

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

In the consolidated matters of:

ELAT 1952/20

Mr. Dewanand Cowalparsad c/o Dharamjay Cowalparsad

Appellant

v.

Ministry of Housing and Land Use Planning

Respondent

AND

ELAT 1953/20

Mr. Dharamjay Cowalparsad

Appellant

v.

Ministry of Housing and Land Use Planning

Respondent

AND

ELAT 1954/20

Mr. Jayenarain Cowalparsad c/o Dharamjay Cowalparsad

Appellant

v.

Ministry of Housing and Land Use Planning

Respondent

Determination

The three Appellants have lodged appeals against the decision of the Ministry of Housing and Land Use Planning (the Respondent) for having rejected their respective applications for subdivision of their land for residential purposes. The grounds of refusal, as contained in the letters of refusal are that, firstly, the site is outside defined settlement boundary by approximately 185 metres as per the prevailing Outline Planning Scheme for Pamplemousses Riviere du Rempart District Council, and secondly the proposed application lies within the 200 metres buffer zone of two poultry farms.

Evidence was adduced in the course of the hearing by Mr. Dharamjay Cowalparsad, the Appellant in case bearing reference ELAT 1953/20, who also represented Mr. Jayenarain Cowalparsad and Mr. Dewanand Cowalparsad, Appellants in the cases bearing reference ELAT 1954/20 and 1952/20 respectively.

The contention of the Appellants is that the presence of the said poultry pen had been outcried since the time it was being set up. Neighbours had voiced out objections against the implanting of the poultry pen in the area, yet the permit had been granted for this activity. Copies of objections made to the authorities against the poultry pen have been filed as Documents D and D1. Furthermore, it is the version of the Appellants that there have been permits delivered to other developers for sensitive uses within the same area, reference being made by him to a primary school and another residential morcellement which was referred to as a Beach Agency.

The version of the Appellant was supported by Mr. Amitchand Gobin, who resides at a distance of 100 metres from the poultry pen, and he had been among those who had protested against the setting up of the poultry pen, but to no avail. He confirmed the version of the Appellant that there have been permits given for sensitive uses within the buffer zone after the setting up of the poultry pen.

The representative of the Respondent, Mrs. Prayag deposed and reiterated the grounds of refusal for each of the Appellants. In addition to the fact that the respective properties were located within the buffer zone of the poultry pen (she explained that there was the presence of only one poultry pen and not two, as mistakenly stated in the reply from the Morcellement Board), the sites were outside settlement boundary as follows: the property of Mr. Devanand Cowalparsad was at a distance of 185 metres outside the settlement boundary, that of Mr. Jayenarain Cowalparsad was outside settlement boundary by a distance of 185 metres and that of Mr. Dharamjay Cowalparsad was outside settlement boundary by a distance of 191 metres as per the prevailing Pamplemousses/ Riviere du Rempart Outline Planning Scheme (these were contained in the refusal letters produced as Documents E, F and G).

The Development Control Officer of the Ministry of Housing and Lands, who effected a site visit to the premises, produced an aerial photo of the locus as Document H, showing the position of the Appellants' properties and the respective distances with the settlement boundary and the poultry pen. He went on to explain the planning instruments that were relied upon by the Respondent in the assessment of the application, namely, the Outline

Planning Scheme for Pamplemousses Riviere du Rempart (Document J) and the Planning Policy Guidance (PPG: Document K).

Mr. Banjoo, the Planning and Development Officer of the District Council of Pamplemousses, deposed as a witness. He explained that the permit for the construction of the poultry pen had been delivered on the 20th May 1987. He explained that the subdivisions of other lots had been done in the year 1998/1999, at a time when the PPG was not in force. The PPG came into force in 2006. As regards the application for subdivision made by the Appellant, the District Council had given its views to the Morcellement Board.

The rationale for the 200 metres buffer zone from the poultry pen has been explained by the representative of the Ministry of Environment, Mrs. Seenarain. She maintained that the Ministry of Environment did not favourably recommend the application made to the Morcellement Board due to the potential health hazards that the presence of a poultry pen can have on sensitive land uses like housing, health and educational facilities. The health engineering officer from the Ministry of Health, Mr. Khodaboccus, reiterated the need for a security barrier from a poultry pen in order to prevent an outbreak of diseases and pandemics. The Ministry of Health had therefore given a negative stand to the Morcellement Board in respect of the Appellant's application. He maintained this position at the hearing.

We have given due consideration to the evidence adduced by the respective parties.

It has come out throughout the hearing that the Appellants have systematically objected to the implanting of the poultry pen in close proximity to their land. Several avenues for complaint have been taken by them, as repetitively said by the Appellant, Mr. Dharamjay Cowalparsad, who deposed on behalf of the other Appellants. Yet, the permit had been granted to the poultry pen.

We are today not sitting to assess the objections of the Appellant against the poultry pen, but the subject matter of the present appeal is the decision of the Morcellement Board to reject the application for subdivision made by the Appellants, and the grounds thereof. The granting of the permit of the existing poultry pen, and the objections raised against it, are not in issue before us, although the presence of the said poultry pen in proximity of the Appellants' land is a primary consideration in the Respondent's decision.

The Morcellement Board, as rightly pointed out by counsel for the Respondent, is duty bound to operate within the parameters of the law, namely, section 6 of the Morcellement Act, which stipulates that the Board has to consider if the proposed morcellement satisfies all the planning requirements, before sending its recommendations to the Minister for his decision. The non-compliance to the planning instruments, namely being situated outside settlement boundary on one hand, and being located within the buffer zone of a poultry pen, have led to a refusal to grant the application. It is on record that the views of all relevant authorities, namely the local authority, the Ministries of Health and Environment respectively had been sought and they all highlighted the presence of a bad neighbour development and the need to prevent the development of sensitive land use within the buffer zone. The Planning Policy Guidance (Design sheet on Industry Adjacent to Sensitive Uses) sets out the acceptable distance of sensitive land use from the boundary of a bad neighbour industry with respect to poultry/livestock farms as being 200 metres. The distances from the respective lands of the Appellants and the poultry pen, fall short of this buffer distance.

The first ground of refusal also has been amply substantiated, namely the site of the respective Appellants being situated outside settlement boundary. Policy SD 4 of the Outline Planning Scheme for Pamplemousses Riviere du Rempart provides for a presumption against proposals for development outside settlement boundaries unless some exceptions as listed in the policy are met. None of the exceptions provided for are met in the present application.

We therefore find no reason to interfere with the decision of the Respondent, which is found to be in compliance with the planning instruments, namely policy SD 4 of the Outline Planning Scheme and the Planning Policy Guidance issued by the Ministry of Housing and Lands, the revised version being in September 2006. The appeal is accordingly set aside in all three cases.

Delivered by the Environment and Land Use Appeal Tribunal:

Mrs. Vedalini Phoolchund-Bhadain, Chairperson,

Mr. Shravan Kumar Sultoo, Member

Mr. Shanmoogum Moothoosamy, Member

Date:

16th September 2021.