

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

**ELAT 131/12**

**In the matter of :-**

**Soureshmabhaye Luximon**

**Appellant**

**v/s**

**Municipal Council of Curepipe**

**Respondent**

**DETERMINATION**

The present appeal is against a decision taken by the Council for having rejected an application made by the Appellant for a Building and Land Use Permit (BLUP). The application was for the conversion of the first floor of an existing building at Lake Point Commercial Complex at Queen Elizabeth Avenue, Curepipe into (i) a Multipurpose hall and (ii) General Retailer's Shop/ Victualler's shop

The grounds for refusal were set out in a letter dated 29<sup>th</sup> December 2011 as follows:

"1. The Fire Services Department has in a letter FPL/37/02 dated 27 July 2009 revoked The Fire Certificate of Lake Point Ltd Commercial Complex of which your site forms part.

2. The Ministry of Health and Quality of Life has in a letter dated 03 February 2009 not recommended that:

(a) Entertainment activities be carried out in view of the fact that they are a source of noise the more so that complaints have been registered, and

(b) The building which was previously being used as skating-rink is not suitable for such activities.

3. In view of the scale of development being proposed, the parking requirements are by far inadequate (it should be at the rate of 1 parking space per 4m<sup>2</sup> public floor area as per Planning Policy Guidance.
4. Site notification plate has not been affixed and press notification is incomplete.
5. Legal notice has not been served on all contiguous neighbours.
6. Consent has not been obtained from the lessor i.e Municipal Council of Curepipe as per Article 14 of the Lease Agreement dated 02 July 2001."

Mr. Luximon, father of the Appellant testified on her behalf with regards to the grounds of appeal lodged. Mr. Gooriah, Head Planner at the Council, testified on behalf of the Respondent. Both parties were legally represented.

We have duly considered all the evidence placed before us as well as submissions of both counsel. Grounds 1 and 6 of the grounds of refusal of the Council were dropped. They were made a live issue to some extent but we believe that since they were dropped, there is no need for this Tribunal to address those. We also note that the second limb to the application for BLUP relating to General retailer shop/ Victualler's shop was not canvassed as such before us. It was infact intimated by Counsel for the Appellant that this would be dropped in an attempt to prompt a reconsideration of the application by the Council. The Council reverted maintaining their objection after the case was closed. We are therefore confined to considering the merits of this appeal with regard to the application for BLUP for a wedding hall only since no evidence was adduced with regard to the latter part of the BLUP application and also the Appellant did not deny that the notification made no mention of the General Retailer's shop/ Victualler's shop.

## **Ground 2**

It is the contention of the Appellant that the letter issued by the Ministry of Health and Quality of Life dated February 2009 refers to activities which used to be carried out at the time such as nightclubs, discos and late night parties whereby music was played throughout the night. The Appellant's enterprise, according to her father, would be substantially different in that only Indian weddings will be conducted there which would be in the daytime. He also made a comparison with the Municipal Town Hall of Curepipe, situated barely a few metres away, which entertains all sorts of parties, open air concerts and weddings whereby noise pollution would normally be moreso an issue. He stated that he failed to understand the disparity with

which the Appellant's enterprise for a wedding hall was being considered when compared to the activities carried out at the Municipal Town Hall. The Council's representative stated that he had been posted there for 10 months at the time he was deponing, he tried to differentiate the noise pollution emanating from the Lake Point and that from the Town Hall. He stated that the wooden structure of the Town Hall rendered the building more sound proof in comparison to iron structure of the Lake Point. He admitted that he was not a noise expert but that his knowledge on the issue was acquired through experience.

We find this analysis of wooden structure compared to iron structure of the two buildings a rather flawed one in this particular context. It is common knowledge that functions that take place at the Town Hall are usually conducted with their doors wide open, possibly for people to move freely and for proper ventilation. It was also not disputed that open air concerts with live music and orchestras are held in the compound of Municipal Town Council. Although such concerts may not last throughout the night, the evidence on record suggests that the Town Hall does entertain parties at night. When compared to the activity sought by the Appellant, which would not be at night and within the confines of the building, we are not convinced that the respondent's stand on the issue is justified. True it is that there would be some commotion associated with the cortege or vehicles of those attending the wedding but these are the "little inconveniences of life" which, in our opinion, one has to expect when living next to big complexes such as the Casino, the Town Hall or the Lake Point. It is important to note that infact the Lake Point Ltd has held a permit since 2001, a copy of which is on record, for commercial complex comprising of night club, restaurant, food court, shops, art gallery, skating track and offices. This is a clear pointer of the types of activities that the complex was intended. They are predominantly entertainment. It would appear for some reason some outlets within the Lake Point have closed down. This however does not change the fact that the complex had gained planning acceptance. This means that the planning department of the respondent must have given its clearance to the complex accommodating entertainment activities. Noise pollution is in many situations a consequence of entertainment. The enterprise of having a wedding hall for Indian weddings, would be entertainment but in our view at the lower end of the scale since they would not be an activity that would be carried out day in day out, throughout the year, let alone throughout the night.

The respondent's representative failed to convince us in what way the letter emanating from the Ministry of Health and Quality of Life back in 2009 was applicable in this case, without further justification. There was no evidence adduced by the respondent with regard to any objections to the proposed development of the appellant. This ground of refusal refers to objections which may have related to activities totally different from the present one. It would seem that the Council did not deem it fit to revert to the Ministry for a clearance for the proposed development. The tenor of the letter dated 24<sup>th</sup> August 2012 emanating from the

same Ministry under the signature of Mr Luckwa suggests that as a matter of procedure if the Council sought a clearance from them, it would have had to send in an official request. Mr Gooriah did not give evidence on whether pertaining to the application of the Appellant, a clearance was sought from the Ministry. We believe this should have been done given the specificity of the enterprise. He also did not give any evidence in what manner the skating rink would not be suitable for the proposed development. We therefore cannot surmise on the issue. This ground therefore fails.

