

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

**ELAT 2107/22**

**In the matter of :-**

**INAS & CO. LTD,**

acting by and through its Director, Mr. Yusuf Naden SAMBON.

Appellant

v/s

**The Municipal Council of Vacoas/Phoenix**

Respondent

**IPO:**

- 1. Mr. Mohamed Ali Aniff Nazeebun**
- 2. Al Safaazam Hotel Halaal Food Ltd.**
- 3. Mr. Mohamed Anwar Hussein Gorabye Chukoury**

**RULING**

1. The present appeal is against a decision taken by the Municipal Council of Vacoas/Phoenix [“the Council”] for having rejected an application for a Building and Land Use Permit [“BLUP”] made by the Appellant for the conversion of an existing residential building into a dormitory at Royal Road, Phoenix. The Co-respondents have all left default. The hearing of the matter having started, Counsel appearing for the Respondent chose to produce the minutes of proceedings of two hearings that took place before the Permits and Business Monitoring Committee of the Council [“PBMC”] in the course of the examination in chief of Mr. Cundasamy, the Head of the Planning Department of the Council which was met with some objection. Following a ruling of the Tribunal, the minutes of the PBMC meetings in relation to the second application and the third application, subject-matter of the present appeal, made by the Appellant were each produced and marked Doc C and C1 respectively by Mr. Cundasamy.

2. Counsel appearing for the Appellant objected to a question put to Mr. Cundasamy by Counsel for the Respondent regarding objections raised in relation to waste disposal which the PBMC took into consideration. The basis of the objection is that the question which has been asked by Respondent's counsel has not been specifically pleaded in the Respondent's Statement of Defence dated 23<sup>rd</sup> June 2022 and that in any event the question is irrelevant and extraneous to the specific grounds upon which the Council has refused the application for a BLUP of the Appellant. He refers to the notice of refusal dated 11<sup>th</sup> May 2022 to make the point that if the question is allowed it will be irreversibly prejudicial to the Appellant who has already closed its case and is therefore unable to adduce any evidence of its own on this issue now being raised. Counsel for the Respondent resisted the objection on the ground that paragraphs 11 and 13 of the Respondent's Statement of Defence make reference to all matters being taken into consideration including environmental impact of the project which is in a residential area, its character and amenity, and that this was in line with the reasons given in the refusal letter. She also stated that the question was geared towards the representative giving more detail as to the different elements considered as part of the environmental impact issue at the PBMC. We shall not reproduce the submissions of both counsel save where we deem it fit to do so. We have otherwise duly considered both their submissions.
  
3. As background to the case, the appeal at hand is in relation to the third application for a BLUP that was made by the Appellant, the first two applications having been rejected previously by the Council. Mr. Cundasamy explained the procedure adopted at the Council. The latter would not normally require an applicant to keep having notification procedures with every fresh application if it is in respect of the same project and the previous application has been rejected. This implies that there will be no "new" objectors so to say except for the ones who would have objected following notification of the proposed development. The practice at the Council, as he explained it, is that any objection previously received in relation to the development proposal is considered. He also explained that an incomplete application is normally rejected without calling in the objectors for a hearing nor are they informed if the application is rejected. However, irrespective of whether it is a second or third application with

regard to the same development, all objections are kept in abeyance and dealt with once an application is complete and in order. We understand that the Council considers the objections to be valid and applicable if there is no change on the development proposal no matter how many times a fresh application is made.

4. The reasons for refusal by the PBMC are that *“a previous application for the same development, with reference BLP3-MCVP-2021-2391, was rejected on the following ground: The proposed development will be disruptive to the amenity and character of the residential neighbourhood. Same is maintained; and 2. The proposed development is likely to create bad neighbour impact on residential occupiers in the area.”* It stands to reason that any nuisance arising due to the activities undertaken at the subject site is likely to cause an impact on the surrounding environment including those who live in the vicinity. The test is how is the surrounding environment being impacted by the development. Waste disposal definitely ticks the box when it comes to potential source of nuisance since an inadequate waste disposal system will have an impact on the quality of life of the residents living in the neighbourhood. The question asked by Respondent’s counsel was specifically with regard to what the PBMC had to say in connection with the waste disposal issue. This is of particular relevance since it relates directly to the motivation behind the PBMC coming to the “impugned” decision which is being challenged and which is in relation to the activities of the development proposal which could have a bad neighbour impact. Both the objections considered by the Council and the consideration of bad neighbour impact are being challenged under the grounds of appeal found at paragraphs 15 (i) and (ii) of the Appellant’s Statement of Case [“SOC”].
  
