

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

Cause No. : 602/14

In the matter of:

SOHUNLALL MOOTHOOR & OTHERS

Appellants

v.

DISTRICT COUNCIL OF RIVIERE DU REMPART

Respondent

In presence of:

INDIAN OIL (MAURITIUS LTD.)

Co-Respondent

DETERMINATION

The Appeal lodged by the Appellants is in respect of a Building and land use permit granted by the Respondent (District Council) to the Co-Respondent (Indian Oil Ltd.) to operate a filling station at Pointe aux Cannoniers.

1. Six grounds of appeal were initially lodged in the notice of appeal as follows:

- (i) Outbreak of fire incident -petroleum products being extremely flammable
- (ii) Road safety - the proposed outlet being close to a roundabout
- (iii) Noise pollution due to vehicles transiting in the outlet and due to air compressor

(iv) Environmental pollution risks (ground) due to spillage of petroleum products

(v) Negative impact on health due to noise and odour from petroleum products

(vi) Loss of clients due to the above factors.

2. At the close of the case and in written submissions, it has been submitted on behalf of the Appellants that the only ground of appeal which they are pressing on is 'to the effect that the petrol station constitutes a threat to road safety inasmuch as the outlet is too close to a roundabout'. In view of this stand, we find no need to address the evidence adduced in support of the other grounds of appeal. We shall deal with this sole ground of appeal.

3. The governing provision for the activity subject matter of the BLUP is contained in the Planning Policy Guideline 8 (PPG 8) which regulates the setting of petrol filling stations. PPG 8 sets the guidance that petrol filling stations should be located where they are readily accessible to vehicles to avoid motorists having to make unnecessary detours for the purpose of refueling. Section 2.2 of PPG 8 lays down the criteria for site selection, the relevant provision for the purpose of the present appeal being that "Petrol Stations should not be sited within 100 metres from any road bends, road junctions or vertical curve on classified A and B roads".

4. On the factual aspect, it has to be determined whether the 100 metres limitation is applicable in the present case. The submission of the Respondent on this issue is two fold, firstly that the provision of PPG 8 does not apply to the site being given that the bend referred to is in fact a 'roundabout' as opposed to a 'road bend'. Secondly, the Respondents rely on the fact that the Co-Respondent had obtained and submitted all the necessary clearances from the relevant authorities, including the Road Development Authority and the Traffic Management and Road Safety Unit, along with its application.

5. The assessment of the locus was done on the basis of the plans produced in the course of the hearing, considered in the light of the evidence adduced by the respective witnesses. The plans and report produced by sworn land surveyor Mr. Bhurtun, submitted on behalf of the Appellants (Document F) indicate a distance of 33 metres between the edge of the site of the proposed

filling station and the road bend when approaching the roundabout from the direction of Grand Bay. It also indicates the distance of 64 metres from the same point to the first edge of the road islet. In cross examination however, Mr. Bhurtun conceded that the distance as shown on the plan attached to his report does indicate a distance of more than one hundred metres from the edge of the proposed filling station and the roundabout.

6. Indeed, it is material to assess the locus taking into account that there is a roundabout just before the road bend when proceeding from the direction of Mon Choisy towards Grand Bay. The plan drawn by Mr. Bhurtun shows that at the roundabout the road proceeds straight on towards the coastal road and one exit that turns towards the right in the direction of Grand Bay. This is the very spot referred to as the road bend by the Appellants. In our view, what is to be considered for the purpose of compliance with PPG 8 is whether the distance between the filling station and the roundabout (and incidentally the curve to the right) does not exceed the required 100 metres. Both the evidence of Mr. Bhurtun and that of the representative of the TMRSU point towards a distance exceeding 100 metres from the proposed filling station. Mr. Bhurtun's reference to a distance of thirty three metres from one edge of the station cannot be taken as the reference point being given that point A on the plan annexed to Document F is not the material point. Mr. Bhurtun stated that he was not aware at the time when he took the measurements the exact point of entry and exit to the station. These points are important for the purpose of taking the measurements and ensuring compliance with the requirement of the PPG.

