

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 671/14

In the matter of :-

Global Sports Ltd

Appellant

v/s

Municipal Council of Quatre Bornes

Respondent

DETERMINATION

1. The present appeal is against a decision taken by the Municipal Council (hereinafter referred to as "the Council"), for having rejected an application made by the Appellant for a Building and Land Use Permit (BLUP) for the conversion of the second floor of an existing commercial building situated at 2, Palma Road, La Louise, to be used as (1) Operator of Totalizator (agent) and (2) Bookmaker operating outside racecourse; including Telebook shop (other).
2. The decision of the Council was communicated to the Appellant by a letter dated 10th April 2014 which stated that the Council rejected the application on the ground that
 - (i) There is insufficient parking space available on the site.
 - (ii) The proposed development is likely to create traffic congestion in the area.
 - (iii) The proposed development is likely to increase the risk of larceny.

3. The Tribunal also carried out a site visit in this case on the 4th December 2015. In the course of the visit, we had the opportunity to have a visual appreciation of facts, which was of great importance in this case since the refusal was based on reasons grounded on an appreciation of facts, of the site, locality and circumstances.
4. We have duly considered all the evidence placed before us including submissions of both counsel. We do not intend to overburden this determination with the evidence of each witness or submissions of counsel except where we deem it necessary to do so.

CONTEXT ANALYSIS

5. The property *in lite* is a storeyed building found on Palma Road, La Louise, Quatre Bornes within the core commercial area and a few metres from the main taxi stand in La Louise. It contains commercial shops downstairs including a hardware shop with a forecourt used as parking area. The parking space proposed by the Appellant and which can accommodate around 30 vehicles is found at 59, Western Boundary Avenue, Quatre Bornes which is a few hundred metres away from the building.

THE ISSUES

6. The grounds of appeal are broadly as follows
 - (1) The Respondent failed to consider that parking facilities were made available and further parking spaces were provided to overcome the apprehension of insufficient parking space.
 - (2) The Gambling Regulatory Authority issued a licence to the Appellant to operate outside the racecourse, the police authority having acceded to the licence being issued must have considered the issue of traffic congestion and risk of larceny.
 - (3) There is no such place which can be classified as free from larceny in Mauritius.

7. Learned counsel appearing for the respondent in essence submitted that the site has insufficient parking space. He also submitted that the proposed development will add to the existing traffic congestion and that the risk of larceny will increase in the area.

I. Insufficient Parking

8. One of the considerations that must be borne in mind is whether the amenity of the locality will be adversely affected by the proposed development. As far as the amenity of the area is concerned, we have it in evidence that the area where the subject site lies is a highly commercial area. The Tribunal has to consider how the proposal might affect the amenity of the locality having regard to its impacts such as car parking and traffic.
9. It is the contention of the Respondent that in view of the insufficient parking space, and that the alternative parking space is not within a reasonable distance, this can constitute a hazard for pedestrians as the road leading to the parking area has no pavement. In support of this contention the respondent filed an extract of the design guidance from the PPG, Doc H, to show that for Commercial developments, off-street car parks require that the *"car parks should be easy to find and convenient to use. Customers will avoid using car parks that are awkwardly located and at some distance away from main centres of activity."* We believe that the Council is perfectly right in saying that there is insufficient parking onsite. Infact the Appellant cannot rely on the parking space attached to the building since the demand is already saturated with the number of outlets that exist in the vicinity. We have it in evidence that provision has been made for alternative parking space by the Appellant and evidence was also produced [Doc A] to show that the distance taken via two separate routes to reach the subject site was around 5 minutes. The site visit gave the Tribunal the opportunity to take the route from the parking area to the subject site via Palma Road. This evidence adduced by the Appellant was thus tested and found to be acceptable.

10. After having analysed the provisions of the PPG, we believe that in this particular case a distinction can be made. We are not dealing with commercial outlets such as shops or supermarkets where customers will need to have a carpark nearby so that they can easily take their shopping bags to their cars. Here, not only will the proposed business be carried out on the second floor, away from other outlets, but the main activity will be betting. This activity generally attracts only a particular section of the population, unlike supermarkets or furniture shops amongst others, which are part of the daily lives of the general public.

