

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

**ELAT 1988/20**

**In the matter of:**

**BEST DEAL PROPERTY DEVELOPMENT LTD.**

**Appellant**

**v.**

**MINISTRY OF HOUSING AND LAND USE PLANNING**

**Respondent**

**Determination**

The present appeal is against the decision of the Respondent dated 28<sup>th</sup> October 2020 for having declined the application made by the Appellant through its agent, one Mr. Mohamed Aljabeer Dinally, for sub-division of a plot of land situated at 'Calebasses' into seventeen lots for residential purposes. The grounds of refusal are that the site is situated at about 60 metres outside settlement boundary and that the proposed development does not follow a sequential approach under the exceptions of Policy SD 4 of the Outline Planning Scheme to be qualified for development and is not capable of ready connection to existing transport network without public expense.

In a notice of appeal lodged before the Tribunal on the 16<sup>th</sup> November 2020, the Appellant raised three grounds of appeal as follows:

- (a) Because the Respondent erred in finding that the proposed development does not follow the sequential approach under the exceptions of Policy SD4.
- (b) Because the Respondent failed to find that the presumption against development under Policy SD4 had been rebutted in the circumstances.
- (c) Because the Respondent erred in finding that the proposed development is not capable of ready connection to existing transport network.

In its Statement of case the Appellant submitted that, under grounds (a) and (b) (supra) the proposed development does follow the sequential approach under SD4 for the following reasons:

- a. The appeal site is surrounded by residential development,
- b. The proposed site is conducive to the surrounding amenities, the more so that the project of sub-division is destined for residential development,
- c. The proposed development followed the sequential approach to the release of sites identified in SD1, SD2 and SD3,
- d. The proposed development will not lead to any ribbon or scattered development,
- e. The proposed development will consolidate gaps in otherwise built-up area.

The director of the Appellant company, Mr. Kanhya, deposed at the hearing and produced a copy of the context plan which is an aerial map (Document A) as well as a context location plan drawn by a land surveyor (Document B). These documents show the different access roads to the site. Document C produced shows the presence of electric poles at a distance of 50 to 100 metres along the road leading to the site. He indicated also the presence of residential developments opposite the site and within a perimeter of 50 to 75 metres from the site, more particularly at a distance of 54 metres from the edge of the settlement boundary (as indicated on Document B). A photograph produced as Document C shows the presence of new houses being built and Document D showing the presence of a concrete building opposite the site of his proposed development. The description of the area surrounding the site, as given by the Appellant's representative and supported by Document A is that there are residential developments, houses as well as plots purchased for residential developments at a distance of 50 metres from his property. He did not dispute the fact that the site is located outside settlement boundary but insisted that despite this, there were many residential developments. He added that the land was an agricultural land at the time of purchase and he had subsequently obtained a land conversion permit (copy of which is at Annex E to the Statement of Case). He produced copy of his title deed as Document E. He maintained that the proposed development will not be a 'stand-alone' one as there are many residential developments within a radius of 60 metres from his site and they are serviced by utilities, namely electricity and water. In cross examination, the Appellant's representative stated that he would undergo all expenses to bring the tarred road until his plot of land.

The Respondent, in its statement of defence (SOD), has stressed on the fact that the proposed development does not fall within the exceptions that are allowed under Policy SD4. Policy SD4 of the Outline Planning Scheme lays down a general presumption against development outside settlement boundaries unless it has been shown that the proposal has followed the sequential approach to the release of sites identified in SD1, SD2 and SD3. The SOD highlights that:

- (i) The site is not readily connected to transport
- (ii) The closest residential development is approximately 60 metres from the site
- (iii) The subject site is surrounded by undeveloped land
- (iv) The subject site does not follow the sequential approach for its release
- (v) The proposed development will be a stand-alone development
- (vi) The proposed development does not constitute consolidating gap as it lies approximately 59 metres from settlement boundary and is not surrounded by residential developments.

