

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 2074/22

In the matter of :-

1. Ramtohul Jayendra Kumar

2. Ramtohul Sujata

Appellants

v/s

District Council of Riviere du Rempart

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 Appellants for the conversion of an existing building into "storage of goods in foreign trade zones (between 50-100m2)" at near Horse Stable, L'Esperance Trebuchet, Poudre D'Or. The ground for rejection is *"Compliance notice served as building was already put up. As per Policy A1 of the Outline Planning Scheme a maximum floor of 30m2 is allowed."*
2. The grounds of appeal as per the notice of appeal are reproduced hereunder:
"(A) The particulars of the notice as laid down at Paragraph 2 clearly show that the facts contained in the correspondence submitted along with the application have NOT BEEN DULY CONSIDERED; particularly letter dated 19th October 2021 addressed to the CHIEF EXECUTIVE and letter dated 15th November 2021 addressed to the planning division of the district council.
(B) Regarding the maximum floor area mentioned at paragraph 2(b), I carried out a survey of the area on Saturday 25th December 2021. I have drawn out a list of the

buildings (residential as well as commercial) whose floor areas exceed by far the would be maximum. The survey report backed by a Google map of the region will be produced at the ELAT.

(C) Paragraph 2.c is not clear. With a view to understanding this paragraph and clearing other obscure points I had sought an appointment with the Chief Executive. I phoned the secretary of the Chief Executive on Friday 17th December 2021 at 10.21 and on 21st December 2021 at 14.15.

Instead of an appointment with the Chief Executive I received on 30th December from him a pulling down notice. The notice is dated 28 December 2021. The Chief Executive might have overlooked the fact that, as highlighted by himself in the Rejection Notice, an aggrieved party has 21 days within which to appeal to the ELAT.”

3. Counsel appearing for the Respondent raised a preliminary objection to the effect that Grounds of Appeal (A) and (C) cannot be construed as grounds of appeal and should be set aside. She argued that these two grounds fall short of the provisions under **section 5(4)(a) of the Environment and Land Use Appeal Tribunal Act 2012 [“ELUAT” Act]** in that they have not been drafted precisely and concisely and given the way they have been couched they cannot be construed as grounds of appeal. Counsel appearing for the Appellants, conceded on Ground (C) but resisted the objection in relation to Ground (A). Ground (C) is accordingly set aside.

4. The crux of the argument from the Respondent’s Counsel is that Ground (A) makes reference to paragraph 2 of the particulars of the notice and merely states that the particulars have not been considered and that there is a letter addressed to the Chief executive. No particulars were given as to how the Respondent’s decision was wrong, unlawful, unreasonable, unjustifiable, or baseless. She also states that no letter addressed to the Chief Executive has been annexed to the application. In support of her argument, she cited a ruling given by the Tribunal in the case of **Sujeun v/s District Council of Riviere du Rempart [ELAT 1995/21]** to say that the grounds of appeal cannot be drafted in vague, general and uncertain terms and that in the present instance the grounds were merely vague averments without eliciting how the Appellant was being prejudiced.

5. The Appellants' Counsel submitted in essence that the ground was clear in that the Council had not taken into account the letters addressed to the Chief Executive in particular the letter dated 19th October 2021 and presumably the letter 15th November 2021, although Counsel stated 15th October. Counsel went on to submit that it was clear that "*...they are saying that they have not taken into consideration his letter and that is why he believes that by not considering his letter and they were wrong to reject the application in relation to the-to ground A on the decision of the respondent, was that rejection of application for a Building Permit due to compliance notice as building was already put up.*" He went on to submit that the Respondent was "not correct" for not having taken into consideration the letter, which has been sufficiently particularized, and that according to his reading it is not correct in law.

6. The law provides at **section 5(4) (a) of the ELUAT Act** every appeal shall be brought before the Tribunal by depositing with the Secretary a notice of appeal "*setting out the grounds of appeal concisely and precisely*" not later than 21 days from the date of notification of the impugned decision to the party intending to appeal. Ground (A) of the "grounds of appeal" addresses particulars given at paragraph 2 of a notice which was served on the Appellants and that these particulars demonstrate that the correspondence submitted with the application have not been duly considered. Reference is made in particular to a letter dated 19th October 2021 addressed to the Chief Executive and a letter dated 15th November 2021 addressed to the planning division. We find that this ground as couched falls short of meeting the criteria of being precise and concise for several reasons. The way the ground has been drafted seems to suggest that a correspondence and/or possibly the letters dated 19th October 2021 and 15th November 2021 have not been taken into account but the fact is, as we gather from the Appellants' Statement of Case, the notice was already served on 13th October 2021, before these letters were even sent to the Council. Therefore, it not possible for the particulars of the notice to take into account letters that were issued subsequent to its service, unless there is another notice which has been served subsequent to the second application for BLUP made by the Appellants which is subject matter of the appeal before us and to which no reference has been otherwise made in the pleadings.

7. Furthermore, the Appellants fail to address in what way the fact that the particulars of the notice show that the correspondence has not been taken into account was wrong in the manner in which the Council assessed the application for a BLUP. The way the ground has been drafted not only leads to confusion but also lacks precision in that there are several possibilities of what the Appellants could be saying leaving room for more confusion and lack of clarity, and it also falls short of addressing us as to how the Appellants are aggrieved by the Council's assessment of the BLUP application, subject matter of the present appeal. It does not convey in any way whatsoever particulars of how the Respondent's decision was not correct.

8. In the case of **Pougnnet v The Medine Sugar Estate Co. Ltd 1998 [SCJ] 299**, it was held *"Grounds of appeal are usually drafted to inform the Respondent and the Court what precisely and distinctly are the issues which are being raised. In Appadoo v Societe Mon Tracas 1979 [MR] 109, the Supreme Court held that if several grounds covering various issues are, as it were, brought into a hotchpot, so that it is no longer possible to say what are the precise grounds on which the judgment is criticized, there is a tendency to introduce general arguments which are not covered by any of the grounds considered separately."*

9. As far as the Respondent is concerned, we find that it is unclear what case it has to meet with regards to Ground (A) as couched, since it fails to disclose the particulars of challenge of the ground for refusal. The compliance "notice" came before the actual application for BLUP for storage for commercial purpose and therefore the particulars of that notice cannot have any bearing on the application itself, as seems to be suggested under Ground (A). This "ground" amounts to no "ground of appeal" for lack of precision and vagueness. We do not agree with the submissions of Counsel appearing for the Appellant who seems to be suggesting that the Council was wrong to have rejected his application for not taking into consideration the letters he sent. This is not what we read in the way Ground (A) has been couched and we do not believe that we should read more into it than what has been written otherwise we would be surmising. The grounds of appeal should be clear enough so that there is no room for several interpretations or misinterpretation, which is the case here.

10. For all the reasons set out above, we find that the point was well taken. “Ground of Appeal” (A) is accordingly set aside. We have addressed our minds to the fact that the Appellants were not legally represented at the time that the appeal was lodged but this does not relieve them from conforming to the provisions of the law. The case is therefore to proceed on its merits solely on ground of appeal (B).

Ruling delivered on 19th April 2023 by

Mrs. J. RAMFUL-JHOWRY

Mr. R. ACHEEMOOTOO

Mr. S. BUSGEETH

Vice Chairperson

Member

Member