

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

**ELAT 840/15**

**In the matter of:**

**Roopkumar Jeeha**

**Appellant**

**v/s**

**District Council of Grand Port**

**Respondent**

**In the presence of**

**Mohamed Nayaaz Abdool**

**Co-respondent**

**Determination**

1. The present appeal is against a decision taken by the District Council of Grand Port (hereinafter referred to as "the Council"), for having granted an application made by the co-respondent for a Building and Land Use Permit (BLUP) for the conversion of an existing residential building into an Aluminium workshop at Kashmir Lane, Plaine Magnien. The decision of the Council was communicated to the Appellant by a letter dated 25<sup>th</sup> September 2013, which stipulated that the Council approved the application since 26<sup>th</sup> January 2011 subject to 3 conditions namely:

- "1. All working activities should be carried out inside the building as per approved plans.
2. The proposed development should not give rise to nuisances for the neighbourhood.
3. All windows and doors in the building should be closed while operating."

2. The letter also makes mention that a site visit was effected by officers of the Council who warned the workshop operator to abide by the conditions of the BLUP and that the activity will be monitored by the Council and the Ministry of Health and Quality of Life.
3. We have duly considered all the evidence placed before us including submissions of counsel. The appellant was not legally represented but called as witness his wife, Mrs. Vimita Jeeha and the co-respondent, who was present but represented by his brother, chose to abide by the decision of the Tribunal while the Council was represented by the Head of the Planning Department as well as counsel, Me. Sookhoo.

I. **APPEAL OUTSIDE DELAY PRESCRIBED BY LAW**

4. We believe that at the outset we need to deal with the validity of the appeal. The appeal was lodged at the registry of the Tribunal on the 11<sup>th</sup> February 2015, as per the notice of appeal on record. The letter dated 25<sup>th</sup> September 2013 notifying Mr. Jeeha of the decision of the Council informed the Appellant of his right of appeal at the Environment and Land Use Appeal Tribunal (albeit rather late since he was an objector at the hearing of the Council in January 2011). The appellant explained in the course of his deposition at Page 3 of the sitting of the 25<sup>th</sup> March 2016, that he attended a hearing at the Council in January 2011 and that in March the same year the co-respondent was granted a BLUP but that it was only in 2013 when he enquired at the level of the Council that he was informed a BLUP was granted. He testified that he received the notification letter from the Council in 2013. The point being it is not denied by the Appellant that he was notified in 2013.

5. **Section 5 (4) (a) of the Environment and Land Use Appeal Tribunal Act 2012** stipulates

*'Every appeal under section 4 (1) shall, subject to paragraph (b), be brought before the Tribunal by depositing, with the Secretary, a notice of appeal in the form set out in the Schedule, setting out the grounds of appeal concisely and precisely, not later than 21 days from the date of the decision under reference being notified to the party wishing to appeal.'* (stress is ours)

It is therefore clear that the appeal was lodged well outside the timeframe of 21 days prescribed under the law.

## II. GROUND OF APPEAL : NOISE POLLUTION

6. The Tribunal is entitled to set aside the appeal for the reason mentioned above. However, we are minded in this case to consider the crux of the appellant's case which is grounded on the issue of noise pollution on account of an Aluminium workshop operating within a residential area. From the testimony of the appellant and the record, it shows that as a background to this case there has been bad blood between the Appellant and the Co-respondent's family for years and the matter is far from being resolved. They are neighbours living in Kashmir Lane in the village of Plaine Magnien.
7. Miss Bosquet testified that she, from the Council and an officer from the Ministry of Health and Quality of Life, Mr. Wan, Health Engineer Officer accompanied by Police Officers went on the *locus* on the 5<sup>th</sup> February and 12<sup>th</sup> February 2014 and that on both occasions the noise level was measured from the premises of Mr. Jeeha and found to be within permissible limits. The appellant confirmed that Mr. Wan and Mr. Ramdonee came on the premises. A full report of Mr. Wan Ying Ching together with a similar correspondence to the one addressed by him to Mr. Jeeha [Doc H] is on record and shows that when the cutting machine and drilling machine were in operation, the noise level as received on the premises of Mr. Jeeha shows that it is within the permissible limit. The appellant also filed the correspondence [Doc B] as evidence of the fact that following complaints made by him, the officers of the Ministry of Health and Quality of Life carried out a noise survey.
8. We have considered the testimony of all witnesses on this issue and we do not find any reason to doubt the noise survey report made by an independent officer, the moreso as the contents of Doc B are not being disputed by the appellant since he produced it. Therefore, when the co-respondents are operating within the parameters set by the Council in the BLUP, it appears that the noise is within permissible level. The appellant also confirmed when cross-examined by the co-respondent's representative that he is a cake seller and so is his wife and that they sell cakes on the main road away from their premises every day.
9. The appellant stated that the co-respondents normally carry out their activities outside. Miss Bosquet, on the other hand, stated whenever the Council went on site no activities were noted outside the building. The content of Doc B produced by the appellant also states that at the time of the visits all activities were being carried out inside the workshop with windows and doors closed. The appellant stated that the police in the course of all these years have been contacted by him several times and so have the

Police de L'Environnement but that each time the co-respondents managed to put away all their materials. This raises doubt as to whether the appellant and his family are in fact exposed to noise pollution on a daily basis, to the extent that the appellant has been submitting before the Tribunal. The appellant did not bring any independent evidence to support his version. On the other hand, the co-respondent's version is supported by the evidence produced by the Council.

10. One final issue which needs addressing is whether such bad neighbor developments are allowed within residential areas. While the appellant testified that the area was a residential one without producing any photographs or other evidence in support of his contention. The co-respondent and Miss Bosquet stated that it is a mixed use area where developments other than residential ones exist. This was not successfully challenged by the appellant. The co-respondent's version is that with the exception of the appellant and his immediate family, all their neighbours have no objections to them operating the workshop.
11. In view of the flimsy evidence of the appellant, the fact that the co-respondent has been operating with a BLUP since 2011 and bearing in mind that the appellant lodged his appeal in 2015, well outside the delay prescribed by law and all the reasons set out above, we find that this appeal is devoid of merit and is therefore dismissed. No order as to costs.

*JB.*  
Determination delivered on 10<sup>th</sup> March 2017 by

**Mrs. J. RAMFUL**

**Vice Chairperson**

**Mr. G. SEETOHUL**

**Assessor**

**Mr. S. KARRUPUDAYYAN**

**Assessor**