

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

**ELAT 1971/20**

**In the matter of :-**

Mousheerl Mohammad Maharaullee

Appellant

v/s

Municipal Council of Curepipe

Respondent

**DETERMINATION**

1. This is an appeal against the decision of the Respondent [“the Council”] for having refused to the Appellant the granting of a Building and Land Use Permit [“BLUP”] for the conversion of an existing building at ground and first floors into other accommodation e.g dormitory purposes, to operate at Charles Regnaud Street, Eau Coulee. The two grounds of refusal of the Council as per its online service downloaded on 11th September 2020 are

*“1. The proposed development will cause an intensification in the use of the building in terms of number of residents. It will be disruptive to the amenity and character of the residential neighbourhood. It will not be compatible with the residential character of the area;*

*2. The existing building is found at a distance less than the statutory setback of 0.9m with the right hand side boundary line, consent has not been obtained from the adjoining neighbours and the latter has objected to the proposed development.”*

2. The Appellant, who was legally represented at trial, is the CEO of TFP, a furniture business having 8 showrooms, 3 warehouses around the island and 1 factory in Eau-coulee. TFP employs some 250 workers directly and 150 workers indirectly. The case for the Appellant, in summary, rests on the fact that the building will be used for residential purposes and that it will be used to accommodate 17 housemates, as opposed to the initial proposition for 25 housemates, who are Bangladeshi nationals. These workers are employed by the Appellant to work at his factory in Eau Coulee and that the Appellant is willing to abide by any conditions imposed should the development proposal be allowed. He is willing to make structural changes and implement measures to mitigate any nuisance especially regarding noise. He will also engage a dormitory manager to manage the housemates in case of conflict or other issues arising with regards to them.
  
3. The Council was duly represented by the head of its planning department, Mr. Jeetun, who explained the basis for refusal by the Respondent, the incompatibility of having a dormitory containing this many housemates within a residential area, the more so as objections were received mainly on the grounds that there will be nuisance since the area surrounding the subject site is residential and that complaints were not only sent to the Council but also to the Mayor, the Ombudsman and the Ministry. We have duly considered the evidence before us as well as the submissions of both counsel.
  
4. The Appellant lodged 3 grounds of appeal with his Notice of Appeal. The first ground of appeal, which contains several limbs, addresses the first ground of refusal while the second ground of appeal, which is also multi-limbed, addresses the second ground of refusal. The third ground of appeal addresses an issue of generality. For better clarity, we shall analyse the grounds of appeal under each ground of refusal.

**(i) Under ground 1 :**

***The proposed development will cause an intensification in the use of the building in terms of number of residents. It will be disruptive to the amenity and character of the residential neighbourhood. It will not be compatible with the residential character of the area.***

5. The first ground of appeal is reproduced in italics below:

- (i) *“With regard to first reason for refusal, the Municipal Council of Curepipe was wrong in as much as-*
- A. *The Subject Property is located within the Settlement Boundary of the approved Outline Planning Scheme for Curepipe which was approved on 11 April 2015 [henceforth the “OPS”].*
  - B. *The definition of Settlement Boundary is also defined in the OPS and the development has to be ‘suitable’.*
  - C. *The lodging of some 18 upto a maximum of 25 foreign workers, in this large house with 6 large bedrooms is unlikely to cause an intensification in the use of the Building in the acceptable number of residents.*
  - D. *The Proposed Development is for the Lodging of male workers, engaged with TFP, the furniture company, of which the Appellant is a Director, The Furniture Village of TFP is located within close proximity of the Subject Property. Those male workers now engaged with TFP were taken charge of when their previous employer, Afrasia, went into receivership. Those male workers are being presently housed in temporary accommodation very far from the Furniture Village of TFP, adding to transport problems, and additional costs, in an enterprise which is seeking to add to the productive capacity of Mauritius, at a time, when the country is undergoing unprecedented difficulties, due to the Covid-19 pandemic.*
  - E. *All the male workers are working in the Furniture Village of TFP and are under the management control of the Appellant.*
  - F. *The neighborhood cannot be described as an area with a predominantly residential character. It can be more appropriately described as a mixed Zone use with a number of non-residential activities.*
  - G. *The Subject Property used to be a commercial activity where alcoholic drinks were sold to the public.*
  - H. *The Appellant disputes that the housing of some 17 to 25 male workers, under a strictly managed condition, would reduce from whatever residential character that the immediate neighborhood may enjoy.”*

