

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 1548/18

In the matter of :-

Sachin Bhugwat

Appellant

v/s

District Council of Moka

Respondent

IPO

Reena Ramnuth

Co-respondent

DETERMINATION

1. The present appeal is against a decision taken by the Council for having granted a Building and Land Use Permit ["BLUP"] to the co-respondent for the construction of a building to be used as a Poultry Pen at Providence, Quartier Militaire. The appellant was informed of the decision of the Council by way of a letter dated 4th January 2017, which should infact have read as 4th January 2018. The ground of appeal as per the notice of appeal lodged by the appellant is

"I reside at Bechard Road, Melrose which is a residential area, I am against this construction as it is near my house and due to the bad smell which harm both me and my family's health."

2. The Appellant, legally unrepresented, deponed under solemn affirmation and was cross-examined by the Respondent's Counsel and the representative of the Council, Mrs Seebaluck, Planning and Development Inspector, also deponed and was cross examined by the Appellant. We have duly considered the evidence placed before us.

3. The design sheet for **"Industry adjacent to Sensitive Uses" in Planning Policy Guidance ["PPG 1"]** prescribes a buffer of 200 metres between Poultry/Livestock Farm and Sensitive Land Uses such as residential development. There is undisputed evidence that the subject site lies well outside settlement boundary. In fact the evidence on record shows that the co-respondent's poultry pen is not the only one that exists in close proximity to the Appellant's property. The Appellant conceded that there is no BLUP for his residential property and explained the circumstances under which he and his family constructed a house in the locality. The representative of the Council confirmed that this and added that the Appellant's father was prosecuted for the illegal construction and sentenced accordingly. The Appellant's house is an illegal construction, he therefore cannot claim to be a resident in the locality as of right since he not acquired the right to construct a residential building in that area.

4. The Council's stand is that the area is a non-residential area and that in fact there are no residential properties in close vicinity to the Appellant's property. There is another poultry farm that belongs to the Boodhoo family which is close by. Following a site visit by the representative of the Council, she provided the Tribunal with measurements taken on site and testified that the house of the Appellant was ninety five metres from the Poultry Pen of Mr. Bodhoo which existed before the application of Mrs. Ramnuth was granted. She also gave evidence that the settlement boundary is two kilometers away from the property of the Appellant. The evidence, which was not disputed, gives an indication that the Council has always treated this zone as a zone favourable for non-residential development and an area more conducive to bad neighbour development, as it is known in planning jargon.

5. The Appellant's case is that there is an imminent risk of disease or health hazard through being exposed to the activities of a Poultry farm. While we have addressed our minds to this, we believe that there is no breach of the planning provisions as applied by the Council since the Appellant's property was constructed unlawfully. When this is placed on a balance against the rights of the co-respondent, the rights of the co-respondent will be severely curtailed if she is precluded from proceeding with a venture which would in the normal course of events, have gained planning acceptance since there is breach of planning instruments.

6. For all the reasons set out above, the appeal is dismissed. No order as to costs.

Determination delivered on 22nd April 2019 by

Mrs. J. RAMFUL

Vice Chairperson

Mr. MONAFF

Member

Mr. SAULICK

Member