

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

Cause No. : 531/13

In the matter of:

NOORANEE CHEDDY

Appellant

v.

CITY COUNCIL OF PORT LOUIS

Respondent

DETERMINATION

The appeal is in respect of a the running of a workshop for panel beating by the Appellant at No.10 d'Epinay Street, Plaine Verte, in the district of Port Louis. The case for the Appellant as at explained by him chronologically is that he has been operating this activity at the premises in question for some ten years and without permit. He had been queried by the ICAC in respect of his transactions and following this, the Municipal Council decided to react by asking him to stop all activities at that spot. Then only did he submit an application for a building and land use permit to the respondent, which met with a refusal, hence the present appeal. The ground for refusal is that the proposed development is an incompatible use with residential area.

At the outset, the reasons for appealing as contained in the prescribed form submitted by the Appellant on the 22<sup>nd</sup> October 2013 do not, per se, amount to grounds on which the decision of the Respondent can be questioned and reversed. They amount to a request to the Tribunal to consider his family and financial situations as factors to determine the application for a permit.

As regards the stand of the Respondent, it is contained in the refusal letter dated 4<sup>th</sup> October 2013, and is to the effect that the proposed development is incompatible use within a residential area. This stand is supported by the evidence of the witness for the Respondent, namely, the head planner of the Council, who confirmed the contents of the statement of defence of the Respondent. These are to the effect that an assessment of the application submitted by the appellant showed that the proposed activity is to be carried out in an open corrugated iron sheets structure which may be a source of pollution and nuisance. It would be an incompatible use within a residential area.

The respondent has however stated in the statement of defence that consideration would have been given to the application if it had been carried out in concrete premises so as to minimize the risk of noise. However, the lease agreement of the appellant did not authorise him to erect any concrete structure.

In evidence, the appellant confirmed that the premises where he proposed to operate were rented premise. He had no licence to erect concrete structures there. At any rate he had no means to do so. He laid emphasis on his means and the fact that the workshop was his means of livelihood and he had a family to cater for. He also added that in view of his age, it would be difficult for him to find a job elsewhere. The witness who deposed for the Appellant did not shed any more light in support of his case. He simply stated that he had accompanied the Appellant to the Tribunal. He did not know much about the appeal.

A preliminary observation is that the respondent's stand is based on policies governing development in residential zones. Yet, it stated that should the risk minimizing measures be taken, namely by enclosing them in concrete structures, it could have considered the application. This is in contradiction with the abovementioned policy relied upon.

Having said this, we note that it has been undisputed that the proposed activity will be in a residential zone. The 'Planning Policy Guidelines in respect of Industrial, Commercial, Residential activities (PPG 1) that is applicable to such types of activities provides the following:

*"...Industrial uses as panel beating and spray painting, manufacture of furniture and vehicle repairs are not normally acceptable uses within residential areas due to dust, noise, fumes, vibration and other adverse environmental effects..."*

The 'Draft Public Report on the Outline Scheme 'on deposit' for Port Louis provides in its Policy ID 1 on Industrial Developments in Existing Sites, Estates and Zones that:

*"Small scale workshops that are unsuitable in residential areas should seek sites in SME zones and Small Scale Business Industrial Workshop zones. The fact that the*

restrictive clause contained in the lease agreement preventing any concrete construction there.

In view of these elements, there is no room for improving the status of his workshop, and given the existing guidelines as to planning policies to be followed, the decision of the respondent is justified.

For these reasons therefore, we find that the appeal cannot be supported. We dismiss the appeal.

**Delivered by:**

**V. BHADAIN**  
Chairperson

**A. JEEWA**  
Member

**A. BUSSAWON**  
Member

**Date: 16 September 2014**