

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 1532/17

In the matter of :-

Bawoo Bappoo

Appellant

v/s

Municipal Council of Vacoas-Phoenix

Respondent

DETERMINATION

1. The present appeal is against a decision of the Council for having refused the granting of a Building and Land Use Permit ["BLUP"] to the appellant for the proposed extension of an existing residential building to be used as Aluminium/metal welding workshop and to install the following electric motors: 1) one cross cut saw (1650 W), 2) two drilling machines (500 W) at 176, Ligne Berthaud, Vacoas. The reason for refusal was communicated to the appellant by way of a letter dated 21st November 2017 as follows:
"Aluminium workshop being a noise generating activity is not acceptable as secondary use within a residential area."
2. The Appellant, legally unrepresented, deponed under solemn affirmation and was cross-examined by the Respondent's Counsel and the representative of the Council. Mrs. Juwaheer, Planning and Development Inspector, also deponed and was cross examined by the Appellant. We have duly considered the evidence placed before us.
3. The Appellant has lodged a notice of appeal with the only ground of appeal being that he is the sole bread winner of the family and it is his only job. He also stated in the course of the hearing that the following a first appeal before the Tribunal where

he had proposed to carry out the development under CIS, the Council has informed him that he needed to submit a fresh application to have the development sheltered under a concrete structure.

4. The case for the Council is that the subject site being within settlement boundary is found in a residential area, which is not denied by the appellant. As such development of an industrial nature is not allowed within a residential area due to the dust, noise, fumes, vibrations and other adverse environmental effects.

I. APPLICABLE PLANNING INSTRUMENTS

5. The house of the appellant is found within the settlement boundary which favours residential development. The proposed development would consist of carrying out welding of metal and aluminium work as well as the use of cut saw and drilling machines, which is categorized as an industrial activity and is regulated by **Policy ID 2** of the **Outline Planning Scheme** and *Section 2.13 –Industrial Use (PPG 1)*.

6. **Policy ID 2 of the Outline Scheme** regulates such type of development (small scale enterprise) and actually permits these developments only if the use is ancillary to the principal use as residential. However, a number of criteria have to be observed including:

-Premises are of a suitable size and design to accommodate the additional activity and all its ancillary requirements such as parking, loading area and adequate setbacks from neighboring properties.

-No neighbours' objection within a radius of 50 metres.

-No serious/adverse impact on residential occupiers in the area or the character of the neighbourhood particularly in regard to noise, fumes, smells, dust nor excessive vehicle movements or loading and unloading of goods and products;

-Sufficient parking space within the cartilage of the property available to accommodate any staff or visitors;

II. DECISION

7. From the evidence on record, the subject site is in a residential area. The proposed development, as per evidence, is to be carried out in the compound in front of the appellant's house where he keeps his car. The representative of the Council stated that she went on the site for a visit and produced photographs to show that the locality is a residential one. It would appear that there are no objections from some of the neighbours. However, one Mr. Bakerally, who is the immediate neighbour residing behind the appellant, has objected. His complaints were to the effect of the disturbance and prejudice that is being caused to him.
8. We believe the Council was right to have refused a BLUP for an industrial activity in a residential area, the more so as there has been a complaint of nuisance and disturbance from a neighbour who lives within a radius of less than 50 metres. From the photographs produced and explanation given by the Appellant that the objector lives some 70 feet away from him, this implies that the objector is still within a 50 metre- radius from where it is proposed for the workshop to operate.
9. We agree that both **Policy ID 2** of the **Outline Planning Scheme of Vacoas-Phoenix** and **Section 2.13 –Industrial Use [PPG 1]** classify metal workshops as being not normally suitable in residential areas but the circumstances under which these may be allowed are very specific and clear. One of the criteria is that there should be no objection from neighbours. Since there were complaints from one neighbour in this case, one Mr. Bakerally, who uses the same common access road as the appellant to access his property and the Appellant has applied to use noise and dust generating equipment such as grinder and welding machines, the Council rightly applied the **Policy ID2** to conclude that it will be a pollution and nuisance generating activity that will not be conducive within a residential area. We are also alive to the fact that there may be other consequences to the proposed development such as vibrations when for example a grinder is being used and a marked increase in traffic with associated nuisance in the vicinity due to clients. This will have an adverse impact on the character of the neighbourhood.

10. We are therefore of the view that when all considered such “bad neighbour” developments, should not be allowed in residential areas to the detriment of other residents, the more so as there are retired people who live in the vicinity and objections have been received from the immediate neighbour. Afterall, a residential area is meant to be such where one can legitimately enjoy ones’ property peacefully.

11. It would appear that the appellant might have had the impression that the respondent would grant him a BLUP when he was requested to make a fresh application for BLUP in case he intended to build a concrete workshop. It stands to reason that if there is modification in the development of the appellant, the respondent has the right to ask that he applies for the relevant development proposal. This cannot be a ground to grant a BLUP nor does it amount to an undertaking by the respondent to grant the appellant with the relevant BLUP.

12. For all the reasons set out above, we find that the Council was right in rejecting this application. The appeal is set aside. No order as to costs.

Determination delivered on 2nd June 2020 by

Mrs. J. RAMFUL
Vice Chairperson

Mr. AUBEELUCK
Member

Mr. MONAFF
Member