6. The contention of Appellant under paragraphs A, B, C and F requires a context analysis. The subject site is located in Eau-Coulee which falls within settlement boundary of the approved Outline Planning Scheme for Curepipe, hence conducive to residential development. The evidence adduced by the Council is that the area is a predominantly residential one, which was also noted by the Tribunal in the course of a site visit, as opposed to the contention of the Appellant that the area is a mixed use one. In fact the Google map showing an aerial view of the location produced by the Appellant, Doc H, shows that within a radius of 90 metres from the subject site, there is barely any non-residential development with the exception of a school. The development being thus proposed within a predominantly residential area, it is important to consider how the residents, especially those living within close proximity, will be impacted by the activities that are likely to take place within the building *in lite*. The question that has to be determined is whether the activity that is being proposed by the Appellant can gain planning acceptance in a residential area.
  
7. We are here dealing with a proposal for a dormitory which will be within a building that lays on an area of land of 3.89 perches. As per evidence on record, the building is a one storeyed building, adjoined to that of one Mr. Narad Bonomally Ram, one of the main objectors to this development, which the latter is using as his residence. Following a division in kind, one unit of the building comprising of ground and first floor which initially belonged to the Bonomally Ram family was sold to the Appellant. The building, now Appellant's property, remains structurally adjoined to the property of Mr. Narad Bonomally Ram. There exists some openings and balconies on the Appellant's property and Mr. Bonomally Ram's property that allow a "vue directe" on each other's property for which the Appellant is ready and has to some extent taken measures to mitigate the overlooking, as were also noted by the Tribunal in the course of the site visit. There is an access road which starts from the main road next to the Appellant's property and runs along it to the rear of the property where there exists 2 other houses, as per Doc G, which also belonged to the Bonomally Ram family out of which one has also been purchased by the Appellant while the other is still inhabited by the Bonomally Rams. This gives an indication of the Bonomally Ram family's residence prior to the division in kind.

8. The Appellant's contention is that as per the title deed the property is of an extent of 3000 square feet and that there is no common access between his property and that of Mr. Narad Bonomally Ram, that the only access into and out of the dormitory will be through the front entrance since the access at the rear of the building has been barricaded through fencing. As far as the building itself is concerned, following renovations made by the Appellant, the house now contains some 6 rooms, 5 toilets, 3 bathrooms to cater for the 17 housemates. There is no open space to the building as such, as per the testimony of Mr. Jeetun.
9. Mr. Jeetun for the Council explained that the building in lite was originally a residential one where the previous owner resided and on the ground floor, there was a retail shop which was a family business. From evidence, the building is found on a plot of land of less than 4 perches. It is a low-density development and now with it being converted into a dormitory where a large number of people, that is 17 people, will reside, he was very certain that it will bring about an intensification in the use of the building in that it will be overcrowded and that for the small size of the building housing so many people will have an impact on the amenity and character of the neighbourhood. The overcrowding will produce other social nuisances such as noise and eyesore of hanging clothes everywhere. He stated that as regards garbage collection there will be an enormous amount for 17 people compared to a family.
10. Mr. Jeetun explained that as per **The Occupational Safety and Health (Employees' Lodging Accommodation) Regulations 2011**[GN 27/2011] made under the Occupational Safety and Health Act, the specified floor area allocated per person with a single bed is not less than 4.6 sq.metre per person and that allocated for 2 people per bunk bed is not less than 5.6 sq.m for 2 people. The subject site has total floor area 164 sq.m. From the plans produced by the Appellant, Docs K and K1, it appears to satisfy the legal requirement of floor area allocated per person. We pause here to make a note that there was a third room on the first floor, which leads onto a balcony which overlooks the property at the rear belonging to Mr. Khemraj Parsad Bonomallyram. This room will not be used from our understanding and is therefore disregarded. This being said, we are sceptical of relying solely on such evidence derived from a mathematical calculation of the floor area to occupancy ratio when assessing the intensification of use, besides there may be other variables that are not being accounted such as other furniture in the rooms. These parameters are used mostly when assessing the

granting of accommodation permits based on health and safety rules, not BLUPS which are based on planning principles. Likewise, the Fire Certificate for the premises for 25 housemates is granted on the assessment of the safety of the building in case of fire breakout and cannot be taken to mean planning acceptance for a BLUP to be granted. We do not believe that the Council was wrong to have considered the BLUP of the dormitory as being different from a conventional residential family home.

