

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 1261/16

In the matter of :-

Sooren Seewoogolam and Ors

Appellant

v/s

Ministry of Housing and Lands

Respondent

DETERMINATION

1. The present appeal is against a decision taken by the Ministry for having rejected the application of the Appellants for a permit for subdivision of a plot of land of an extent of 1055.22 sq.m into three lots situated at Solferino, Vacoas, for residential purposes. The ground for rejection communicated to the Appellants in a letter 25th August 2016 is that the proposed site

"i. lies outside settlement boundary as per prevailing Outline Scheme of Municipal Council of Vacoas Phoenix; and

ii. lies 137m, 147m and 178 m from 3 poultry pens respectively."

2. Two of the Appellants deponed under solemn affirmation and was cross-examined by the Respondent's Counsel. A representative of the Council was also called on behalf of the Appellants. The representative of the Ministry and a witness from the planning division deponed to substantiate the grounds of refusal of the Respondent. We have duly considered the evidence placed before us as well as submissions of Counsel.

3. The case of the Appellants in essence is that they do not dispute that their property is within the buffer zones of the 3 Poultry Pens, out of which two are fully operational as per the evidence of the witness from the Council. The Appellants seem to have no qualms about living near the Poultry Pens. One of the Appellants stated that she is currently living in house with restricted space and needs to build a house where she can live comfortably with her family. From the testimony of the witness from the Council, it appears that the stand of the Council has been not to grant BLUP for residential purposes outside the settlement boundary and moreso in view of the presence of the operational Poultry Pens. She has however produced before the Tribunal evidence of the fact that a BLUP for residential development was granted to one person that falls in the category of those landowners who have their property Outside the Settlement Boundary of Vacoas Phoenix but could not give any details about the circumstances under which the BLUP was granted. As per her testimony there are seventeen such residential owners whose properties fall outside the settlement boundary and fourteen have been prosecuted and convicted and two are still being prosecuted and one has been granted a BLUP. She stated the area is still mostly under vegetation and that the character of the place has not become residential with the construction of these buildings. The Ministry's case 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 200m from at least two out of the three Poultry Pens, which are fully operational.

4. 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 pens and the Appellants' property is less than 200 metres.

5. 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. This section also makes reference to the **Environment Protection Act 2002**. 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. Some Environmental Guidelines have been issued by the Ministry of Environment for the rearing of poultry and as per these guidelines, the buffers are provided in view of the biosecurity risks. This also implies that local authorities and Ministries 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’etre” of these guidelines. On the basis of the application of the Planning Policy Guidelines and the Environmental Guidelines issued by the Ministry of Environment on the rearing of Broilers, which we believe should be adhered to in the circumstances due to the biosecurity risks involved especially with the presence of the two Poultry Pens, we are of the view that this appeal should not be allowed.

6. As far as the land being outside settlement boundary is concerned, we have heard it from the testimony of the witnesses from the Respondent and the Council’s representative who deponed on behalf of the Appellant, the land *in lite* is outside the settlement boundary by 143m. The character of the area has not changed. It is still very much under vegetation and cannot be said to have become a residential area despite the presence of some residential buildings, albeit, illegally constructed. The stand of the Ministry is in line with **policy UDS4 of the Outline Planning Scheme of Vacoas Phoenix**. We find no reason to apply our discretion to depart from this position. We have not been favoured with any evidence that supports that this policy has been inconsistently applied or that the present case favours a departure in the application of the policy.

7. Infact, we believe that should this appeal be allowed, it will result in a lot of pressure being applied on the local authority and relevant ministry to release the surrounding land for residential purposes for land which falls outside settlement boundary and whereby the Council has already issued BLUP for bad neighbour developments.
8. For all the reasons set out above, we find that the appeal is devoid of merit and is accordingly set aside. No order as to costs.

Determination delivered on 15th October 2019 by

Mrs. J. RAMFUL

Vice Chairperson

Mr. P. Manna

Member

Mr. J. Aubeeluck

Member