

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 881/15

In the matter of :-

Basudeo Moloye

Appellant

v/s

The District Council of Moka

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 residential building at Cote D'Or, St. Pierre. The ground for rejection communicated to the Appellant in a letter 24th April 2015 is that

"Proposal will not comply with sequential approach of the Outline Scheme for release of land outside settlement boundary."

2. The Appellant was legally represented and deponed under solemn affirmation. He was cross-examined by the Respondent's Counsel. The representative of the Council, Mrs Curpen, 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 of an extent of 1688.11 sq.m and forms part of 4 portions of land totaling over 3 arpents, all belonging to Calix Investment Ltd situated at Cote D'Or, Saint Pierre. The appellant is the Director of the company and has been authorized, as per Annex 6, by the latter to use the land for the construction of his house. He has been exempted from a Land Conversion Permit and obtained a conditional clearance on 3rd July 2014 from the Ministry of Agro-Industry and Food Security for the site to be used for residential development provided such development is permissible within the relevant Outline Planning Scheme. It is undisputed that the site is located outside the settlement boundary and that it is approximately 150 metres from existing residential morcellements such as Aurea which has approximately 500 residential lots. The site *in lite* is also in close proximity to the NHDC morcellement. A BLUP for a boundary wall on the site has already been obtained by the Appellant from the Council.

II. THE EVIDENCE

4. The case of the Appellant in essence is that he does not dispute that his property is outside the settlement boundary but that it is not a place of conservation of sugarcane field because the Ministry Of Agro-Industry has given him a clearance provided that the development he wishes to carry out is in line with the policies. He testified that the subject site is located a few metres away from the new morcellement by Aurea in Highlands where judicial notice can be taken of the fact that people have already started putting up residential buildings on a few hundred of the residential lots and that there is another residential morcellement for NHDC houses in the vicinity of the subject site. The road networks connecting Trianon, Verdun and Terre Rouge are new and form part of the new highway. The Appellant submitted that there are no issues regarding the environment as landscaping, drainage system, planting of trees have all been done on the site.

5. Evidence of Mrs Curpen is that the site falls outside settlement boundary which is not favourable to residential development. The site is only accessible through an untarred track and that there are no residential buildings in the vicinity except for the Morcellement Aurea. According to her, if a BLUP is granted it will lead to release of agricultural land and this will be contrary to the sequential approach and not consolidate any gaps. She conceded that the utilities were available on site and so was a boundary wall. She also stated that **Policies H1** of the **OPS** and **Policies SP14** and **SP15** of the **NDS** were not applicable since the development proposal did not satisfy the requirements under **Policy SD4** of the **OPS** in the first place.

III. THE LAWS AND PLANNING INSTRUMENTS

6. The site being situated in St. Pierre the applicable outline scheme is **Planning Scheme of Moka ["OPS"]** and **The National Development Strategy ["NDS"]** will also be referred to.
7. The Council has essentially grounded its objection on the basis that the subject site is located outside the settlement boundary, as regulated by **Policy SD4** of the OPS. The policy is set out fully hereunder for ease of reference.

"SD 4

Development on Land Outside Settlement Boundaries

There should be a general presumption against proposals for development outside settlement boundaries unless the proposal:

- ***Has been shown to have followed the sequential approach to the release of sites identified in SD 1, SD 2 and SD 3 and there are no suitable sites within or on the edge of settlement boundaries; and***

- *Is for the essential purposes of agriculture, forestry or other uses appropriate to a rural area; or*
- *Is for the re-use or refurbishment of existing buildings set in their own grounds; or*
- *Is considered a bad neighbour development as defined in PolicyID 4; or*
- *In cases of national interest when having regard to material considerations, locational preferences linked to employment creating uses and socio-economic policies of Government, development may have to be outside settlement boundaries and is acceptable on planning, traffic impact and environmental impact grounds; and*
- *Is capable of ready connection to existing utility supplies and transport networks or can be connected without unacceptable public expense;*

Or where:

- *The proposal is from a small owner seeking residential property for themselves and their close kin and can be considered as a hardship case, provided that in the opinion of the relevant authorities such release would not encourage large scale removal of land from agriculture; or*
- *There has been a formal commitment given by the Ministry responsible for Public Utilities, Local Authority, the Town and Country Planning Board, the Ministry responsible for housing and Lands or other Government-approved scheme prior to the approval of this Outline Planning Scheme, provided such a commitment is duly supported by bona fide evidence i.e. original and authentic documents;*

And the proposal:

- *Is not located in an environmentally sensitive area nor in an area of landscape significance as notified by the Ministry responsible for Environment and National Development Unit; or*
- *Is not occupying a site of long term suitability for agriculture, forestry or an irrigation zone as notified by the Ministry of Agro- Industry and Food Security;*
- *Broadly follows the design principles contained in Design Guidance outlined in SD 5.*

Justification: At the District level there is sufficient land available, committed or vacant within settlement boundaries for residential development and through approved morcellements, VRS and other land conversion schemes to accommodate future residential needs for the next 15-20 years. To conserve remaining land in the District, especially land required for long term agriculture, or land that has an ecological or landscape significance, a sequential approach to new development should be followed which first considers sites within or on the edge of built-up areas in existing settlements before greenfield sites outside settlement boundaries are selected. This presumption reinforces key NDS objectives for clustered growth and more efficient provision of transport and utility facilities and social and community services. It is recognised however that not all development can or should be accommodated within settlement boundaries and in well-defined circumstances some developments may be more appropriately located outside settlement clusters and the main built-up areas. The definition of hardship case, small owner and close kin is as defined in SD 3.”

