

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 1395/17

In the matter of :-

Andre Guy Joseph Le Blanc

Appellant

v/s

The District Council of Riviere du Rempart

Respondent

RULING

1. The present appeal is against a decision taken by the District Council ("the Council"), for having refused the appellant the granting of an Outline Planning Permission ['OPP'] for the construction of nineteen residential villas at Poudre D'Or Village. The reasons for refusal which were communicated to the appellant vide letter dated 14th April 2017 are as follows:
 - "1. Site is found outside Defined Settlement Boundary by 150m.*
 - 2. No built up in the vicinity.*
 - 3. Site is found within scenic zone.*
 - 4. Site does not follow sequential approach for release of land under policy LS1."*
2. The matter was scheduled to be heard on its merits when counsel appearing for the appellant moved this Tribunal to rule that the decision of the Town and Country Planning Board ['TCPB'] in a previous connected case to which the respondent was also a party was binding upon the latter to the extent that the TCPB had already dealt with the issue of the subject site being "Outside Defined Settlement Boundary" and that the site is found "within scenic zone".

3. By way of background to this case, as can be noted from the pleadings, there was a previous application made by the appellant before the TCPB for the excision of a plot of land of the extent of 3988 sq.m from a plot of 11928sq.m for residential purposes at L'île D'Ambre Poudre. The Council was also a party to that case. One of the annexures to the statement of case of the appellant is a document emanating from the TCPB. It states that there was a hearing held on 16th November 2010 whereby the Committee, after considering several elements to the case, took the view that residential development on the site might be permissible. It also stated that the appellant may proceed with the development of the site based on certain criteria that was provided and since there was no objection by the parties, the appeal was set aside.
4. Counsel for the appellant in essence is moving for this Tribunal to make a finding that the Council is bound by this decision of the TCPB. He also raised the point that the Council having raised the grounds of refusal as stipulated above, and the TCPB having come to the conclusion that the appellant may proceed with the development, he moved that this Tribunal rule on the "binding effect" of the decision of the TCPB on the Council.
5. We have duly considered the submissions of Counsel for both sides. The appeal that lies before us is in relation to an application for an Outline Planning Permission for the construction of nineteen residential villas at Poudre D'Or Village. This is not only a totally different application to an application for excision of land but also a different stage of the process. We are not in presence of the application for excision that was before the TCPB, and therefore we cannot surmise that the application for excision must have related to the same plot of land or not, or for a project of nineteen residential villas, or for some other residential project. There are several possibilities of what exactly was put forward before the TCPB regarding the residential project of the promoter. We are not privy to such information and it is also not mentioned in the statement of defence of the respondent.

6. Since the application for excision is different from an application for an OPP, which requires a new set of procedures to be complied with and compliance with specific criteria, we are of the view that the Council *de facto* has the right to assess the application again and it was legally entitled to refuse the granting of the OPP on its application of planning instruments and policies.
7. The granting of an application for excision cannot guarantee the granting of an OPP just as the granting of an OPP cannot guarantee the granting of a BLUP for the same project. This comes with the logic that with time circumstances change, the character of the area changes, the amenities change, the topography may also have changed and the applicable planning policies may have changed too. Therefore it is important that at every stage the Council be allowed to reassess the application on the basis of the applicable planning policies.
8. It may well be that the issues of the subject site being "Outside Defined Settlement Boundary" and the site being "within scenic zone" have been thrashed out before the TCPB. If the appellant's motion is to do with him being aggrieved by the manner in which the Council has acted in disregarding the issues previously canvassed before another forum (and agreed upon), then it would be beyond the jurisdiction of this Tribunal to decide on the "binding effect" of another appellate body. The recourse of the appellant on this specific ground raised will lie before another forum.
9. For all the reasons set out above, the motion of the appellant is set aside. The matter will be called pro-forma.

Ruling delivered on 14th November 2018 by

Mrs. J. RAMFUL-JHOWRY

Vice Chairperson

Mr. L. CHEONG

Assessor

Me. R. SEETOHUL

Assessor