BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 1903/19

In the matter of:

Mr. Poorbarlen Chokupermal

Appellant

v.

The District Council of Moka

Respondent

In the presence of:

1. **Deoraj Futhee**
2. **Mrs. Jayewantee Futhee**

Co-Respondents

Determination:

The Appellant has appealed against the decision of the District Council of Moka dated 24th October 2019 for having refused to grant the application for a Building and Land Use Permit for the conversion of an existing structure to be used as Dog Kennel (4 units) at Sans Souci Road, Montagne Blanche. The ground of refusal is that "The apprehensions expressed by the immediate neighbours are viewed to be valid in as much as both the Ministry of Social Security, National Solidarity and Sustainable Development and the Ministry of Health and Quality of Life have highlighted the form of nuisance by way of noise, dust, odour or otherwise being caused by such activity to the surrounding environment."

The grounds of appeal as expressed in the Notice of Appeal lodged before the ELUAT dated 13th November 2019 can be grouped in two grounds of appeal, the first one being that a petition has been signed by the neighbours in the surrounding where they agree that the dog kennel does not cause any type of disturbance. He denied the issue of odour as the dog kennel is washed and sanitized every day. The second ground, as drafted, is in the interrogatory in respect of what type of dust is produced and how the Co-Respondent is being affected, and a disagreement expressed as to the reason why Co-Respondent No.1 had been allowed to represent Co-Respondent No.2 at the hearing without any valid proof of her absence.

The Appellant was inops consilii at the time of lodging the notice of appeal. He was represented by counsel at the hearing. We have taken this into account, however this does not preclude the fact that the Appellant has to comply with the legal provisions, namely section 5 sub-section 4(a) which provides that 'every appeal shall be brought before the

Tribunal by depositing, with the Secretary, a notice of appeal in the form set out in the Schedule setting out the grounds of appeal concisely and precisely....'.
The second ground of appeal, as spelt out above, does not respond to the criteria of being precise and concise. This ground spells out queries on the types of nuisance and how they affect the Co-Respondents and is an expression of the Appellant's disagreement on the conduct of the hearing at the level of the Council. The reference made to the case of R. Pougnet v. The Medine Sugar Estate Co. Ltd. 1998 SCJ 299 finds application here, namely that : *"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 criticised, there will be a tendency to introduce general arguments which are not covered by any of the grounds considered separately".* In the light of these observations and being given that the ground as stated above is non-compliant to section 5 sub-section 4(a), we find that the second part of the 'grounds of appeal' amount to no ground at all and we set aside this 'ground' at the very outset.

The Statement of case of the Appellant on which the Appellant expatiated in the course of his testimony before the Tribunal is to the effect that the Appellant holds a dog breeding licence for two years, which was granted by the Animal Welfare Unit Division of Livestock and Veterinary (Documents F and F1) and he had obtained an approval from almost all his neighbours through a petition signed by them. In the course of the hearing, he produced a no objection letter from his immediate neighbour, who had given his consent to him for the said kennel being constructed on the boundary between their respective plots of land without having observed a statutory setback of 900 mm from the boundary (Document D). A plan of the kennel was produced as Document C. Two further letters were produced during the hearing, namely, a letter from the Ministry of Social Security, National Solidarity and Environment and Sustainable Development addressed to the Chief Executive of the Moka District Council (Document A) and a letter from the Ministry of Health addressed to the Appellant (Document B), stating that for the purposes of a Building and Land Use Permit, a clearance from this Ministry was not required, yet they pointed out to complaints that they had received in the past with respect to nuisance arising to similar activities.

In evidence, the Appellant deposed to the effect that he has been the holder of a dog breeding licence for two years, namely that it had been delivered in 2017 and was renewable on a yearly basis. After two renewals, the Appellant was informed on the third renewal process that henceforth he would require a clearance from the District Council. He provided the relevant clearances to the Council and was informed of a hearing to be held.

The hearing held at the level of the District Council unveiled some ongoing dispute between the Appellant and his immediate neighbours, the Co-Respondents. Co-Respondent No.1 highlighted the environmental nuisance that he faced due to the Appellant's activities. In response to this, the Appellant called as his witness another neighbour, who incidentally lives across the road from the Appellant's premises, and who seemed to have no difficulty nor objection to the Appellant continuing his dog-breeding activities in the premises.