5. The qualm of the Appellant is that now that the case for the Appellant is closed, any evidence on this issue will be prejudicial since it was not addressed in the Statement of Defence. We find that the Appellant had itself addressed the issue of previous applications in detail in its SOC from paragraph 7 until paragraph 14. Paragraphs 10 and 11 of the SOC specifically relate to the second application made by the Appellant and the grounds of its refusal. The latter essentially averred at paragraphs 21,22, 23 and 24 of the SOC that the Respondent had no valid reason to refuse the second

application and that the third application was identical to the second one since the exact bundle of documents was submitted by the Appellant for both applications and that the Respondent maintained its reason for refusal for the second application in the third application and added a further ground and that these two reasons of refusal have no basis. We find that the Appellant itself raised the issue in great detail especially with the regards to the connection between the second application and the grounds raised by the Council there and being maintained again in the third application. As a consequence of these issues being raised by the Appellant, we have several points to make.

6. The Appellant having raised the issue of first, second and third application, could have availed itself of the procedure of disclosure of documents as per the rules of the ELUAT to procure the relevant minutes of proceedings before the PBMC. It failed to do so, even after it had taken cognizance of the reply of the Respondent in its Statement of Defence ["SOD"] whereby reference is made to the considerations taken on board by the Council.
7. Following the reply of the Respondent in its SOD, the Appellant did not seek particulars on environmental impact. This could have been done before the filing of the Statement in Reply of the Appellant so that the issue could be better addressed at its paragraph 15 in relation to the "alleged environmental impact" not being cited as one of the reasons for refusal. As a specialized Tribunal, what we read as environmental impact in this case is the impact that the proposed development will have on the surrounding environment, be it on its character as a residential or mixed-use area, or the impact in terms of the nuisance it is likely to create by its very nature. In our view, the question of waste disposal is part and parcel of potential source of nuisance which can have a negative impact on the character and amenity of the surrounding environment.
8. The Appellant having raised the issues relating to the subject matter of the second application and its consideration in the assessment of the third application, the Council was duty bound to, and did, address these issues its SOD. The Appellant cannot claim its irrelevance when it was made a live issue by itself and the points were addressed

and refuted by the Respondent. The Respondent in its Statement of Defence [“SOD”] replied as far as paragraph 21 of the SOC is concerned, which refers to the Respondent not having valid reason to refuse the second application, that this was irrelevant to the present appeal. However, in relation to paragraph 23 of the SOC, which refers to the maintenance of the grounds of the second refusal in the third application, we find it of particular relevance that the Council stated at paragraphs 11 and 13 that the environment impacts, assessments and objections especially in a residential area need to be taken on board. These do have to be taken into consideration and the decision of the PBMC on these issues are pertinent. Since these averments in the SOD made reference to objection and so did the grounds of refusal by making reference to the grounds in the previous application being maintained and the impact on the residential occupiers, hence most likely due to the objections raised, the Appellant could have testified on the issue.

9. Bearing in mind the procedure as elicited by Mr. Cundasamy regarding the instances when and circumstances under which the objections are considered, we find that the Council did not falter in complying with their own internal process of considering the objections nor was the question asked by Respondent’s counsel irrelevant. It was relevant since it goes to the very crux of the issue of how the PBMC viewed the issue of waste disposal, which could be a nuisance to the surrounding environment. The question is therefore allowed and the case is to proceed on its merits.

Ruling delivered on 24<sup>th</sup> April 2023 by

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

**Mr. S. MOOTHOSAMY**  
Member

**Mr. S. BUSGEETH**  
Member