

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 601/14

In the matter of :-

Seerally Soorabally & Anor

Appellant

v/s

District Council of Moka

Respondent

IPO:

Mrs Rashida Mudhoo & Ors

Co-Respondents

Determination

The present appeal is against a decision taken by the Council for having refused to grant a Building and land Use Permit for the construction of a concrete building to be used as a body and paint workshop at ground floor at L'Agrement, Route Bois Cherie, St . Pierre.

We have duly considered all the evidence placed before us as well as submissions of counsel and attorney. The Council motivated its decision on the basis that the area being situated in a residential area and objections having been received, the proposed development will be a bad neighbour development as per the Planning Policy Guidance.

The Appellant deponed to the effect that although it is not disputed that the area is a residential one, she and her husband will carry out their activities within the confines of a sound proof garage and that

the booth within which they propose to have vehicles painted will not allow the smell of paint to escape. She also confronted the Council with the fact that one Samah Sooreeatoolah has recently obtained a BLUP for paint workshop in the same locality. The Council explained that the latter lives 150 metres away from the Appellant and Objectors. It is uncontested that the Appellant and objectors are contiguous neighbours. One of the objectors gave evidence that she has built her house and will be the nextdoor neighbour and that her child is an asthma patient and that she also is allergic.

The proposed development would be one regulated by the **ID1 of the Outline Planning Scheme** and under **section 2.13 of the Planning Policy Guidance** which provides as follows:

" Small Industrial Workshop and Home Working:

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. Industrial Uses such as panel beating and spray painting, manufacture of furniture and vehicle repairs are not normally acceptable uses within residential areas due to dust, noise, vehicles, fumes, vibrations and other adverse environmental effects.."

It is undisputed that the area is a residential one and with such a development as the one proposed, the character of this locality will change in that there is will be traffic generated by it. The flow of traffic may be affected in terms of volume as well as pace. The photographs produced depict a typical rural area with a quiet and peaceful surrounding. The flow of traffic in and out of the site is most likely to disrupt the amenity of the place. This may also lead to road safety issues which this Tribunal is bound to pay heed to. Furthermore, health issues are to be taken seriously. Afterall the right of those who would be affected by the proposed development also has to be assessed against the right of the aggrieved party. An asthma patient is most likely to be affected by fumes of paint and thinner and other chemicals associated with such activites. Although the Appellant was ready to guarantee that there would be no escapes, no expert was called by her to depone to that effect. She stated she was unaware that she had to do so but we believe that is no excuse.

We therefore are of the view that the respondent's decision was well motivated. The proposed development will not only flout policy 2.13 of the PPG but we also view this as potential risk of pollution to the local residents. For all the reasons set out above, we find that this appeal is devoid of merit. The appeal is dismissed. No costs.

Determination delivered on 9th June 2015

J. RAMFUL

Vice Chairperson

B. KANIAH

Assessor

G. SEETOHUL

Assessor