

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT: 409/13

In the matter of:

Pratish Sharma Balkissoon

Appellant

v.s

Municipality of Quatre Bornes

Respondent

DETERMINATION

The present appeal was lodged before the Environment and Land Use Appeal Tribunal on the 15th April 2013 and is an appeal against the decision of the Municipal Council of Quatre Bornes for having refused a Building and Land Use Permit (BLUP) to the Appellant to convert part of an existing residential building to be used as (waterless) carwash, at Lall Bahadoor Shastri Lane, Candos, Quatre Bornes.

The ground of refusal was set out on a letter dated 23rd March 2013 as follows:

“The activity is likely to create noise and dust nuisance to neighbours due to use of vacuum cleaner”.

Both parties deponed under solemn affirmation and were cross-examined. Appellant deposed in favour of his appeal and Mrs Saddul, of the planning department, deposed on behalf of the Respondent. They were not legally represented.

We have duly considered all the evidence before us. We will first make an analysis of the context then decide on the merits of the appeal.

CONTEXT ANALYSIS

The development site is located along Lall Bahadur Shastri Lane and according to plan submitted has a road frontage of 11.58m. It is a one storeyed building where the first floor is being used for residential purposes and part of the ground floor is where the Appellant proposes to carry out the commercial activity of car wash.

From the photographs submitted by the Appellant it appears that the site can only accommodate 2 parking slots, although the Appellant stated there is only one parking, and only one car can be cleaned at a time and that will be inside the garage of the Appellant's building. The Appellant intends to use a waterless system to clean the cars and that will be done with a vacuum cleaner, which uses a system of vapor and it also contains a solution. From the plan submitted, it appears that the site is just a few metres off the main road of Candos and is very close to Victoria Hospital.

THE PLANNING INSTRUMENT

As per the Planning Policy Guidance 1, the development is regulated by **policy ID2** of the Outline Scheme on **Small Scale Enterprises and Home Working** whereby it is stipulated that there shall be a *presumption in favour of small scale enterprises from residential properties*.

THE ISSUES

As stated above the ground of rejection is that ***"The activity is likely to create noise and dust nuisance to neighbours due to use of vacuum cleaner"***.

Therefore the issues at hand are whether the said activity is likely to

- create noise and dust nuisance
- disturb the neighbours
- due to use of vacuum cleaner

The appellant's grounds of appeal as per his notice of appeal sets out 3 grounds, which in a nutshell states that the same type of vacuum cleaner is available in many shops for domestic use and that no permit is required by the individuals if same is meant for their personal use; the level of noise generated through the use of the vacuum cleaner is not so high as to breach any law and finally, less than 5 meters from his premises there is a mechanical workshop which uses equipment that most likely creates nuisance such as noise pollution and dust .

(I) NOISE AND DUST POLLUTION

The appellant stated in examination in chief that the type of vacuum cleaner that he intended to use is one which is of the home appliance type, 1200 watts, readily available at local stores like Kalachand and is for domestic use and therefore, no permit would be required by an individual to use it. He also stated that he has had local notice publications made and no objection was received. In cross-examination he maintained his version and further stated that he believed that the Municipality did not understand what type of system he intended to use, they probably thought it was similar to what they use in filling stations where as this is not the case, it is more in line with the door-to-door services provided by people.

(II) NEIGHBOURHOOD

As far as neighbourhood is concerned, the Appellant stated that he does not have any neighbor, his property is surrounded by wasteland and that in front of his property there is a warehouse for business of import and export and that on one side there is a mechanical workshop called Dewan Engineering, where heavy duty vehicles such as JCBs are repaired, and

on the other side there is an uninhabited house where the previous inhabitants have migrated to Australia since nearly 20 years and since then it has not been lived in.

