

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 2019/21

In the matter of:

Saint Felix Agri Limited, represented by its director

Appellant

v.

The District Council of Savanne, represented by its Chief Executive

Respondent

DETERMINATION

The appeal is against the decision of the District Council of Savanne for having declined the application submitted by the Appellant for a building and land use permit for the development of a livestock rearing project at Chamouny. The sole ground of refusal, as communicated to the Appellant on the 16th April 2021 (as per the notice of appeal) is the proposed development (rearing of 3000 sheep and 200 goats as phase 1) would generate much inconvenience in terms of odour nuisance which would negatively affect the surroundings.

The Appellant has appealed against this decision on two grounds:

1. The Respondent was wrong both in law and on the facts to set aside the application in that it failed and neglected to apply the prescribed/relevant planning instruments and material considerations in its overall assessment of the planning merits of the said application; and
2. It adopted the wrong approach in its appraisal of the Appellant's application.

The Statement of case filed by the Appellant listed out the objections raised at hearing at the level of at the Council and responded to arguments raised. We do not propose to consider these at this stage, as the appeal process before the ELUAT is to consider whether the decision was rightly taken by the Council, by assessing the decision contained in the letter of refusal and in the light of the grounds of appeal raised.

The Statement of Case filed by the Appellant lists out in it annexes the clearances obtained from various authorities, namely, the Preliminary Environmental Report Approval (Annex 10), the health clearance from the Environmental Health Engineering Unit of the Ministry of Health (Annex 15), the Food and Agricultural Research and Extension Institute clearance (Annex 15 A), the Ministry of Agro-Industry and Food Security (Annex 15 C), Traffic Management and Road Safety Unit (Annex 15 D), Forestry Service (Annex 15 E).

Evidence adduced by the Appellant, as per the record, is to the effect that a 'Preliminary Environmental Report' (PER) with twenty-nine conditions had been issued to the Appellant by the PER Committee of the Ministry of Environment on the 29th October 2019. Conditions contained therein are to the effect that the permission had been granted for the rearing of 3,200 animals (3,000 sheep and 200 goats). The conditions are geared towards avoiding environmental pollution and nuisances. There is also the Environment Monitoring Plan (EMP) that has been approved along with the PER to ensure compliance with environmental standards. Two lacunas have been highlighted, the conditions relating to clearances from the Water Resources Unit and the Road Development Authority which have not been met with.

From a planning perspective, the Appellant has set out how the planning norms that should apply to this type of activity have been met with, among others, the fact that the proposed development will observe the acceptable distance of sensitive land use from the bad neighbour that the project constitutes (in accordance with the Policy ID4 of the Outline Planning Scheme). Furthermore, from the Appellant's evidence it has been established that the project will be at a distance of 1.1 kilometers from the nearest residential area, namely Chamouny.

The Respondent has in the Statement of Defence, explained that the decision of the PBMC dated 24 February 2021 to reject the application are as follows:

- (a) It was presumed that the promoter would undoubtedly increase the number of animals to be reared in future
- (b) Odour nuisance would undoubtedly emanate from the proposed development
- (c) Inconvenience and prejudice would be caused to prospective projects by the neighbours
- (d) Odour and nuisance would cause inconvenience to the neighbourhood.

The sole ground of refusal communicated to the Appellant (*supra*) rested on the inconvenience in terms of odour nuisance which would be generated and would negatively affect the surroundings.

The evidence adduced by the representative of the Respondent, Mrs. Bosquet differs substantially with the description of the locus as described by the Appellant. She first referred to the presence of a residential zone known as 'Mont Blanc' in the vicinity of the proposed project. We note that neither the Development Management Map nor the Google photo (Annexes 8 and 8A to the Statement of Case) refer to the Mont Blanc (which is shown on the map) as a residential location. Secondly, she explained that the Council has already informed the Ministry of Housing and Lands in the context of the review of the Outline Planning Scheme that there is a proposal for the site to be allocated for an eco-tourism development. She added that there was a PDS project by Emerald Heights adjoining the site of the present appeal, for which a BLUP and clearances had been obtained. More recently there has been a project for a multi-purpose complex, including a wedding hall at a distance of less than 150 metres from the site, for which an Outline Planning Permission has already been approved and the promoter has already obtained a land conversion permit for the project. Furthermore, there were several owners of adjoining lands who were present at the hearing at the level of the Council who had voiced out their objections. There was also the

apprehension that, despite the initial PER granted for 3200 heads, there will be an increase of livestock units to 10,000 heads in future, thus causing more prejudice to the adjoining land owners. In cross examination, however, she conceded that the mitigating measures proposed to avoid odour nuisance, which is the sole ground of rejection, are adequate to cater for this.

