

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

**ELAT 1561/18**

**In the matter of :-**

**Soudesh Kumar Mohabeer**

**Appellant**

**v/s**

**District Council of Riviere du Rempart**

**Respondent**

**DETERMINATION**

1. This is an appeal against the decision of the Respondent ["the Council"] for having refused the Appellant the granting of a Building and Land Use Permit ["BLUP"] for the construction of an eco-residence for tourists, bio-farming, rainwater harvesting and electricity production at La Salette, Grand Baie.
2. The grounds for refusal as per the letter sent by Council dated 26<sup>th</sup> January 2018 are:

*"1. Site is found Outside Defined Settlement Boundary by 700m'.*

*2. It does not qualify for release of land under Policy SD4."*

**I. GROUNDS OF APPEAL**

3. The grounds of appeal as set out in the Notice of Appeal and re-iterated in the Statement of Case are reproduced hereunder:

*“(a) Appellant will submit that the project is in line with Policy SD4 the more so for the purposes of agriculture and other uses appropriate to a rural area.*

*(b) The project provides for industrial uses that are not appropriate within settlement boundaries.*

*(c) The project is on the land which is determined to be surplus to future long term agriculture requirements and which could otherwise be developed more efficiently outside settlement boundaries.”*

4. Both parties were legally represented and the Council’s representative was Mrs. Padayachi, Planning and Development Inspector. At the outset we importantly note that the application for BLUP being for the construction of an eco-residence for tourists, bio-farming, rainwater harvesting and electricity production was not assessed on its planning merits since the assessment made by the Council was for construction of a reinforced concrete building at ground and first floors for tourist residence. This was brought to the attention of both counsel for the Appellant and the Respondent. In planning jargon, there is a wide difference between ‘eco-tourism’ and ‘tourist residence’ while the Appellant has throughout his case referred to his project as “eco-residence for tourists”. However, the Appellant chose to proceed with the appeal as it is. We have duly considered the evidence on record and the submissions of counsel.
  
5. The main contention of the Appellant is that the Council failed to understand his project and has wrongly assessed it as a Tourist residence whereas he wishes to build an Eco-residence and restaurant for Tourists. True it is that the Council did assess the application as a Tourist residence and this is admitted throughout the hearing by the representative of the Council, Mrs. Padayachi, Planning and Development Inspector, but this does not in itself render the appeal a meritorious one in any way. The proposed development must still be assessed on its planning merits, an exercise that can only be performed in its entirety by the Council, which is vested with the powers under the Local Government Act, the Building Act, the Town and Country Planning Act and the Planning and Development Act amongst others as the statutory body to assess and administer development controls as per the country’s planning scheme.

6. The Tribunal's jurisdiction under **section 4(1) (a) (ii) of the Environment and Land Use Appeal Tribunal Act 2012 ["ELUAT Act"]** is to hear and determine an appeal pursuant to a rejection by the Council under **s.117(14) of the Local Government Act 2011** on the understanding that the decision of the Council is based on its assessment of the development proposal. Where the Council has misunderstood the development proposal, as is the contention of the Appellant or the Appellant has failed to make his application correctly as is the contention of the Respondent, the fact of the matter remains that the Council did not *ab initio* assess the planning merits of the type of development that the Appellant intends to carry out on his property, and this is clearly reflected on the record.

**(i) Under ground 1**

7. It is the contention of that the project is in line with Policy SD4 the more so for the purposes of agriculture and other uses appropriate to a rural area. The Appellant testified that he had submitted a project brief to explain his business plan to the Council for it to better understand his project of eco-residence for tourists with a restaurant. As far as the hotel is concerned, he explained that it will spread over a surface area of 3000 sq. metres with a restaurant attached to the hotel consisting of approximately 12 guest rooms with attached ensuite and there will be a swimming pool, farm house, shelter farming, catchment area and electricity to be generated from solar and wind energy. As regards his background to demonstrate his understanding of Bio Farming, he stated that he followed training at the Ministry of Agro Industry, his certificate of attendance was produced, Doc C and that he has the means to do such a project. He explained that he has been working in the hospitality industry since 1996 as a hotel director as he owns a hotel in Grand Baie.
8. The Appellant's case is that for the type of project that he wishes to implement the development should be outside settlement boundary, closer to natural environment and further away from built up areas. He also stated that the subject site contains some endemic plants, is close to Old Mills found at Petit Raffray, and beautiful views such as Coin de Mire, L'Ile Plate, L'Ile Rond and that he intends to implement activities