(III) USE OF VACUUM CLEANER

The Appellant explained that his business will be a small scale family business which he intends to carry out, in his garage and on his own, without using water and without the need for a drainage system. He explained that the way the vacuum cleaner works is that it takes in all the dust using a gun and the dirt is then trapped inside the cleaner containing a solution. The solution is thereafter disposed as garbage. He stated that he intends to wash one car at a time and the reason why he cannot take on any work commitment is because of his poor health, he requires dialysis regularly so he prefers to work from home to earn his living. When Mrs Saddul deponed in examination-in-chief she stated that she didn't know if the members of the executive committee who took the decision to reject the application had in fact, effected a site visit in this case. She conceded that the appellant had not stated in his application form that any motor will be used and that it was the executive committee which decided to take into consideration the use of a vacuum cleaner. She also conceded that the appellant was never requested to produce any specifications regarding the vacuum cleaner. She stated that it was the executive committee that decided that the activity will create noise and dust due to the use of the vacuum cleaner, not the Permits and Business Monitoring Committee and this decision was taken without them having taken cognizance of specifications of the type of vacuum cleaner to be used. When asked to cross-examine the respondent's witness, the appellant simply stated that before rejecting his application the Municipality should have gone to his place and sought clarification about his project before rejecting his application.

OUR FINDING

The site being located only some 60 metres from the main road, we find it to be rather doubtful whether the development will unreasonably disturb the local neighbourhood by

giving rise to noise and dust. We can take judicial notice of the fact that the main road that runs along Candos in front of Victoria Hospital is a very busy road since is a mixed area of residential and commercial development. Paragraph 2.13 of PPG1 and Policy ID2 stipulate that developments permitted in residential areas are small industrial workshops and home working. While we do bear in mind that this is a mixed area and not a purely residential one, it would appear that this small scale enterprise is favorable for this type of area, moreso as the overall character of the dwelling and surrounding amenity will not change as a result of the proposed development. This being the case, it came out in evidence, which was undisputed, that there already exists a mechanical workshop in the immediate vicinity where heavy duty vehicles are repaired. The photographs produced by the Appellant add veracity to his version. He also stated that there is also a warehouse which is operational in the vicinity. This is indicative of flow of vehicular traffic in and out at various points in the day in the area. This being the case, we find that by no stretch of the imagination can one possibly come to the conclusion that the use of a domestic appliance of 1200 watts inside a house can generate noise or dust to the extent of it amounting to a nuisance to his neighbours.

This brings us to the next point, *who are the neighbours of the Appellant?* The house without inhabitants? Workers at the warehouse? Workers at the workshop? Or simply occupiers, if any, of the wasteland? In the absence of any evidence to the contrary, the Tribunal has no qualms to act on the evidence of the Appellant and find that it was not only, in the present circumstances, most unreasonable for the Respondent to have taken such an irrelevant consideration as “nuisance to the *neighbours* (the stress is ours)” into account but it was almost ridiculous, the moreso, as there were no objections from the so-called neighbours. And this “reasonable standard” threshold seems to have been lowered much more by the Respondent when they decided to consider a totally irrelevant factor, which was the use of a vacuum cleaner. It immediately springs to one’s mind, *where does that come from?* The application relates to the conversion of part of a residential building into a waterless car wash. There is no evidence as to whether Respondent have taken cognizance of what type of system, or what type of vacuum cleaner the Appellant intends to use. The Respondent’s own witness

had to concede on that issue. We tend to agree with the Appellant's supposition that the Respondent seems to have presumed that the former will be using the type of vacuum cleaner that generates a lot of noise as the ones used at Petrol Stations. We are of the view that the Respondent has acted unreasonably and unfairly by having considered an irrelevant factor, that is, the use of a vacuum cleaner when on the face of the application it makes mention only of a waterless car wash and alternatively, if it had to consider the use of a vacuum cleaner, it should have taken cognizance of same and offered the chance to the Appellant to furnish explanations about the system and the noise level it would generate and about disposal of the waste, amongst others. Furthermore, it could have, after taking cognizance of the strength and capacity of the vacuum cleaner, advised the Appellant on how to mitigate the nuisance, if any.

For all the reasons set out above, we allow this appeal and order the Municipality to provide the Appellant with the relevant BLUP within the least possible delay and with any condition attached to the BLUP as it deems fit.

Determination delivered on 11th November 2013 by

Mrs. J. RAMFUL

Ag. Chairperson

Mrs A. Jeewa

Assessor

Mr. S. Karupudayyan

Assessor