

IN THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 447/13

In the matter of:

Rameswar Ramkissoon

Appellant

v/s

District Council of Flacq

Respondent

DETERMINATION

The present appeal is against a decision taken by the Council for not having granted to the Appellant a Building and Land Use Permit (BLUP) for the excision of a plot of land for residential purposes at Grande Retraite, Flacq. The decision of the Council was communicated to the Appellant by a letter dated 20th June 2013, which stipulated that the Council rejected the application on 2 grounds, namely:

- "1. Site lies outside settlement boundary by 350m;*
- 2. The original land was subdivided for agricultural purposes."*

We have duly considered the evidence placed before us and the depositions of both witnesses. The Appellant essentially testified that there were residential buildings in the vicinity of his property and that he had information that Constance Sugar Estate which has its property in very close proximity to the Appellant's property would be building a new residential morcellement in the near future. The Council, as represented by Mr. Bundhoo, Planning Inspector, maintained its stand and stated that the Council had not been informed of any such development by Constance Sugar Estate and that the built up areas were very small and still more than 100 m from the subject site. He stated that the Council cannot 'release' the land of

the Appellant. The proposed development does not meet the requirements under **policy SD3 of the Outline Planning Scheme of Flacq** which regulates **Development on the Edge of Settlement Boundaries**, on the sequential approach because there are the villages of Bois D'Oiseaux and Grande Retraite where land found within the settlement boundary is still undeveloped.

As per the **Outline Planning Scheme of Flacq** the site is located outside the settlement boundary and **Policy SD4** which regulates **Development on Land outside Settlement Boundary** stipulates that there should be a general presumption against proposals outside development settlement boundary unless, amongst other reasons less apt in this context, the proposal is from a small owner seeking residential property for themselves and their close kin and can be considered as a hardship case, provided that in the opinion of the relevant authorities such release would not encourage large scale removal of land from agriculture.

The representative of the Council stated that the Appellant does not qualify under the category of hardship case. After the Appellant testified, the Council's representative visited the site. He subsequently reported to the Tribunal that he noted that the subject site was isolated, surrounded by sugar cane fields and that the closest built up area was around 125 metres from the subject site which comprises of 4 houses, out of which 2 have commercial BLUPs and 2 have residential ones.

Given the fact that there is development closer to the subject site, we are of the view that, that in itself has pushed the boundaries of settlement for non-agricultural development. This also implies that utilities are more easily available, closer to the subject site. From maps produced by the Appellant together with his notice of appeal, it can be seen that the property is accessed by a proper road, Route Publique de L'Aventure. Whether Constance Sugar Estate will eventually come up with a morcellement project is merely speculative at this stage. This being said however, if the morcellement does happen, it would further push the boundary for residential settlement such that the Appellant's property may well fall within the settlement boundary. However based on policies **SD 3 and SD 4**, which are the applicable policies for land found outside settlement boundary, which is the case here, we are of the view that it would be pre-mature and not be apt to allow development of a residential nature on the site at the moment since the fact remains that it is found amidst sugarcane fields. It would set a bad precedent to allow haphazard residential development and thereby defeat the purpose of having planning instruments to regulate the sequence of development to avoid any kind of wild or uncontrolled development.

For all the reasons set out above, we find that the Council was not wrong. The appeal is therefore dismissed.

Determination delivered on 9th December 2016 by

Mrs. J. RAMFUL

Vice Chairperson

Mr. S. Karupudayyan

Assessor

Mr. G. Seetohul

Assessor