

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

Cause No. : 646/14

In the matter of:

CHRISTIAN PATRICK FINEAU

Appellant

v.

CITY COUNCIL OF PORT-LOUIS

Respondent

DETERMINATION

The present appeal is against a decision of the City Council of Port-Louis which had refused to grant an application for building and land use permit to the Appellant. The ground of refusal, as contained in the letter dated 14th March 2014, is as follows:

“The proposed activity is an incompatible use within the residential area and are not normally acceptable uses due to the adverse environmental effects”
(this being a verbatim reproduction of the ground quoted from the refusal letter).

The grounds of appeal set out in the notice of appeal filed by the Appellant are as follows:

1. The site lies near the Champs de Mars or is near the city centre where all types of development exist
2. There exists a mechanical workshop which generates noise whole day at less than ten metres from his site.
3. Sophisticated compressor will be used and there will be only painting of cars in closed painting boot and there is no harm to the environment
4. Only one car will be painted at a time.
5. This is the only means of living of the Appellant due to his age.

The statement of defence of the Respondent is to the effect that it had received an anonymous complaint against the illegal operation of the Appellant's workshop. This had been verified and confirmed by the City Council. A notice had been sent to the Appellant requesting him to make an application for a BLUP as he had been acting in breach of the law by operating a panel beating/or a paint workshop without permit. The Appellant submitted an application which was refused for the abovementioned reason.

At the hearing the Appellant explained the circumstances in which he started to operate a workshop and that he had obtained the authorisation of his neighbours to do so. Since he had not obtained a permit, he had to operate illegally. He was unable to work and this led his activities to stop.

He agreed that he had been operating illegally and had to stop due to the problems faced by him. He maintained that he would wish to operate his painting workshop if he were authorised by the Council.

The representative of the City Council, the head of the Land Use and Planning Department, deposed to explain that the objection of the City Council was based on the Planning Policy Guidance (Document A), where paragraph 2.13 relating to the 'Design Guidance on Industrial Development' provides that: *"...Industrial uses such 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..."*. He added that the decision was also based on the provisions of the 'Outline Planning Scheme under preparation' where Policy ID 1 in relation to Industrial Development in Existing Sites and Zones provides that: *"New proposals should not create any bad neighbour impact on residential occupiers in the area, or the character of the neighbourhood particularly in regards to noise, smoke, fumes, smells within a radius of 50 metres."* According to this witness, the nuisance that the proposed activities of the Appellant would be caused by the polishing of vehicles which generates dust and the use of 'quickfill' and paint as well as thinner used in the painting process, which are noxious and may affect immediate neighbours.

After having considered the evidence adduced by the Appellant and the Respondent, we find that the basis on which the application for BLUP has been rejected is sound as it finds support in the provisions of the Planning Policy Guidelines and the Outline Planning Scheme as listed above by the Respondent. The rationale for such policies which find legislative support in the Town and Country Planning Act and the Planning and Development Act, are, at the end of the day, to maintain an environmentally sound space in residential areas, which are first and foremost for people to live in. We do take into account the need of residents, like in the present case, to earn a living through an economic activity. However, this should be compatible with the area where the activity is to take place. A polluting activity like painting is not compatible with a residential area.

Planning norms and guidelines are here to determine the acceptability of such and such activities in specific areas. In the present case, the representative of the Respondent has amply explained the legal basis for its decision. This is why we find no reason to interfere with this decision.

We must however make an observation on certain aspects that have come out in the course of the hearing. The appellant has highlighted the existence of an activity which is equally incompatible with the residential area, namely the operation of a mechanic's workshop at a distance of less than fifty metres from the proposed site. This has raised queries as to how such a state of things has been approved/ or tolerated by the City Council. The Head of the Land Use and Planning Department has been unable to enlighten the Tribunal on this.

We set aside the present appeal for the reasons set out above. We also trust that the Respondent will adopt a consistent approach in applying the planning norms and guidelines in its decisions, the more so that such decisions have a bearing on the means of livelihood of people.

Delivered on the 15th December 2014 by:

Mrs. V. P. Bhadain

Chairperson

Mr. M. A. Busawon

Member

Mr. P. Thandarayen

Member