11. We are of the view that the imposition of stringent conditions on the Appellant that its customers are to park their vehicles in the car park provided at Western Boundary Lane, La Louise should satisfy this ground. After all, although a so-called 'betting house' normally remains open for betting activities during the prescribed hours of operation, the Tribunal can take judicial notice that in this country the times when the customers actually attend the 'betting house' is mostly on Thursdays, Fridays and Saturdays. The point being made here is that a reasonable assessment of the situation will be the foreseeability of the days when there will be more customers so that the Appellant can set up the relevant mechanism to ensure no on-site parking by their customers is allowed. This would, in our view, overcome the situation regarding on-site parking if the conditions are made clear to the customers by the Appellant right from the outset. The Council will of course have to exercise its duty of carrying out post control visits.

II. Traffic Congestion

12. It is also the contention of the Respondent that with the existence of several outlets near the proposed development including a taxi and lorry stand, there will inevitably be congestion. This ground does not appear to be material to the proposed development since the existing character of the locality is that it is within the commercial core area and hence has the associated inconveniences of traffic congestion, noise pollution and

parking space. All the commotion associated with vehicular and human traffic is not unexpected. Although arguably, the proposed development will attract people, this would be the case for any other development on the subject site. The area being a commercial one, the most likely proposal that can gain planning acceptance is a commercial development proposal since that is the accepted "land use" of the place. There is no supporting evidence to the submission of the respondent that the proposed development will generate traffic on the locus and "this will add to the already dense traffic resulting again in congestion". This seems to be a perceived but not substantiated concern that the proposed use will adversely affect the traffic conditions.

13. We are of the view that, as stated earlier, if proper conditions are laid so that the proper mechanism is set up by the Appellant company to ensure that all vehicles owners attending the premises have to park their vehicle in the parking area allocated to Global Sports Ltd on Western Boundary Avenue but not in front of the building in lite, it should not be an impediment to the existing traffic situation along La Louise, the more so as the parking area is found along a road which, we have it in evidence is accessed by a one-way road. The Council may ensure strict adherence to such condition by making it a mandatory condition. Whether the road was equipped with pavement or not, was not part of the case of the Respondent at trial.

14. It is apposite at this point to address the issue of ownership of the parking area. The Council made it a live issue and in this context the Appellant also called a number of witnesses to testify on the issue. No one called by the Council, on the other hand, gave lie to the testimony of these witnesses. The Tribunal, while appreciating that there has to be a valid parking arrangement with a parking space that is functional, we cannot get into the intricacies of the contractual relationship between the proposed developer and the parking site owner. Being given that the Appellant has called witnesses to support

the averment that the parking site for 30 cars, as per Doc D, has duly been put at the disposal of the Global Sports Ltd, the Tribunal can simply appreciate as a matter of fact.

III. Risk of Larceny

15. It is the contention of the Respondent that since people visiting the premises will be carrying money for betting purposes that will increase the risk of larceny. We do not subscribe to this line of argument. It is merely anecdotal, speculative, with no planning merits and unsubstantiated by any evidence. Infact having perused the minutes of proceedings before the Committee, Doc J, it would appear that the objectors present never raised the issue of risk of larceny so that it cannot be an issue of concern of the people who are in the locality. Their concerns seem to be grounded mainly on business competition and traffic issues. They mentioned "loose characters" such as drug addicts were seen.
16. We believe that the BLUP may be granted to the Appellant provided stringent conditions are imposed on it regarding mainly the issue of parking so that on-site parking is strictly forbidden. The parking space allocated to the clientele of the Appellant has to be clearly brought to the attention of its customers. The Appellant has to put in place a mechanism to safeguard against on-site parking at all times and to ensure clear directions to the parking area. There should at all times be a reasonable number of parking slots made available to the clients of the Appellant and within walking distance from the place of business.
17. For all the reasons set out above, the appeal is allowed. The Council may grant the BLUP subject to stringent conditions being imposed as stated above and any other conditions it deems fit. The Council will have to exercise ex-post control to ensure adherence to these conditions by the Appellant such that any breach of these stringent conditions may result in the revocation of the BLUP.

Determination delivered on 15th December 2016 by

Mrs. J. RAMFUL
Vice Chairperson

Mrs. B. Kaniah
Assessor

Mr. G. Seetohul
Assessor