The representative of the Respondent deposed and explained that the Council relied fully on the correspondences received from the Ministry of Health and Ministry of Environment respectively. They also relied on the Planning Policy, namely Policy ID 4 of the Outline Planning Scheme, which sets out that the location of bad neighbour uses should follow the sequential approach, bad neighbour developments being listed out in the policy as including quarries, stone crushing plants.....animal-rearing uses, among others. The guiding principles of these planning norms are that bad neighbour development should be clustered and should share a buffer zone and should be away from residential areas.
The evidence of the Council's representative is that the development 'in lite' is located in an area which is 'predominantly residential', albeit the presence of some commercial activities in the vicinity. The Co-Respondent adduced evidence, explaining the nuisance caused by the activity of the Appellant and the impact that this has on him and his family.

After having considered the evidence adduced on behalf of both parties, we make the following observations:

1. the Appellant had been conducting the dog-breeding activity for two years, having been issued with a Dog Breeder Licence by the Animal Welfare Unit, Division of Livestock and Veterinary of the Ministry of Agro Industry and Food Security. It is stated that there has been a change in the policy of the Ministry whereby there was now a requirement of a BLUP to be issued for such activity. No evidence of the change of policy nor the basis for this new requirement has been put before the Tribunal. Be that as it may, the Appellant did submit an application for BLUP and has been denied same.
2. It is noted that the documents relied upon by the Council raise some interrogations, namely Document A from the Ministry of Environment, which states that the dog breeding activity does not require any EIA nor PER and the Ministry goes on to set conditions, namely that there should be no nuisance by way of odour, noise and dust or otherwise to the surrounding environment. Furthermore, the Appellant is referred to the Ministry of Health and Quality of Life for a clearance. The Ministry of Health on the other hand clearly informs the Appellant in Document B that a clearance from it is not a prerequisite for an application for BLUP. Yet, this Ministry refers to complaints that it has received with respect to odour and noise that have arisen in similar activities. They then go on to request the District Council to ensure that the proposed activity is compatible with the planning characteristics of the neighbourhood. Document B addresses the nuisance that generally arises in such activities. Although the Council relies on Documents A and B, these documents do not assess the application 'in lite'.
3. Having said that, the prime considerations in the assessment of the application are the Planning norms that should be applicable. The evidence of the Council's representative that the area is predominantly residential takes significance. The nuisance highlighted by the Co-Respondent No.1 appears to be genuine ones. The evidence of the Appellant's witness, the neighbour who lives across the road, did not strike us to be of much relevance, in as much as she lives further away from the spot as opposed to the Co-Respondent and does not bear the immediate impact of the dog rearing activity. Although she may not be affected by the noise that emanates from the kennel, as she stated, it is obvious that the nuisance felt by the immediate

neighbour is more significant as he is impacted by the noise as well as the use of 'karcher' and the early washing of the kennels, as stated by the Appellant himself.

4. Despite the fact that there appears to be a lack of concerted approach on the jurisdiction of each of the authorities that the Appellant was referred to, it is our view that the Council was right to take on board the precautionary approach propounded by both Ministries to such activities. Although the District Council made no reference to Policy ID 4 in the letter dated 24 October 2019, its representative referred to it in his testimony as being the basis of their assessment of the present application. This policy states as follows:

> *'The location of bad neighbour uses should follow the sequential approach commencing with Policy SD3 and where buffer zones are required or potential nuisance exits, with Policy ID 4.*
> *Bad neighbour developments are defined to include quarries, stone crushing plants, concrete batching plants, asphalt mixing plants, power stations and tank farms, animal-rearing uses including piggeries, poultry farms .....'*

The Appellant has adduced evidence on the fact that he does not operate on a large scale and that he has followed the advice of the Animal Welfare Division in the setting up of his kennel and that he proposes to run a maternity for the newly bred in his kennel. His application for a BLUP is for the conversion of an existing structure to be used as dog kennel. As per the evidence of the representative of the Council, the activity that is proposed is akin to a bad neighbour development. It is noted that the list of bad neighbour developments as provided in Policy ID 4 is not exhaustive.

5. It was attempted on behalf of the Appellant to rely on the fact that the Council's position is based on mere apprehensions. We note however that the activity has been existent for two years. The complaints of the Co-Respondent are based on nuisance experienced by him. These coupled with the views expressed by the respective Ministries are such that we find no reason to interfere with the decision of the Respondent.

We therefore set aside the appeal.

Delivered by:

Mrs. Vedalini Phoolchund-Bhadain, Chairperson .....

Mr. Rishiraj Seetohul, Assessor .....

Mr. Parvin Manna, Assessor .....

Date: 13th August 2024