

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

**ELAT 1914/19**

**In the matter of :-**

**Best of Breed Dogs Ltd.**

**Appellant**

v/s

**District Council of Moka**

**Respondent**

**RULING**

1. The present appeal is against a decision of the Council for having refused the granting of a Building and Land Use Permit ["BLUP"] to the Appellant for the conversion of an existing building at ground floor to be used as a dog kennel at Bois Cheri, Moka. The reason for refusal being that objections were received from immediate neighbours.
2. In the course of the hearing, Counsel for the Appellant sought to adduce evidence from Mr. Mahadooda, a Planning and Development officer, who had been posted at the Council of Moka before but is no longer posted there. Counsel for the Appellant stated that the purpose of calling that witness was to adduce evidence including photographs "to prove... that at the moment that Mr. Lotun, the objector, made his objection, his own site was his own property was a building site with work going on" and that officer would "produce the document following these site visits on the objector's property and it is to show the bad faith of the objector which has been averred in the statement of case". At paragraph 6 (c) of the Statement of case there is an averment as regards the complaint of Mr. Lotun is alleged was made in bad faith because his property was a construction site at the relevant time and that he was not living there at that time so the dogs could not have been a source of nuisance, and that the Respondent had carried out a site visit on 7 March 2019 on the premises of Mr. Lotun with regard to another case.

3. Mr. Mahadoo stated that at the time that he had made the site visit on the premises of Mr. Lotun a report was prepared for the District Council of Moka which was not in his possession and that there had been pictures of the site of Mr. Lotun taken but that those snaps were on his mobile phone and he did not know whether he was entitled to produce them. Counsel for the Respondent objected to this course of action on the basis that Mr. Lotun has nothing to do with the present application. Counsel for the Appellant did not insist on the production of the photos and report of site visit but attempted to make the witness depone viva voce on his observations on the premises of Mr. Lotun in the course of the site visit, which was also met objections from the Respondent.
  
4. We have duly considered the submissions of both Counsel. We find that any evidence in relation to Mr. Lotun's premises to be of no relevance as regards the present appeal. As a matter of procedure for admissibility, evidence is admissible if it is relevant. The objection from the neighbours is one of the factors which the Council has taken on board bearing in mind that both the Ministry responsible for the Environment and the Ministry responsible for Health "have highlighted the form of nuisance by way of noise, dust, odour or otherwise being caused by such bad-neighbour development to the surrounding environment." as per the refusal letter of the Council. The Council, being the local authority, is bound to consider any objections from those who will be impacted upon by any nuisance from the bad neighbour development, the more so if the proposed development is in a residential area. The Council may accept the objections as being valid or reject them. These are planning considerations. However, whether each individual objector was of bad faith is not a planning consideration. Mr. Mahadoo is firstly not deputed by the Council of Moka so that he is not mandated to use the official records of the Respondent. Secondly, the site visit conducted was in relation to a totally different case, which had nothing to do with the present application. It would be inappropriate to use the information gathered in relation to another case where the owner of the premises is neither a party to the present case nor possibly aware that information provided by him is being used against him behind his back. Mr. Mahadoo may have had first hand information regarding the state of the premises of Mr. Lotun at the relevant time but he is not officially deputed by the Council to produce such information. Besides, the refusal letter refers to "apprehensions expressed by the immediate neighbours..." So it is clear that the Council is referring to objectors so that the issue of bad faith cannot be narrowed down to just one person. Any evidence as regards the objections or the objectors can be obtained through cross-examination of the officer who has been officially deputed by the Council to represent it and who is deponing from its official records.

5. The Appellant's counsel argued that the averments made at paragraph 6 (c) and (d) were not denied by the Respondent in their defence and therefore they are deemed to be admitted and hence there can be no objection to evidence being adduced to substantiate the averments. We are of the view that the Tribunal need not take on board matters which are irrelevant to proving the matter in issue. Moreover the averments concern a third party who is not a party to the present case. In any event, we fail to see the relevance of such evidence being adduced as it is immaterial to the matter in issue which will help the Tribunal to come to an informed decision as regards the nuisance being generated by the activities of dog breeding in the area. The evidence sought to be admitted through Mr. Mahadoo is not relevant to the planning issues at hand and would be inappropriate to adduce for the reasons mentioned above.
  
6. For all the reasons set out above, we uphold the objection of the Respondent. No evidence with regards to Mr. Lotun's case with the Council can be elicited from the officer who is not officially deputed by the Council. The case is to proceed on its merits on the date scheduled.

Ruling delivered on 19<sup>th</sup> November 2021 by

**Mrs. J. RAMFUL-JHOWRY**  
Vice Chairperson

**Mr. MOOTHOSAMY**  
Member

**Mr. ACHEMOOTOO**  
Member