

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

**ELAT 2157/23**

**In the matter of :-**

**Mr. Shakil Juddoo**

**Appellant**

v/s

**The Municipal Council of Beau Bassin/Rose Hill**

**Respondent**

**IPO**

**Land Drainage Authority**

**Co-respondent**

**DETERMINATION**

1. The present appeal is against a decision taken by the Municipal Council [“The Council”] for having rejected the application of the Appellant for a Building and Land Use Permit [“BLUP”] for the construction of a one storeyed residential building along Road Side at Lot.1, Berthaud Avenue, Trefles, Rose Hill. The Appellant was informed of the decision of the Council via the National E-Licensing System [‘NELS’] on 16<sup>th</sup> February 2023. The reasons for refusal are:

*“The development is not in accordance with the:*

- *Town and Country Planning Act*
- 1. *Subject site is found in a region which is prone to flooding and any development thereon would accentuate the already existing flooding issues in the region as just witnesses during the heavy rains. Therefore the subject site is not being recommended from a land drainage perspective.*

- *Required clearances have not been granted*
  1. *Subject site is found in a region which is prone to flooding and any development thereon would accentuate the already existing flooding issues in the region as just witnesses during the heavy rains. Therefore the subject site is not being recommended from a land drainage perspective.”*
- 2. The Appellant deponed in favour of his case and was *inops consilii*. He did not call any witness. The Respondent and Co-respondent were legally represented. Mr. Chitamun, Building Inspector deponed on behalf of the Respondent while the Co-respondent was represented by a Land Drainage Officer, Mr. Ramdohur. We have duly considered all the evidence placed before us as well as the submissions of Counsel.

I. **Grounds of Appeal**

3. The grounds of appeal as set out in the annex to the Notice of Appeal are reproduced:

“1. A Building and Land Use Permit (BLUP) has been issued to me in June 2022 by the Municipal Council of Beau Bassin/ Rose Hill with Ref: BLP2-MCBBRH-2022-528 for Volume number of Land/Property: 9190/49 and with PIN 1711530246. Note that the BLUP issued is less than one year.

2. (i) Before the purchase of the plot, I sent an e-mail with site/location plan to clarify about the status of the land to the Director of Land Drainage Authority (LDA) on 18.11.2022 and 21.11.2022. But there was no reply from LDA. When I visited the office of the LDA (entry made in Visitors Book on (18/21.11.2023), I was told that LDA officers do not receive members of the public. I made a request at the reception to kindly leave a message to the inspector/officer to check my emails and at least reply through a phone call. Still there was no reply from the LDA. Later on, after the rejection of the Permit by the Municipal Council of BB/R.Hill, when I had sent an another email to LDA (21.02.2023) and visited the office of the LDA (entry made in visitors book on 21.02.2023), thereby I insisted upon meeting an officer to

clarify issues regarding the rejection. Again I wasn't allow. I was told that officers are not available. **HOWEVER, THIS TIME I RECEIVED AN EMAIL IN THE AFTERNOON FROM THE LDA STATING SAME AS MENTIONED IN THE EMAIL BY THE MUNICIPAL COUNCIL ( subject site is found in the flood prone area.....)**

(ii) I further sent an email to the Land Irrigation Office at Port Louis on 21.11.2023 also to make sure that the site does not fall in an irrigation zone. Email was not answered. Eventually, my wife and I went to query and we were received by officer Mr Dosieah/Mr Nundloll. We were told that the area does not fall in the Irrigation zone.

(iii) Lastly, after a visit at the Municipal Council of Beau Bassin Rose Hill with the officer Mr Quirin, the latter told that he does not see the site falling in the flood zone. He reassured my wife and I that the plot/site already got a BLUP which was issued by the Council in June 2022. Hence, it should not be an issue as such to grant permit for construction subject to plan details which should be submitted for construction. Following all these, then only my wife and I went ahead to purchase the plot in December 2022.

3. Following the two weeks heavy rainfall in January 2023, I've personally gone on the site and make videos which clearly show that there are no accumulation of water around my plot of land and **NO FLOWING DOWN OF WATER** too. Instead water running down the mountain mainly affects the area **AFTER** cremation and **BEFORE** Khoodaruth Quincaillerie. Hence, the Site is **NOT** a flood zone area but far away from the flood zone which is about **240 meters as from Kulfi Dream/Samech Co. Ltd Building**. Besides I do not see how the site can accentuate to the existing flood.
4. Flooding in the area **between Cremation and Quincaillerie Khoodaruth** has existed since long years back. But there has **NEVER** been water accumulation after Quincaillerie Khoodaruth towards Trefles/Rose Hill.

