


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

ELAT ~~1684/18~~ 1924/20 

**In the matter of:**

**Mr. Mohammad Iqbal Lackpatia**

**Appellant**

**v.**

**Moka District Council**

**Respondent**

**Determination**

This is an appeal against the decision of the District Council of Moka for having refused to grant a building and land use permit (BLUP) to the Appellant 'for the conversion of an existing structure and extension of same at ground floor to be used as a dog kennel at Caudaye Road, Dagotière'. The sole ground of refusal is contained in a letter dated 20 December 2019, and is as follows:

"In line with the guiding principle from the Ministry of Environment, Solid Waste Management and Climate Change and the Ministry of Health and Wellness, it is viewed that such bad neighbour activity is incompatible since the site lies within Settlement Boundary".

A notice of appeal was lodged at the Tribunal on the 13<sup>th</sup> January 2020, wherein the Appellant listed five grounds to appeal against this decision, but limited himself to four grounds on the day of the hearing, which are as follows:

1. Appellant is an authorised dog breeder since the 5 May 2016.
2. Appellant is the holder of a dog breeding licence issued in accordance with the Animal Welfare Act No.19 of 2013 and has renewed same on a yearly basis.
3. Appellant has secured the consent and authorisation of his neighbours which have already been obtained and communicated to the Council.
4. Other dog breeders living in the same vicinity have been granted BLUP's by the Council

At the hearing, the Appellant produced the 'no objection' letter from his neighbours (Document A) and his dog breeder's licence (Document B), the validity of which is for the period of 11 June 2018 to 10 June 2019.

The representative of the Respondent deposed and confirmed the zoning of the premises of the Appellant as being within settlement boundary. He explained that the Council had applied the planning instruments in its decision, namely Policy ID 4 of the Outline Planning Scheme which propounds that 'bad neighbour developments' are required to be distant from residential and other sensitive land uses for health and safety reasons. The SOD filed

by the Respondent also placed reliance on Policy ID 4 in support of its decision to decline the application for BLUP.

Two issues raise concern in the Respondent's stand in this case. Firstly, the discrepancy between the ground of refusal, as communicated to the Appellant, and the evidence ushered by the Council's representative. It is noted that in the refusal letter sent to the Appellant, the Respondent had relied on the 'guiding principle from the Ministry of Environment, Solid Waste Management and Climate Change and the Ministry of Health and Wellness' to find that 'such bad neighbour activity is incompatible since the site lies within Settlement Boundary'. No reference whatsoever has been made by the Respondent's representative on those guiding principles at the hearing, so much so that the Appellant and the Tribunal have been left in the dark as to those guidelines.

Secondly, it has come out in his cross examination that the Council has granted permits for the same type of activity to two other applicants and no justification has been brought forward on the basis for a departure from the planning policy.

This Tribunal has time and again drawn attention to the fact that the local authorities are public bodies and should ensure that there is consistency in the application of their policies in order to avoid the perception of bias in their decision-making.

Having said this, despite the fact that there has been a no objection raised by the neighbours, the Council has to look into the objective assessment of the proposed development in the light of planning instruments. Policy ID 4 lays down the need to locate 'bad neighbour uses' in a clustered and sequential manner, and should normally be located away from existing settlements. The list of 'bad neighbour developments' is not exhaustive, but includes animal-rearing uses. It is our view that, as held in the case of **Chokupermal v. District Council of Moka ELAT 1903/19**, the activity of the Appellant is akin to a 'bad neighbour development' within the qualification given in Policy ID 4.

We need however to make certain observations on applications for dog-breeding activity. The Appellant has explained that he has been holder of a dog-breeding licence delivered Animal Welfare Unit of by the Ministry of Agro-industry and Food Security for three years and this has been renewed on a yearly basis. The advent of new regulations requiring holders of such licence to secure a Building and Land Use Permit for the purposes of renewing their licence is a recent one, as per the evidence of the Appellant. The BLUP is issued by the local authority, which acts within the parameters of the planning instruments, as described above, whereas the renewal of licences has been done by the Ministry of Agro-industry in accordance with the Animal Welfare Act 2013. The yardstick for assessing an activity like dog breeding is different from the assessment of the location of the activity, where the zoning of the project dictates the issue of the permit. There has been no provision for a 'grandfather clause' that could have catered for existing activities like the Appellant's one. This, in our view, is a matter that calls for a policy decision for this area of activity.

As matters stand, we find no basis to interfere with the decision of the Council for it has acted within the parameters of the planning norms that apply to the issue of BLUP's. The appeal is accordingly set aside.

2022 

Determination delivered on 25<sup>th</sup> January 2020 by:

**Mrs. Vedalini Phoolchand-Bhadain, Chairperson**

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**Mr. Moothoosamy Shanmoogum, Member**

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**Mr. Roshan Seeboo, Member**

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