BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 1849/19

In the matter of:

Marie Elodie de Commarmond

Appellant

v.

District Council of Riviere du Rempart

Respondent

Determination

The Appellant lodged an appeal against the decision of the District Council of Riviere du Rempart for having rejected her application for a Building and Land Use Permit in respect of the construction of a reinforced concrete building at ground floor on her land situated at a place called the Vale, Riviere du Rempart. In a letter dated 28th June 2019, the Respondent informed the Appellant of the grounds on the basis of which the Permits and Business Monitoring Committee of the Council declined the application as follows:

1. The site lies outside defined settlement boundary by about 900 metres and within the buffer zone of a stone crushing plant.
2. The application does not comply with Policy ID4.

The Appellant initially lodged four grounds of appeal, out of which three were subsequently dropped. The sole ground of appeal remained that "Because the Respondent has treated the Appellant's application unfairly in as much as much other entities who/which are closer to the stone crushing plant have been granted the required BLUP, and thereafter effected construction."
The hearing of the appeal proceeded and after the case for both parties was closed and submissions made on behalf of the Respondent, counsel for the Appellant moved to offer further submissions on a subsequent date and was granted a postponement to do needful. On the next scheduled date, counsel provided some fresh information for the consideration of the Respondent, the latter nevertheless maintained its decision to decline the application. The Appellant moved to have the Respondent's representative tendered for cross examination again, to which counsel for the Respondent objected and the matter was fixed for arguments. This was not proceeded with and, in lieu of arguments on the motion, counsel made further submissions on the appeal, so much so that it was left for the Tribunal to give its determination on the matter (and not a 'ruling' as shown on the record).

In the course of her testimony, the Appellant produced several photographs of residential premises constructed in proximity of her land, namely Documents E, F, F1, G and G1. She also

produced Document J showing the construction of a commercial building in the same area. In cross examination, she conceded that her property was located within the buffer zone of the stone crushing plant. She also conceded that the decision of the Respondent would have been justified had it not been for the presence of the other constructions in her surroundings.
The evidence adduced by the representative of the Respondent is to the effect that the District Council has adhered to policy ID 4 of the Outline Planning Scheme for Riviere du Rempart of 2006. Policy ID 4 caters for the location of 'bad neighbour development' by stating that *'the location of bad neighbour uses should follow the sequential approach commencing with Policy SD3 and where buffer zones are required or potential nuisance exists, with Policy SD 4. Bad neighbour developments are defined to include quarries, stone crushing plants...'*.

The representative also explained that the Privy Council judgment in the case of Beau Songe Development Limited v The United Basalt Products Limited and Anor. 2018 UKPC 1 had laid down the need for strict adherence to the 'one kilometre' buffer zone from stone crushing plants for any sensitive land use.
Documents L and M were produced to show the respective distances from the settlement boundary and the buffer zone of one kilometre from the stone crushing plant, with the site of the Appellant being within this buffer zone. The application submitted by the Appellant being for residential development, the rejection was justified by the above policy and judgment.

In his submission, counsel for the Appellant sought to bring evidence to establish that the Council had derogated from the established principles by granting permits within the buffer zone of one kilometre, and this, even after the Privy Council judgment of Beau Songe v United Basalt Products (supra). He contended that by doing so, the Council acted unfairly towards the Appellant when it declined her application.

We have considered all the evidence and the submissions of counsel for the respective parties.
The planning instruments (Policies ID 4 and SD 4 of the Outline Planning scheme for Riviere du Rempart 2006) have laid down the parameters that are required to be observed by the authorities in granting building and land use permits. The rationale for Policy ID 4 is set out as follows:

> *"Bad neighbour developments are required to be distant from residential and other sensitive for health and safety reasons and require buffer zones which may preclude certain forms of development within a specified distance.....In selecting new sites for bad neighbour developments, locations for some particular facilities such as landfill and stone crushing crushers should where practicable be planned up to 1 Km distance from sensitive land uses, which include residential areas, hospitals and schools...".*

The Privy Council judgment of Beau Songe Development Limited v United Basalt Products Limited (supra) has spelt out that the 'one kilometre' buffer zone is mandatory in nature, which is why the Council paid strict adherence to it. The evidence of the representative of the District Council, supported by Documents L and M, assessed in the light of the Privy Council decision led to the conclusion that the Council was justified in its decision to reject the application for a building and land use permit.

We have given due consideration to the submission of unfairness felt by the Appellant, being given the granting of permits to other applicants within the said buffer zone. This has been conceded by counsel for the Respondent. We note however from the evidence of the Council's representative that as regards Document J, the application and the building referred to was for a commercial development. This, not being a 'sensitive use' within the definition given in Policy ID 4, is, for all intents and purposes, a permissible development within that zone. As regards the other residential developments referred to in Documents D, E, F, F1, G, G1 and H, her evidence revealed that some had been granted prior to the Privy Council judgment and others had no indication of the dates when the permits had been granted. The evidence on record has revealed that there have been inconsistent decisions taken by the Council, some related to the chronology of the applications, others related to the nature of applications. Although it is on record that the Council has approved an application for sensitive use after the Beau Songe judgment (supra), we note that no evidence has been placed before the Tribunal to establish the unfairness that has been averred.

Be that as it may, this Tribunal is bound by the authoritative value of the Privy Council Judgment of Beau Songe (supra) and the indicative buffer distance of 'up to one kilometre', as laid down in the Planning Policy Guidance I, that has to be observed between bad neighbour industry and sensitive land use. In this respect, the Respondent's decision to comply with these cannot be faulted. We therefore find no reason to interfere with this decision.

The Council however has to bear in mind that, as a public body, it is accountable for its decisions. It has to show consistency in its decisions to avoid perception of bias.

The appeal is set aside. No order as to costs.

Delivered on 20th January 2022 by:

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

Mr. Pravin K. Manna, Member .....

Mr. Radhakrishna Acheemootoo, Member .....