

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

Cause No.: ELAT ¹⁴³⁹1406/17 

In the matter of:

MR. JEAN DANIEL BEAUNOM

Appellant

v.

DISTRICT COUNCIL OF SAVANNE

Respondent

DETERMINATION

The Appellant has lodged an appeal against the decision of the Respondent for having refused to grant a Building and Land Use Permit (BLUP) for the conversion of part of an existing building into retail sale of hardware having no right to sell cement, iron and steel bars for commercial purposes at Royal Road Chemin Grenier. The application was declined by the Respondent by letter dated 9th June 2017 on the ground that unfavourable views had been obtained from the Traffic Management and Road Safety Unit to the effect that "*Since the development is located at a sharp bend, there will be visibility problem for vehicles accessing the development from both left and right turning movement which can result in dangerous crashes*".

The Appellant's sole ground of appeal, as contained in his notice of appeal, is that "*The Respondent was wrong to set aside the Appellant's application in view of the location of the 'sharp bend' as per the views of the TMRSU which is not valid inasmuch as there are commercial development as well as a church along the same 'sharp bend'*".

Evidence was adduced by the Appellant and the representative of the Respondent. The Appellant also produced photographs of the spot (Documents A, A1 and A2), with particular emphasis on the presence of a store opposite the site of the proposed activity. The Appellant also produced a plan (Document B) of the site showing the provision for a

loading and unloading zone as well as provision for four parking spaces. An amended plan (Document D) shows the site in relation to the bend on the road.

The Appellant has adduced evidence on the different commercial activities that operate in the area where he proposes to run his business: there is the presence of a church next to his proposed activity, the shop opposite his site also deals with delivery lorries that load and unload in front of the shop and these have not been the cause any traffic problem.

The Respondent's representative deposed to state that the Permits and Business monitoring Committee (PBMC) relied on the unfavourable views given by the Traffic Management and Road Safety Unit (TMRSU) and declined to grant the BLUP applied for (Document E). She explained that the store referred to by the Appellant in support of his application, namely the shop opposite his site, had been granted a permit to operate in the year 2001 and, at that time, there was no requirement to seek the views of the TMRSU. This requirement to seek the views of the TMRSU and the Road Development Authority (RDA) was laid down in the year 2006. Similarly, the church referred to by the Appellant is a very old existing building. The representative of the TMRSU, although summoned to adduce evidence before the Tribunal, failed to be in attendance.

It has been submitted on behalf of the Appellant that the views of the TMRSU cannot be relied upon since this authority has left default, any view expressed by them would amount to hearsay evidence. A strict approach would lead to the exclusion of the letter expressing the views of the TMRSU. However, it is on record that the representative of the Respondent, Miss Bosquet, Head of Land Use and Planning Department of the Council, has deposed to the effect that in compliance with a directive from the Ministry of Local Government, the application had to be referred to the TMRSU whenever traffic issues were raised. This was done and a letter was sent to the Council with the views of the said authority. In spite of the absence of the witness from TMRSU before the Tribunal, the Council, having received these views, bearing reference TMRSU/III/SAV V 4 as per the Council's letter dated 9th June 2017 (Document E), did refer to them in reaching its decision. True it is that the Appellant has not been able to question the TMRSU on the views communicated by it to the Respondent. Yet, these views were, as a matter of fact, communicated to and relied upon by the Council, even if the letter from the TMRSU was not produced as counsel for the Appellant raised objection to it. The Respondent was entitled to, and duty bound to have regard to those views. We find no reason to interfere with the Council's decision to do so.

As regards the ground of appeal that there is a commercial development as well as a church along the same 'sharp bend', the evidence adduced by the representative of the Respondent is that these buildings existed prior to the new policy. This has not been rebutted. We cannot refer to these as being precedents which ought to bind the Council.

The Council would have been minded to refer to the planning parameters that ought to govern its decision, and not limit itself to the view as expressed by the TMRSU. Nonetheless, as stated above, this does not call for us to interfere with its decision to rely on the said views of the TMRSU, being the competent authority in traffic management. The fact that there are pre-existing buildings along the said 'sharp bend' does not render the views of the TMRSU 'invalid', as stated in the sole ground of appeal, and the Respondent has amply explained for this state of things (supra). The ground of appeal raised is not upheld. The appeal is dismissed.

Delivered by:



Mrs. Vedalini Phoolchund-Bhadain, Chairperson

Mr. Marc Reynolds Guiton, Member

Mr. Reshad Monaff, Member

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Date:

26 February 2020