

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

**IN THE MATTER OF:**

**Cause Number: ELAT 16/12**

**YACOOB MOTALA**

**Appellant**

**v.**

**MUNICIPALITY OF BEAU BASSIN ROSE HILL**

**Respondent**

**In the presence of:**

**GHANANDA MOTAY & OTHERS**

**Co-Respondent**

**DETERMINATION**

The appeal is against the decision of the Respondent for having refused the application for a Building and Land Use Permit (BLUP) for the construction of a mosque at Monneron Street, Beau Bassin. The decision of the Respondent is contained in a letter dated 11 April 2008 and lists the ground of refusal under section 98(6)(b)/ 98(7)(b) of the Local Government Act 2003 (as amended) as follows:

1. The proposed development, being proposed in a context where the local population does not belong to the applicant's religion, is likely to disrupt the local community's peaceful cohabitation.
2. Activities generated by the development (gathering, ceremonies, rituals, vehicular movements... etc would degenerate the tranquility of residents in the neighbourhood and worsen the existing traffic environment.
3. Objections received from inhabitants in the neighbourhood of the site.

The Appellant initially lodged an appeal before the Town and Country Planning Board, and was transferred to the ELUAT in November 2012. As such, the proceedings before the TCPB do not contain the prescribed form as required by the ELUAT Act 2012, where the grounds of appeal are required to be laid down precisely and concisely. We shall therefore refer to the grounds as relied upon in the statement of case of the Appellant.

In relation to the first ground of refusal which is now being challenged, the Appellant placed emphasis on the demographic composition in the area which, according to him, justified the presence of a mosque in the proposed premises. This grounds calls for attention on two aspects, firstly, the composition of the local population supporting the application and, secondly, the potential disturbance that the proposed development can cause to the peaceful cohabitation in the neighbourhood.

At the outset, the first limb of this ground for refusal raises concern. We take judicial notice that there is peaceful cohabitation of persons of various communities in this country and, to our knowledge there is no segregation in so far as practicing one's religion is concerned. The first ground of refusal is indeed infelicitous and is not a reflection of the way of life in this country. Nonetheless, irrespective of our stand to condemn any attempt towards intolerance, this Tribunal has to adjudicate within the parameters of our planning laws and other planning instruments that govern planning administration.

#### The PPG:

Under the Planning and Development Act, a specific instrument is issued in relation to places of worship (PPG 3: Places of worship, effective from 26 July 2007) provides at paragraph 2.3 of the Design Guidance for Places of Worship that: “ **Smaller worship facilities would be allowed on plots the size of which do not generally exceed local plot size; where the local population belongs predominantly to the applicant's religion and where the level of disturbance to nearby residents would be acceptable**”. The consideration of the demographic composition in the context of the applicant's religious activities is therefore part of the planning considerations as per the PPG. The Head Planner of the Respondent explained the sampling exercise that led to the conclusion reached by the Council. However much we do not subscribe to this approach, we concede that this exercise pertains to Town and Country Planning issues that the local authorities are called upon to look at within the PPG considerations. Whatever be the case, we are of the view that the basis for refusal as contained in the first ground, although controversial and questionable, has the merit of being compliant with PPG 3 on the 'Places of Worship'. The evidence of the Appellant on the predominance 'of the applicant's religion' did not rebut the consideration raised by the

Respondent. The compilation of a list of signatures in support of the application is not sufficient. The conditions as laid down in the PPG (supra) are cumulative. It has been submitted that the Respondent did not make an actual assessment of the composition of the population in the neighbourhood. The Head Planner has amply explained the basis of his assessment when coming to his decision. The sampling exercise enables the sampler (be it on behalf of the Appellant or the Respondent) to draw inferences from his exercise. In statistics, population sampling is a method that allows researchers to infer information about a population without having to investigate every element/individual in that population. At any rate, it is important to highlight that Building laws and regulations are not about pitting objectors against proponents, but rather examining whether the objectors' concerns are real and require consideration. We must also look at the wider parameter when assessing the facts:

1. There is evidence on record that there are four to five places of worship within the area which are easily accessible, thus catering for the local population.
2. Monneron Street is not a classified road. The only commercial activities approved in that area are those that serve the local needs of the community, hence the decision of the Respondent (both the Permits and Business Monitoring Committee and the Executive Committee).

