

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

Cause No. : ELAT 415/13

In the matter of:

ALAMPATA LTD.

Appellant

v.

DISTRICT COUNCIL OF MOKA

Respondent

DETERMINATION

The Appellant has lodged an appeal against the decision of the Respondent which has refused the granting of a Building and Land Use Permit for the construction of a first floor on a commercial building to be used as a guest house.

The decision of the District Council is contained in a letter dated 26 March 2013 where the ground of refusal is said to be 'Inadequate parking spaces'. The Appellant notified of his decision to appeal on the 8th April 2013 and filed its statement of case on the 28th January 2014. It is noted from the statement of case that there had been an exchange of correspondence between the parties between the 5th March 2013 and the 26th March 2013, wherein the Appellant had informed the Respondent that necessary measures had been taken to cater for additional parking. Nonetheless the decision of the Respondent was maintained.

From the statement of defence filed by the Respondent, it is averred that, as indicated by the Appellant, one Cooshnea Dev Shantaram had proposed to put at the disposal of the Appellant his land to be used as parking. A site visit was effected by the 'prepose' of the Respondent and certain recommendations were made. The Executive Committee subsequently maintained its objection on the ground that the parking had not been provided on a permanent basis. The Respondent added that they have also received objections from the inhabitants of the locality.

It is on record that on the 12th January 2014, ministerial approval had been obtained for a BLUP to be issued for the setting up of a car park by the Appellant at the given

address, subject to the 'Council ensuring that alternative parking arrangement be made after the lapse of the three year agreement with Mr. Cooshnea.' (It has been stated that the initial agreement between the said Mr. Cooshnea and the Appellant was for a period of three years).

The Appellant deposed and explained the details of his proposed project and the fact that there had been no objection to the proposed activity.

The Chairperson of the District Council was called to depose on behalf of the Respondent. This witness agreed that according to the guidelines governing this type of activity, the provision of ten parking slots for a guesthouse comprising of nine rooms would be sufficient. He went on to say that the objection has been maintained because the parking space is not on the land owned by the promoter and, in his opinion, this amounts to an inadequacy considered by the Council. The witness attempted to bring in new grounds to support the refusal, namely the objections that were made against the development and the 'immoral activities' that may take place with such development. This line of argument was rightly objected to being given that the ground of refusal of the application for BLUP is restricted to the said inadequacy of parking space.

In cross examination, it came out that the Permits and Business Monitoring Committee of the Council had recommended the approval and the Ministry of Agriculture had also given its green light. The Minister of Local Government had also given its approval with a proviso that that the Council ensured that adequate parking be maintained after an initial three year period.

Having heard the evidence adduced by the Appellant and representative of the Council, we find that the refusal, being based on the inadequacy of parking has not been substantiated.

The Chairperson of the District Council sought to give the term 'adequacy of parking' a meaning that relates to the permanence of such facilities. Yet, this is not within the definition given in the 'Building and Land Use Permit Guide' issued by the Ministry of Local Government, which was produced as **Document B**.

We do not subscribe to the view expressed that the assessment of the criterion of 'adequacy of parking' should be looked at from the duration point of view. We agree with the view expressed that 'adequacy of parking' should be viewed in terms of the 'availability' and the 'extent' of the parking.

Document B provides for the need of **adequate parking space** on site as per a ratio of one parking space for three bedrooms in the case of hotels and Guest House with Dining areas, Conference or function facilities.

It is on record that the application relates to a BLUP for a guest house to operate nine rooms. Yet the parking space provided can accommodate ten vehicles. This meets the requirement as set out in the BLUP Guide.

Although the issue of permanence of the parking is not provided, per se, in the BLUP Guide, the witness for the Respondent raised this concern. His stand contains an apprehension that any future development may have on the availability of such parking space.

In this respect, **Document A** produced by the Appellant shows an agreement signed by one Mr. Shantaram Cooshneea, owner of a portion of bare land of the extent of 9 perches situated opposite the proposed development, to the effect that he has let the said portion of land for an indefinite period to the Appellant company in consideration of a yearly rent of six thousand rupees. The concern as to the duration of the arrangement is taken care of by Document A which provides the answer to the apprehension expressed on behalf of the Council.

Finally, we must highlight that the Council is empowered to review its position should there be any change that may have an impact on the conditions that it is authorized to impose in any BLUP.

In view of the above, we hold that the ground of refusal expressed by the Respondent has not been supported. There is ample evidence on record to show that there is adequate parking in accordance with the BLUP Guide.

We therefore allow the appeal. The Respondent is ordered to proceed with the granting of the permit applied for with conditions that it deems necessary for the conduct of the development in question.

Delivered on 8th September 2015 by:

Mrs. V. Bhadain
Chairperson

Mr. S. Karupudayan
Assessor

Mr. G. Seetohul
Assessor