

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

**ELAT 221/12**

**In the matter of:**

**Shandra Tourist Residence Ltd  
( represented by Mr. L. Seewoochurn)**

**Appellant**

**v/s**

**District Council of Black River**

**Respondent**

**DETERMINATION**

The Appellant, acting through one Mr. Seewoochurn, has lodged an appeal against the decision of the Council for having refused to grant it a Building and Land Use Permit (BLUP) for the conversion of existing building into a tourist residence at corner Avenue Des Empereurs and Baracudas in Morcellement Chazal, Albion.

The ground for refusal set out in a letter dated 9<sup>th</sup> July 2012 is that the “proposed development is being proposed in a residential lot within Morcellement de Chazal where commercial lots have already been designated.”

This appeal was initially lodged before the Town and Country Planning Board and was subsequently transferred to the Environment and Land Use Tribunal following the enactment of the Environment and Land Use Tribunal Act 2012. This explains for the presence of some documents in the file.

Mr. Seewoochurn gave evidence on behalf of the Appellant company, which was not legally represented. Mr. Dunputh on the other hand gave evidence on behalf of the Council and was cross-examined by Mr. Seewoochurn. We have duly considered the evidence of both parties as well as submission of counsel for the Respondent.

The ground of appeal raised by the Appellant in an undated letter to the Council is that the reason put forward by the Council is frivolous and unsustainable. Mr. Seewoochurn gave evidence that he owns a house in Albion and that he had no job at the time of the hearing. He sought to get some revenue out of the house by converting it into a Tourist Residence since he had been in the field for some twenty five years. He stated that although the morcellement is a residential one, there are commercial developments some 200 metres from his house. The Council's stand was that the Morcellement had clear designated lots for residential developments and for commercial developments. The lot owned by Mr. Seewoochurn was clearly a residential one. Reference was made to his title deed which was already on record.

The title deed indeed stipulates that *"...il a ete observer que la susdite distraction a ete dument approve conformement a la loi a des fins residentielles par "THE BLACK RIVER DISTRICT COUNCIL" ainsi qu'il appert d'un 'development permit' emanant dudit "District Council" ....qui est demeure annexe audit contrat."*

The Council therefore, having approved the "distraction" of the lots within the morcellement, was in a position to inform the Tribunal the status of the lots. From the uncontested evidence of the Council, it would appear that this morcellement was designed in a way to accommodate commercial enterprises in certain designated lots, in our view possibly in strategic places, while the rest are residential lots. In a morcellement where such details have been seen to, it can be reasonably inferred that it was thus designed to enhance its character. Allocation of commercial lots within a morcellement is usually done to promote certain enterprises which will cater for the need of its residents. This is all part of its amenity. We are therefore satisfied that in having regard to the design of this morcellement the Council paid heed to planning laws. After all design is also an aspect of planning.

The Appellant bore the burden of proving the reason given by the Council is frivolous and unsustainable. Its representative vaguely stated that there were some commercial developments within 200 metres of the subject site and that there is also a hairdresser's parlour some 50 metres from his house. Surprisingly, he could not provide any detail concerning the parlour. When put to him if he knew whether the hairdresser had a valid BLUP, he was unable to give a satisfactory answer. While we do appreciate that someone would not in the normal course of things go around asking entrepreneurs whether they have a valid BLUP, we would have expected a concerned party to do some background work for the sake of proving his case. We find that the evidence of the Appellant, as presented, is rather flimsy. Infact, apart from the deposition of Mr. Seewoochurn, which we found to be rather sketchy, no other evidence was produced nor was the Tribunal referred to any documents which were on record. Now, even if his version is to be believed concerning the commercial developments, the

Council did not deny same by explaining the concept of designated commercial lots within the morcellement. The Appellant did not provide any name of enterprise specifically. In the absence of such information from the Appellant, the Council cannot, understandably, verify whether any conversion has been allowed from a residential cluster to a commercial one within the morcellement, bearing in mind the numerous lots it contains.

The Appellant did not enlighten us either on why the business of tourist residence should be allowed within a morcellement which is meant to be a residential morcellement. All we had in evidence from the testimony of Mr. Seewoosoorun was that there was a hotel not too far away but we were again not favored with any evidence of similar activities within the morcellement operating with or without the relevant BLUP. In the circumstances, we find that averments of the Appellant were not well motivated.

For all the reasons set out above, we find that the Appellant has failed to prove its case. The appeal is therefore dismissed. No order as to costs.

Determination delivered on <sup>12</sup> 12 May 2015 by

Mrs. J. RAMFUL

Vice President

Mr. SEETOHUL

Assessor

Mr. BUSSAWON

Assessor