5. Recently in the last 3 years, the road Ligne Berthaud has been asphalt with proper pavements and **DRAINAGE SYSTEM along the NAME side of the road** where lies the site/my plot. I am agreeable and there is possibility for me to erect a retention wall with a drainage from the subject site which would go and connect to existing drainage along Ligne Berthaud. Otherwise as may be suggested/instructed to me by the Council.
6. Videos/pictures are available of the site during the heavy rains on **26.01.2023 at 14 17**. Pictures/videos show **no water accumulation/no water flowing** on the site or nearby. No residential houses around the site/ plot were affected by the recent flood or any subsequent flood.
7. Adjacent to the flood (falling same side of the road), there are **FIVE residential houses with ground and first floor which are quite recent**, even one car mechanic operating about 70 meters away from where my plot ends and which have not been affected by any recent flood.
8. After the cremation, near the **boundary Beau Bassin Rose Hill/Quatre Bornes**, on the left/on the mountain side, a ground + first floor house is situated in the Flood Zone Area. The house is NOT causing any problem aggravating the flood condition in the area.
9. **Gated Complex** which has recently been constructed still on the side of the mountain and is situated at **180 meters away from the Cremation**. The gated site **falls entirely in the flood zone**. Where there is great accumulation of water after **every** heavy rainfall. Still the Municipal of Beau Bassin Rose Hill has given permit and **yet this place is know since long back for accumulation of water**.
10. **Note:** An inhabitant of 72 years old who is a born resident in that area has given his consent to testify about the specific regions along Ligne Berthaud where flood exist and yet construction permit has been issued to new residents.

11. HUGE building (**Samech Co. Ltd/Kulfi Dream**) which is along Ligne Berthaud again on the side of the mountain and is also a quite recent building falling in the flood zone where water accumulation is often seen. It is only meters away from the Gated Complex side. The building is fully operating with several rented rooms/offices as may be seen in the pictures.
12. After Quincaillerie Khoodaruth, there is a road leading towards the foot of the mountain. There are **several residential houses which are recent**. It goes far in and yet found in the flood zone area and **where the flood zone area ends/accumulation of water ends**.
13. Normally during heavy rainfall, Police blocks Ligne Berthaud road **as from Cremation up to Quincaillerie Khoodaruth**. This is where flood water is greatly accumulated and we have Gated Complex and the huge building. Thus, the area falling after the **Quincaillerie Khoodaruth** towards Trefles/Rose Hill, thereby the subject site is found, remains operational for both pedestrians and vehicles even during flood days.
14. **More importantly, before the Cremation along Ligne Berthaud Road, currently there is a residential construction with ground and first floor. It right at the foot of the start Corps de Garde mountain.**
15. The subject site **is flat and levelled with the Ligne Berthaud Road** which again make it difficult to accumulate water/or cause any flood. Yet as mentioned above I can make provisions to connect my plot (**15 meters from Ligne Berthaud**) to existing drainage along Ligne Berthaud and which falls along the same side of the subject site/plot.
16. I SHALL BE AGREEABLE TO ABIDE TO ANY AMENDMENT/ INSTRUCTION/GUIDELINE as may be imposed by the Council.”

4. Under **section 5 (4) (a) the Environment and Land Use Appeal Tribunal Act 2012** [“the Act”], *“Every appeal under section 4(1) shall, subject to paragraph (b), be brought before the Tribunal by depositing, with the Secretary, a notice of appeal in the form set out in the Schedule, setting out the grounds of appeal concisely and precisely, not later than 21 days from the date of the decision under reference being notified to the party wishing to appeal.”* [underlining is ours].
5. **Section 5(4)(a) of the Act**, as quoted, unequivocally prescribes the manner in which appeals must be brought before the Tribunal: that every appeal under **Section 4(1)** must be accompanied by a notice of appeal, which should be in the form set out in the Schedule to the Act. Furthermore, this notice of appeal must set out the grounds of appeal concisely and precisely and this provision has been reiterated under **Section 5(4)(ab)(ii) of the Act**. This requirement is of paramount importance as it not only ensures transparency in the appeal process but also facilitates the efficient administration of justice. It is evident from the appellant's submission that he has provided a statement of facts in favour of his case without presenting precise and concise grounds on which he is seeking to challenge the local authority's decision.
6. Upon a careful examination of the Appellant's “grounds of appeal”, it appears that he has presented a detailed statement of facts supporting his case. While such factual information can be pertinent in an appeal, it should be accompanied by clear and concise grounds of appeal that outline the specific legal basis upon which he seeks to challenge the local authority's decision. The failure to draft precise and concise grounds of appeal as per the statutory requirement of the Act may hinder the Tribunal's ability to assess the merits of the appeal as there may be a lack clarity on what those grounds of appeal are and it is not for the Tribunal to surmise on these issues. We do bear in mind that the Appellant has had no legal representation throughout and that no objection was taken by the Respondent and the Co-respondent. We cannot however be oblivious to the provisions of the law. We will therefore address only the grounds which have been properly drafted as grounds of appeal and consider them in the light of the evidence placed before us.

