IN THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT/731/14

In the matter of:-

Mr. Dominque Mathieu G. GUILLERMIN Appellant

v.

District Council of Black River Respondent

DETERMINATION

The present appeal filed on 16th July 2014 is against the decision of the Black River District Council for having refused a Building and Land Use Permit to use part of an existing building for rent of vehicles (cars and scooters) at 80, Avenue des Cachalots, Flic en Flac

The grounds of refusal dated 30th June 2014 being;

1) Plate Notification as required has not been put up on site

2) Site is within an exclusively residential area at the end of a cul-de-sac where only one-way traffic is possible

3) The operation of a car business at that location will interfere with the residential amenities of the area and is likely to be a source of nuisance for the neighbourhood

The Appellant lodged the present appeal on three grounds:

(a) Duration of the notification: The Appellant avers that he had put up a notification plate prior to the application for BLUP. He had not been informed by the officer of the District

Council of the need to maintain the plate posted until he obtained the permit. The guidelines concerning the notification plate had not been given properly.

(b) The cul-de-sac should not be an issue because, firstly, there are no other vehicle that uses the road except the Appellant himself, and, secondly, the premises will be used only for storage of the vehicles. The Appellant proposes to deliver the vehicles to the place of clients. As such there will be no traffic jam.

(c) There has been adequate notification as he has caused publications to be made in two newspapers for one week as requested by the Respondent. No complaint has been received. There is therefore no indication of nuisance to be caused to the neighborhood.

The procedural requirement:

At the hearing, Document A was produced by the Respondent showing the '***certificate of notification***' signed by the Appellant showing the undertaking to leave a notification plate of his proposed development until he obtains the permit applied for.

The rationale for such notification procedures for development other than residential for sites located in residential areas is explained in the Building and Land Use Guide. As per the guide, notification has to be carried out 15 days prior to the submission of the application. We note that these notification procedures have been set out considering:

(i) that a proposed development could negatively impact on the surrounding residential neighbourhood

(ii) to allow the neighbouring and/ or adjoining neighbours or the public at large to be aware of the development and to object against if they wish

(iii) And gives the opportunity to confront the parties through a hearing which would allow a better assessment of the development.

We take on board the ground raised by the Appellant that he had been wrongly advised by the Respondent on this procedure and that he had backed up the notification by putting required notices in the daily newspapers. Nonetheless, the Appellant has signed and submitted Document A, binding him to the procedures as set therein.

We have to observe that the requirement of display of notification plate 15 days prior to submitting an application poses the problem of monitoring of this requirement. Indeed, the competent authority is only notified of any proposed development when the application for same is submitted to it. As such, control of whether notification has been posted prior to this date is not feasible. The authority can only rely on the word of the applicant. The local authority is in a position to control the presence

of such notification once the application is made. On this aspect, the Appellant did not comply, and he explained why. It is noted that the publication in newspapers does not suffice.

This Tribunal, although being of the view that procedure should not dictate the assessment of the substantive application, cannot overlook this absence of procedural compliance for the reasons given above.

Having said this, the procedural flaw in the application is a matter which the Respondent could have addressed by way of advising the Appellant, namely, the Council could have informed the appellant of the incorrect site notification procedure prior to assessing the planning merits of the development.

The Planning Assessment of the development:

It is not disputed that the proposed development is situated in a residential morcellement. There is nothing on record to indicate that there is any title deed restriction on the activities that are permissible in the morcellement. However, Policy CR 1 of the Outline Scheme regulates commercial developments as a whole and the PPG 1 on 'commercial development' also gives an indication of the type of activities that would normally be permissible within mostly residential areas. The philosophy underlying those policies is that only commercial development that serves the daily basic needs of the inhabitants can be allowed in such areas, provided they do not negatively impact on the neighbourhood.

Another relevant aspect is the **site accessibility**. It has been stated by the Representative of the Council that the road is a 'one way street' and the Appellant's house is situated at the end of the road. It came out later that he meant that the road could be used as a single lane traffic road and it was a 'cul de sac' and that two vehicles cannot cross each other or, if they do so, they will have to encroach on the road reserve. Furthermore, it came out that there was no parking area and, more importantly, there was no reversing facilities, so much so that any vehicle coming from the opposite direction would have no alternative than to reverse onto the main road (a rather difficult manoeuvre being given the right angled bend along that 'cul de sac') or to seek to reverse into the yards of the neighbouring premises (another difficult manoeuvre in case there are trees or plants along the road reserves and setbacks). Therefore any additional flow of vehicles as a result of the proposed activities of car and scooter rental would have an impact on this common access road.

The Appellant stated that he proposes to use his yard as a place for storing his fleet of vehicles, which once rented, would be delivered to clients. As such, there will be no intensification of traffic as apprehended by the Black River District Council. He explained that at any rate, he proposes to keep four vehicles for renting purposes, which will not be a source of nuisance to the neighbourhood.

Good planning practice would not allow an intensification of vehicular movement caused by a commercial activity within a residential area like the present one, the more so that site is in a coastal area with pedestrian movement is frequent. The ground raised by the Appellant that he would deliver

the vehicles to the clients and this will not cause intensification of traffic in the 'cul de sac' is a matter which the Respondent would be unable to control if the permit applied for is granted. Besides, the vehicles to be rented also comprise of scooters. Although the Respondent did not raise the issue of sound pollution, we take judicial notice of the potential noise that such vehicles can generate in a residential area.

Having taken all the above into consideration, we find that the grounds of refusal as contained in the letter dated 30 June 2014 are sufficiently justified and we find no reason to interfere with them. The grounds of appeal raised by the Appellant cannot be upheld by this Tribunal. The appeal is therefore set aside.

Delivered on 28 April 2015 by:

Chairperson

Mrs. B. Kaniah
Member

Mr. Busawon
Member