

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

**ELAT 438/13**

**In the matter of :-**

**Rose Hill Transport Properties Ltd**

**Appellant**

**v/s**

**Municipal Council of Beau Bassin/Rose Hill**

**Respondent**

**DETERMINATION**

The present appeal is against a decision taken by the Council for having rejected an application made by the Appellant, a registered company, for a Building and Land Use Permit (BLUP) for it to use bare land situated at 19, Hugnin Road, Plaisance, Rose Hill as a bus depot. The grounds for refusal were set out in a letter dated 24<sup>th</sup> May 2013 as follows:

“1. The proposed development will be to the detriment of the neighbourhood, inhabitants in the vicinity and to road users taking into account the existing residential context, the heavy traffic flow, and the limited width of Hugnin Road along the site.

2. Bus maneuvering from and into the subject site will disrupt fluent traffic flow along Hugnin Road.

3. The noise emanated from the buses in the proposed depot early morning and late in the evening will be a source of nuisance to the immediate neighbourhood.”

Mr. Sin Kwok Wong, Project Coordinator at RHT Properties Ltd testified on behalf of the Appellant under oath with respect to the four grounds of appeal lodged. Mr. Nawoor, Planning Inspector at the Council, testified on behalf of the Respondent.

## **CONTEXT ANALYSIS**

We have duly considered all the evidence placed before us. The starting point is, we believe, to make an assessment of the type of locality we are dealing with. It is the contention of the Council that 19, Hugnin Road, Plaisance, Rose Hill is situated in a residential area. This explains why there have been objectors to the proposed development. Infact, Hugnin Road has been qualified by the Council as "main distributor" road which links Beau Bassin to Rose Hill. The fact that Hugnin road runs through a residential area and is already saturated with traffic is not denied by the Appellant but what is denied is that the road will be overburdened since the number of buses will not increase. Some 10 buses will simply be relocated to the proposed depot which is 10 metres away on the opposite side of Hugnin road.

### **1. RHT has been operating there since long so the development cannot be detrimental**

The Council's stand is that the proposed development would contravene the planning instruments. It referred to the Outline Planning Scheme (OPS) and the Planning Policy Guidance (PPG). The relevant extracts were not produced for our appreciation. While the Council failed to address us on the particular policies, we can take judicial notice of the fact that the OPS and PPG were inexistent in 1954. Having a bus depot which contains some 95 buses within a residential area is no doubt, in planning jargon, a bad neighbour development. Its existence can only have come about through a lack of proper development control. The Appellant submitted that the proposed development will not lead to an intensification of their business and that the total number of buses that would emerge on Hugnin road will remain the same. Developments of such nature are normally assessed in terms of their impact on traffic levels and it is incumbent on the developer to show in what way the development will not have any negative impact on the existing traffic. The point we need to address is whether the proposed development will infact be detrimental to the character and amenity of the area. The Appellant's witness gave evidence that typically as from five o'clock in the morning, the buses start leaving the depot and that as the situation currently stands the buses at the start of their journey emerge onto Hugnin road and that this will not change with the proposed development either. We believe that the evidence of the Traffic Management and Road Safety Unit on this point as well as issues such as the characteristics of the road including the proximity of road junctions, pedestrian crossings, bus stops and general layout of the road would have been of great assistance to us in deciding this point. The point, in our view, is that the proposed development will create a second outlet onto Hugnin road such that the buses of RHT Properties Ltd will be filtering onto this main distributor road from 2 different points at the same time. With so many buses emerging one after the other from 2 strategically opposite exit

points and having regard to the uncontested evidence as to the volume of traffic on that road, we believe that it is likely to lead to some major hindrance in the flow of traffic on such an important road. From the location plan produced, Document C, it can be seen that between the 2 exit points, there are other junctions that is Churchill Avenue and Rue Alfred Gelle. While we do take on board that their day starts at five in the morning but as the representative of the Appellant himself stated, the drivers do not all come at the same time. It is possible therefore that it could take well over an hour for all the 95 buses to finally be on the road. This is most likely to coincide with the time when there is already a substantial amount of traffic built up on that road. It is conceivable that buses entering onto Hugnin road from 2 opposite points with possibility of each turning in either direction at the point of exit, may create major traffic congestion. We are therefore, not convinced on this point.