7. Whatever be the case, we are of the view that the evidence from the TMRSU is crucial in this process. Certified copies of the plan submitted to the TMRSU have been produced, as undertaken by Mr. Gooljar, engineer representing the TMRSU, during his examination in chief. Mr. Gooljar explained that the certified copies are required as part of the procedure in securing the views of the TMRSU. What is material for the Tribunal to assess compliance with the PPG is whether the distance from the filling station to the roundabout is within the norm of 100 meters. It is our view that since the quantitative approach to distance is what the Appellants rely upon, it is important that any such measurement bear an exact reference point. On the

plan produced by Mr. Gooljar and which was submitted to them by the Co-Respondent, the distance is shown as being 101.57 metres from the centre of the frontage, (i.e. midway between the entrance and exit of the filing station) to the point at the round about where vehicles engage into the bend when proceeding from the direction of Mon Choisy towards Grand Bay. We agree that the proper course is an assessment of the distance whilst taking into account other elements like the entrance and exit points to the station as well as the potential impact of these on the flow of traffic. A mere quantitative compliance may lead to results which are of no use at all.

8. From the record, the TMRSU has taken this more holistic approach by proposing modifications to the original plan and laying certain conditions. Mr. Gooljar explained in a letter addressed to the Respondent (Document S) that "the TMRSU did not foresee major traffic and road safety problems in the proposed project subject to some conditions" mentioned therein. The condition that is most relevant to the provision of PPG 8 is the interchanging of the entrance and exit to the station, which was complied with by the Co-Respondent. What is the impact of this condition? This would have the effect of placing the exit from the station further away from the round about. This has a bearing on traffic coming from the roundabout but has no impact on traffic coming from the opposite direction, being given that those vehicles would have to exercise the same level of care as any vehicle when motoring along a road where there is likelihood of vehicles emerging. At any rate, this being the stand of the TMRSU, the sole authority having jurisdiction on road safety matters, the Respondent was entitled to rely on Document S in its decision.

9. It is noteworthy that by this letter (Document S), the TMRSU undertakes to 'come up with corrective measures' to be implemented by the promoter in case of any problem regarding traffic and road safety. In addition to this stand of the TMRSU, the evidence of the technical officer from the Road Development Authority, Mr. Jalim, is unequivocal. He stated that the RDA had been satisfied with the proposed project and had issued a no objection letter (Document N) to the Co-Respondent. It came out that the RDA had taken into consideration the position of the TMRSU, the authority that had the jurisdiction on traffic matters, as well as the provisions of PPG 8 in its decision. The views

of the TMRSU were at any rate not in contradiction with the provisions of the PPG.

10. The real evidence on record has shown that there was compliance with the PPG Guidelines as regards the setting of the filling station. The proximity issue has been dealt with. As regards the safety issue that is raised in relation to this, the above positions of the RDA and TMRSU shows that this has already been accounted for by those authorities having jurisdiction on the matter. The Respondent was entitled to rely on those clearances in its decision.

11. It has been submitted on behalf of the Appellants is that the Respondent failed to address its mind to paragraph 2.2 of PPG 8 (namely that the site selection being more than 100 metres from a road bend). We note that this ground has not been raised in the notice of appeal. The only ground raised by the Appellant is the failure to observe the distance, which, as stated above, has not been established by the real evidence on record. The element of the Respondent having failed to address its mind to the PPG 8 amounts to raising a new ground of appeal altogether and this cannot be entertained at this late stage of the proceedings.

12. On the basis of all the above, we find that the ground of appeal raised cannot succeed.

The appeal is accordingly set aside.

Delivered on

22nd February 2017
by:

Mrs. V Bhadain

Chairperson

Mr. V. Reddi

Assessor

Mr. G. Seetohul

Assessor