

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

Cause No. : 599/14

In the matter of:

MR. SONHU OMDUTH

Appellant

v.

DISTRICT COUNCIL OF RIVIERE DU REMPART

Respondent

In presence of:

MR. HEMRAZ BUCKUS

Co-Respondent

DETERMINATION

The Appellant has objected against the issue of a Building and Land Use Permit (BLUP) to the Co-Respondent for the conversion of an existing ground floor to be used as workshop for repair of electrical appliances. The executive Committee of the Respondent authority did not retain the objections raised and granted the BLUP.

The grounds of appeal:

The Appellant lodged an appeal against this decision on three grounds:

1. The distance of the building from the main road is about only three feet and there is no space for parking.
2. The building has obtained slab grants from the NHDC in the name of one Vimlacomaree Sonhu.

3. The workshop is in a residential area and the building has been constructed on the boundary.

The statement of case filed by the Appellant goes beyond the grounds of appeal and refers to disturbance caused by the activities and that the decision was "unfair, arbitrary, unjust and contradictory".

The stand of the Respondent

The stand of the Respondent, as contained in the Statement of defence, is that there is a setback of 1.5 metres from the roadside in line with the existing alignment of buildings along the same road and that the issue of setback does not arise as the activity would serve the local inhabitants and the permit is compliant with the Planning Policy Guidance. Furthermore, the permit contains twenty five conditions that have to be complied with by the Co- Respondent otherwise the Respondent may revoke the permit, if justified.

The evidence adduced:

In evidence, the Appellant laid emphasis on the fact that the Co-Respondent had been granted a slab grant from the Government and that one of the conditions in the said grant is that the grant is meant to be used exclusively for residential purposes. He also complained of other disturbance caused by noise, their respective premises being very close and the fact that the electrical appliances repaired are exposed on the terrace of the house, this being in breach of the conditions of the BLUP. It came out in cross examination that the main contention of the Appellant was the financial facilities granted by the NHDC to lay concrete slabs on the premises used. It also came out that the proximity of their respective houses is a result of the mutual agreement of the respective owners not to observe the statutory distance.

The representative of the Respondent deposed and reiterated the stand of the Respondent as contained in the statement of defence. He added that a site visit had been effected on the locus and this only confirmed that the setback from the edge of the road was 1.8 metres while the width of the road was 3.9 metres. There was no traffic nuisance and there was no noise nuisance caused by the operation of the electrical workshop. As regards the issue of the grant referred to, it was explained that the grant was allocated for the casting of slabs to the owner of the premises and not to the Co-Respondent. Only the front part of the building (when facing Telegu Temple Road) was being used as workshop. The remaining part of the building was used for residential purposes.

The Planning Policy Guidance:

The Planning Policy Guidance (PPG 1) in the 'Design Guidance for Industrial Development, at paragraph 2.13 provides that:

" Small scale enterprises that are carried out in the home without modification of the dwelling may in some locations be acceptable, but stringent criteria are necessary to ensure that surrounding residential amenity is not compromised.....Examples of potentially acceptable small scale enterprises include.....repairs to electrical goods."

The PPG goes on to limit such activity by imposing specific criteria, like "... *there should be no adverse external nuisance such as noise....., Loading and unloading are not disruptive to the amenity of the surrounding residential neighbourhood... adequate parking if available for staff and visitors.*"

The evidence on record shows that the activity of the Co-Respondent is a small electrical workshop, catering for the local area. Furthermore, from the observations made at the site visit, the premises are used partly for dwelling purposes and partly for a workshop. There was no use of electric motors and the setback being sufficient for this activity, there was no difficulty for loading and unloading and no parking problem being given that the Co-Respondent had a strip of land in front of his house.

All these elements tend to show that the activity conducted by the Co-Respondent is within the scope of what is permitted by the PPG on small industrial workshops and home working. In addition, the BLUP issued sets out a list of twenty-five conditions that need to be observed by the permit holder, the relevant ones being **condition 3** ("*the activity shall not give rise to any nuisance. In case of persistent, the Council may impose additional conditions which shall be scrupulously observed within the prescribed delay*") and **condition 5** ("*the permit may be cancelled without any compensation at any time the Council feels it expedient ...for any breach of the conditions...in the interest of public health, public comfort, public order or public safety.*")

In view of the fact that the decision of the Respondent to grant the BLUP is in line with the policies as contained in PPG on small industrial workshops and home working, we find no reason to interfere with this decision. However, we draw attention to the fact that it is incumbent on the Respondent to ensure that there is compliance with the conditions contained in the BLUP by a close monitoring on its part.

The appeal is set aside.

Delivered on the 11th June 2015 by:

Mrs. V. Bhadain

Mrs. B Kaniah

Mr. ~~A~~ Busawon