such as horse riding and strolls. The Respondent's case on the other hand is that the Council assessed the application as a Tourist residence. Mrs. Padayachi explained that the application did not possess any element of eco-tourism in that for a hotel development, a Preliminary Environment Report should have been submitted to, and all clearance received from, the Ministry of Environment, and as regards the Bio Farming aspect, clearance should have been submitted from the Ministry of Environment and the Ministry of Agro-Industry. She also explained that the subject site does not follow the sequential approach to allow for its release and that only bad neighbour development can qualify for release under the **Policy SD4 of the Outline Planning Scheme of Riviere du Rempart ['OPS']**.

9. It is important right at the outset to understand if there is any difference between Tourist Residence, Eco-Tourism and Eco-Residence for Tourists. Under the **Tourism Authority Act 2006** "Tourist Residence" has been described as "*any premises, other than a hotel or a guesthouse, which offers sleeping accommodation to tourists with or without meals, for a fee.*" "Tourist Residence" falls under the category of "Tourist Enterprise" which is an establishment or activity specified in the First Schedule of the Act as amended by Act no.14 of 2009. An Eco-Tourism Development, on the other hand, has been described fully in the Design Sheet of **Planning Policy Guidance 1** of the Ministry of Housing and Lands, as the Ministry of Housing and Land Use Planning was known in November 2004. As per the Design Sheet, Eco Tourism is a type of tourism which seeks to have ecological elements to it such as wild life viewing, adventure, nature, culture and learning amongst others. It seeks to focus on the preservation and interpretation of indigenous natural and cultural resources by bringing the visitors close to the natural and cultural uniqueness of a site. Given the uniqueness and specificity of the site, development should be on a small to medium scale in order to minimize the impact on the surrounding natural environment.
  
10. As far as the site development is concerned for eco-tourism development, the design sheet provides that it is essential to maintain the integrity of the resource while offering a quality 'experience' to the visitor. However, the experience must not in anyway compromise the integrity of the resource. Therefore, as far as lodge

development is concerned it should not be driven by human functional needs but rather with minimal disturbance to the landscape and environment, visually well integrated and well blended into the site which in turn needs “to respond to the special character, climate, topography, soil and vegetation as well as be compatible with the existing cultural context” as per the Design Sheet. Ecotourism basically provides opportunities for visitors to experience powerful manifestations of nature and culture and to learn about the importance of biodiversity conservation and local cultures. At the same time, it also promotes conservation and generates economic benefits for communities living in rural and remote areas. These protected areas are the greatest ecotourism attractions because of their ecological value and these attractions may consist of rare or endemic species of flora or fauna, abundant wildlife, high indices of species diversity, unusual or spectacular geomorphological formations, or unique historic or contemporary cultural manifestations in a natural context. This is what Eco tourism is about. However, not all tourism in natural areas is ecotourism. Nature tourism, as opposed to ecotourism, may lack mechanisms for mitigating impacts on the environment and fail to demonstrate respect for local culture. In ecotourism development, there should be sustainability of tourism in protected areas and that is why lodges are to be constructed in order to conserve the integrity of the resource and in a manner that it is well-blended with the site.

11. On the facts of the present case, firstly the Appellant’s application for BLUP relates to the construction of a one storeyed building as a single block as opposed to construction of lodges which blend visually into the site so that its visual prominence is kept to the minimal. The Appellant has described his development proposal as “eco-residence for tourists”. It appears that the Appellant is making reference to the building which will shelter the tourists as being eco-resident. However, it is unclear as to what the Appellant means by eco-residence since there is no evidence on record to suggest that he intends to construct ecologically friendly structures which typically would blend with the natural environment such a wooden and thatched lodges that will conserve the integrity of the natural resources with the relevant mechanism to mitigate any negative impact of tourism on the site, which normally would be of ecological value. The Appellant appears to have used a term, eco-residence, which

