

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

Cause No. : ELAT 1526/17

In the matter of:

MR. HURREERAM YASDEO

Appellant

v.

DISTRICT COUNCIL OF MOKA

Respondent

In the presence of:

MR. HEEROO HASSEA

Co-Respondent

DETERMINATION

The Appellant has lodged the present appeal against the decision of the District Council of Moka to grant a Building and Land Use Permit (BLUP) to the Co-Respondent for the conversion of part of a building to be used as automotive workshop. The Appellant was notified of this decision on the 13th November 2017 and lodged an appeal on the 27th November 2017 on the following grounds:

- (a) The permit was granted in a residential zone (a 'morcellement') and is next to his door.
- (b) The access is in a private and dead end road where there is a need to drive in a backward gear.
- (c) The activity concerned is against his neighbour privacy and is detrimental to his day to day living and health of his family.

In his statement of case he explained that he had sent an objection letter to the District Council and had attended a meeting of the Permits and Business Monitoring Committee (PBMC) where he had explained the impact of this activity on his day to day life and his health as well as that of his family. He submitted that in addition to the impact on his privacy, the said activity was causing nuisance in terms of noise, fume, petroleum smell pollution caused by the vehicles attending the workshop in a backward gear. Besides the access is a private and dead end road. The Appellant, who was inops consilii, adduced evidence where he reiterated the nuisance caused by the Co-Respondent's activity on him and on his family.

In its Statement of Defence, the Respondent supported its decision to grant a BLUP despite the provisions of Policy ID 2 of the Outline Planning Scheme for Moka. (Policy ID 2 states that small scale activities carried out in the home such as light industry uses such as the Co-Respondent's business are not normally suitable in residential areas due to dust noise and fumes.) The Respondent's rationale in granting the BLUP is contained at paragraph 9(ii) of the Statement of Defence : “ *In order to provide for the establishment of small scale enterprises where startup capital outlays for new premises may be beyond operator's means, small scale activities are sometimes authorized provided same does not disrupt the amenity in the surrounding area*”. In this spirit, the Council decided to grant the BLUP applied for with ‘stringent conditions to minimize potential nuisance to adjoining neighbors’. These conditions are listed in the BLUP (produced as Document A1) as special conditions. The Respondent added that (at paragraph 9(iv) of the SOD), ‘*it further intends to ensure compliance by exercising ex post control namely to ascertain that there is no noise pollution and even proposes to carry out noise survey if need be*’. The Co-Respondent stated that he will abide by the decision of the Tribunal.

After hearing the evidence adduced by the Appellant, especially with regards to the issues of noise, parking, the use of the private lane by vehicles in reverse gear thus causing further nuisance, the Tribunal requested the Respondent to effect a site visit, as part of the ex-post control that it undertook to exercise, and also in the spirit of the mediatory approach that is provided under section 53(c) of the Environment and Land Use Appeal Tribunal Act 2012, as amended. The representative of the Respondent complied with this request and reported to the Tribunal. After confirming under solemn affirmation the contents of the

Respondent's SOD, the representative went on to explain that the site visit revealed that the Co-Respondent did not comply with the conditions laid down in the BLUP. The non-compliance relates to the part of the building that is being used for the workshop which does not conform to the approved plan (as shown at Document D) and the use of the parking area by the Co-Respondent for repairing vehicles.

We have considered the evidence adduced by the Appellant and the representative of the Respondent. The evidence of the Appellant on the issue of noise pollution and other nuisances caused by the automotive workshop has been un rebutted. Furthermore, a letter sent to the Ministry of Social security, National Solidarity, Environment and Sustainable Development (Document A) brings support to the complaints made by him to the authorities on the activities of the Co-Respondent. We find that the Appellant has been consistent in his complaints and has shown genuineness in his testimony at the hearing. The Council has now been made aware of the breach of the conditions of the BLUP by the Co-Respondent. We must say that it goes to the credit of the Respondent to acknowledge this and to decide to abide by the decision of the Tribunal. We draw attention to the special conditions contained in the BLUP, in particular conditions 4, 5 and 6. Based on the evidence adduced, and the acknowledgement of the Respondent that there has been breach of the conditions, the Respondent is fully entitled to take action against the Co-Respondent and revoke the permit as provided at condition 6 of the BLUP. We highlight that the Respondent has the duty to monitor compliance with the conditions imposed by it, the more so that the permit has been granted by it on a discretionary basis as it is not compliant with Policy ID 2 of the Outline Planning Scheme.

For the above reasons, the appeal is allowed.

The decision to grant the BLUP is remitted back to the Respondent for a revocation of the licence in the light of the observations made above.

Determination delivered by:

Mrs. Vedalini Phoolchund-Bhadain, Chairperson

Mr. Guruduth Saulick, Assessor

Mr. Juswansing Aubeeluck, Assessor

Date

16th May 2019