

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 412/13

In the matter of :-

BRA Gungadin Metal Industry Ltd

Appellant

v/s

Municipal Council of Vacoas/Phoenix

Respondent

DETERMINATION

1. The present appeal is against a decision taken by the Council for having rejected the application of the Appellant company as represented by Mr. Anil Dutt Gungadin for a Building and Land Use Permit for the construction of a one-storeyed shop to be used as office and metal workshop at Lachooa Lane (also known as Avenue Capucine), Camp Fouquereaux, Phoenix. The grounds for rejection communicated to the Appellant in a letter dated 27th March 2013 are set out below:

“(i) According to the Planning Policy Guidance, the minimum acceptable width of road for such type of development should be 6m whereas the site is serviced by a 3.65m partly tarred access.

(ii) It is observed that the width of the road cannot be increased to 6m given that it is already built up along the access.

(iii) The Town and Country Planning Board has in the past rejected an appeal made by the applicant on the same site for similar development.”

2. Mr. Anil Dutt Gungadin, as representative of the Appellant, deponed under solemn affirmation and was cross-examined by Respondent's counsel. Miss Ramroop, head of Land Use and Planning Department, deponed on behalf of the Council and was cross-examined by the Appellant's counsel. We have duly considered all the evidence placed before us as well as submissions of both counsel.

I. CONTEXT ANALYSIS

3. The subject site is currently agricultural land of the extent of 570 squared metres and located along an untarred track which is part of Lachooa Lane. The property is found one hundred metres outside settlement boundary and is surrounded by predominantly agricultural land. Lachooa Lane is approximately 3.5 m wide and has no pavements. There are only 2 houses situated at the entrance of the lane but there are also two industrial buildings by the name of Florecold and RKY Ltd.

II. APPLICABLE PLANNING INSTRUMENTS

4. The refusal of the Council is grounded essentially on the point that the access to the site is unsuitable being given that it is narrow and the width cannot be increased. To substantiate their contention, the Council has referred to the provisions of the Planning Policy Guidance ("PPG") as set out in the Technical Sheet on Design Guidance for Industrial and Commercial Roads, which are reproduced hereunder:

"Internal Roads

As a general guide, access roads within an industrial development area should preferably be 7 m wide but no less than 6 metres wide.

It is essential to provide sufficient manoeuvring space to enable vehicles to enter, turn around and leave the site in forward gear. There should never be any need for vehicles to reverse out of the individual sites onto the public road."

The Respondent also referred to and submitted that the applicable policy is **Policy ID3 of the Outline Planning Scheme of Vacoas-Phoenix**. The Policy is reproduced hereunder:

ID3: Industrial Development Outside Existing Sites, Estates and Zones

There should a be general presumption against applications for new industrial uses outside existing industrial sites, estates or zones unless the activity is classified a bad neighbor development or has site-specific locational requirements, and there is no other site available or suitable following the sequential approach, or the activity is in the national interest.

In these cases clustering of similar industrial uses on a single site should be considered to make efficient use of existing transport and utility infrastructure.

III. ISSUES

5. From the evidence of the Appellant, DOC B, it would seem that as matters stand , apart from the two houses at the entrance of Luchooa Lane, there does not seem to be other residential properties. Documents B, C and E when analyzed in conjunction (bearing in mind the discrepancies outlined by the Respondent's witness) it would seem that the area is built up all along Camp Fouquereaux Road, also known as Shri Shambhoonath Road, and that that between this road and the settlement boundary the development seems to be obeying the sequential approach. Now, development within a settlement boundary is normally favourable for residential development. The appellant's representative testified that the site was chosen because it was outside a settlement boundary and far from residential development in order not to disturb the residents whilst operating. We have no difficulty in finding that the use to which the site is being put, that is industrial, is perfectly permitted. It is outside settlement boundary where bad neighbor developments are allowed. However, what really needs to be determined here is whether the physical development can be approved.