neither describes adequately the nature of the building he wishes to have erected on the subject site nor does it describe adequately the type of development. What the Appellant seems to be describing as regards the type of activities surrounding the hotel he wishes to construct for tourists to spend their vacation is more in line with eco-friendly practices. Eco-tourism may encompass eco-friendly practices but eco-tourism development is more to do with the ecological value of the site which deserves protection and conservation with minimal disturbance to the landscape and environment. In fact, we note from the record that it is only after Mrs. Padayachi deponed as regards the elements of eco-tourism development as opposed to a tourist residence, that the Appellant's case then geared towards eco-tourism development instead of eco-residence for tourists, which appears to be a term coined by the Appellant. Hence, there are no planning instruments in our planning system which regulate such a type of development.

12. We are here primarily dealing with an appeal in respect of an application for a hotel construction. With the application being unclear as regards its nature, we are of the view that the Council could not have assessed the proposed development as being conducive to a development that needed to be located outside settlement boundary. Bio Farming, generation of electricity through natural resources are collateral developments designed to add value to the main hotel construction. And if the Appellant wished to construct a hotel, he should have sought clearances from various authorities such as the Ministry of Environment, as stated by Mrs. Padayachi, which he failed to do. The Council cannot be said to have faltered in its assessment of the project since in our view the proposed development lacks clarity in its very nature. It would appear to us that it is the Appellant who may have not have been adequately informed of the nature of eco-tourism development. His background knowledge as regards bio farming or in the hospitality industry is not questioned. It is the nature of the development, which in our assessment from what is on record, a building which will be used as a hotel to lodge tourists, that cannot be assessed as being in line with Policy SD4 for the purposes of agriculture and other uses appropriate to a rural area.

13. The Council's stand is also that since it considered the application as a Tourist Residence, the subject site does not qualify to be released under **Policy SD4 of the OPS** since it is considered as falling within the category of sensitive use. Normally it is only bad neighbour developments which are allowed outside settlement boundary. According to **Policy SD 4** which applies for **Development on Land Outside Settlement Boundaries**, there is a general presumption against proposals for development outside settlement boundaries unless the proposal follows the sequential approach to the release of sites and it is essential for agricultural purposes or for refurbishment of existing buildings or that it is a bad neighbour development or in cases of national interest and the site is capable of ready connection to utility supplies and transport networks or can be connected without unacceptable public expense; or where the proposal is from a small owner seeking residential property as a hardship case, amongst others. The justification for the application of this policy is so as *"To conserve remaining land in the District, especially land required for long term agriculture, or land that has an ecological or landscape significance, a sequential approach to new development should be followed which first considers sites within or on the edge of built-up areas in existing settlements before greenfield sites outside settlement boundaries are selected."* The Council's representative agrees that eco-tourism developments are done outside settlement boundary, we believe the reasoning being that it is more in nature with less built-up area, but she maintained that the application as done by the Appellant was not for eco-tourism development but for tourist residence based on sustainable development. We agree. Eco tourism is characterized by the natural and cultural resources of the locus and it includes wildlife watching, nature photography, indigenous and sensory features and heritage values of which no evidence was adduced to show in what way from the proposed development would offer these.

14. This ground therefore fails. We also note that there is no evidence of any BLUP application made for a swimming pool that the Appellant stated would be on the hotel premises.

**(ii) Under ground 2**

15. It is the contention of the Appellant that the project provides for industrial uses that are not appropriate within settlement boundaries. The Appellant explained that his project will consist of various activities in line with sustainable development such as production of electricity from wind and solar energy through generators and photovoltaic solar panels and that he would carry out rain water harvesting for which tanks will be installed and he will have a farm house where bio farming and shelter farming will be practiced and there will be a catchment area with water pipes for agricultural and sewage purposes. He also testified as regards the investments he has already made in favour of his project as regards procurement of equipment for generation of electricity such as solar panels and tanks to be used for rain harvesting.
16. As far as the investments that the Appellant has already made, these are not planning considerations which weigh in the balance when considering the merits of the application for the proposed development. As regards the “industrial uses” which we understand the Appellant to be referring to the equipment and mechanism to be set up for the generation of electricity, for rain water harvesting and bio farming, we believe these developments cannot be looked at in isolation. They are ancillary and connected to the main development project, which as we concluded is not an Eco-tourism development but at best, a hotel construction. We agree with the submissions of the Respondent on this score, that “the application did not carry any specificity, ingredient or substance of an Eco-Tourism project”. On this basis, with the main development not gaining planning acceptance, the collateral development proposals automatically fail. This ground therefore fails.