## **2. More space is needed to park and repair buses for improvement of operations and efficiency**

The Appellant's main contention is that more space is needed for their buses within the existing depot namely for better control over human resources and so that there is adequate space to repair their buses. According to the testimony of Mr. Sin Kwok Wong, the current depot being very full when some of their drivers are late, results in a rearrangement of the buses within the depot to allow buses to leave on schedule thus generating more noise. The proposed depot will facilitate the task of the drivers as they would know exactly where to find their buses, according to him. Although we are given to understand by the Appellant that simply relocating 10 buses will help, it would seem that 10 buses is only a drop in the ocean. The existing depot would still contain some 85 buses which would possibly still require manoeuvring should some drivers come late. No clear evidence has been adduced with respect to the proposed parking layout of the remaining buses, their access and exit, nor how this will reduce noise pollution. Even with regards to the proposed depot, Doc B produced shows parking slots for only 8 buses where as the Appellant is proposing to have 10 buses there. When it was put to the representative of the Appellant in cross-examination that the proposed depot would only accommodate a maximum of 8 buses, he replied that the arrangement would be 8 alongside each other but that it would not be difficult to put in a couple more. If that is the case, again we can anticipate that it would necessitate some rearrangement of buses to move them out of the proposed depot, which could cause commotion within or even outside it since some of the buses would have to be moved out of the entrance onto the road. The Appellant's representative stated that the Appellant would shelter only 8 buses there if need be. Even if his version is to be believed, we fail to see in what way apart from these 8 buses, how the space vacated by 8 buses in the

existing depot will solve the problem of the remaining 87 drivers from having to manoeuvre for easier access and exit. It is unclear in what way will that ensure that all their buses will be starting their journey on time. From a planning perspective, we view the fact of having 2 bus depots in the same locality but on 2 different sites as an intensification of a bad neighbour development in that instead of having one locus where all the commotion, congestion and noise pollution is generated, there would be 2 such problematic areas on split locations. From the testimony of the Appellant's representative it is clear that the commotion is not only in the morning when the buses are moved around and leave the depot but even in the afternoon, they all have to queue up to get into a slot one by one inside the depot. This exercise if it has to take place simultaneously on the 2 lanes of Hugnin Road, will no doubt create major disruption in the flow of traffic since it could entail an overspill of the line of buses onto that road. The objective of main distributor roads such that Hugnin Road is normally to carry traffic to town centres. Therefore, it is important to reduce traffic demands on main distributor roads so that there is as little congestion as possible and that in turn buses can provide an adequate level of service. The proposed development is likely to overburden this distributor road by providing a second access for non-essential traffic. This in turn may also adversely impact the environment and safety of the adjoining land users and road users.

The respondent's stand on this issue according to their statement of defence is that there is a lack of visibility splay, of turning radius and manoeuvring space to enter and move out of site. This is supported to some extent by Doc C. There is already a high rate of traffic flow as it is main distributor linking Beau Bassin to Rose Hill, according to the respondent, and the road is so narrow that it would be difficult for 2 buses to cross. If this is daily occurrence it will cause undue traffic delay. This evidence was also uncontested by the Appellant save that its representative stated in cross examination that the gate can be enlarged if need be because of the turning radius required. We have also not been enlightened by way of evidence on whether the Appellant also holds a BLUP for workshop or if it holds the relevant BLUP for the type of works or repairs it intends to carry out on the buses at the existing depot. This ground therefore also fails.

### **3. The aim of the development is to improve the operation of service provided to the public**

The buses of Rose Hill Transport Properties Ltd, according to the Appellant's version, carry about 30,000 passengers per day. The company is in receipt of a government grant of Rs 4.5 Million to finance the cost of fuel for carrying old age pensioners and students. The

proposed development will improve their service in that their drivers will respect their time table to the satisfaction of their passengers, there will be less time involved in moving buses hence fuel costs savings and reduced noise pollution which according to the Appellant is in the public interest. This issue of public interest in the view of the Appellant should have been weighed up against the interest of a handful of objectors, some 17 or 18 of them, which the Council failed to do. The respondent's response to this argument is that it cannot determine the application to the benefit of a business only while disregarding the impact of such development on its immediate residential surrounding. Objections were received from inhabitants of the neighbourhood with respect to the development affecting their environment in terms of pollution.