#### Disturbance

Another relevant concern as contained in this PPG is the level of disturbance that such a development can cause to the neighbourhood. This concern is also contained in the second ground of refusal and is at the basis of the third ground of refusal.

The Co- Respondents have voiced out their anxiety and urge for the preservation of the tranquility of the residential area and the need not to upset the social fabric of the neighbourhood. The disturbance referred to is, on one hand, the potential noise disturbance caused by the activities of the mosque, namely the call for prayer done through loudspeakers, and, on the other hand, the traffic nuisance. As regards the use of loudspeakers by the mosque, the Appellant has testified before the Tribunal that the mosque will not use the loudspeakers for the prayer in the morning, which is generally at 5.00 a.m. He also undertook that the noise level by the loudspeakers will not exceed fifty five decibels. We note that not only such undertaking was not placed before the Respondent at the time of the application, but this would call for a monitoring by the Respondent to ensure compliance. The likelihood of potential breach is a source of concern for the local population, hence the objections placed by the inhabitants. The Co-Respondents who deposed before the Tribunal have convincingly explained the impact of the proposed development on their way of life, emphasis being placed on the elderly and sick persons who live there.

The potential traffic nuisance has been explained by the Head Planner: Monneron street is not a classified road, which has been served a residential area where the only commercial activities that have been authorized are those which serve the local community. It has been submitted, and we agree, that the presence of a mosque in such an area will undoubtedly increase the traffic flow from that road onto the very busy road. The provision of a parking in the area to serve the mosque does not remedy this nuisance.

Much emphasis was placed by the Appellants on the presence of a 'funeral house' operated by Ellie and Sons, which had been granted a BLUP to operate within the same area. The Co-Respondents deposed to the effect that this activity does not cause nuisance to the tranquility of the neighbourhood being given that the frontage of the funeral house is on the main road, which is a classified road. This was confirmed by the evidence of the Head Planner of the Respondent who explained that the Funeral service operated by Ellie & Sons is a business whose main activity is registered as 'office and commercial activities' and the ancillary use to this is the 'chappelle'. It has a frontage for entrance and exit on the classified road and has a provision for parking which is compliant with the PPG on parking requirements and which also provides for access from the classified road. In this respect the presence of the funeral house cannot be used as reference for the application under appeal, the more so that the regularity of the activity of the funeral house is not comparable to that of a mosque.

#### Jurisdiction

We have taken note of the submission made on behalf of the Appellant to the effect that this Tribunal is an appellate body and can interfere with the findings of facts only on certain grounds, which are present here because the PBMC erred in its findings and failed to apprehend the weight to be given to certain facts. The process as it holds before this Tribunal is to make an assessment of the planning merits of the application, taking into consideration the existing planning instruments as well as environmental considerations. This is why evidence is adduced by the parties before this Tribunal and why there is strict adherence to the 'audi alteram partem' rule.

We have taken note of the Appellant's testimony that the donation of the land, that was initially meant for residential purposes, to the Waqf in order to construct a mosque. However laudable this decision can be, the planning considerations of the development have to be taken into account. After hearing the evidence adduced by all parties concerned, we find no reason to interfere with the decision reached by the Respondent to refuse the granting of a BLUP to the Appellant.

The appeal is accordingly set aside.

Determination delivered by:

**Mrs. V. Phoolchund-Bhadain, Chairperson**

**Mr. G. Seetohul, Assessor**

**Mr. M. A. Busawon, Assessor**

Date

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2<sup>nd</sup> June 2017