

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

Cause No. : ELAT 1029/15

In the matter of:

MRS. TINTAMOONEE NIRMALA

Appellant

v.

CITY COUNCIL OF PORT LOUIS

Respondent

DETERMINATION

The appeal is against the refusal of the City Council to grant a building and land use permit (BLUP) for the extension of the ground floor of a building for residential purposes. The grounds of refusal, as per the letter dated 20 November 2015 from the City Council, are as follows:

1. The building has already been put up without having obtained a BLUP.
2. The statutory setback from the road edge has not been observed.

The Appellant appealed on the ground that she had been granted a permit to operate a corner shop (tabagie) by the City Council. She labored under the impression that she could operate on the basis of the plan as approved by the Council. In her statement of case, the Appellant stated that she had made a complaint to the Central Electricity Board in relation to electrical cables that were present across her property. This resulted in the CEB, in turn, to effect complaints to the City Council. The City Council, in its statement of defence, unveiled that the CEB had, by letter dated 28 July 2015 (Annex A), informed the Appellant's husband that his construction was too close to the LV Network at Roche Bois and that the presence of metallic scaffolding for his construction represented serious hazards for workers on his site and the CEB warned him of the risk that he ran for such construction. Following the complaint received from the CEB, the Respondent effected a site visit and it was found that the construction works were being carried out. A notice had been served on the Appellant on 7 August 2015.

Subsequently, on the 14th October 2015, a clearance was given by the CEB for construction at ground floor by way of a note on the proposed plan at Annex B to the statement of defence. It is the contention of the Respondent that the construction does not follow the alignment of setback of 1.5 metres from the road.

The Appellant's husband represented her at the hearing and he conducted his own case. He explained the financial difficulties that his wife was facing by the fact that she could not work due to the stop notice sent by the Respondent. He prayed that the Respondent reconsiders its decision.

The Representative of the Respondent deposed to explain the reasons for the refusal to grant a BLUP to the Appellant. The potential danger of electrocution that the construction represented was highlighted by him. Although the CEB revised its position by giving its clearance for the construction at ground floor level, the Council's decision was maintained due to the failure to observe the setback of 1.5 metres from the road. Furthermore, the construction at the ground floor had already been completed without a BLUP. Prosecution had been initiated by the Respondent against the Appellant for this construction.

Section 3.2 in the Design Guidance for Residential Development in PPG 1 highlights the importance and the need to observe appropriate setbacks for residential developments. In the present appeal, the Appellant has caused erection of the extension without having observed the statutory setback of 1.5 metres from Blanche Street. Furthermore, the construction has been erected without prior obtention of a BLUP. The CEB had initially highlighted the potential danger that existed due to the proximity of the CEB LV Line Network but subsequently a clearance was given for the construction at ground floor level.

After having considered the evidence adduced, we must make the following observation: The Appellant's representative stated that she Appellant was already holder of a BLUP issue by the Respondent to run a 'tabagie' at the premises. The issue of setback only arose at the stage when the Appellant applied for the upgrading of her 'tabagie' by putting up a concrete slab in lieu of corrugated iron sheets. In view of the above provisions as regards the statutory setback, we find no basis to interfere with the decision of the Respondent under the first ground for refusal. Should the Appellant be in a position to cure this structural hurdle in her application she may submit a fresh application in the light thereof.

As regards the first ground of refusal, we agree that the Respondent cannot condone illegal constructions. On the other hand, we must draw attention to the fact that the building has already been put up. By applying for a BLUP, the Appellant is attempting to 'legalise' her construction. It is our view that applicants should be encouraged to place

themselves within legality and within the parameters set by the Council. The Respondent may consider entertaining a fresh application in the light of the above observation, the more so that the Appellant was already holder of a BLUP prior to the present application.

The appeal is otherwise set aside.

Determination delivered by:

Mrs. Vedalini Bhadain, Chairperson ...

Mr. Luis M. Cheong Wai Yin, Assessor

Mr. Yusuf Ali Imrit, Assessor

Date:

31st May 2017