

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 2064/21

In the matter of:

Mr. Roshan Issur

Appellant

v.

The District Council of Moka

Respondent

Determination

The Appellant had made an application for a Building and Land Use Permit for the extension to a building at ground floor and addition at first and second floors for residential purpose at Royal Road, Montagne Ory. He was informed by the Respondent that the Permits and Business Monitoring Committee had rejected the application a decision on three grounds, as per Document A produced. At the hearing, counsel for the Respondent informed the Tribunal that the second and third grounds of refusal are not insisted upon. The sole ground of refusal that remained is the following: 'The construction is contrary to the Building and Land Use Permit and approved drawings which had been issued by the Council and in respect of which an enforcement notice had been served. As at date, the illegal parts have not been pulled down to comply with the requirements of the Notice'.

The Appellant raised four grounds of appeal:

1. The Respondent failed to take into account that the porch on the first floor is but an extension of the already constructed porch on the ground floor which was existent and for which a BLUP was already granted.
2. The Respondent erred in refusing to grant the BLUP on the ground that the construction is against the BLUP and approved drawings already issued when it was its duty to consider the application for BLUP holistically and as a separate application from the previous BLUP which were granted, and that the fact of non-compliance with previous BLUP should not be a bar to the granting of fresh BLUP.
3. The Respondent took an irrelevant consideration when it stated as a ground of refusal the fact that the dimension was not indicated on drawings, and that the layout drawing submitted is not readable, which are not valid reasons to refuse to grant the BLUP, for which it could ask the Appellant to clarify.

4. The Respondent failed to consider that there are other premises in the neighbourhood of similar distance with the main road, and that it has a duty to act fairly and indiscriminately towards all residents of the neighbourhood.

The third ground of appeal relates to the grounds of refusal that have been dropped. We find no need to address this ground. The other three grounds will be considered together taking into account the evidence adduced.

It has come out that there have been successive applications for BLUP made by the Appellant, some approved, some rejected, and there have been applications submitted after enforcement notices have been served on the then applicant. These have been justified by the Appellant as being the result of different phases at which the constructions started and based on budgetary considerations. The Respondent's evidence points towards an applicant who flouts his obligations and seeks to redress unauthorised constructions by applying for BLUP's 'a posteriori'.

For the purposes of the application, subject matter of the present appeal, it has transpired from the evidence adduced that construction of the porch at first floor and staircase have already been done and there have been an enforcement notice issued by the Respondent (Document E), yet the Appellant proceeded with the said construction. The Appellant seems to rely on the BLUP that was granted to him on 29th June 2021 (Document C) to seek justification for the porch whose construction that he embarked upon at the first floor. He conceded in cross examination that the drawings submitted for the June 2021 permit made no reference to the porch and also conceded that the general conditions contained in the permit issued in June 2021 specifically state at condition 1 that '*Before starting any other development e.g. additions, extensions, enclosures, walls, etc, on site, developer should apply for a new BLUP*'. Furthermore, at condition 5 it is clearly stipulated that '*All development and construction work to be carried out as per approved plans, approved by the Council and approved BLUP.*' Clearly, this has not been observed in this case.

Now, the Appellant is relying on the fact that he had been denied a BLUP for the construction at the ground floor and was even issued with an enforcement notice, yet this had been cured when he applied for a BLUP subsequently and was granted with same. The submission made on his behalf is that the requirement of setback of six metres from the Classified Road B, where his residence is found, had been dispensed for the ground floor, as such, the same should apply for the first floor. We do not agree with this reasoning. The Planning Policy Guidance clearly stipulates the requirement of six metres from the roadside boundary in the case of a Classified Road B. It is the duty of the Respondent to apply this PPG in its decision. Considerations which may have dictated the decision in respect of the construction at the ground floor are not before us. The representative of the Respondent attempted to explain that the context plan of the neighbouring houses could have been a consideration. Yet, the evidence that has been adduced in the course of the present hearing has not brought any such justification. The context plan produced as Document G shows pictures of buildings where, visibly, the required setback has not been observed. We have had no clarification on the distance of these buildings from that of the Appellant which could have been considered for the sake of consistency. It has also been submitted, and left undisputed, that the constructions in the area are old constructions which had not observed the six metres setback, and this was one of

the considerations at the time of approval of the construction at ground floor done by the Appellant. The Appellant seems to be bent relying on this to pursue further construction at the first floor. We find that this is not acceptable, the more so that the Appellant started his construction without permit, flouting the conditions of the BLUP that he held and now raises discrimination in support of his flouting the law.

We find no reason to interfere with the decision of the Respondent in enforcing the law, the more so that there has been a breach of condition of the BLUP issued to the Appellant on the 29th June 2021 and that there is an enforcement notice served on the Appellant and which has not been complied with. The Appellate process before this Tribunal cannot be used to circumvent the power of the local authority under section 117(10) of the Local Government Act, under which the Council can monitor development so that it is done according to planning norms.

For the reasons given above, we dismiss the appeal. No order as to costs.

Delivered on the 9th January 2023.

Mrs. V. Phoolchand-Bhadain, Chairperson

Mr. S. Moothoosamy, Member

Mr. I. Suffee, Member