11. The 4 bedrooms to be used by 17 people cannot be compared to the size of 2 regular sized families occupying 2 floors of the residential building. The guidelines from the Ministry of Local Government were issued to the Council in 2019, marked Doc J, where a dormitory is considered different from a residential building. A distinction was made between what constitutes a residential building as opposed to a dormitory and the Council is bound by the guidelines and was entitled not to consider the proposed development as a typical residential development as in the conventional family home, and consider the objections of the people living in the neighbourhood and how they may be impacted by the proposed development. According to the guidelines of the Ministry *"A residential building may be described as a house to accommodate a family (normally low density) whereas a dormitory is a building used to house large number of persons (usually foreign workers)."* The letter also stipulates *"...conversion of an existing building into a dormitory may be considered as the making of a material change in the use of a building (in line with the definition of "development works" in the Local Government Act). This will warrant a fresh application for BLUP for dormitory after the obtention of a Lodging and Accommodation Permit."* The Council nor the Tribunal can disregard the guidelines issued by the Ministry, the more so as they specifically address the issue at hand. The Appellant applied for a BLUP for dormitory.
  
12. The nature of the development involves some human traffic with people coming in and out of the Appellant's premises at any point in the day and night in a residential neighbourhood in view of their working hours. The comfort, security and adaptability of strangers in the existing environment are all issues of consideration for the Council. In the case of **RT Knits v/s The City Council of Port Louis [ELAT 547/13]** after due consideration the Tribunal found that since there was a material change in the use of the building, the Council was justified to have requested a BLUP. In that case there were to be 45 housemates to be housed in a residential

building within a residential area. True it is that the facts of RT Knits may not be on all fours with the present one but as a guiding principle the Tribunal also considered the intensification of the use and came to the conclusion that the Council was right to have refused to BLUP on the basis that it would be incompatible to have the dormitory of 45 people within a residential morcellement where the inhabitants are expected to have a peaceful enjoyment of their property.

13. In the present case, Mr. Narad Bonomally Ram had been residing on the locus from well before the Appellant purchased the property next to his. In fact the record shows that the subject property, plot 2B, forms part of a single property which initially belonged to one person. As explained at paragraph 7 above, the property at the rear also belonged to the Bonomally Ram family before the purchase made by the Appellant. It appears that since the property at the origin operated as a single unit, there is setback between the subject property to the property of the objector, Mr. Narad Bonomally Ram, found on its righthand side. They share a common wall. On the left-hand side of the subject property and at the rear of it the setback of the building with the access road is almost non-existent, as per Doc G, with no boundary wall but a few windows and ventilators opening on all sides of the property, although some may be sealed by the Appellant. The witness for the Respondent also explained that there was hardly any space in front of the building except for a very small area. There is no boundary wall between the main road and the building, possibly being given the history of the place, as it was a shop.

14. The Respondent's witness explained that as a planner, he would not agree to a dormitory for 17 people unless the building was large enough with proper setbacks that could have mitigated these nuisances and that at best, according to him the building could accommodate a family size of 5-6 persons. We consider that catering for 17 housemates as opposed to a couple of regular sized families of 5-6 residents would constitute a material change of use which will interfere with the residents' peaceful enjoyment of their property. We have taken on board the schedule of the 17 housemates who will be setting out to work at 7 am. They will normally wake up at around the same time. On an average 5 toilets and 3 bathrooms will be used successively, breakfast will be prepared and served, they will all leave at the same time and return at the same time, at around 5.30pm. This will be an everyday feature day in

and day out for 6 days for 17 male foreign workers who would be living in an existent residential area. These activities will generate not only noise nuisance when they are being performed since there is very less setback from other properties but also noise generated when a group of 17 male persons talk, walk and they are likely to leave and return at the same time which is likely to cause disturbance to the neighborhood. Furthermore, with the willingness of the Appellant to mitigate all the noise nuisance and any overlooking onto adjoining neighbour's properties or generally any disturbance to the neighbourhood, the Appellant has blocked some openings, windows, doors and even garage. The subject site has ended up not having an open space. The Council's planner explained that the workers will be confined with the building. We believe that this in itself is not conducive for the workers. However, this will inevitably lead to the workers hanging around outside their dormitory at some point either in the early hours of the day or late in the evenings when they are not at work and this will in turn cause disturbance to the neighbours in view of their sheer number. In addition, cultural differences, traditions and customs are also relevant to determine whether they can blend with the environment and residents who have been living in the neighbourhood for years.

