

**BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL**

**ELAT 364/13**

**In the matter of:**

**Emtel Ltd**

**Appellant**

**v/s**

**Moka District Council**

**Respondent**

- 1. Mauritius Marathi Mandali Federation**
- 2. Information and Communication Technology Authority**
- 3. The Ministry of Housing and Lands**

**DETERMINATION**

The present appeal lodged before the Tribunal on 1<sup>st</sup> March 2013 is against a decision taken by the District Council (hereinafter referred to as "the Council"), for having rejected an application made by the Appellant for an Outline Planning Permission (hereinafter referred to as "OPP") for the installation of a Cellular Base Station (E-site) at Reduit Triangle, Reduit. The ground for refusal was set out in a letter dated 25<sup>th</sup> January 2013. We pause here to make the following observation. The letter of refusal emanating from the Council refers to an application for Building and Land Use Permit (BLUP) whereas the application form of the appellant clearly stipulates at paragraph 7 that the application is one for OPP. In fact every document emanating from the Council addressed to the Appellant wrongly refers to an application for a BLUP. This not only reflects rather poorly on the administration at the Council given that these are clearly distinct applications but also suggests that the Council may not have been thorough in their assessment of the merits of the application.

The ground for refusal is as follows:

*"The siting of the antenna is approximately 280m from an existing antenna; as such it does not comply with policy for location of antenna within suburban/rural areas which is normally 1 km."*

We have duly considered the evidence adduced by all parties. It is rather unfortunate that the representative of the Council never turned up and so the case for the respondent had to be closed without calling evidence. The case for the appellant is that the application for the OPP should have been considered favourably for a number of reasons. More importantly in relation to the reasons for refusal, the Appellant's case is that the Council's misinterpretation of the **section 2.1 of the Planning Policy Guidance no.7**, a document prepared and issued by the Ministry of Housing and Lands, which in essence offers guidance for the sites and for design of Radio Telecommunications Equipments (antennas being an example of such equipment), has led the Council into taking an incorrect decision which should be set aside. What can be gathered from the collective evidence of the appellant and co-respondents nos.2 and 3 is that the criterion for location of a base station to be at distances of 1 km in suburban and rural areas applies to the same service provider such that if Emtel had a base station in a suburban or rural area, another of its base stations should be located 1 km away. This criterion does not apply if there are base stations of other service providers. Evidence was in fact adduced that Emtel does not have a base station in that area of Reduit. The Council's decision was therefore flawed by its incorrect appreciation of facts and wrong interpretation of PPG 7, as confirmed by the issuing authority itself, that is, the Ministry of Housing and Lands.

This being a civil case, the maxim to be applied is that "He who avers must prove." The Appellant's representative deponed under solemn affirmation as to the veracity of its pleadings and the testimony was not contradicted in any way. Although counsel for the respondent attempted to cross examine him, which in any case could have only gone towards credibility, we believe that the witness stood the test and the material part of his evidence was reinforced by witnesses called by the Co-respondents nos.2 and 3. As for the Council, from the very outset it fell short of proving its case since it failed to adduce any evidence. The representative of Co-respondent no.1 chose not to cross-examine any witness but made a statement that the Federation strongly opposes to the project for reasons given at the district council. In the absence of any evidence from the Council and from the Co-respondent no.1, this Tribunal cannot speculate on what those reasons were.

For all the reasons set out above, we allow this appeal and order the Council to grant the Appellant the relevant Outline Planning Permission.

Determination delivered on 31<sup>st</sup> October 2014 by

**Mrs. J. RAMFUL**

**Vice President**

**Mrs A. Jeewa**

**Assessor**

**Mr. S. Karupudayyan**

**Assessor**