### **Ground 3**

It is the contention of the Appellant that there is sufficient parking space for the proposed development. The Appellant's representative stated that there was around 30 parking slots for the Lake Point complex and that he had made arrangements with the Centre Islamique de Maurice situated a few hundred metres away for more parking space but that no agreement had been entered into pending the outcome of the application for the BLUP. We have it in evidence that the compound of the Centre Islamique could accommodate some one hundred cars. According to the Council the parking space would not be adequate since for a gross floor area of approximately 600 sq metres, floor size of the site in lite, a parking requirement of 150 slots would be required as per the Planning Policy Guidance. Furthermore, their stand is that the Islamic Centre being situated over 350 metres away would not be a practical arrangement for those attending the wedding. The reply the Council obtained to that was that the guests could be dropped<sup>off</sup> at the Lake Point so that only the driver would then have to park the car at the centre. We believe that there may be some merit in this point raised by the Council. Document D, which is an extract of the Technical sheet of the PPG essentially provides that for Wedding Halls the parking requirement is 1 car park space per 4 sq. m public floor area. It is worthy of note that the term used is not gross floor area but "public floor area" meaning where the public has access. That therefore may lead to a variance in the figure 600 sq m as calculated by the Council. This being said, the Technical Sheet contains a note as follows:

*"The above parking guidance will be applied in a manner appropriate to local circumstances together with local and national trends in transport policy making. For example reduced on plot provision may be acceptable where it can be demonstrated that spaces are not required e.g highly accessible locations, locations well served by public transport, specific user/operational requirements etc."*

The evidence on record shows that Lake Point is accessible through 3 routes, it is situated next to Jan Palach, the bus station of Curepipe and that the proposed development is intended for the hosting of Indian weddings only, as per the evidence of the Appellant's representative.

These are important factors, which on the face of it appears to satisfy the criteria for the Council to exercise its discretion in accepting a reduced plot provision for the parking space. This of course cannot be an exhaustive list, since there are many other issues to consider such as the number of weddings to be hosted, the days on which the hall will be used, the times, the drop off points to the venue. We have it in evidence on record that the Islamic Centre, which has a functional parking space within walking distance, is willing to offer part of its parking space to the Appellant. We believe that although it would have been desirable to have a proper parking area next to the venue, this in itself cannot be a ground for refusal of a BLUP. This issue can be corrected by imposing the appropriate conditions. Besides, the strategic location of the Lake Point, in our view, makes it rather accessible. The main entrance to the Lake Point is next to the Town Hall, and in the vicinity of the Town Hall, there is the market, there are commercial complexes, banks and even a church. Public parking spaces are available in such places depending on the day of the week. Alternatively the Council could impose conditions that the Appellant would be granted a BLUP subject to her furnishing proof that there is an arrangement made for accommodating <sup>150</sup>~~160~~ parking lots within walking distance from the Lake Point. This ground therefore fails. *207*

#### **Grounds 4 and 5**

The Appellant's representative testified that he was informed by someone at the Council that for development within the commercial centre no site notification was required. As for the press notification he stated that he had put places of entertainment but infact intends to restrict it to Wedding Hall. The application form for the BLUP mentions "Multipurpose Hall as well as a general retailer/victualler." He also stated that he had served legal notice on the 5 contiguous neighbours including the Casino de Maurice and Sicom Ltd. The copy of the notice annexed to the statement of case shows that the notice served by usher on the neighbours refer only to wedding hall. The Council's representative failed to give any evidence to substantiate the ground raised by the Council which could be of assistance. He stated in cross examination that the Appellant failed to serve legal notice on one neighbour, who resides behind the pre-primary school which is found behind the Municipal Town Council's property. He stated that this resident's land adjoins the site partly but in the same breath agreed that Lake Point is surrounded by water. As per the extract of the Building and Land Use Permit Guide 2006, produced, notification for applications for the construction of a building or conversion of a building to be used as a theatre, cinema hall or other place of public entertainment is required. Although it does not mention specifically a wedding hall, we believe that conversion of a building into a wedding hall would be included. However, the distinction here is that Lake Point is a commercial building which already holds a permit for predominantly entertainment

activities. As a matter of common sense, the contiguous neighbours are most likely already aware of the nuisance associated with a commercial complex. The reason for having a notification procedure is to bring to the attention of people who would be affected that there is a proposal for a particular development there. The Appellant published press notices with regards to Public Place of Entertainment, which we believe does include wedding hall. He has served notice on neighbours within and outside Lake Point with the exception of one person, although no witness has been called by the Council to substantiate this. We believe that on the facts of this present case, a technical defect in the notification procedure is not fatal given the circumstances.

For all the reasons set out above and given that the evidence adduced by the Appellant was solely with regard to the hall being used as wedding hall, we allow the first limb of the appeal. We order the Council to grant the BLUP for a wedding hall subject to such conditions that it deems fit. The second limb to the appeal regarding the application for general retailer/victualler not having been pleaded, is therefore dismissed for lack of evidence.

Determination delivered on 24<sup>th</sup> July 2015 by

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**Mrs. J. RAMFUL**  
Vice President

**Mr. V. Reddi**  
Assessor

**Mr. B. Kaniah**  
Assessor