15. The contention of the Appellant under paragraphs D and E, is that these workers are presently working under the control of the Appellant at the Furniture Village, TFP and that they are currently housed in different locations which is taking them longer to reach the workplace. We have in this respect also considered the submissions of learned Counsel appearing for the Respondent. The Appellant is a director of MC General Traders Ltd, not a shareholder. He has therefore no legal interest as such in MC General Traders Ltd, as evidence by Doc B, the BRN. It is MC General Traders Ltd that has recruited and employed these 17 Bangladeshi workers, not the Appellant. The workers not being the employees of the Appellant *per se*, the latter may be taken to be providing accommodation services to the workers. The Business Registration Card of the Appellant, provided at page 21 of the Appellant's Statement of Reply, clearly shows that the nature of the Appellant's business is for import and export as well as provide other accommodations (workers hostels, boarding houses, dormitory etc.). The point to be made here is that if it were that the Appellant was employing them and housing them, there would be more of an interest for the Appellant to ensure compliance with good housekeeping and neighbourliness practices for sustainable development and no nuisance



from a planning perspective. On the other hand, if the Appellant is merely providing lodging facilities to the workers, then these standards are less likely to be respected.

16. In the case of **RT Knits** *supra* the Tribunal had at length considered the classification of dormitory, which was unclassified under the relevant schedules of the Local Government Act 2011, and came to the conclusion that it could only be classified as a “residential” development on the facts of that case since it could not be categorized as an “economic activity”. In the present case, there is no evidence on record to suggest whether the Appellant will be receiving money in exchange for offering lodging facilities to the Bangladeshi workers. There does not seem to be any clear legal interest established for the Appellant to want to house these workers in his personal property when they are in fact employees of MC Traders Ltd, other than for commercial purposes.

17. It is the contention of the Appellant that the workers are currently residing far away from the Furniture Village, TFP, their place of work, as a temporary arrangement and that sometimes transport facilities are required for them and that it takes them long to reach work. In cross-examination it came to light that these workers are residing in Eau Coulee itself, some in Wooton and in Camp Fouqueraux. The Tribunal can take judicial notice of the fact that these places are not very far from their place of work, as contended by the Appellant. With the exception of Camp Fouqueraux, that could potentially be further away compared to the other two locations which are within walking distance from the Furniture Village.

18. Under paragraphs G and H, it is the contention of the Appellant that liquor was previously sold on the locus. It would appear that there was a shop, qualified by the planner as a family business, which was a general retailer servicing the locality. We cannot otherwise surmise on issues as to any nuisance associated with the operation of this business or whether the impact it had on the character of the neighbourhood. This point is therefore disregarded.

19. The objectors have raised several objections, as contained in the Statement of Reply of the Appellant. They have invoked “day-to-day annoyance” in their peaceful neighbourhood, nuisance to their daily life as per objections of Mr. Khemraj Parsad and Mrs Chumanee Bonomallyram and according to them “all these houses on that land were owned by the

Bonomallyram Brothers and family since 1976 and hence these were constructed on a familial and extended family type of living. In no way, these were built for dormitory or business purposes". True it is that Mr. Khemraj Prasad Bonomallyram's property is found at the rear of the subject property, where the workers will not have access from within the building, his property can only be reached through the access road where the workers will most foreseeably be congregating or loitering in their spare time before or after work every day. His objections cannot be disregarded in our view. We note also at least 8 other objectors were keen to have themselves represented at the hearing scheduled before the Council as per annex 2 of the Statement of Reply.

20. Furthermore, the Appellant, having worked with foreign workers, has felt the need to appoint a dormitory manager to address any issues of unsociable behaviour. This albeit showing the willingness of the Appellant to keep nuisance at bay, is also indicative of the type of nuisance that is easily anticipated with 17 male housemates living under a single roof. Nuisance can take several forms and in planning the impact that such nuisance can have on the other inhabitants is a very relevant factor. While it can be appreciated that the Appellant intends to only provide lodging for workers in a house having all the necessary amenities, the nature of the lodging, that is to house workers, may in some circumstances have a negative impact on the neighbourhood. We are here looking at housing 17 Bangladeshi workers in 4 bedrooms. The objectors being local the inhabitants have expressed their dismay and dissatisfaction in several ways all constituting nuisance and causing inconvenience to the neighbourhood. When these are weighed up against the contribution of migrant workers for our local economy which needs to be appreciated and there is a need to work with rather than against human habits, having unpleasant noise pollution after working hours, unsociable behaviour or even having long lines of clothes hung up to dry over balconies, may impact the character of neighbourhood.

