUP should be considered by taking into account the guidelines issued under the law. Under **Section 7 of the Environment Protection Act**, the Minister has wide powers, to propose and develop policies on all aspects of environment, to establish such standards as may be necessary to safeguard human health and the environment, amongst others. Environmental Guidelines have been issued by the Ministry of Environment for the rearing of poultry and as per these guidelines, the buffers provided are so in view of the biosecurity risks. This also implies that Council should normally take on board the risks associated with the contamination of broilers and spreading of aviary diseases and the likely effect it may have on inhabitants within the vicinity in the eventuality of an outbreak. This, we believe, is the underlying logic for having buffer distances, hence the *raison d'être* of such guidelines.
12. By reason of the fact that the Appellant is willing to reside within the buffer zone of the poultry pen, does not negate the associated risks. On the basis of the application of the Planning Policy Guidelines, we are of the view that this appeal should not be allowed. The appeal is accordingly set aside. No order as to costs.
- Determination delivered on 13th November 2018 by

Mrs. J. RAMFUL

Vice Chairperson

Me. A. Jeewa

Member

Mr. M. Busawon

Member