

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

Cause No.: ELAT 1597/18

In the matter of:

MR. SHROVAN SHAIB

Appellant

v.

DISTRICT COUNCIL OF GRAND PORT

Respondent

DETERMINATION

The Appellant has lodged the present appeal against the decision of the Respondent for having refused to grant a Building and Land Use Permit (BLUP) for the construction of a ground floor to be used as 'operation of other sports facilities (i.e. mini football pitch)' at Deux Bras, Cent Gaulettes Road, New Grove. The grounds for refusing the said application, as communicated in a letter dated 22 March 2018, are three fold:

1. The access road leading to the site is not meant for two way traffic and it is classified as a common road and not public road.
2. The subject site is located on the edge of settlement boundary which would be more appropriate for residential development purposes.
3. The proposed development would be a source of nuisance to the surrounding neighborhood.

The Appellant has lodged five grounds of appeal against this decision:

1. Because the Respondent was wrong to have refused the BLUP on the ground that the road is not meant for two way traffic in as much as there are several roads which can lead to the site of the proposed development and there is already a heavy vehicle workshop in the vicinity.

2. Because the Respondent erred when it concluded that the access leading to the site is classified as common road and not a public road as there is no requirement that the access roads shall be used exclusively by the co-owners.
3. Because the Respondent was wrong to decide that the site would be more appropriate for residential development purposes as the site is situated in a residential cum commercial area.
4. Because the Respondent was wrong to have inferred that the proposed development would be a source of nuisance to the surrounding as the site is situated in an undeveloped zone which is mostly surrounded by bare land.
5. Because the reasons put forward by the Respondent to deny the BLUP are unreasonable and contrary to the public interest.

We have considered the evidence adduced by both parties.

Under the first and second grounds of appeal, namely relating to the state of the roads leading to the site, the Appellant has adduced evidence that he proposes to cede part of his land in order to enlarge part of the access road to six metres in order to avoid any congestion. It has been submitted that the proposed development, being situated in the third plot of land from the main road, the extension of the road along part of the Appellant's land will abate any congestion. We find that these measures are in line with Policy SD 3 of the Outline Planning Scheme, which encourages developments where utilities can be provided without unacceptable public expenses. We note that the Design Guidance for Residential Roads of the Ministry of Housing and Lands provides for a six metres road for a maximum of 81 -200 plots and at least five metres for 1-20 plots. The proposed extension of the road next to the site by the Appellant is in compliance with this Guidance. The said road is an access road. There is no evidence on record to show that the access to the proposed football pitch has to be a public one, nor is there anything prohibiting the use of the said road by those other than co-owners. Furthermore, the existence of a workshop near the site, as well as the traffic related to its activities (as shown on Document C3) has not revealed traffic congestion issues. We are of the view that the first two grounds of appeal have been amply substantiated, so much so that the first ground of refusal cannot stand. Based on the above, we uphold the first two grounds of appeal.

Under the third ground of appeal, the position of the Respondent that the site is more appropriate for residential development is not supported by any planning consideration nor instrument. The relevant planning provisions that should be considered are as follows:

- **Policy SD3** which is the general provision regarding '**Development on the edge of settlement boundary**'. The relevant part reads as follows: "*There should be a general presumption in favour of development on the edge of but outside*

settlement boundaries providing such development proposals are aimed at consolidating gaps in an otherwise built up area.....AND the proposals are capable of connection to existing utility supplies and transport networks or can be connected without unacceptable public expense....,Do not inhibit the comprehensive development of an area or restrict access to adjoining areas of land appropriate for development of the sequential release of land nor prevent expansion or disrupt existing business/employment generating activities.”

- **Policies SC3 and SC4** of the Outline Planning Scheme apply specifically to community and Sports facilities respectively. **Policy SC3** relates to *proposals for community facilities within village and settlement centres* and “*....where suitable sites are not available within settlement boundaries.....sites on the edge of settlements may be considered in accordance with Policy SD 3.”*
- **Policy SC4: Location of District and Regional Sports Facilities** relates to the positioning of sports facilities to areas where there is high accessibility to public transport.

It is on record that the proposed site is surrounded with bare land which is mostly undeveloped and there is an existing workshop in the vicinity of the proposed development (as shown on Documents C2, C3 and C4). The proposed development is to occupy only a small part of the land (2%) owned by the Appellant. The representative of the Respondent kept stating that the site would be more suitable for residential development without supporting this position by any objective reason. Furthermore, we note that, as submitted on behalf of the Appellant, there is no restriction in the Planning Policy Guidance which prohibits a commercial development on the edge of a settlement boundary. We add that the Respondent’s position contains inherent contradictions: on one hand it holds that the proposed development is on the edge of settlement boundary (thus outside settlement boundary), and, on the other hand, it states that the proposed commercial development cannot be envisaged as the area will be more appropriate for residential development. We find it difficult to adhere to these contradictory positions. For this reason and based on the planning policies as listed above, we uphold the third ground of appeal.

As regards the fourth ground of appeal, we note that except from the apprehension expressed by the representative of the Respondent, no evidence has been adduced in respect of nuisance that the football pitch may cause. It has also come out in the course of the hearing that the immediate neighbours have not objected to the proposed development. Those who have objected at the level of the District Council do not reside in the vicinity and were not called to adduce evidence on the nature of the nuisance that they are likely to face. There is un rebutted evidence on record that similar developments have been approved in

villages like Grand Bois and which are close to residential properties (as shown in Documents C5 and C6). The alleged nuisance has not been supported by any evidence. In the circumstances, the third ground of refusal has no basis. This is why we uphold the fourth ground of appeal.

As regards the fifth ground of appeal, we take into account the investment that is proposed by the Appellant to develop part of his property for an activity that has been the subject of policy of the authorities to encourage sports activities for the youth. It is our view that such types of activities should have been encouraged by the Local Authority, and it is in the public interest to do so. Issues that may have been of concern to objectors can reasonably be addressed by the Respondent by way of conditions to be imposed and monitored by it. We find that the fifth ground of appeal is justified and uphold it.

For all the reasons given above, the appeal is allowed. The matter is referred back to the Respondent for needful to be done accordingly.

Delivered by:

Mrs. V. Phoolchund-Bhadain, Chairperson

Mr. Gerard M. L. Lepoigneur, Member

Mr. Marc Reynolds Guiton, Member

Date:

2nd June 2020