

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 2174/23

In the matter of:

Mr. Rousset Christian Serret

Appellant

v.

The Municipal City Council of Port Louis

Respondent

Determination

The present appeal has been lodged against the decision of the City Council of Port-Louis for having declined to grant a building and land use permit for the excision of a portion of 380 square metres from a larger plot of 673 square metres after survey, for residential purposes situated at Rue Gabriel Bouic, Sainte Croix, Port-Louis. The sole ground of refusal as per the decision communicated to the Appellant on the 9th June 2023 through the national electronic licensing system (NELS) is as follows:

“The development is not in accordance with the Town and Country Planning Act. Not recommended. Subject site is found in a flood prone area and same is not being recommended from a land drainage perspective”.

In a Notice of Appeal lodged before the Tribunal on the 27th June 2023, the Appellant, being represented by his sworn land surveyor, Mr. R Bhurtun, listed the following grounds of appeal:

- (a) Subject site is already provided with a network of drains and canals put up by the authorities along Bouic Gabriel Street on both sides of College Pere Laval, and in front of his site, 1.50 metres large, 2 metres deep in concrete, marked A, B C and D on the plan that was annexed.
- (b) The canal in front of his site is 4 metres large, 1 metre deep spent with a bridge 11 metres wide with asphalted roads. The authorities have spent millions of rupees to build those canals and drains to drain off water around College Pere Laval and his land also.

The above-mentioned points are shown on the 'excision plan' drawn by the sworn land surveyor Mr. Nuckchady and annexed to the Appellant's statement of case, wherein the latter also explained that the excision had been accepted by the Forestry service of the Ministry of Agro Industry and Food Security in April 2022.

The stand of the Respondent is based on the recommendation obtained from the Land Drainage Authority, namely that the subject site is found in a flood prone area and cannot be recommended from a land drainage perspective. In the light of this recommendation, the Respondent could not approve the present application. Furthermore, the Respondent states that the clearance obtained from the Forestry service does not amount to a final clearance.

The Appellant was *inops consilii*, but was assisted, with the leave of the Tribunal, by one Mr. Sooben Tylamma during the hearing. Mr. Tylamma deposed to the effect that the Appellant had purchased the plot of land in 2014 in a morcellement that had obtained the approval of the Ministry of Housing and all relevant authorities. The Appellant, who is now of ill health and being in need of finance for his treatment, applied for excision of part of his land with a view to sell that portion in order to cater for his medical expenses. The application has been declined on the ground that the land is located in a red zone.

Mr. Tylama produced as Document A, a copy of the clearance for excision that had been granted from the Forestry Service of the Ministry of Agro Industry in respect of the land belonging to Mr. Bruno Serret, adjacent to the Appellant's land. He also produced as Document B, copies of nine snapshots that had been taken by him after the flood dated 7th March 2023, showing the state of the canal found on the land belonging to the Appellant, which was almost dry. He explained that Document B1 shows other snapshots of a newly constructed drain that

had been put up on the land belonging to the Appellant. The City Council of Port Louis has even inaugurated a sports complex at a distance of 150 metres from the Appellant's land.

In cross examination, Mr. Tylamma maintained that he does not agree with any mapping that may have been done by the Land Drainage Authority that had led to the land *in lite* being qualified as 'in the red zone', for the simple reason that despite heavy rains that have occurred, the land belonging to the Appellant was not subject to flood and there are already drains constructed in the area as shown on Document B1.

The Appellant's witness, Sworn Land Surveyor, Mr. Bhurtun, deposed lengthily on his assessment of the Appellant's land, as described in a provisional technical survey report with a plan drawn up by him and produced as Document C. As per his evidence, the topography of the land belonging to the Appellant is such that it is higher than the surrounding areas, and there already exists a drain on his plot of land having a statutory reserve of three metres on each side. The portion that he wants to excise is situated on the higher portion of his property, and this part would not be impacted in the event of any accumulation of water. Besides there have been infrastructure works done in the region, with the construction of a bridge and drains to cater for any excess water. These are shown on the photographs produced as Document B and B1 collectively. The witness conceded in cross examination that he had no knowledge of the capacity of the drains that were shown on Document B, nor the volume of water that they could evacuate, these matters not being within his area of expertise.

The representative of the Land Drainage Authority (LDA), summoned on behalf of the Respondent, deposed to explain the stand of the LDA on an application made to the City Council, which had been transmitted to the LDA in accordance with section 117 of the Local Government Act. As per the plans submitted, a mapping was done and the LDA found that the land, subject matter of the appeal, was situated in a flood prone area. The LDA did not recommend the proposed development on this ground, and this had been communicated to the City Council. As per his explanation, an area is said to be flood prone based on the characteristic of the land to retain water in a particular spot, i.e. the inability of accumulated water to be evacuated, thus, can potentially cause material damage as well as a threat to life. He added that the area of Sainte Croix is found in an area which is high risk flood prone area. He produced, as Document D, an aerial photo of the area, wherein the 'red zone' was shown, indicating the flood prone area and the land belonging to the Appellant is located in that zone.

Document D also shows that drains that have been constructed since March 2021 and these drains pass along the Appellant's land.

We have considered all the evidence adduced. We are alive to the hardship that the Appellant is facing in view of his particular health conditions. The Respondent, being the sole authority to grant building and land use permits, has to take into consideration the views of the specialist authority, which is here the LDA, on matters of water accumulation and flooding. Being given that the application for excision is for residential purposes, the Respondent is duty-bound to act in accordance with the recommendations of the LDA.

We must however make certain observations. It has been explained by the representative of the LDA that this authority does a mapping exercise to locate areas that are flood prone. Necessary action needs to be taken by other authorities for mitigating measures to be taken, the construction of drains being one of them. We have had the benefit of the pictures produced by the Appellant showing the drains that had been constructed in the area. It has now been brought to our knowledge that these drains are not adequate for the volume of water that can accumulate following a flash flood. The Appellant's representative attempted to establish that there had been no flooding on the Appellant's land. This is disputed by the Respondent. The representative of the LDA has explained that irrespective of the topography of the land in question, it is located in the red zone, as shown in Document D produced. We agree that the assessment of the application cannot be taken in isolation from the surrounding reality. We also take judicial notice of the flooding that the area of Sainte Croix has had to face in the recent past after heavy rains.

It is our view that the Respondent's decision to align itself with the recommendation of the LDA is not flawed. We however raise a note of alarm on the situation where, like the Appellant, many are faced with the incapacity to develop their property. It has now become imperative that the mapping done by the LDA, depicting areas as being in the 'red zone', be followed by policy measures to address the flooding of those zones, as well as other climate hazards that is becoming a reality with climate change.

The representative of the LDA has explained that the categorisation of the 'flood prone areas' is a dynamic situation, likely to evolve with the construction of drains, among other policy measures. The Respondent is called upon to exercise diligence, together with other authorities, in the implementation of remedial measures to address the flooding issues in its jurisdiction.

In view of all the above considerations, we shall not interfere with the decision of the Respondent.

The appeal is accordingly set aside. No order as to costs.

Determination delivered on the 16th May 2024.

Mrs. V. Phoolchund-Bhadain, Chairperson

Mr. Roshan H. Seeboo, Member

Mr. M. Reaaz Baureek, Member

For Appellant: Inops Consilii

For Respondent: Mrs. R. Jadoo Jaunbocus, of counsel