**(a) Under Grounds 1 and 2**

7. It is the contention of the Appellant under the first ground of appeal that a BLUP has been issued to him in June 2022 by the Council which allows him to develop his plot of land for residential purposes. Ground 2 is not a ground but merely statements of facts in support of ground 1. The Appellant provided details such as the BLUP reference number Ref. BLP2-MCBBRH-2022-528 of the BLUP granted by the same Council for excision of an extent of 692 sq.m from a larger plot of 1328 sq.m for residential purposes and the Volume Number 9190/49 and PIN with respect to his property. He explained in great detail the various struggles and endeavours that he and his wife had to go through to be able to finalise the purchase of their plot. He also stated it was only subsequent to the reassurance given by an officer of the Council that the land *in lite* was not found in a flood prone area and that since BLUP had been issued by the Council, it should not be an issue to have a permit for construction, that he went ahead with the purchase. His bone of contention is that the Council was aware of the excision being for residential purposes and yet within 6 months of obtention of that BLUP it rejected his application for construction of his house. According to him the stand of the Council is contradictory.
8. He also argued there was no official communique or otherwise from the authorities that could notify of any site being declared as flood prone. He believes that the Council made a hasty decision without due attention because had it made a proper assessment of the area, it would have noted that his plot does not fall within any area which is flood prone. He put forward a number of explanations including visuals to show that his property is not in a flood prone area.
9. The Council denies having granted any BLUP in favour of the Appellant for excision. Its stand is that the Land Drainage Authority ["LDA"] is the authority responsible for land drainage issues and particularly the identification of flood risk areas in Mauritius and it was duty bound to take the views of the LDA in this case which identified the subject site as falling within an area identified as a flood risk. According to the Council any development thereupon would exacerbate the already existing flooding problems as

witnessed during the heavy rains. It did not therefore grant the BLUP as that was not recommended from a land drainage perspective due to which the LDA did not grant any clearance. The Co-respondent agrees that it was motivated not to grant a clearance to these reasons. To an averment made by the Appellant regarding having to chase the Co-respondent to finally get its views, the latter's position is that it has no records of any email received from the Appellant and that it tenders its views only to government agencies but that in some cases, as in the present one, where its views have already been submitted to the Council, it is forwarded to the applicant.

10. We understand from the copy of the BLUP for excision referred by the Appellant and produced by him, Doc C, that the BLUP has in fact been granted for excision for residential purposes albeit not in the name of the Appellant. This was confirmed by Mr. Chitamun. From Doc D, email addressed by the Appellant to the LDA, it appears that reference is being made to excised property by the Appellant as being the one he ultimately purchased. The ownership of the land is not in dispute besides this was canvassed in cross-examination of the Appellant by Co-respondent's counsel. The excision may well have been for residential purposes but the fact remains that as per the **Local Government Act 2011**, prior to any land development a BLUP is required to assess the actual development proposal. Infact the Appellant was confronted with one of the conditions in the BLUP granted for excision, Doc C, stipulating "A subsequent Building and Land Use Permit shall be obtained for all developments involving construction of any building thereon."

11. This procedure has its *raison d'être*: the Council needs to be able to assess and decide on the planning merits of the application at a given point since it is the authority that controls development island wide. Given the context of the subject site, which is on flat land not far from the foot of the mountain and close to areas which have been heavily flooded in the recent past, the Council was not wrong to have sought the views of the LDA. There is no legal requirement for the LDA to make public any flood prone area and therefore no fault can be attributed to either the Respondent or the Co-respondent on this score.