8. Policy H1 of the OPS : Development in or on the Edge of Minor Settlements

In or on the edge of minor settlements for which no settlement boundaries have been defined, development should be permitted subject to the clustering principle and sequential approach outlined in SD1, SD2 and SD3 and design parameters under SD5.

Justification: The design and assessment of proposals for sites in and around small villages which have no defined boundaries should also follow the sequential approach and clustering principles adopted for major settlements. Rounding off and infilling in small settlements and villages assists in the efficient use of land as a resource in the effective provision of transport services and utilities and in the consolidation of existing community and social networks.

For the purposes of this policy, a minor settlement is defined as **“one having more than fifteen houses in a more or less compact form and which shows potential in growing into a proper settlement.”**

IV. THE ISSUES

9. As per paragraph 10 of its written submissions, it is the case of the respondent that the application is not justified because the evidence shows that the access to the site is by a narrow untarred track road, that although the Ministry of Agro Industry and Food Security granted clearance it is subject to the development complying with the OPS which it does not and finally, the site is surrounded by sugar cane fields, with no surrounding residential developments.

10. Although **Policy SD4** does not favour development proposals outside the settlement boundaries, it does recognize that not all development can and shall be accommodated within the settlement boundaries and in certain defined circumstances some developments may be appropriately located outside settlement clusters and the main built-up areas. We believe that rather than blindly applying the policies, it is important to look at the spirit of the policies and their origin as well as their vision in what they seek to achieve in the long term. Hence, we turn to the justification of SD4. It provides that the existence of this policy is in essence to conserve remaining land in the District, especially land required for long term agriculture, or land that has an ecological or landscape significance and for this to be achieved development is normally to follow sequentially. What we believe is important here is the context. The residential Morcellement of Aurea and the NHDC Morcellement are in the vicinity. If we are to take the version of the Respondent, as stated by Me. Sookhoo, the subject site is about 121.91 metres from the SIT Morcellement "Aurea". These morcellements are easily accessible with the new road networks connecting Trianon to Terre Rouge. Incidentally the Highland Rose Morcellement, another residential development, is also in the vicinity.

11. When all these factors are looked at, the broader picture reveals that the area favours residential development. In fact the justification paragraph of **SD4** provides that the

approach of exploiting sites within built-up areas before moving to greenfields outside settlement boundary reinforces key **NDS** objectives for clustered growth and more efficient provision of transport and utility facilities and social and community services. What needs to be borne in mind is that on the site *in lite*, it will not lead to the government incurring costs because the utilities are already available. The appellant produced evidence to the effect there is water supply and electricity on site. The site is easily accessible through a modern highway.

12. The version of the respondent is that the site is only accessed through a untarred track through bareland. If this is the state of affairs, then the appellant bears the responsibility of connecting his property to the existing road networks through a tarred access road. However, what is of importance, in our view, is that the site is accessible, and it can be accessed through the road networks of Morcellement Aurea onto Cote D'Or main road which also joins the Verdun-Terre Rouge Road, as per the Google maps submitted. The appellant testified that there is a 400m length road built and a five-metre access road with landscaping. He also stated that on the site *in lite* landscaping has been done as well as a proper drainage system put into place and trees have been planted to enhance the environment. The building was initially intended to be constructed using technologies such as solar system, water-treatment system, Bio-agricultural system. Whilst this is commendable, this is not relevant for the purposes of this determination.

13. We believe that the appellant's development proposal, in an area which has already seen a number of residential developments such as Morcellement Aurea and Morcellement Highland Rose, without disregarding certain residential projects by Ominicane, would fall "*under the well-defined circumstances some developments may be more appropriately located outside settlement clusters.*" as per the justification under policy **SD4**. To a certain extent, under **Policy H1**, referred to by the respondent have the same underlying principles regarding the capability of ready connection to existing

utility supplies and transport networks and this without incurring public expense, which is a relevant consideration.

14. The appellant produced a clearance from the Ministry of Agro- Industry, this in itself is evidence of the fact that the Ministry has no objection regarding the clearing of land under sugar cane plantation. Agreeably, the letter provides a condition that the development can only be done provided it is permissible under the OPS and the strategic and detailed policies of a development plan. This clearance is indicative, however, in that the Ministry has in essence endorsed that the land *in lite* is not one of conservation value for being "*land required for long term agriculture, or land that has an ecological or landscape significance*" under **SD4**.

15. Under the **Strategic Policy SP14** of the **NDS** concerning the **Rural Regeneration and Growth** identifies Moka/St. Pierre/Highlands as *Rural Regeneration Zones* and recommends a general presumption in favour of mixed use development, taking into account the level of accessibility from the subject site to the highway, public transport and utility networks, its suitability for agriculture (if any) and its environmental and landscape sensitivity. Under the **Strategic Policy SP15** of the **NDS** which relates to *Development in the Open Countryside*, it is stated under the justification paragraph that where proposals for development are made on land which has been classified as having marginal suitability for agriculture and which is surplus to private sector requirements, is sited within or adjoining settlement limits, and where existing physical and social infrastructure networks already exist, there should be a general presumption in favour of development where it can be shown to sustain local needs especially in areas vulnerable to change in the agricultural sector. We believe that the site *in lite*, irrespective of whether it is surrounded by sugar cane fields, is essentially located in an area which is vulnerable to change from its agricultural origin. It is also close to settlement limits and what weighs heavily in its favour is the existence of networks. In our view, sites which are readily connected to existing networks, such as the present one, are conducive to development.

16. For all the reasons set out above, we allow this appeal and order the Council to grant the appellant with the BLUP with conditions attached regarding the tarring of the access road leading to his property and any other such conditions as the Council deems fit.

Determination delivered on 31st December 2018 by

Mrs. J. RAMFUL

Vice Chairperson

Me. R. SEETOHUL

Member

Mr. P.MANNA

Member