

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 2089/22

In the matter of :-

Mr. Mohammad Kawsar Al-Yasa DILMAHOMED

Appellant

v/s

The District Council of Moka

Respondent

DETERMINATION

1. The present appeal is against a decision of the District Council of Moka [“the Council”] for not having granted a Building and Land Use Permit [“BLUP”] to the Appellant for the construction of a reinforced building at ground, first and second floors for residential purposes at Royal Road, Montagne Blanche. The reasons for refusal as communicated to the Appellant via the National E-Licensing System [“NELS”] are:

“1. According to Policy SD4 of the Moka Flacq Outline Planning Scheme and the Development Management Map, the site lies outside settlement boundary whereby there is a general presumption against development.

2. Land Conversion Permit has not been submitted as per guiding principle of the Sugar Industry Efficiency Act.

3. Name of Applicant on application form does not tally with NIC.”

2. The Grounds of refusal as per the Notice of Appeal are as follows:

(a) As per Notary Studies of Vinay Deelchand, the land is not subdivided for agricultural purpose. See the map depicting the other properties within close proximity of the appellant’s land.

(b) Land Conversion Permit is not required as per section 2 of the land conversion permit guideline.

(c) The name of the appellant is correctly spelt, only for the “hyphen” “-“ (Al Yasa) which is automatically removed by the operating system’s autocorrect function.

3. In the course of the hearing of the case, the Respondent dropped the second and third grounds of refusal. The corresponding Grounds of Appeal (b) and (c) are accordingly set aside. We are therefore to make a Determination on the basis of the first ground of refusal. The Appellant deponed and was legally represented. The Respondent was represented by its Planning and Development Inspectors, Mr. Hemrage and Mr. Chellapen. No other witnesses were called. We have duly considered the evidence on record as well as submissions of both Counsel.

Ground of Appeal (a)

4. It is the contention of the Appellant under this ground that as per the research of Notary Deelchand the land is not subdivided for agricultural purpose and that there are other properties in close proximity of the Appellant's property. The Appellant produced a report from Notary Vinay Deelchand, marked **Doc A**, showing that the extent of the property is 506.20m², is situated at Montagne Blanche in the District of Flacq, that the Appellant does not own any other land exceeding 10 Arpents in aggregate, the land has not been subdivided for agricultural purposes and that according to a declaration made by the owner of the land, the property is not found in any irrigation zone nor does it form part of any agricultural morcellement.
5. The refusal of the Council is based on the **Policy SD4 of the Moka Flacq Outline Planning Scheme** and the Development Management Map and as the site lies outside the settlement boundary there is a general presumption against development. Under **Policy SD4 of the Moka Flacq Outline Scheme ["OPS"]** residential development may be allowed outside the settlement boundary provided it follows the sequential approach and certain criteria are met. Doc B, a google map was produced by the Appellant demonstrating the subject site is surrounded by mostly agricultural or waste land with no built-up area save for 2 buildings which are next to his property, one being a store as per his testimony and the other being a commercial building, named EKM, shown in photograph marked B2. On the opposite side of the road the presence of another commercial building is noted, as shown in photograph marked B1, which

according to the Appellant is a company by the name of Ingenium. No other building is noted in the vicinity and there is no evidence on record to suggest the presence of any residential property within the vicinity of the Appellant's property. This evidence is not only confirmed by the Appellant but also corroborated by the evidence of Mr. Hemrage. Infact the Appellant testified that there are mostly sugarcane fields surrounding his property for around 200 metres. Mr. Hemrage gave evidence to the fact that the subject site was outside the settlement boundary by a distance of about 28 metres. Neither was the location of the settlement boundary nor its distance from the subject site successfully challenged although Counsel appearing for the Appellant objected to a Google Map showing the settlement boundary being produced on account of the fact that it was not certified by the Council. In any event, no evidence was produced by the Appellant suggesting an alternative location of the settlement boundary, if that was his case, which does not seem to be so from the pleadings. The witness for the Respondent showed the Tribunal the location of the relevant settlement boundary on the Development Management Map but in view of its bulkiness the map could not be produced. We are satisfied that the subject site is found outside the settlement boundary as per the evidence of Mr. Hemrage.

6. Under **Policy SD4** of the **OPS** there is a general presumption against proposals for development outside the settlement boundary provided certain exceptions apply. The proposed development being outside settlement boundary would, in this case, not follow the sequential approach which is a pre-requisite when applying **Policy SD4**. Whether the subject site is connected to the basic utilities or is easily accessed through a main road, here the B27, is a secondary issue to be considered once the development proposal satisfies the sequential approach, which in our view is not the case here on the basis of the evidence. There are numerous unconsolidated gaps with large areas of sugarcane around the subject site. The construction of a residential building can only be allowed where such development is permissible. Mr. Hemrage explained that in this area there are unconsolidated gaps even within the settlement boundary hence the availability of land for residential development. This being the case, we believe, the Council was right in its decision.

7. Allowing such a development would entail large scale removal of land from agriculture outside settlement boundary where normally only bad neighbour development is favoured. The development that exists in the vicinity of the Appellant’s property is only 3 non-residential buildings, which is in compliance with the **OPS**. A residential development over there would neither be in compliance with the provisions of the **OPS** nor fall within the exceptions, in this case, due to the availability of land within the settlement boundary which favours the clustering principle of allowing new development in and around existing settlements. Furthermore, there is no evidence on record to suggest that the Appellant is a ‘small owner’ who is applying under the “hardship” exception as set out under **Policy SD3** nor does the plot size satisfy the criterion. So, we fail to see in what respect should this case be treated any differently. The ground therefore fails.
8. The Council raised in its Statement of Defence that the subject site lies within the 200-metre buffer of a cattle and sheep shed but since this was not one of the grounds of refusal and it was not made a live issue, the issue is disregarded. Otherwise, for all the reasons set out above, we find that the appeal is devoid of merit and the decision of the Council was correct. The appeal is set aside. No order as to costs.

Determination delivered on 8th May 2023 by

Mrs. J. RAMFUL-JHOWRY
Vice Chairperson

Mr. R. SEEBOO
Member

Mr. R. SEETOHUL
Member