

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 1010/15

In the matter of :-

Veerappa Parasram

Appellant

v/s

Municipal Council of Vacoas-Phoenix

Respondent

DETERMINATION

1. The present appeal is against a decision taken by the Municipal Council (hereinafter referred to as "the Council"), for having rejected an application made by the Appellant for a Building and Land Use Permit (BLUP) for the construction of a building under CIS roofing to be used as workshop for washing of vehicles at the corner of Bernica Lane and Tres Bon No.4 street, Vacoas. The decision of the Council was communicated to the Appellant by a letter dated 25th September 2015. The reasons given therein by the Council for having rejected the application are as follows

- (i) "The site is located at a junction and ingress and egress of vehicles onto Bernica Lane and Tres Bon No.4 Road will create hazardous situation to the detriment of road users.
- (ii) Views from TMRSU have not been obtained."

2. The Appellant deponed and also called as his witness, Mr. Arvinanand Itoo and Mr. Dharanjay Bissoon. They were all cross-examined by Counsel for the Respondent. The Head of the Planning Department, Miss Ramroop deponed on behalf of the Council. The Appellant did not wish to cross examine her.
3. We have duly considered all evidence placed before us. The main issues of contention of the Appellant is that the development has been scaled down, there will not be any traffic issues as the activity will be carried out on appointment and that the Council is not the relevant authority to assess traffic issues.

(i) CONTEXT ANALYSIS

4. The proposed development site is located within a residential area as per Doc A at the junction of two roads, Bernica Lane and Tres Bon No.4 street, Vacoas. From the unrebutted evidence, it appears these roads are narrow, not allowing vehicles to go past each other easily. Tres Bon No.4 street is only 3.8 metres wide. The objectors are contiguous neighbours to the house where Appellant intends to set up his business.

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(ii) THE PLANNING INSTRUMENTS

5. The applicable policy is the **Vacoas-Phoenix Outline Planning Scheme ['OPS']** and the site is, as per evidence, within the settlement boundary. Since the evidence shows that the area is a residential one, the applicable policy is **Policy ID2 of the OPS of Vacoas-Phoenix** since it is this policy that regulates small scale enterprises and allows small scale industrial proposals in residential areas if the use is ancillary to the principle use as residential subject to certain criteria being met.

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6. Policy ID2 of the Outline Planning Scheme on Small Scale Enterprises and Home working which provides

Proposals to operate and extend office/business uses or small scale enterprises from residential properties should only be permitted if the use is ancillary to the principal use as residential. Criteria should include:

- (i) Premises are of a suitable size and design to accommodate the additional activity and all its ancillary requirements such as parking, loading area and adequate set backs from neighboring properties.*
- (ii) No neighbours' objection within a radius of 50 metres.*
- (iii) No serious/adverse impact on residential occupiers in the area or the character of the neighbourhood particularly in regard to noise, fumes, smells, dust nor excessive vehicle movements or loading and unloading of goods and products;*
- (iv) Sufficient parking space within the cartilage of the property available to accommodate any staff or visitors;*
- (v) Safe access from the roadway;*
- (vi) Storage of materials should be able to be contained within the cartilage*
- (vii) The operator of the office/business or small scale enterprise should remain at the premises.*

7. From the photograph produced and explanation given by the Appellant, the workshop that the Appellant intends to operate will be built under CIS roof. It is also not contested that the objectors are contiguous neighbours and that the subject site is within a residential area. We have taken on board the fact that the neighbours have objected to the development and we believe that the Council was also right to have taken on board the reasons advanced by the objectors which was basically due to the nuisance of noise associated with the equipment such as vacuum cleaner and pressure wash as well as with the traffic that it will generate. Document B, produced by the Council's witness is in support of the fact that objections were raised and considered. The objector present at

the hearing of the Council, one Mr. J. Ramsarran, feared that in addition to the disruption being caused to him due to this poor health and his family in that they will be they would be prejudiced by the nuisance associated with the noise, he also expressed concerns regarding ingress and egress of vehicles and the increased risks of accidents due to the narrowness of the roads in question. The Appellant and his witnesses agreed in cross examination that the roads are very narrow and that the situation as it is at the moment, vehicles cannot cross each other on the same road with much ease. The Appellant also admitted to using some noise generating equipment such as a pressure washer and vacuum cleaner once the business would be operational. While the Appellant argued that there were other neighbours who were in favour of the proposed development, we believe it is important to consider how residents in the neighbourhood are impacted by the development.

8. We are therefore of the view that when all considered such “bad neighbour” developments, as termed in planning jargon, should not be allowed in residential areas to the detriment of other residents, the more so as the immediate neighbours have objected and the reasons advanced is that it will have an adverse impact on the character with regard to pollution such as noise and detriment to the residential nature of the area which the objectors are not willing to put up with. We believe that the Council’s decisions cannot be said to be flawed in anyway. Having such a workshop in such close proximity to the residences of people is a misallocation. It may generate further issues in future if the business expands in terms of human and vehicular traffic. Due diligence must be exercised when carrying out development which is likely to have an impact on the neighbourhood because a residential area is meant to be such where one can enjoy ones’ property peacefully.
9. For all the reasons set out above, the Tribunal finds that this appeal is devoid of merit. The appeal is dismissed.

Determination delivered on 5th ~~April~~^{May} 2017 by

Mrs. J. RAMFUL
Vice Chairperson

~~Mr. Manna~~
Member

Miss Seetohul
Member