

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

Cause No. : ELAT 1264/16

In the matter of:

MR. MOHAMAD SAMEERKHAN BURTHUN

Appellant

v.

MUNICIPAL COUNCIL OF VACOAS-PHOENIX

Respondent

DETERMINATION

The appeal is against the decision of the Respondent for having rejected the application made by the Appellant for the conversion of an existing structure under CIS to be used as car wash located at Tres Bon Road No.1, Diolle, Glen Park. The Appellant was informed of this decision by letter dated 13 September 2016, wherein the reasons given for the decision are as follows:

1. The space is inappropriate for car washing activity in as much as car washing activities also consist of behooving and car drying.
2. Parking space provided is inappropriate as this may give rise to on street parking and as site lies at a corner junction, it will be detrimental to road users and pedestrians.

I: The evidence:

The Appellant adduced evidence to the effect that he proposes to run the business by himself and to work on an appointment basis, so that the issue of traffic congestion and on street parking will not arise. He would use home use washing instruments and this would not disturb the neighborhood. He added that the area where he resides is a semi-commercial one where different types of business operate, there should be no impediment to his proposed business in that location. He conceded however that the spot is situated at a junction where the traffic is heavy. He had submitted an application

to operate during the week including Saturdays from 9 hrs to 5 hrs and on Sundays from 9 hrs to 3 hrs. He stated that he now proposes not to operate on Sundays. He produced a photograph showing another car wash where there is only one parking, for which a BLUP was nevertheless granted. The Planning and Development Officer deponed on behalf of the Respondent. She produced the context plan (Document B) and three photographs showing Tres Bon Road and the locus of the proposed development and highlighted the incompatibility of the proposed activity in the residential area as well as the inadequacy of the access and the existing on-street parking along that road, which will be accentuated by the car wash. It came out that the application submitted was for a car wash service for business purposes.

II: The Planning Instruments:

The planning policy that applies to the present application is the Vacoas Phoenix Outline Planning Scheme ('OPS'). The development site is located along Tres Bon Road off the main road of Vacoas-La Marie and is in a predominantly residential area. Development allowed within this type of locations are corner shops and small retail outlets (Policy CR 2) and small scale enterprises and home working as per policy ID2, which is as follows:

"There should be a general presumption in favour of proposals to operate or extend small scale enterprises from residential properties but only if the use is ancillary to the principal use as residential, and they are not classified as bad neighbor industries. Applications for development should satisfy all of the following criteria:

- The premises are of a suitable size and design to accommodate the additional activity and all its ancillary requirements, with adequate setbacks from neighbouring properties.*
- The proposal will not create any bad neighbor impact on residential occupiers in the area, or the character of the neighbourhood particularly in regard to noise, smoke, fumes, smells, dust, fire risk and disposal of toxic material within a radius of 50 metres.*
- The proposal will not generate any excessive vehicle movements or loading and unloading of goods and products, there will be availability of sufficient parking space within the plot boundary to accommodate any staff or visitors' parking requirements and safe access from the roadway will be provided.*
- Storage of materials should be able to be contained within the plot boundary and*
- The operator of the small scale enterprise should reside on the property."*

In addition, the *Design Guidance for Industrial Development* provides, at 'paragraph 2.13: Small Industrial Workshops and Home Working', that "For both the use of home as office or other small scale enterprise the key consideration is whether the overall character of the dwelling and surrounding amenity will change as a result of the proposed use." Issues to be considered, among others, are whether the enterprise will result in a marked rise in traffic or people calling and whether the enterprise will disturb neighbours at unreasonable hours or create other forms of nuisance such as noise, dust, fumes or smell".

Evidence placed before the Tribunal has established that the development is proposed to be carried out in an existing car port of a ground floor concrete residential building. The site is located at a junction. Photographs produced as Documents A and A1 have corroborated the position of the Municipal Council that there is already on street parking along the roads in front and adjacent to the sites, which justify the apprehension that the proposed activity will intensify this problem. We find that the Respondent has acted in accordance with the policies set out above in assessing the application. The location of the proposed activity, the inadequacy of the space that is provided for same and the potential nuisance that may arise are sufficient reasons to justify the decision of the Respondent. We find no reason to interfere with this decision.

The appeal is accordingly set aside.

Determination delivered by:

Mrs. Vedalini Phoolchund-Bhadain, Chairperson

Mr. Marc Reynolds Guiton, Assessor

Mr. Luis Miguel Cheong Wai Yin, Assessor

Date:

17th June 2019