The main witness for the Respondent, Mr. Juggoo, Development Control Officer, in his testimony, sheds another light on the location of the proposed development. He stated that he had been on the site and referring to Document G, the development management map, and Document H, the aerial photo of the site, he maintained that the proposed development is at a distance of 59 metres outside settlement boundary and the residential development referred to as R1, R2, R3 and R4 shown on Document H are also outside settlement boundary and R1, being the closest to the site, is at a distance of 80 metres from it. He relied heavily on the distance from the relevant

points to conclude that the site does not qualify as one following the sequential approach exception provide in Policy SD4.

Indeed, a perusal of the documents produced indicates that from a geographical perspective, the requirements listed under the exceptions contained in Policy SD4 are not satisfied.

We agree with counsel for the Appellant that the issue of access to utilities (electricity for instance) is of no relevance as this has at no time been a criterion for the Respondent's decision. The issue of capacity of ready connection to existing transport network without unacceptable public expense is one of the grounds of refusal. We note that the Appellant has stated that he is willing to do needful to tar the road leading to his site, thus providing the access without 'unacceptable public expense'. The second ground of refusal is a matter that could eventually be addressed. In this respect, the third ground of appeal questioning the second ground of refusal is substantiated.

As regards grounds 1 and 2, the evidence of witness for the Respondent, Mr. Juggoo, has shed a different perspective to the assessment of the site. His version that the site is at a distance outside settlement boundary and is certainly not surrounded by residential developments, as stated by the representative of the Appellant, is corroborated by the real evidence, particularly Documents G and H. As per the evidence of witness Mr. Juggoo, the closest residence (referred to as R1 on the aerial map) is at a distance of 80 metres from the site for the proposed development. We are also left in the dark as to the legal status of the residential developments (R1 to R4). Furthermore, the mere presence of these residences does not satisfy the **clustering principle**. This principle is referred to in the Outline Planning Scheme as one of the two major key objectives:

*"Clustering principle" constitutes*

- (i) Clustering of new developments in and around existing settlements and especially identified growth zones;*
- (ii) Making more efficient use of existing facilities and service and strengthen the economic and social linkages between them*
- (iii) Clustering homes, jobs and leisure opportunities*
- (iv) Assisting in alleviating expensive public infrastructure costs*
- (v) Improving the integration of land use and transport including reducing the dependency on private car (especially for journeys to work).*

*"Sequential approach to site development" which*

- (i) Supports the clustering principle*
- (ii) Seeks to ensure that sites and land parcels in and around already built-up areas and defined settlement boundaries have been looked at before trying to convert more valuable agricultural land or developing quality landscape and environmentally-sensitive Greenfield sites.*

We take note that the Appellant has obtained a land conversion permit from the Ministry of Agro-Industry. The Appellant, however, still has to meet other planning criteria. We note also that in view of its location, the proposed development will not consolidate gaps in otherwise built-up areas as stated in the statement of case.

We have taken into consideration the submission of counsel for the Appellant that the issue of distance should be balanced with other factors in the assessment of the site. Nonetheless, we cannot overlook the preponderance of 'zonings' and 'boundaries' that are present in planning instruments, the prime one being the settlement boundaries and the need for sequential approach allowing for development in limited cases for the release of sites. Policy SD4 and the exceptions contained therein as well as Policy SD3 of the Outline Planning Scheme are illustrations of this approach.

Having taken into consideration the evidence on record and the submissions made, it is our view that the Respondent did not err in finding that the proposed development does not follow the sequential approach under the exceptions of Policy SD4 and the Respondent did not err in finding that the presumption against development under SD4 has been rebutted.

The first and second grounds of appeal are therefore set aside.

Despite the observations as regards the second ground of refusal, the appeal is set aside.

No order as to costs.

Delivered by:

Mrs. V. Phoolchand-Bhadain, Chairperson .....

Mr. Mohamad I. Suffee, Member .....

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

Date: 22<sup>nd</sup> September 2022