The witness for the Respondent, Mr. Mussai's testimony is to the effect that there exist other high-end developments that have been earmarked for the said area, namely, a 'RES development' on an adjoining land. He confirmed that the RES project is an 'ongoing one' but which had been delayed due to some legal hurdles (a case pending before the Supreme Court), but for which the BLUP that had been issued has not been revoked. Another adjoining land as shown on Document A produced by him is subject to an application for an Outline Planning Permission (OPP) for which the required documents are being processed at the level of the Council. The witness also referred to erroneous information that had been imparted to the PER Committee on the consultation process with the neighbourhood, as there has been no consultation whatsoever.

We note that much of the contention of the witness relate to an erroneous assessment of the PER process at the level of the Ministry of Environment. The PER Report has rightly placed emphasis on the mechanisms to be set up by the developer to curtail the effects of any potential pollution. The Appellant placed reliance on the conditions as laid down in the PER conditions and has laid emphasis on the fact that the Ministry of Environment is the competent authority to monitor the environmental hazards that the project may cause. However, the present appeal is not against the PER granted by the Ministry of Environment but against the decision of the Council to refuse to grant the BLUP. The assessment of the zoning and compliance with the planning norms that apply to such and such areas are, '*par excellence*' the jurisdiction of the local authority. In this respect, the Council, based on the evidence of Mrs. Bosquet, has acted within its jurisdiction by looking for the zoning of the project and the applicable norms, particularly the proximity of the proposed development with sensitive uses (here residential use) and taking on board the concerns expressed by the objectors at the hearing.

We have taken note of the evidence that one Mr. Polin from 'La Vallee des Couleurs' had not been consulted in the process of granting the PER. As stated above, the process before the Ministry is not under appeal here, but the decision of the Council is. We note also that much emphasis was placed by the Respondent and the witness on the potential for growth of the project to reach 10,000 heads of livestock and the environmental impact of this increase. We find no need to address this as what has been approved is 3200 heads and this is the subject of the appeal.

What is questionable on the part of the Council is the fact that all the zoning concerns expressed by its representative were at no point embodied in the letter of refusal issued by it. Since the sole ground of refusal was the issue of the odour nuisance, the Appellant could not be faulted to have geared its appeal on this sole aspect. Yet, at this juncture, the evidence that has transpired from the hearing is that there are sensitive uses that have been approved, or under consideration, in close proximity with the site for the proposed development, and the objections do relate to the odour nuisance that would emanate from the development. Although, the site falls outside settlement boundary, it does *a priori* comply with Policy ID4 of the Outline Planning Scheme relating to Bad Neighbour Development. Yet, the evidence adduced by the representative of the Council and that of witness Mr. Mussai, brings a totally

different light on the nature of the surrounding lands. The evidence of these witnesses has at no point been rebutted by the Appellant, so much so that the Council, having issued a BLUP and considering an application for OPP for sensitive land use within that same region, and having officially considered the setting up of an eco-tourism project in that area, cannot turn a blind eye to the potential nuisance (odour among others) that the proposed development can bring. Furthermore, and more importantly, it cannot fetter its discretion by relying solely on the competent authority dealing with environmental pollution (the PER Report).

We make a final observation on the zoning of the project: The Ministry of Environment and Sustainable Development issued a guideline, the "Sectoral Guideline No.4 on the Content of Preliminary Environmental Report (PER) for the Rearing of Livestock including Cattle, Goat and Sheep" states as follows:

"2.0 : Prior to embarking on rearing of livestock, due consideration has to be given to site selection criteria:...The site should be at a minimum distance of 200 metres from the limits of settlement boundary, any nearest residential building outside settlement boundary and other sensitive land uses (including education and health facilities)." (underlying is ours).

The presence of other proposed land use, some of which are sensitive land use, rightly bring the Respondent to question the proposed development even if it is to be operated outside settlement boundary. The proposed development, despite being a laudable economic one, its actual location (as per the evidence adduced) is such that it falls short of being compliant with the required distance to be observed. The potential odour nuisance that would affect the surrounding areas is cause for concern. The first ground of appeal is therefore not upheld. We also do not find that the Respondent adopted the wrong approach in its appraisal of the Appellant's application. Both grounds of appeal do not succeed.

We accordingly set aside the appeal.

No order as to costs.

Delivered on 26th January 2022 by:

Mrs. V. Phoolchand-Bhadain, Chairperson

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Mr. Roshan H. Seeboo, Member

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]Mr.Sujoy Busgeeth, Member

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