12. At this point we have an authority, the LDA, that is mandated to give its views to local authorities and is the sole authority that can declare a region as being flood prone. A flood prone area is determined by analyzing up to date information, high resolution natural drainage path of water, rivers, connected drains around Mauritius as at September 2019, feeder canals, flood prone areas, lowlands and catchment. The views of the LDA are based on the Digital Elevation Model [“DEM”] which has a precision of up to a few centimetres. The officer of the LDA explained that the latter does not look into individual sites but analyses the whole catchment area.
13. It may well be that the Appellant has not noticed any flooding on the subject site recently or as per information that he has gathered. However, when there is an authority specialized in identifying flood prone areas which has identified an area as falling within such a catchment, then the Council cannot be taxed for having sought and basing itself on those views to take a decision. After all, it would be a risk to the safety of those inhabitants and their property living in a flood prone area in case of flooding and water accumulation.
14. Erecting a building on a plot of land means clogging up the soil with cement, blocks or bricks and the like which will not only render the soil non-porous thereby delaying absorption in case of water accumulation but it will also reduce the surface area of soil available for greater and faster absorption, hence accentuating the flooding. Furthermore, the Council’s representative explained that at the time of the processing the application for BLUP for excision, it did not seek the views of the LDA since it only started seeking their advice since July/August 2022. It may be viewed as contradictory approach by the Council, as the Appellant put it, but the views of the LDA being sought before taking a decision on whether or not to grant a BLUP as in the present case was not a wrong decision by the Council.

**(b) Under Grounds 3, 4, 5, 6 and 15**

15. These 5 grounds are treated together in as much as they all relate to the contention of the Appellant as set out under ground 3 that the site is not found in a flood prone

area. The Appellant has produced several photographs annexed to his statement of case which we have reconciled with a plan of the area produced as Doc A. The Appellant has also provided the Tribunal with excellent visuals by the way of video clips, Doc B, of where his property is situated from the Corps de Garde mountain and the amount and nature of development in the area where his property is found as well as the places which tend to have water accumulation. While he agrees that there has always been a flooding issue in the area, he vehemently denies that the subject site is found within an area which is flood prone. He has enlightened the Tribunal on the exact points where traffic is normally diverted during and in the aftermath of heavy rains when there is water accumulation and explained that the drainage system has improved in the area following some works done on Ligne Berthaud, which is some 15 metres from the subject site. According to him the video contained in Doc B and photographs marked 7 (i) and 7 (ii) attached to his SOC show no water accumulation or water flowing on the site or nearby and that no residential properties have been affected by any recent or subsequent flood.

16. After a close analysis of the evidence, particularly the video evidence from Teleplus found in Document B, it has become abundantly clear that the area of Ligne Berthaud faces a significant issue with water accumulation. It is noteworthy that the Appellant does not dispute the historical occurrence of floods between the cremation ground and Quincaillerie Khoodaruth hardware shop. However, we find it challenging to accept the Appellant's sweeping assertion, devoid of supporting evidence, that no residential properties in the vicinity have experienced flooding, especially given that the Appellant does not reside in the area. It is plausible that the Appellant is relying on second-hand information.

17. In contrast, the Co-respondent relies on scientifically derived information with an accuracy margin of 10 centimeters. The LDA has conducted a comprehensive mapping of the region in relation to flooding. The methodology employed by the LDA involves utilizing the DEM to analyze water flow patterns, both in terms of direction and elevation changes.

18. Mr. Ramdohur provided detailed insights into their data sources, which encompass contributions from various entities, including the Police Force, local authorities, residents, and the Fire Rescue Services, particularly concerning past flooding incidents. Moreover, their maps are regularly updated following flood events or heavy rainfall. Using the DEM, Mr. Ramdohur elucidated the natural drainage routes, particularly those originating from the Corps de Garde mountain and leading toward the Feeder Canal La Ferme. He also clarified that the terrain tilts toward the site, and while some constructions have received permits, such as the gated community and the residential morcellement behind Quincaillerie Koodaruth, the larger area encompassing the subject site remains undeveloped. This fact is corroborated by Documents G and G1, which provide aerial maps of the entire mountain-side region, as presented by the Co-respondent.

19. To a point raised by the Appellant regarding the presence of a river by the foot of the mountain, Mr. Ramdohur explained that it is not a river but rather a natural drainage path which carries water even when there are no floods. He also explained that the water table in the region is very high and so the water keeps flowing back. Furthermore, to another point raised by the Appellant regarding the construction of a big property, shown as “current construction” on map marked Doc A, in between the 2 points where the police typically divert traffic along Ligne Berthaud, hence known to be a flood prone area, a BLUP has been granted. The LDA officer explained that this property does not fall within the flood-prone zone, according to LDA records. His explanation included the fact that the road’s elevation has been altered, and drainage systems have been established to prevent water from the mountain from flowing across to the other side of the road. Importantly, the Appellant’s property is situated on the same side as the Corps de Garde mountain.