The Tribunal does appreciate that there is a need to protect residential and other sensitive areas from traffic intrusion in order to prevent environmental pollution in all aspects and especially to improve air quality. This is where the need for development of measures to reduce vehicle traffic arises. In Mauritius, we have the Planning Policy Guidance to give guidance notes on planning measures to compliment and contribute to traffic reduction. In other words, they are ways devised for development to be planned in a way so that there is better control on conurbations, on traffic density, on developments and the minimizing of the risk of accidents amongst others. Some flexibility is allowed. We do take the point of the Appellant that there is the wider public interest to be weighed. The 'public interest' issue, according to us is an amorphous concept which cannot be given a rigid definition because it changes over time, it changes according to circumstances of each situation and it changes according to categories. In the present case, we believe that the 'public interest' issue as canvassed by the Appellant is more of a commercial consideration/benefit. Whether the company is receiving grant for the fuel carrying a targeted crowd is not an issue of the general public at large nor is it relevant for the purposes of considering whether a development would be an environmentally sound project which should gain planning acceptance at that location. Whether the buses will be able to respect their time table and satisfy a sizeable part of the public is a different issue, which we believe does not find its application in this case. It would then have been more a question of finding ways for the removal of heavy duty vehicles from Hugnin Road and other routes which will allow bus services to avoid delays and improve their reliability. We are infact here faced with a situation where the buses, if the BLUP is granted, will be emerging on both lanes of Hugnin Road from 2 exit points almost opposite each other. In the afternoon, the scenario will be repeated but in reverse order, that is the buses will be lining up, most probably on the road since the proposed development site is on a much smaller scale, so that they can park in their slots within the depot. This undoubtedly will cause a serious slowdown in the traffic, a lot of noise and air pollution, raise issues of safety and security of roads users and that of the inhabitants of the locality including the children. We believe that the proposed project of the Appellant is an environment issue coupled with the issue of land use. Infact these two issues

are inextricably linked in that any development on a property, hence its land use, will have an impact on the environment and vice versa. One needs to look at one's surrounding environment to see whether a particular development is compatible or not in the locality. While we do appreciate the Appellant's depot existed since 1954, the Appellant did in no way adduce any evidence to show their project will not be detrimental to the traffic congestion or pollution, let alone improve them. We believe that the onus was on the Appellant to call on expert evidence on these issues. It does not suffice to say that the sum total of the fleet of buses emerging on the road will remain constant and therefore the traffic and pollution issue will also be unaffected. Hugnin road is connected to a network of roads. This Tribunal has said time and again that planning is always for the future and therefore it is crucial to look at all aspects of the development in the amenity of the existing locality and the likely natural progression of developments that will take place in the foreseeable future within that locality. This helps in the planning assessment of whether a project is environmentally sound to be accepted in a particular locality. In this respect, it is also important to take on board those who will be impacted upon by the development. Doc A, produced by the Appellant, is a copy of a letter signed by one Nadal Thierry with a petition attached bearing some 16 names and signatures. As per the contents of the letter, they are opposing the proposed development in their capacity as local inhabitants on the ground of pollution. The content of the letter is not disputed by either party. The representative of the Appellant stated in examination in chief and in cross examination that moving the buses around makes a lot of noise and that bus engines already creates noise pollution. We believe that the Council was right to have taken on board the objections. As stated above, for a project to gain planning acceptance it is also important to take on board whether it will have a negative impact on those who will be directly or indirectly affected by it and assess the merits of those objections. It is only logical that having two sources of noise, air and traffic pollution on both sides instead one will be an intensification of the pollution for those who will bear the brunt of living in that locality. This ground therefore fails.

#### **4. The Appellant was not given a hearing before the Council.**

It is the contention of the Appellant that the Council should have given them the chance to explain their project and its implications, especially as there were objectors. The stand of the Council is that the outcome of the hearing would not have changed even if a hearing was held or the objectors withdrew their objections. The proposed development would go against the policies. The simple issue here is whether the law imposes a duty on any Council to offer a hearing to the parties. The answer is the negative. The guide that was quoted by the Appellant cannot be given force of law. It is as the name suggests, simply a guide. The language used therein that is that the PBMC "may hold a hearing at the earliest convenience. When the

hearing is fixed, no postponement of the hearing will be entertained...." seems to suggest that the Council does indeed have a discretion on deciding whether or not to have a hearing. Of course, it is most desirable for the Council to exercise this discretion judiciously and diligently but where a party is contesting the decision making process, its recourse is by way of judicial review before another forum. In any case, any perceived procedural lapse is cured by this tribunal reviewing the merits of the application. This ground therefore also fails.

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

Determination delivered on 8<sup>th</sup> July 2015 by

**Mrs. J. RAMFUL**

**Vice President**

~~Mrs. A. Jeewa~~

**Assessor**

**Mr. P. Thandarayan**

**Assessor**