21. Any factor that may bring about an imbalance in the quality of life of the inhabitants can be disruptive to the local residents as well as the foreign workers. While the amenity of the area may not change, the character of the site is sure to change with the presence of persons who are not "homemakers" who will have no attachment to the neighbourhood, the moreso if the worker turnover of the Appellant is fluid or high. This would not be compatible with the

character of a residential neighbourhood. This can already be sensed from the vehemence in the objections of the inhabitants. It is important to make an assessment of the development in its context, the impact of the development on its surrounding environment and its compatibility. Besides, it is known that the key objectives of the planning instruments whilst acknowledging the socio-economic development of citizens, is also to respect, preserve and enhance the quality of life especially in residential areas and to ensure compatibility of development that would allow the residents to have a peaceful enjoyment of their property and not infringe the privacy of the residents. Planning is always for the future and hence allows for some degree of speculation provided it is not unduly unreasonable. The Ministry responsible for Local Government in its wisdom has decided to set out guidelines to regulate the development of dormitories in an attempt to treat all such applications with uniformity. The Council cannot be oblivious to such framework. Good planning decisions do not mean taking decisions to allow a development, that may be foreseeably incompatible with the surroundings, and thereafter necessitate cancelling the BLUP. This will set a bad precedent. We believe that the Council was right to conclude that the proposed development will be incompatible with the current character of the area. The presence of a couple of non-residential activities, as per Doc H, within a radius of 200 m from the subject site which serve the locality does not render the area mixed zone. This ground therefore fails.

(ii) **Under ground 2:**

***The existing building is found at a distance less than the statutory setback of 0.9m with the right hand side boundary line, consent has not been obtained from the adjoining neighbours and the latter has objected to the proposed development.”***

22. The second ground of appeal is reproduced in italics below:

*The Municipal Council is wrong in law in as much as*

*A. The concept of statutory setback of .9m between the building of the Appellant and that of the nearest complainant cannot be applied as the Complainant is deemed to have consented to the division in kind before the Supreme Court.*

*B. Appellant has already given an undertaking to the Municipal Council of Curepipe on 5<sup>th</sup> August that both rooms adjoining the property of the nearest complainant will be turned into store rooms and will not be used for the living and sleeping of the lodgers.*

*C. Objections received were not reasonable and the Municipal Council of Curepipe failed to do the balancing act with the mitigative measures made by Appellant to:*

*(a) To provide a management service offering a dedicated member of the personnel for the cleaning and cooking facilities of the Subject Property, so that the Subject Property is always spick and span;*

*(b) To provide guidelines to the users of the Subject Property so that at no time, should the neighbourhood noise be above normal acceptable level*

*(c) To ensure compliance with the expected standards of conduct and behavior, through the regular monitoring to be carried by a former policeman.”*

23. We now address paragraphs A, B and C under the second ground. On the right hand side of the subject site, the Appellant's property has a boundary line but no boundary wall as such and no setback but shares common walls from within the building with the objector, Mr. Narad Bonomally Ram, albeit through no fault of the Appellant's. The layout of the building is such since it was originally one unit which was divided by law. Since the properties cannot be physically pulled apart, the consent of adjoining neighbour. Activities taking place in one part of the building may have an impact on the daily life of the neighbour living technically in the same building. Two rooms of the Appellant's building are adjacent to the property of the objector. The Appellant stated with some discrepancy in his testimony that there was only one room from the subject property that is adjacent to that of the objector but it was clear from the site visit that there were in fact 2 rooms that were adjacent. The Appellant stated that he was willing to change those into stores possibly to create more of a buffer for mitigation of noise. While this can be a possible measure to abate the noise, the apprehension of the objector stems mainly from the fact that his home will be annexed to a dormitory which will serve as residence to a group of men. Therefore, having the 2 rooms used as stores may not be the solution to the problem that the objector has with the development.

