

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

ELAT 2000/21

**In the matter of:**

**Reduit Development Co. Ltd.  
represented by Nidesh Rajkoomar**

**Appellant**

**v.**

**District Council of Moka**

**Respondent**

**Determination**

The present appeal is against a decision of the Respondent dated 31 December 2020 to reject the application for a Building and Land Use Permit for the 'Implementation of an open car showroom (20 slots) and a Paid Parking Facility for 92 cars at Ebene Road, Reduit'.

The grounds of rejection are as follows:

1. Following the previous communication from the Road Development Authority drawing the attention of the District Council to the fact that this illegal development has generated a rise of traffic flux, neither the Road Development Authority and the Traffic Management and Road Safety Unit have given their approval. Moreover, the District Council views that undue pressure will be exerted over the already busy stretch of road.
2. The natural soil drainage characteristics of the land will be affected by the development. Overburdening by vehicles, vehicles movements and drainage systems alteration may cause risk of slope failure and landslide.
3. The District Council views the development as an isolated one and is not functional thereby representing amongst others a hazard to all road users.

A notice of appeal was lodged against this decision on the 19<sup>th</sup> January 2021 wherein the Appellant stated the following:

The grounds of refusal do not disclose any departure from Section 117(3) of the Local Government Act, are arbitrary and unreasonable. The Appellant is therefore relying on the following grounds of appeal before the Tribunal:

1. The reasons for which the RDA and TMRSU have not given their approval have not been specified. Moreover, the District Council is not the competent authority to judge whether "undue pressure will be exerted over the already busy stretch of the road".

If the local authority had the necessary competence, it would not have referred the matter to the RDA and the TMRSU.

2. The District Council has no competence in carrying out geotechnical investigations and, as such, could not have reached the conclusion arrived at ground 2 of the refusal letter.
3. The last ground of refusal does not make any sense at all. An isolated development cannot be a hazard to road users or have a negative impact on the neighbourhood. Furthermore, no reasons have been given as to why the development is not functional.
4. The Respondent has acted contrary to the prevailing provisions by putting the Appellant's application on hold on the 18<sup>th</sup> November 2020.
5. (a) The Respondent has acted in breach of the law by not notifying the Appellant in writing within 14 working days of the effective date of his application, and after approval of the Executive Committee that same has not been approved, together with the reasons thereof.  
(b) In so doing, the Respondent has acted illegally by making total abstraction of the relevance of the "effective date".

It is in the Statement of Case filed by the Appellant that he explained that on the 18<sup>th</sup> November 2020, he had been informed that the application had been put on hold by the Respondent and clearance was sought from the TMRSU and RDA seeking their views on the proposed development (Annex C to the Statement of Case). Subsequently, he was informed on the 31<sup>st</sup> December 2020 of the decision taken by the Respondent to reject the application for BLUP.

The Respondent in its Statement of Defence, maintained that the decision to reject the application was fully justified on planning grounds. It was furthermore explained that the decision to put on hold the application was taken pending the obtention of specific clearances and the Appellant had been informed of same by email on the same date, hence the 14 days period was not applicable in the circumstances.

We have considered the evidence adduced on behalf of the respective parties.

At the outset, we have to make one observation on the first ground contained in the refusal letter issued to the Appellant. This contains an expression of the opinion of the Council that there will be an increase in the influx of traffic along that road. It can be inferred that this opinion is derived from a correspondence dated 15 September 2020 (Document R) emanating from the Road Development Authority addressed to the Chief Executive of the District Council of Moka, querying if Engen Reduit [Filling station] was in possession of a trade licence. Observations had been made therein on the operation of a paid parking service in an adjoining bare land besides the filling station which have generated a rise in traffic flux and ensuing conflicts during peak hours. However, two other letters have been placed before this Tribunal, Document P dated 26 November 2020 from the Traffic Management and Road Safety Unit (TMRSU), and Document Q dated 9 December 2020 from the Road Development Authority.

In Document P, it is stated that the technical committee of the TMRSU gave its 'views comments and recommendations' by referring back the matter to the District Council for a 'planning assessment' of the common access road proposed to be used for the Filling station

and the car showroom. We fail to see any view whatsoever of the TMRSU expressed in this reply.

Document Q, on the other hand, contains a reply from the Road Development Authority where the views expressed by the RDA are set out in the form of seven conditions to be complied with by the developer. The representatives of the District Council and the RDA have both maintained in their respective testimony that this reply does not amount to a green light given for the project. Yet, as rightly pointed out by the Appellant, the first six 'views' mentioned in the letter appear to be conditions like those generally imposed by the relevant authority whenever an approval is given.

