

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

Cause No.: ELAT 1466/17

In the matter of:

MR. & MRS. NAYNA LOUIS CHRISTOPHE

C/O HAROLD PUDMAN

Appellant

v.

MUNICIPAL COUNCIL OF VACOAS PHOENIX

Respondent

DETERMINATION

The Appellants applied for a Building and Land Use Permit (BLUP) for the construction of a residential building at ground and first floors and a boundary wall of a length of 106.95 meters at La Marie road, Vacoas. By a letter date 7th August 2017, the Respondent informed them that the application had not been favourably considered for the following three reasons:

1. The site lies within a buffer of a poultry pen and sensitive uses are not allowed in such buffer zones as per provisions of the Planning Policy Guidelines.
2. The Ministry of Health and Quality of Life has through a letter dated 6th July advised not to entertain such types of application.
3. By way of a circular letter dated 16 January 2017, the Ministry of Local Government has advised to comply strictly with the provisions of the PPG and the Outline Planning Scheme as regards the buffer of a poultry pen.

A notice of appeal has been lodged against this decision on the 11th August 2017, wherein the grounds of appeal are listed as follows:

1. Construction is being carried out in a residential zone and construction site is found inside the settlement zone.
2. Similar developments are being carried out in the same perimeter. Referring to the letter from the Municipality, the poultry pen is no longer operational.
3. By referring to google maps, the construction is being carried out beyond zoom.

The statement of case filed by the Appellants reiterates the grounds of appeal, to which five photographs of the locus have been annexed showing several residential developments in close proximity to the proposed site. The statement of defence filed by the Respondent reiterates the grounds of refusal and annexed the correspondences between the Respondent and the Ministry of Health (Annexes 2 and 3) and the development permit granted in respect of the poultry pen (Annex 4).

Mrs. Nayna, Appellant No.2 deposed on behalf of both Appellants. She explained that there are several residential developments behind the poultry pen and, at any rate, the poultry pen has not been operational since a long time. As such, there is no justification for the decision of the Respondent to decline their application for BLUP.

We have considered the evidence adduced by the respective parties. The Respondent has relied on its compliance to circular letter from the Ministry to support its decision. This circular refers to the policy decision to maintain the need for a buffer zone from the poultry pen and this is dictated by the sanitary considerations, being given the health hazards that such type of activity may generate. We fully concur with this policy of the Ministry which places health and bio- sanitary risks as being the key considerations. Yet, some aspects of this particular application call for our observations. We fail to understand the reason for which a BLUP had initially been granted for the operation of a poultry pen in an area located within a settlement boundary. In addition, what is more surprising is that it has come out that the owner of the poultry pen is even residing in premises next to the poultry pen, based on a permit that had been granted in the past!

The representative of the Respondent deposed to the effect that the poultry pen is operational but the trade fees have not been paid. The permit holder had been prosecuted before the District Court of Curepipe for failing to pay the trade fees in respect of this activity, he was found guilty and fined. Yet no closing down order had been prayed for by the Council and the poultry farm is still in operation. Furthermore, the evidence adduced by the Respondent does not disclose that permits that have not been subsequently granted for residential premises within the buffer zone of the poultry pen. In fact Document C shows that the Council has even granted a BLUP for a proposed extension for residential purposes within the same buffer zone whilst imposing certain conditions namely that the applicant take the necessary precautions to mitigate nuisance arising from the poultry farm and an exclusion of liability condition. This is far from what a planning consideration relates to. Whatever be the case, after having

considered the evidence adduced on behalf of the Respondent, the absence of consistency in decision-making based on planning considerations raises concern. We are also concerned by the evidence of the representative of the Respondent who stated that the poultry farm is operational and has been operational even if the trade fees were not paid whilst Annex 2 to the Statement of Defence, which is a letter from the Head Land Use and Planning Department addressed to the Ministry of Health, which stated that the poultry pen has stopped its activity since year 2014. No explanation has been given for this contradiction.

Be that as it may, it is our view that prime consideration should be given to the underlying rationale for the existence of a buffer zone of 200 metres around poultry farms. As stated in the case of **Sooren Seewoogoolam and Ors. V. Ministry of Housing and Lands ELAT 1261/16**, *“Some Environmental Guideline have ben issued by the Ministry of Environment for the rearing of poultry and as per these guidelines, the buffers are provided in view of biosecurity risks.... Local authorities and Ministries should normally take on board the risks associated with the contamination of broilers and spreading of aviary diseases and the likely effect it may have on inhabitants within the vicinity in the eventuality of an outbreak. This, we believe is the underlying logic for having buffer distances, hence the ‘raison d’etre’ of these guidelines.”* These are the reasons for which, despite the haphazard and questionable decision-making policies followed by the Respondent, we do not find that it has faulted in adhering to the circular issued by the Ministry and in applying the Planning Policy Guideline. In the present circumstances, we set aside the present appeal on biosecurity considerations.

Delivered by:

Mrs. Vedalini Phoolchund-Bhadain, Chairperson

Dr. Yeswaree Mihilall, Assessor

Mr. Raouf Soyfoo, Assessor

Date:

04 June 2020