6. Miss Ramroop gave evidence that the width of the lane is between 3.5 m and 3.66 m and it was therefore submitted on behalf of the Council that it does not comply with the requirements as laid down in the PPG. It is not disputed that there are 2 houses in Lachooa Lane and that even though the road is meant for two-way traffic it is actually very narrow. The development site covers an area of 570 square metres, which is a sizeable portion in our view and the appellant's representative stated that around 20-25 people will be working at the proposed workshop. He tried to argue his case by giving examples of how Lachooa Lane is being used on a daily basis especially because of the presence of Florecold Ltd and RKY Ltd. He also stated that any foreseeable problem can be avoided by the use of alternative routes. Even if the version of the Appellant is to be accepted, access roads have to be passable. We have it in evidence that the site is rather isolated. Access roads leading to the site will require supervision to keep them functioning properly. We have not been enlightened by the appellant regarding the availability on the subject site of utilities, drainage structures, refuse collection and how the ingress and egress of vehicles from the lane onto the main road is likely to take place. These issues have not been addressed and therefore we will not surmise. However, from the photographs produced these would be issues to consider.

7. The Council's stand is that if the roads could be enlarged that would have been favourable but in the same breath also added that the buildings at the entrance of Lachooa Lane have not kept any road reserves and therefore the width of the road cannot be increased to 6m given since it is already built up along the access. Miss Ramroop produced photographs in support of her testimony. While we cannot pre-empt how development will take place in future and the Council will have to maintain close scrutiny on that, the very foreseeable traffic constraint will be that the lane will be burdened by not only more vehicles but larger vehicles such as lorries. The inference that can be drawn with the nature of the proposed development is that the movement of heavy duty vehicles like big lorries carrying steel/iron/aluminium bars or sheets for delivery at the workshop or for that matter even the smaller trucks that would be used

for the delivery of the final products to the clients several times in a day within a narrow road is not conducive to proper and effective planning, due to the lack of safety it creates for other road users. This situation, in our view, will not be remedied by the imposition of conditions of the times of delivery as suggested by the appellant.

8. The Appellant wishes to carry out an industrial development on a site which clearly does not follow the sequential approach. For that matter neither does RKY Ltd nor Florecold Ltd. The representative of the Council explained that Florecold was issued a BLUP before the coming into force of the PPG but as regards RKY Ltd, it is currently operating illegally and the Council is taking steps by way of sanction.

9. Having a metal workshop along Luchooa Lane will no doubt cause a marked rise in human and vehicular traffic in a locality. The road itself cannot be said to bear a lot of residential development such that having a marked rise in traffic will raise safety issues for the inhabitants. The question is whether in view of the state of this lane, it can contain that flow and type of traffic that will be generated through the proposed enterprise. Planning is always for the future and we need to be able to anticipate the types of development that will occur so that there are no repercussions due to bad development. We have borne in mind that there are several roads or tracks that may lead to the subject site. Having adequate roads is imperative so that access to the property is motorable even for firefighters in case of such an emergency, we believe. It was submitted by Counsel appearing for the appellant that the Council may consider certain modifications such as turning some roads into one way roads. It is not within the jurisdiction of the Tribunal to order or even direct the Council to do so. These modifications do not come without cost implications for the Government. The fact of the matter is that as matters stand the land all around is bare or agricultural and yet to be developed. The site is a few hundred metres from the main Camp Fouquereaux Road where some development has started at the beginning of Luchooa Lane and it is located about 100 metres outside the settlement boundary.

10. It can be foreseen that the development, if it keeps following the sequential approach, as can be gathered from the evidence, is likely to lead to development moving towards the settlement boundary from the main Camp Fouquereaux Road. The Appellant's case is that there is approved development very close to the subject site which falls within the planning control of the Municipal Council of Curepipe but this cannot be considered in the absence of solid evidence. We believe that the Respondent was right in its assessment that the access to the site was not suitable for this type of development. From a planning point of view, the use of the access road and that of the site are very important considerations. Will the road serve as a good access to the proposed development site for now? The answer is in the negative. It may well be in the future however, depending on how the road size evolves when there are proper roads, as compared to tracks, servicing the area. We therefore have not been convinced of any argument put forward by the appellant as to why we should depart from the provision of the Outline Planning Scheme or the PPG.

11. The third ground for refusal by the Respondent mentioned in the letter of refusal is rejected. We do not believe that the Council should fetter its discretion in anyway by simply rubber stamping applications even if they have been the subject of a decision previously taken by the Town and Country Planning Board. As time passes by circumstances change, not only with regard to the project of the applicant but also with respect to the external circumstances in relation to the locus or otherwise.

For all the reasons set out above, we find that the appeal is devoid of merit. The appeal is therefore set aside. No order as to costs.

Determination delivered on 7th June 2017 by

Mrs. J. RAMFUL
Vice Chairperson

Mrs. B. Kaniah
Assessor

Mr. M. Busawon
Assessor