

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 115/12

In the matter of :-

Krishnawati Nundoo

Appellant

v/s

Municipal Council of Curepipe

Respondent

DETERMINATION

The present appeal is against a decision taken by the Council for having rejected the application of Mrs Nundoo for a Building and Land Use Permit for the conversion of part of an existing building into an aluminium workshop at 10, Listlet Geoffroy Street, Curepipe. The grounds for rejection were communicated to the Appellant in a letter dated 20th June 2011 and are set out below:

- "1. The existing building does not have the required setback from the road for such type of development.*
- 2. The activities would be detrimental to the residential character of the area."*

The Appellant, who was legally represented, deponed under solemn affirmation and was cross-examined by Mr. Chinasamy of the Planning and Development department of the Council. Mr Chinasamy deponed and was cross-examined by the Appellant's counsel. We have duly considered all evidence placed before us. The Tribunal also conducted a site visit on the 17th August 2015 in the presence of both parties.

Context Analysis

The subject site is located within a morcellement, at the junction of two roads, namely, Avenue des Capucines and a common road. The morcellement contains predominantly residential buildings. The site is a house enclosed on all four sides by a wall with its gate located at the angle of the junction. There are no other gates. The property is surrounded by other residences except for a privately owned bare plot of land on the right hand side. The width of Avenue des Capucines is 3.20 metres and the common road is 4.8 metres as per measurements taken on the locus. A few metres on from the Appellant's house, Avenue des Capucines forks into two such that one track leads onto a construction site, which is a cul-de-sac, and the other leads back onto Lislet Geoffroy road. Both tracks are roughly around 3 metres in width and are meant for two way traffic. No pavements have been noted along these roads/tracks.

Under ground 1 of the refusal letter

The refusal of the Council is grounded essentially on the point that the set back of the Appellant's building from the road being insufficient, would flout the provisions of the PPG. The PPG provides for the distance of a setback for industrial developments depending on the width of the road. As per the evidence, a staircase and a room have been added on the side of the house nearer to the common road. The Appellant contested this point on the basis that she intends to operate in her yard which is rather spacious and that the road is not close to the unit which she intends to use as her workshop. According to her there is sufficient parking space within her compound to even accommodate a vehicle as big as a lorry. There would therefore be no disruption to the flow of traffic.

An accepted definition in planning law of a setback is a space that is normally respected between different land uses. There would normally be setback between buildings, between residences, between the road and a building amongst others. Setbacks are designed to have several uses all predominantly related to safety and security. Some buildings are designed to have set backs to accommodate parking areas, while others have setbacks to protect road users from nuisances and other dangers that escape from certain sites. Sometimes setbacks are simply used as a means of demarcation of incompatible land uses. Why is the application of the setback important in this case? The Council did not offer a logical explanation in the present case except for a purely academic one. On the locus, it was noted that a boundary wall of about 6 feet high surrounds the property of the Appellant and an adjoining room, which is to be used as the workshop, is found at the far end of the entrance. As a matter of common sense, this wall, in the context of the proposed development, not only serves to demarcate the property from the road but also confines the parking area within the Applicant's premises itself

thus offering sufficient isolation from road users. The potential dangers associated with such venture are dust and sparks generated while cutting and grinding or long metal bars that can possibly protrude. We are therefore of the view that this ground raised by the Council lacks merit.

Under ground 2 of the refusal letter

The Appellant argued that there were other workshops operating in the vicinity. The Council on the other hand gave evidence that those workshops do not hold any BLUP. The only workshop owned by one Fawzee which was given a BLUP in the vicinity is found some metres away from the site. It is an automotive workshop which has not been allowed to make use of any motorized equipment. We have had the opportunity to have a visual appreciation of the subject site as well as its surroundings. Indeed the area is a residential one but we have also noted the presence of a handful of workshops which are allegedly operating illegally. The Appellant wishes to carry out an industrial development. The cursumus has always been that any commercial or industrial development will not be allowed in a residential area if it is likely to cause a major disruption in the area, be it in terms of overall character of the dwelling or in the surrounding amenity. We believe that we first need to look at the relevant provisions of the planning instruments and then decide whether any derogation is justified. The applicable planning policy is **Planning Policy Guidance 1** (PPG 1) relating to developments permitted in residential areas. **Paragraph 2.13** stipulates that developments permitted in residential areas are small industrial workshops and home working.

Part of paragraph 2.13 of PPG1 is reproduced below

"2.13 Small Industrial Workshops and Home Working

Small scale enterprises that are carried out in the home with or without modification of the dwelling may in some locations be acceptable if the use is ancillary to the principal use as residential but surrounding residential amenity is not compromised.

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. Examples of potentially acceptable small scale enterprises include cooking of sweets and food preparation, sewing and small scale clothing manufacture, repairs to electrical goods, minor car/mechanical and bicycle repairs,

artists repairs, artists studios, offices such as book keeping, administration, professional services etc....."

It stands to reason that the presence of such a workshop will cause a rise in the traffic in the locality. The presence of the other workshops and the construction site are no exception. Avenue des Capucines and the common road being used for two way traffic and both being less than 5 metres in width do not appear to be adequate to serve areas having industrial developments. At best they can serve residential localities where no on-street parking is required. These roads would be considered sub standard if they have to cater for lorries since crossing of 2 vehicles will be problematic, if it is not already the case. This is likely to be disruptive to the residential amenity of the area. More importantly, noise pollution is a factor of utmost relevance in the ~~presence~~ ^{present} context. It stands to reason that for such an enterprise, an electric saw will be used for the cutting of the aluminium. The application form of the appellant which is on record shows that the working hours will be from 9 am until 1800 hrs and that the machinery that she proposes to use is a compound meter saw of 1650W. We believe that the noise nuisance that will be generated will be so disruptive that even the imposition of conditions will not suffice to mitigate it. Sound proof rooms will not be an option since the noise, dust and fumes associated with this enterprise are noxious and it will not be reasonable to expect anyone to carry out such trade in an enclosed room without proper ventilation. We also believe that since the area is predominantly residential and enjoys a rather calm neighbourhood, allowing such a bad neighbour development in the area will open the floodgates for other such developments. When placed on a balance, the general public interest would outweigh any private interest here. We therefore believe that the Council was right in its assessment and are therefore not prepared to amend its decision.

For all the reasons set out above, we find that the appeal is devoid of merit. The appeal is therefore set aside. No order as to costs.

Determination delivered on 18th August 2015 by

Mrs. J. RAMFUL

Vice President

Mr.G. SEETOHUL

Assessor

Mr. V. Reddi

Assessor