20. Mr. Ramdohur’s testimony highlighted that that area of Bertaud was designated as the most flood-prone area in 2020, prompting the National Development Unit [“NDU”] to initiate drainage network construction in the region. He stated that he had videos depicting the effects of flooding in developed areas and explained that water from the beginning of Berthaud Avenue is directed toward inhabited regions, posing

a risk to human life. He further mentioned that land acquisition procedures are underway in the area to facilitate direct discharge into La Ferme reservoir, bypassing residential areas, with the long-term goal of mitigating flooding problems.

21. While the Appellant argued that the Council historically considered flood-prone areas in decision-making, we believe that in light of advanced land drainage technology, the Council should now rely on data and information for well-informed decisions. The LDA confirmed that no clearance was granted in this case due to the location within a flood-prone area. This decision carries considerable weight, given the authority's unparalleled expertise. Unless compelling counter-evidence is presented, which is not the case here, it is challenging to contest such a conclusion. While the Appellant's property may have been spared from flooding thus far, considering the unpredictable impacts of climate change and the comprehensive view offered by the DEM mapping, a precautionary approach in the interest of public health and safety warrants withholding land for further development.

22. We have not been enlightened by the Council as to how the proposed development would contravene the **Town and Country Planning Act**. We do however find in the Technical Sheet of the **Planning Policy Guidance 1 ["PPG1"]** there is a provision on the need to make provision for drainage- an extract of which is reproduced:

*"Most new development will change the surface water runoff regime. Changing land use from rural to urban (soft landscape to hard) means an increase in impermeable areas (roofs, drives, roads). Consequently rainwater that falls on the area will run off quicker than it did previously.*

*A small development of a house or two, taken in isolation, may be perceived to have a negligible effect on runoff. However, when several such developments are added together in one area, a significant change in runoff regime may occur."*

23. As regards areas liable to flooding, the **PPG1** also provides *"Whilst it is recognized that it is not normally practical to design for extreme rainfall events, consideration should be given to the areas that are liable to flooding during such events. These areas should*

*be identified as early as possible in the design process and development should be laid out accordingly to minimize any potential damage.*” Regardless of whether the Council applied these provisions, it is evident that the Respondent’s decision aligns with the spirit of this guidance by restricting development in what the Co-respondent assesses as a flood-prone area, thereby minimizing potential harm.

24. The Appellant does not agree with the decision of the LDA about not giving a clearance due to the area being flood prone. However, based on the comprehensive explanations provided by the LDA officer upon questions put to him by the bench and based on the workings of the DEM, we believe that the LDA’s holistic assessment of the area is correct. Consequently, the Council’s reliance on their expertise is justified under these circumstances.

**(c) Under Grounds 7, 8, 9, 10, 11, 12, 13 and 14**

25. These grounds in essence seek to challenge the decision of the Council on the basis that there are existing developments in the area. Under these various paragraphs the Appellant has provided several examples of development which exist. These developments do not favour the Appellant’s case in anyway because as we have it from the representative of the Council, many of the developments existed prior to the time when the Council started seeking the views of the LDA. Some of the developments have no BLUP while others are not found within the flood prone area. Be it as it may what is important is that the LDA is the authority on these matters and its views are to be considered in such circumstances as the present one. From the testimony of Mr. Chitamun and Doc F1, the labelled map produced by him, no new application for BLUP has been favourably considered in that area of the Berthaud which is assessed as flood prone since the Council started seeking the views of the LDA. We do not believe that the Appellant’s application has been dealt with unfavourably. We are alive to the fact that it may seem to the Appellant that by rejecting his application the Council has not been fair especially after the excision was allowed for residential purposes. However, the balance weighs heavily in favour of

public interest and safety in not allowing construction in identified flood prone areas.  
Ground 16 as couched amounts to no ground of appeal and is set aside.

26. For all the reasons set out above we find that the decision of the Council in the circumstances was correct. The appeal is therefore set aside. We would however urge the authorities to try to expedite the rehabilitation works so that people can exercise their right to enjoy their property. No order as to costs.

Determination delivered on 3<sup>rd</sup> October 2023 by

**Mrs. J. RAMFUL JHOWRY**  
Vice Chairperson

**Mr. S. MOOTHOSAMY**  
Member

**Mr. R. SEEBOO**  
Member