**(iii) Under ground 3**

17. It is the contention of the Appellant that the project is on the land which is determined to be surplus to future long term agriculture requirements and which could otherwise be developed more efficiently outside settlement boundaries. The subject site which is of an extent of 2 Arpents 55 perches, of which the Appellant is the sole owner, is



located at La Salette, Grand Baie, outside settlement boundary by 700 metres, which is undisputed. According to the Appellant's version as per his statement of case, the proposed development need not be within settlement boundary "because it is actively promoting and encouraging ecotourism." As far as the nature of the development proposed by the Appellant is concerned, he has averred in his statement of case "The purpose of the project in question is to develop an ecofriendly and environmentally sustainable tourist residence and restaurant surrounded by biopharming (free range chickens, goats, lambs, vegetables and herbs), rainwater harvesting and electricity production on part of the property..." We note that on the one hand the Appellant is describing his development as a "tourist residence" and on the other hand he is disputing this. This is rather misleading and therefore, in our view, the Council cannot be taxed for having considered it as a tourist residence and hence taken it to not be in line with **Policy SD4**. If there was one thing that Mrs. Padayachi was categorical about throughout her testimony, which admittedly lacked clarity on some aspects, it will have to be the fact that the development proposal as per the application lacked the elements to qualify as an eco-tourism project and that was why the Council considered it as an application for Tourist Residence. She explained that for an eco-tourism development, the site should be located within a natural and cultural heritage area, which it isn't, and that it should be designed and developed to offer an experience to the visitor but that these have not been demonstrated in the plan. She stated that the plan shows a tourist residence. We have already dealt with the application of **Policy SD4** under ground 1, which also overlaps with ground 3, and our reasoning remains the same. The point we seek to make is that simply because the Respondent may not have understood the project of the Appellant, it does not imply that the application of the Appellant was correctly made and that it should be granted. The application is not only flawed in the way it was made, it lacks clarity, it lacks the requisites in terms of clearances, and it lacks structure in that it does not come across as well-thought project but instead looks like an amalgam of ideas of nature-friendly sustainable practices without it either when looked at individually or collectively amounting to eco-tourism development. As per the Design Sheet on the Guidance to Eco Tourism Development, it *"must contribute to the conservation of natural areas and the sustainable development of adjacent areas and communities, and it should generate*

*further environmental and conservation awareness among resident population and visitors...*” of which there is no evidence on record to show. Biopharming, rain water harvesting, electricity production is not an eco-tourism concept. The third ground fails.

18. We wish, for the Appellant’s better understanding, to refer to an example of eco-tourism development would be for instance in the vicinity of The Rivulet Terre Rouge Estuary, which is a protected Ramsar site, where migratory birds in order to escape the harsh winters or summers, migrate for a few months on our shores for food and shelter. This is a typical attraction for eco-tourists. As stated in the Design Guidance, the basic objectives of eco-tourism are to help visitors to appreciate the natural and cultural uniqueness of the site by bringing them physically closer to it. In the village of Deux Frere, eco-lodges have built by the name “Otentic” offering tourists the experience of staying in a comfortable tent on the river bank or perched on top of a mountain in the middle of nature offering them a range of experiences.

19. We are of the view that this was a fit case for the Appellant to have applied for an Outline Planning Permission [‘OPP’] before applying for a BLUP so that the project could be better presented to the Respondent and also better understood by the Respondent. The application before us was more in line with a typical hotel construction offering eco-friendly practices, nothing that made the experience more typically Mauritian or specific to the area. It lacked the elements of eco-tourism development as defined under the **Design guidance of PPG1**.

20. For all the reasons set out above, we find that this appeal lacks merit and is therefore set aside. No order as to costs.

Determination delivered on 11<sup>th</sup> April 2022 by

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

**Mr. S. BUSGEETH**  
Member

**Mr. R. SEETOHUL**  
Member