Moreover, condition 6 of the letter (Document Q) even refers to the need for the developer 'to secure necessary prior approval/ wayleaves from the RDA for any connection (if any) to existing services on Road B1'. It is only at condition 7 that the RDA stated that "All necessary permits, clearances and/or approvals from all relevant authorities and/or Ministries including TMRSU must be obtained in relation to the proposed work". On this score, we agree with the submission made on behalf of the Appellant that the tenor of the letter from the RDA is as good as an implicit clearance given by it, even if it has been maintained by the representative of the RDA that this is not an express clearance.

In the face of such a state of affairs, we cannot but highlight the need for clarity and consistency by authorities vested with powers to give 'expert opinions and views' in the exercise of the powers. Applicants and other authorities turning to them for their expertise should not be faced with views which are 'neither here nor there'. A committed and motivated decision from such authorities is what is expected. The same observation goes for the 'views' expressed by the TMRSU, which are not views at all.

Be that as it may, the conclusion drawn by the Respondent that there would be an increase in influx of vehicles at that spot is not found in neither Document P nor Document Q. Document R, which is an earlier query in respect of a trade licence held by the Appellant, has not been an issue addressed by the RDA and TMRSU in their assessment and their 'views'. This brings us to question the basis for the first ground of refusal, the competent authorities not having raised the point of traffic influx in their assessment. The first ground of appeal, namely that the local authority did not have the necessary competence to judge the pressure that would be exerted on the road, finds substance.

The second ground of refusal, namely the natural soil drainage characteristics of the land, is a technical matter, which calls for expert assessment. The potential risk of slope failure and landslide referred to in the Respondent's letter is not based on any scientific evidence, nor is there any evidence of the need for/and request made to the Appellant for an assessment to be done on this aspect.

We take note from the evidence of the Appellant that he does not propose to make any construction at the spot and the proposed parking will be an open one.

We take note also of the fact that the proposed development will take place on only part of the land, i.e a third of the total surface area of the land which has a surface area of 2.71 acres, as per the evidence of the Appellant, and there is proposal for adequate setback from the river reserves.

These considerations rightly lead to the questioning of the second ground of refusal and bring support to the second ground of appeal that the District Council could not have reached the

conclusion arrived at in the absence of the competence in carrying out geotechnical investigations/and any request made to the Appellant to carry out same if there was such a potential risk suspected.

The third ground of refusal has not been substantiated. The Appellant has raised that the Council's view of the development being isolated and not functional and represents a hazard to road users is not sustainable. In this respect, we take note of the submission that one can take judicial notice of the fact that the area where the proposed development has been earmarked is a busy one where there is a dire need for parking space. The averment that it is isolated and not functional is not substantiated. The averment that it represents amongst others a hazard to all road users is a matter that falls within the competence the RDA and TMRSU, which was the subject of consultation between the authorities and which gave rise to Documents P and Q above. Based on the observations made above, this ground, although raising important planning considerations, falls short of finding support.

As regards the fourth and fifth grounds of appeal, the District Council is empowered pursuant to Section 117(4) (a) of the Local Government Act to request for clearances from other authorities when an application for BLUP is made to it. The application was made on the 17 November 2020 and the views of the RDA and TMRSU were sought by an email dated 18<sup>th</sup> November 2020. We note that the decision of the PBMC was taken on the 30<sup>th</sup> December 2020 and this was notified to the Appellant on the 31<sup>st</sup> December 2020. We note also that there is no evidence before this Tribunal that the Appellant had taken any step to pay the required fee (or penalty fee where applicable), as provided by section 117 subsection 11(a) of the Local Government Act and give effect to the application so that the BLUP be deemed to have been approved. Raising the legality of the relevance of the effective date at this stage will only be an academic debate. This is why we set aside the fourth and fifth grounds of appeal.

On the other hand, we find that the first three grounds of appeal have been amply supported and, for all the reasons detailed out above, grounds 1, 2 and 3 are allowed.

We furthermore remit back the decision to the District Council for it to consider the imposition of conditions and request for clearances that are deemed necessary, taking into account the traffic fluidity concerns expressed and the access to the proposed parking, in line with the traffic management in the area, and ensure compliance of same by the Appellant.

Delivered by:

Mrs. V. Phoolchund-Bhadain, Chairperson .....

Mr. Shanmoogum Moothoosamy, Member .....

Mr. Radhakrishna Acheemootoo, Member .....

Date: 13 June 2022