

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

Cause No. : ELAT 560/13

In the matter of:

Mr. DEEG JACQUETTE

Appellant

v.

DISTRICT COUNCIL OF BLACK RIVER

Respondent

**DETERMINATION**

The appeal is in respect of the decision of the Respondent for having refused to grant a BLUP following an application submitted by the Appellant for the conversion of an existing building into a bodywork repair and paint workshop. The grounds of refusal, as contained in the letter dated 29 November 2013, are, firstly, that the site already consists of commercial activities (restaurant and proposed beauty care centre), secondly, that the garage was originally intended to be for private use and, thirdly, that the operation of a workshop will constitute an incompatible use with the activities of a restaurant.

The Appellant, who was not represented by counsel, lodged his appeal on four grounds as contained in his notice of appeal dated 4<sup>th</sup> December 2013. These are as follows:

1. The restaurant mentioned was not opened and is not operational.
2. The Appellant states that his business is not a big industrial property and he uses light machinery e.g. only one air compressor of 5.5 KW.
3. The Appellant addresses ecological issues that may arise by using high-tech air filters with no release of chemical products.
4. The Appellant is a professional paint artist and his garage is "more or less a show than an industrial mean".

In addition to his notice of appeal, the Appellant filed three photographs taken by him which show the artistic nature of his work as well as a plan showing the airflow system proposed for the operation of his workshop.

The Respondent, in its statement of case, after annexing the relevant documents that the Executive Committee has taken into consideration (i.e. the BLUP application form, the title deed, the conversion plan of the garage into a workshop and the refusal letter from the Council), simply stated that the appeal is devoid of merits and should be set aside with costs.

The Appellant adduced evidence to the effect that the reasons put forward by the Council for refusing the BLUP applied for are no longer valid, inasmuch as the owner of the premises where he proposes to develop his workshop has never operated a restaurant and no longer wishes to proceed with his project to open a restaurant there. This is supported by a letter from 'Dream Team Properties Ltd.', the owner of the premises, to that effect (Document A). The proposed beauty parlour in the same premises will also not operate there, the promoter, one Mrs. Vimi Luximon, having decided to operate her business in another location. In fact Document B shows that Mrs. Vimi Luximon is operating her parlour in another location. Under cross examination he stated that the type of work that he intends to do in the proposed workshop is paintwork on vehicles. This may cause him to effect some very light repairs body works at the spot where he does the paintwork. He laid emphasis on the fact that his activity did not involve the painting of the body of vehicles but he exercised a form of art work on the vehicles. The technology he used was not that use for painting of vehicles. The photographs submitted by him show the technology used in the course of his work.

We note that there is no bar in the title deed on the use of the premises (Lot 25) for commercial activities as opposed to other lots which are meant to be used exclusively for residential purposes. We note also that the use of 'industrial activity' for which the application was submitted is an administrative classification used for the purpose of submitting an application under a particular 'cluster'. It is arguable whether the 'industrial activity' cluster is excluded from what is defined as 'commercial activity' under the definition of an 'acte de commerce' within the definition of the 'code de commerce'. Having said this, we must highlight that this aspect of the activity of the Appellant was not part of the grounds to reject the application for BLUP made by the Appellant.

The first ground of refusal is that the site already consists of commercial activities, namely a restaurant and a beauty parlour. Evidence adduced by the Appellant shows that there has never been any such activity started at the premises and this is confirmed by the documentary evidence on record (Documents A and B). Therefore there is no basis for us to support this ground.

The second ground of refusal is the existence of a garage originally intended for private use. By this, the representative of the Council explained that this was meant to be used as parking in relation to the operation of the restaurant. Now that we are in presence of evidence to the effect that there will be no restaurant, the issue of having a parking to that effect does not arise. There is no logic in maintaining the destination of the garage as per the BLUP. At any rate, the ten elaborate conditions contained in Document C which, in our opinion, have no relevance whatsoever in the context of a private parking, appear to be more compatible with a business activity rather than a private garage. The representative candidly stated that these were standard conditions that they put in BLUPs! We find that such conditions could very well apply to the activity proposed by the Appellant.

The third ground of refusal is that the operation of the workshop will constitute an incompatible use with the activities of a restaurant. To the extent that there is no restaurant on the premises, nor is there a proposed one, the issue of any potential incompatibility does not arise. This ground also finds no support.

The Appellant has stated that the type of work that he proposes to do is of an artistic nature. Grounds b, c and d of the notice of appeal are supported by the documents produced showing the artistic nature of his work, albeit some aspects of light repair that such works may sometimes require. This has been left undisputed by the Respondent.

At this juncture, the stand of the Respondent calls for an observation. The representative of the Respondent stated that even if it is now to the knowledge of the Respondent that the owner of the premises no longer wishes to run a restaurant and that the beauty parlour is not operational in the premises, the Council cannot grant a BLUP before a period of two years.

We have been left in the dark as to the legal basis of this stand. The BLUP was granted to the owner of the premises, Dream Team Properties Ltd. to open a restaurant. Document A is a clear notice sent to the Chief Executive of the District Council informing him that the company no longer proposes to run a restaurant in the premises, with a specific request to cancel the permit. The same letter informs the Council that the beauty parlour will not open in the premises as the promoter has found another location. We fail to understand the rationale to maintain the permit despite such an express request, and the bar put to any other economic activity in the premises merely by a restrictive approach followed by the Respondent. We do not subscribe to the view expressed by the representative of the Respondent cannot 'put a stop' to the operation of the earlier BLUP. The revocation of a BLUP is very often one of the conditions attached to permits that are generally issued.

Here, not only has there been an express request from the permit holder to cancel his permit, but the permit holder also stated that he has never even started the business of a restaurant. Therefore, the procedure of cessation of business as provided by section 127 of the Local Government Act 2011 does not even apply. Therefore nothing precludes the start of another business in the premises, on the condition that the relevant permit is obtained, which is precisely what the Appellant is seeking.

We are however alive to the fact that the letter sent to the Council requesting for a cancellation of the earlier permit was done on the 25<sup>th</sup> April 2014, i.e. after the appeal was lodged. As such, the Respondent would not have been aware of this development.

The onus is on the District Council to assess applications submitted to it by taking into consideration existing planning norms and applicable planning instruments (in this case the *Design Guidance 2.13 of the Planning Policy Guidance 1 on Industrial Development*, among others). At the hearing no evidence whatsoever was adduced in relation to any infringement to the environment standards set out in this policy. We are also not in presence of any evidence as to the potential objections that may have been expressed against the activity proposed by the Appellant. These are the relevant matters that ought to have called for attention of the Respondent.

In view of all the above observations, more particularly in relation to the grounds of objection being no longer relevant, we do not support the decision of the Council to reject the application for BLUP of the Appellant. We find it appropriate to **remit back the application** to the Respondent for it to reach a decision after having considered the merits of the application within the existing planning norms, and to lay down conditions that are appropriate for such an activity, if the Respondent considers it necessary.

We reiterate the need to ensure that the sole criteria in assessing any application for BLUP must be the planning merits, in the light of the governing planning instruments and ensuring that the 'environmentally correct' parameters are kept.

**Delivered by:**

**Mrs. V. Phoolchund-Bhadain**

**Chairperson**

**Mr. G. Seetohul**

**Member**

**Mrs. A. Jeewa**

**Member**

**Date: 26<sup>th</sup> June 2015**