24. This being said, the consent of the objector to the division in kind cannot by any stretch of the imagination be taken to mean that he has to agree to any type of development that may interfere with the enjoyment of his property the more so as his family had been living there from well before. Mr. Narad Bonomally Ram expressed his objections at the hearing before the Council precisely on the fact that his property shares a common wall with the subject property and associated nuisance this will entail.
25. When deciding whether to grant a BLUP, inevitably the Council has to consider the title deed of the owner of the property and in view of the wide powers vested in it by law, it has a supervisory and regulatory jurisdiction over all development whether private or public. The Council thus decides on applications using planning law principles. In the present case, there have been many objections received against the proposed development. The Appellant stated that out of 63 objections received, he managed to identify some 15 objectors who reside less than 25 kilometres from the subject site and some 18 objectors who reside between 25 metres and 260 metres and 16 objectors who live more than 260 metres away while the remaining 14 objectors could not be identified by him. The point made here is that the Appellant himself cannot dispute that several objections have been received from identifiable inhabitants of the area. As per settled principles in planning policies, where there is a proposed development within a residential area, any objections received from neighbours living in the vicinity, especially a 50-metre radius, need to be thoroughly considered by the Council. The fourteen other objectors are all residents of the neighbourhood. Therefore, providing as reason that bona fide and reasoned objections have been received against the proposed development is a valid ground under the planning policy guidance. The Council has given due consideration to these objections in the course of the hearing as per undisputed evidence and has rejected the application for BLUP. In our view, since they are objections, the Council is under a duty to consider this in the interest of those who will be impacted upon by the development and weigh it up against the mitigative measures proposed by the Appellant. The main objector, Mr. Narad Bonomally Ram has objected to the Council, to the Mayor, to the Ombudsman and to the Ministry. We believe that as well as consideration of the adjoining landowner's rights, wider questions of planning and the public interest must be taken into

account by the Council, which it did, by offering a hearing to the objectors to consider their objections as inhabitants of the locality.

26. The contention of the Appellant as regards the provision of cooking and cleaning facilities to the Bangladeshi housemates cannot possibly amount to a ground of appeal as regards objections received. The objectors are concerned about the impact of the development on them and not whether the premises are spick and span. As regards the provision of "guidelines to the users" to that the noise is kept at bay, there cannot be guidelines without a proper enforcement plan. The Appellant has testified that he will appoint a dormitory manager who was previously a policeman to manage the workers. The system is far from foolproof. The dormitory manager will not reside on the premises. As per the evidence on record, the dormitory manager will be working from 8.30am until 5pm at the head office. Hence, he will only be available during the day when the workers will most likely be at work. The workers normally finish work by 5.30pm with the exception of peak time when they will end work at 7.30pm and on Sundays when they may work until 2.30pm. The likelihood that the dormitory manager will be able to manage them in practice seems rather remote and fanciful since he is employed as a Supervisor with another entity. From the testimony of the Appellant, it appears that the dormitory manager will be contacted in case of issues arising and will travel to the dormitory to look into the matter. We gauge from this that the gentleman will only be available after any mishaps to take remedial actions. We do not believe that this will be good enforcement measure of the guidelines to keep the noise level down. This ground of appeal therefore fails.

**(iii) The Municipal Council was unfair, biased and inconsistent in its decision-making process in as much as at least 5 such dormitories are operating within 1 km of the Subject Property."**

27. It is not within the jurisdiction of the Tribunal to look at the decision-making process of the local authority. This is an area of administrative law that can best be dealt with by way of judicial review. This being said, the Appellant has produced a series of photographs showing buildings that roughly fall within the area of Eau Coulee and some falling outside

it whereby dormitories are allegedly operating. Almost all these dormitories have not been granted any BLUP to operate and legal action is being taken by the Respondent. The Council cannot therefore be challenged due to the operation of these unlawful dormitories when it had been unaware of them and no planning permission had ever been granted. There was no decision on the part of the Council, hence it cannot be said to be unfair or biased. This ground therefore fails.

28. For all the reasons set out above, we find that the Council was correct in its assessment and decision. The proposed development cannot gain planning acceptance in that context. The appeal is set aside. No order as to costs.

Determination delivered on 3<sup>rd</sup> September 2021 by

**Mrs. J. RAMFUL**  
Vice Chairperson

**Mr. P. MANNA**  
Member

**Mr. S. BUSGEETH**  
Member

