

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 786/14

In the matter of :-

Renukha Mulleea

Appellant

v/s

Municipal Council of Vacoas/Phoenix

Respondent

DETERMINATION

The present appeal is against a decision taken by the Council for having rejected an application made by the Appellant for a Building and Land Use Permit (BLUP) to convert part of an existing residential building into a general retailer selling foodstuff and non-foodstuff (excluding alcohol) at Camp Fouquereaux Branch Road, Phoenix.

The grounds for refusal were set out in a letter dated 25th September 2014 and in essence are the following:

1. The proposed parking space in front of the building is barely adequate and there exists a bus-stop on the opposite side of the road;
2. The site is serviced by a narrow road and the proposed activity might give rise to on-street parking along a busy traffic road;
3. Objections have been received against the proposed development.

We have duly considered the evidence placed before us including documents produced and the depositions of all witnesses. The appellant deponed and was cross-examined by Counsel for the respondent and the Head of the Planning Department deponed for the respondent and was cross-examined by Counsel for the appellant. The respondent also called one of the objectors in order to substantiate one of its grounds and she was also subjected to cross-examination.

I. CONTEXT ANALYSIS

It is accepted that the proposed development is meant to take place on the ground floor in an existing residential building located on the Camp Fouquereaux Branch Road, Castel, which is a classified ('B' category road as per Doc D) and runs through a mixed use area of residential and commercial developments. Camp Fouquereaux Branch Road has a width of 4.5 metres at that point, as per Doc E1 produced. It is also uncontested that the floor area of the proposed development site to be used is less than 60 sq.m and that it has a setback of between 2.7 metres and 3.8 metres from the Camp Fouquereaux Branch Road as per Doc E2 produced. The property *in lite* is found opposite a bus stop.

II. THE INSTRUMENTS AND THE LAW

The site being in Castel, the applicable outline scheme is **Outline Planning Scheme for Vacoas/Phoenix ['OPS']** issued under the **Planning and Development Act 2004** and the applicable Planning Policy Guidance is **PPG1**.

The facts of this case revolve purely around planning norms- can this development gain planning acceptance given the context and the circumstances of this case. Since the first and second grounds are grounded on the planning merits of the application, they will be considered together. Developments of such nature are normally assessed in terms of their impact on traffic levels and it is incumbent on the developer to show in what way the development will not have any negative impact on the existing traffic. The point we need to address is whether the proposed development will in fact be detrimental to the character and amenity of the area.

The proposed development may be classified as a "Corner Shop" as stated by the planner of the Council. A "corner Shop" is regulated under **Section 3.2.4** of the **Design Guidance for Commercial Development** in **PPG 1** and **Policy CR 2** of the OPS. Proposals for corner shops, small retail outlets or conversion of residential premises into shops are permissible provided that the following are met:

- (i) the gross floor area does not exceed 60 sq.m, which is a condition met here;
- (ii) it would serve the needs of the local neighbourhood which also appears to be a condition that is likely to be satisfied ;
- (iii) due consideration is given to the local amenity, traffic conditions and pedestrian safety, amongst others.

Now, as per the **Design Guidance for Commercial Development** in PPG 1, the desirable setback for commercial developments along classified 'A' and 'B' Roads is 6 metres. We have it in evidence that the set back in this case is between 2.7 metres and 3.8 metres. We bear in mind that this was originally a residential development which is sought to be converted which explains the limited setback. However, we are also alive to the fact that the width of the road is only 4.5 metres and accommodates two-way traffic. We have it in evidence, which was not contested, that this branch road has a rather high traffic density and also acts as carriage way for big vehicles. The photographs produced by both sides show that the bus stop opposite the site in fact has no lay-by. The proposed development will inevitably, generate traffic be it human or vehicular.

Although the appellant stated in evidence that she has made provision for one parking slot, as per the requirement of the PPG, what needs to be assessed is whether this development is likely to be an impediment to the already constrained flow of traffic on such a narrow and busy road? The answer, in our view, is in the affirmative. The setback in front of the building in lite, although not according to planning norms, is likely to lure inconsiderate customers into parking their vehicles for want to ease of access to the shop for a quick purchase. It is rather doubtful whether customers coming in their cars would want to enter and exit in the compound of the appellant, hence the parking area, in forward gear. Alternatively, if the customers are to come on foot or on their two-wheelers, we are looking at a case scenario where people will be going in and out of a place (that is, the proposed shop). It can be clearly seen from the photographs produced that the access to the proposed development, which is meant to attract customers, is inadequate for lack of pavement such that pedestrians have to resort to walking on the narrow road itself. Furthermore it is noted the width of the road also compromised by the presence of lampposts on both sides. The road is only 4.5 metres in width and that means it has to accommodate traffic coming in both directions and pedestrians. Allowing a commercial development on an already overburdened road would be tantamount to increasing the infiltration of human and vehicular traffic there. We therefore do not believe that it would be in the interest of public safety and security. This brings us to the final ground of refusal.

In this context, we have considered the version of the appellant in the face of the objections received. She stated that the reason behind the objections raised against her proposal is jealousy. While we are not here to decide on such issues and that some of the issues raised by the objector, Mrs. Jomadar, were not in our view of much assistance, we did find of relevance that part of her testimony where she described the situation with the traffic in the vicinity. What transpired from her testimony is that the current state of affairs is such that the flow of traffic is rather restrained and this is causing her family prejudice especially when it concerns

their safety such as when they need to take her husband to the hospital in the car, the traffic jam impedes their movement.

For all the reasons set out above, we believe that the decision of the respondent is justified. The proposed development will not meet the required planning norms especially as regards its impact on the existing traffic conditions on Camp Fouquereaux Branch Road. The appeal is dismissed. No order as to costs.

Determination delivered on 13th June 2016 by

Mrs. J. RAMFUL

Vice Chairperson

Mrs. B. KANIAH

Assessor

Mr. S. KARRUPUDAYYAN

Assessor