

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 1549/18

In the matter of :

Mr. Ghanshyam Mauracheea

Appellant

v.

District Council of Riviere du Rempart

Respondent

In the presence of:

- 1. Mr. Vedandave Mungur**
- 2. Mr. & Mrs. Nundoo Mauracheea**

Co-Respondents

Determination

The Appellant lodged the present appeal against the decision of the Respondent for having refused to grant a Building and Land Use Permit (BLUP) for the conversion of an existing building at ground floor to be used as multipurpose hall and restaurant at SSR Road, St Francois. The grounds of refusal as contained in a letter dated 29 December 2017 from the Respondent are as follows:

1. As per Environmental Guidelines, multipurpose hall should be located outside settlement boundary,
2. Complaint has been registered against the proposed development.

In the course of the hearing on the 26th February 2020, counsel for the Respondent informed the Tribunal that the Respondent will not insist on the second ground of refusal. No objection was raised by the other parties.

The notice of appeal lodged on the 26th January 2018 lists out two grounds:

Ground 1:

The Respondent was wrong to set aside the Appellant's application for the reason that a multipurpose hall should be located outside settlement boundary, as per the Environmental Guidelines, inasmuch as it misconceived and misconstrued the said Environmental Guideline.

Ground 2:

The Respondent was wrong to take on board the objections raised by the 'adjoining neighbours and inhabitants' to the extent that such objections were not justified, especially having due regard to the fact that the Appellant's site is located within a predominantly commercial area.

Being given that the Respondent has now "dropped" the second ground of refusal, the second ground of appeal which is to the effect that the Respondent was wrong to have taken on board the objections from neighbour does not have a 'raison d'etre'.

In the Statement of Case, the Appellant described the site within context, namely that the proposed Multipurpose Hall has the capacity to accommodate some 175 to 200 persons and that it will be used solely in connection with minor functions, especially during the weekend. It will not provide activities relating to the performance of wedding ceremonies. During the events organised in the hall, the restaurant will not be open to the public. A wedding hall as well as tourist residence complex, belonging to other owners, are located adjacent to the Appellant's site. There are a few houses and commercial developments, including a supermarket and a petrol filling station along both sides of the St. Francois Royal Road. The Appellant avers that the site that he proposes to develop is located within a predominantly commercial area.

In its statement of defence, the Respondent denied that it had misunderstood the Environmental Guideline and stated that a multi-purpose hall cannot be set up in a residential zone in order to prevent nuisance and noise pollution from affecting residents.

In the statement of defence of the Co-Respondent, emphasis was placed on the fact that the development context was not compatible with the proposed development. At the hearing, no evidence was adduced by the Co-Respondents.

What we have to determine is whether the Respondent's decision is in accordance with the planning parameters. The proposed activity is governed by the 'Environmental Guideline on Multi-purpose hall including wedding hall' which has been produced as Document E. This Guideline, issued by the Department of Environment, states its purpose as being "*to provide guidance to prospective developers to operate their multi-purpose hall on the basis of self-adherence and to assist Local Authorities at the Building and Land Use Permit stage.*" Paragraph 4 of the Guideline, which refers to 'Location and Siting', is of relevance to us in considering the ground of refusal, and as such, the ground of appeal. It states that: "*The selection of the site for a multi-purpose hall should be determined on the basis of associated activities that are proposed e.g. catering, the size of the hall, the number of persons to be accommodated and the existing development context of the site.*" It goes on to say that: (i) *New multi-purpose halls including wedding halls should preferably not be allowed in predominantly residential areas.* (ii) *The existing development context of the site should be compatible with the activity.*

We note also that Paragraph 3 provides that the construction and operation of a multi-purpose hall including a wedding hall does not warrant a Preliminary Environmental Report (PER) or an Environmental Impact Assessment (EIA) Licence. It requires a Building and Land Use Permit (BLUP) and its operation has to be carried out in accordance with the provisions of the Planning Policy Guidance (PPG) and Outline Planning Scheme.

The Appellant has explained that the activities that he proposes to hold in the premises would exclude weddings but it would cater for activities of a lower scale. He also has adequate parking space to cater for such activities. Issues relating to the access road were referred to by the representative of the Respondent. Yet, we find that this was not set out as a ground for declining the application. As such, we cannot now assess this parameter at the appeal stage, this not being part of the grounds of refusal nor part of the grounds of appeal.

It has been submitted on behalf of the Appellant that the Respondent has reached the decision, as per the ground of rejection, on the misapprehension that the activity proposed should be located outside settlement boundary. The representative of the Respondent confirmed this position. We note, as rightly pointed out, that the Environmental Guideline does not make reference to the 'Settlement Boundary' but instead states that such halls should '*preferably* not be allowed in *predominantly* residential areas'. We find that the

Appellant is justified in maintaining that there is a substantial difference between the location being 'outside settlement boundary' and 'away from a residential area'. The evidence placed before the Tribunal has shown that the site is off the main road of Saint Francois. There are several commercial developments in the surroundings but which are more concentrated along the said main road. The Appellant's site is situated on a side road. We have not been favoured with a plan showing the settlement boundary and the location of the site in relation thereto. Document D however shows an aerial view of the location. Although not situated along the main road, the site cannot be said to be located in a purely residential area. This characteristic of 'semi-commercial' is evidenced '*par excellence*' by the presence of a multifunctional hall near the Appellant's site. Despite questions raised on the presence of that other hall and the rationale for a permit that has been delivered for that development, no good reason has been brought forward. Even queries on the 'inconsistency in decision-making by the Respondent' have remained unanswered.

We are not convinced by the evidence adduced by the representative of the Respondent that the proposed activity cannot be allowed in that area due to the residential characteristic of the site. The above observations on the presence of several commercial activities in the area and even in the close proximity of the site show the contrary. In addition, the witness for the Respondent agreed that the whole area is quite undeveloped. In the midst of this area which is assessed as 'undeveloped' on one hand and 'semi-commercial' on the other, we find that there is room for a development in the nature proposed by the Appellant to take place. Now, as regards the issues of noise, traffic and other potential nuisance, that are not part of the appeal but which are matters that call for the consideration of the Respondent, it is our view that the Council is empowered to set conditions to the operation and impose mitigating measures.

As regards the issue of the absence of mitigating measures to deal with potential noise nuisance that the activity can generate, these are matters that can be addressed by conditions that the Respondent can impose in the BLUP. The contention of the Respondent that the proposal for mitigation measures ought to have come from the Appellant is negated by the provisions of the BLUP Guide, which stipulates that there should be an involvement of the authority in guiding applicants for permits. A consensual approach is what is required and this, coupled with conditions that the Respondent is empowered to impose, is what is required.

In view of these, we find that the ground of appeal has been amply substantiated. We uphold the sole ground of appeal and allow the appeal. The matter is referred back to the Respondent for it to consider the conditions that it deems necessary to impose for the specific activity that is to be conducted.

Delivered by:

Mrs. V. Phoolchund-Bhadain, Chairperson

Mr. Marc Reynolds Guiton, Member

Mr. Raouf Soyfoo, Member

Date:

7th August 2020