

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

**Cause No. : ELAT 1363/17**

**In the matter of:**

**HEIRS ROGHOOAH SEEPURSAD represented by ROGHOOAH  
SAJITSING**

**Appellant**

**v.**

**DISTRICT COUNCIL OF COUNCIL FLACQ**

**Respondent**

**DETERMINATION**

Appellants are hereby challenging the decision of the Respondent for having refused their application for a subdivision of a plot of land of an extent of 2954.87 square metres into seven lots for residential purposes at Pont Bon Dieu Road, Belvedere. The application has been refused on two grounds:

1. The site lies outside settlement boundary by about 767.71 metres and does not comply with Policy SD3 and SD4 of the Outline Planning Scheme.
2. The site lies at about 142 metres and 62 metres from two poultry pens respectively. It does not observe the 200 metre setback requirement from the poultry farm which is a bad neighbour development as per the PPG on Industry adjacent to sensitive use'.

The Appellant has appealed on four grounds, which are in a gist that:

1. The land subject matter of the application is the only property left by Mr. Roghooah Seepursad to his seven heirs who are the Appellants.
2. None of the heirs possess any residential land to construct their respective houses and the majority of the Appellants are actually renting houses to live.

3. The Appellants are only seeking to build on the land belonging to their late father and are not seeking any financial help from the State although it is the stated policy of the State to help low class families to have a proper and decent house under the "Un toit pour chaque famille Mauricienne" policy.
4. The Appellants do not agree that the site lies outside settlement boundary and does not comply with Policies SD3 and SD4 of the Flacq Outline Planning Scheme, being given that there are residential building at a distance of 90 metres and 240 metres from the site and a restaurant as well as a banquet hall are located in the same zoning.

The Appellants were inops consilii and the Council was represented by counsel.

At the outset, our observation is that the grounds of appeal, as contained in the notice of appeal, are not concisely drafted, so much so that grounds 1, 2 and 3 relate to only one issue, namely that the application is being sought under what is referred to in policy SD4 as the hardship criteria. Taking into account the fact that the Appellants are inops consilii, and being given the issues raised under the three grounds they will be dealt with together.

The relevant part of Policy SD 4 of the Outline Planning Scheme of Flacq that is applicable in the present case is that: *"There should be a general presumption against proposals for development outside settlement boundaries unless the proposal ...has been shown to have followed a sequential approach to the release of sites identified in SD1, SD 2 and SD 3 and there are no suitable sites on the edge of settlement boundaries.....or 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..."*.

The other relevant planning instrument is the Design Guidance on Bad Neighbour Buffers: Indicative Buffer Distance between bad neighbor industry and sensitive land uses, provided in the Planning Policy Guidance (PPG 1). This policy lays down the indicative buffer distance between a poultry/livestock farm to sensitive land use as being 200 metres.

From the evidence adduced at the hearing, the version of the Respondent that the Appellant's land is outside settlement boundary is established. The fourth ground of appeal seems to suggest that the land in lite is not outside settlement boundary by the mere fact that there have been developments. However, it has also come out that there have been permits granted to other developments, namely a restaurant, within the same zone, i.e. outside settlement boundary. Attempts have been made by the representative of the Respondent to justify

such a haphazard position of the Respondent in respect of applications made for BLUP. The use of the 'growth zone' to justify one approval given in the case of the restaurant located in even closer vicinity to the poultry pen calls for concern. It is our view that policies like Policy ID 4 (supra) promulgated planning norms that would cater for land use in such manner as not to affect health on one hand, and excessive removal of land from agriculture. These policies require a standard of consistency in their application. We are not convinced that this has been the case in relation to the present application. The granting of a BLUP to a restaurant within the buffer zone and near the appellant's land is indicative of a lack of consistency.

There is no indication whether the application for subdivision was considered under the exception provided under policy SD4 (supra) namely under the hardship criteria. The onus is on the Appellant to provide information on this status. The evidence suggests that for the present application, there had been an affidavit produced to the Respondent to establish same. There is nothing on record to show that the Respondent did consider whether the application could have been granted under the hardship criteria.

On the other hand, the Appellant is fully aware of the limitations to development for residential purposes that the subdivision will carry. Once the subdivision is done the Appellants may be constrained in their intention to cause residential development on those plots. This is a matter that ought to call for his consideration. We draw attention to the need for the Respondent, a public authority having to act within the parameters of the law, to adopt a consistent approach in decision making. Failure to do so may result in a perception of bias. Having said this, in the present case, we cannot accept the submission made by the Appellant that the granting of a permit to another applicant means that he should be granted a BLUP as well. We are not in presence of the reasons that led the Respondent's decision to approve the permit (if any) for the restaurant. The present application, being looked at on its own merit, calls for the application of the planning instruments. The buffer zone of 200 metres from the poultry pen, being a criterion for prohibiting residential development, is required to be adhered to by the Respondent.

For this reason, we find no justification to interfere with the decision of the Respondent in the present matter.

The appeal is accordingly set aside.

Determination delivered by:

**Mrs. Vedalini Phoolchund-Bhadain, Chairperson**

**Mr. Luis Miguel Cheong Wai Yin, Assessor**

**Mr. Marc Reynolds Guiton, Assessor**

Date:

17<sup>th</sup> June 2019 .