

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

Cause No. : 572/13

In the matter of:

MR. EHMAD ASHAD KARAMUTH

Appellant

v.

MUNICIPAL COUNCIL OF VACOAS PHOENIX

Respondent

**DETERMINATION**

The Appellant proposes to run a 'Vocational Training Institute' in the premises situated at Mosque Road Highlands. An application for a building and land use permit made to the Municipal Council of Vacoas Phoenix (the Respondent) has met with a refusal, hence the present appeal before this Tribunal.

The Respondent has refused the application on the following grounds:

1. The proposed activity might give rise to on street parking along Mosque Road.
2. The access leading to the site is narrow where two vehicles cannot cross each other and on street parking will cause traffic congestion which will affect the amenities of the region.
3. The site is located amidst residential buildings and the proposed development would constitute an incompatible use.
4. Objections have been received against the proposed development.

The Appellant has appealed on the grounds as contained in the notice of appeal, which are as follows:

1. The first ground of refusal is an uncertain fact and the Appellant avers that it is 'prejudicial'.
2. The Municipal Council failed to inspect the constructions erected by the inhabitants.

3. He qualified the third ground of refusal as being offensive being given that an educational institution cannot be incompatible with the area and that most educational institutions are within residential areas.
4. He added that the Vocational Training Institute targets school leavers, who are not working and who are without cars. Furthermore provision has been made for ten parking slots for the staff within the proposed educational institution. He finally added that the refusal of the Council is incompatible with the declared policies of the government to bring development in the country.

The following issues came out from the evidence adduced by the Appellant:

- The building for which a permit for conversion has been made has already been issued with a BLUP for residential purposes.
- The Appellant states that the students that he targets for his institution are those who have not succeeded in the CPE examinations and have to follow vocational training. They would use public transport to come to the institution. The walking distance from the nearest classified road is about 100 metres.
- According to the Appellant, there is no incompatibility with a residential area. In fact several existing institutions operate in residential areas.
- As regards the access to the proposed institution, he referred to the complaints made by him to the Council on encroachments by inhabitants in the constructions erected by them. Two such letters dated 16 October 2013 and 24 October 2015 have been annexed to his statement of case. The Council replied on the 18 May 2011 to confirm that one person has been prosecuted and fined for having made an extension to an existing building without permit in or about 31 October 1995! The Appellant added that the issue of two vehicles being unable to cross each other is a feature that exists at several spots along the road from Phoenix to Highlands. Access to his proposed institution should not be singled out.
- He also intended to purchase neighboring land when the proposed institution develops.
- The Appellant stated that he intends to run evening classes for persons who work and wish to follow courses after working hours.

The Planning and Development Officer of the Municipal Council adduced evidence for the Respondent. From her evidence, the following points were highlighted:

- The proposed development, being the running of an educational institution, is governed by Policy SC2 of the Outline Planning Scheme for Vacoas Phoenix (Government Notice 83 of 2013), provides the following: ***“Proposals from Government and the private sector for the provision of sites for new***

***schools and tertiary education facilities should be located where a high level of accessibility by a variety of modes including cycle ways and pedestrian networks is available. Where suitable sites exist, new educational facilities should be integrated with municipal sports and recreational facilities, which can lead to more efficient facility provision through shared use”.***

- Focus was placed by the officer on the distance of the proposed institution from the main road which is 100 metres. The walking distance being far, the only other access would be by private transport. This leads to the difficulty in the access, namely the narrowness of the road to the spot. The Municipal Council also assessed the parking layout as presented on the application submitted by the Appellant as being inadequate for the seven vehicles as indicated by the latter.

From the cross examination of the representative of the Respondent, it appears that the plans submitted by the Appellant did not meet the guidelines for such type of activity. It has also been submitted that there had been objections raised against the proposed development from neighbors. The Council had not conducted a hearing as the application had been at the very outset found not to be in accordance with the guidelines. In a further submission made by the Appellant, he highlighted that the access to the site can be remedied by use of a pedestrian road that leads to the site and also on the fact that he targets a student population that would not exceed fifty. For this purpose, his site would be amply sufficient.

We have considered the evidence adduced by both parties. Furthermore, the Tribunal has conducted a visit to the locus in order to assess on site the grounds raised by the Appellant and the grounds for the refusal of the Respondent.

Following the site visit, it has come to our knowledge that, indeed, as stated in the statement of defence of the Respondent, the proposed development is situated in a locus that is not easily accessible. The distance from the classified road, thus the walking distance, is a long one (200 metres) and is located in a densely residential area. Although the latter aspect is not a ground against such a project, we are of the view that the level of accessibility as required by policy SC 2 of the Outline Planning Scheme for Vacoas Phoenix is not met with. It is noted that this policy has been reiterated in the Approved version of the Outline Planning Scheme for Vacoas Phoenix dated 28 May 2015.

The access to any educational institution should be within reach by a variety of modes of transport, including by walking. In the present case, much emphasis has been placed on the fact that students can walk to the institution. Yet, we have observed that the

access by any type of vehicle along the only access road which is 3.5 metres wide, is largely inadequate.

We have to highlight that it is essential that any educational institution should be easily reachable by vehicles. Even if the targeted students would walk to the institution ( as suggested by the Appellant), it is necessary to foresee any type of emergency that may occur and which would require that vehicles be in a position to reach the said institution without difficulty. Security is of paramount importance when considering permits to be issued to any educational institution.

The Appellant stated that in the longer term, he proposes to run evening classes in the premises. The observations that we have made above become even more relevant should students attend the institution for evening classes. The fact that there are activities that are carried out until late in the surroundings, reference being made here to the activities of the mosque, cannot be a consideration that the Respondent can take in assessing the parameters to authorize an educational institution to operate. The criteria and planning considerations for these two types of activities differ substantially.

We have given consideration to the points raised by the Appellant that the Council has failed in its duty in not acting upon complaints made on encroachments on the access road. We note the letter produced by the Respondent dated 18 May 2011 indicates criminal action against the offender. The Respondent has not placed on record the reason for not contemplating any pulling down order. This is not a matter which is within the jurisdiction of this Tribunal. Yet, we can observe that planning decisions are within the jurisdiction of the Respondent. This includes enforcement of its policies by taking remedial actions for breach of its policies.

The Appellant has stated that he intends to purchase an adjoining plot of land for an easier access to the premises. This is a matter that the Council will have to assess in the context of an application to be made, taking into account the new parameters.

As matters stand, although we are of the view that the proposed development is a laudable one, we find that the grounds of refusal related to the inadequate access for such a development and the potential on street parking that such an activity can cause on the classified road nearby (i.e. Mosque Road) have been amply justified.

As regards the issue of incompatibility of use and the objections received against the proposed development, the representative of the Respondent stated that the decision of the Council to reject the application rested mostly on planning inadequacies of the application. No evidence was adduced in support of those two aspects.

In the light of the above reasoning, we find no reason to interfere with the decision of the Respondent taken on the planning merit of the application as detailed out above.

The appeal is therefore set aside. No order as to cost.

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Delivered on 23 July 2015 by:

  
**Mrs. V. Bhadain**  
Chairperson

**Mr. G. Seetohul**  
Assessor

**Mrs. B. Kaniah**  
Assessor