

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 830/15

In the matter of :-

Mrs Anjinee Gokool-Bara

Appellant

v/s

District Council of Savanne

Respondent

DETERMINATION

The present appeal is against a decision taken by the District Council of Savanne (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 construction of a commercial building to be used for General Retailer for Foodstuff (excluding liquor) and non-foodstuff at Lot 154, Morcellement VRS II, Tyack. The decision of the Council was communicated to the Appellant by a letter dated 7th January 2015, which stipulated that the Council rejected the application on 3 grounds, namely:

- "1. The proposed activity will cause disturbance to the residential aspect of the neighbourhood.
2. The site is found at a junction which may cause traffic hazard.
3. The new construction will be carried out on an area reserved for leaching field."

At the hearing, the Appellant was not legally represented. She deponed under solemn affirmation and was cross-examined by Respondent's Counsel. Her witness was her husband, Mr. Bara who was also cross-examined. The Acting Head Planner, Mr. Saddul, deponed on behalf of the Council and the Appellant chose not to cross-examine him.

We have duly considered all the evidence placed before us including submissions of learned counsel. We have also considered all the grounds raised by the Appellant in her notice of appeal and her statement of case.

(i) CONTEXT ANALYSIS

The proposed development site is located within a residential Morcellement at Tyack which was set up under the Voluntary Retirement Scheme for the former Sugar Estate workers. As per the title deed, there is no clause which specifically addresses any development of a commercial nature, as such. From photographs and plans produced, the land *in lite* also bears the house of the Appellant which takes up a big portion. The Appellant intends to build a small shop on lot 154, by the boundary wall of her property. The building set back and road reserves and road width appear to be in conformity with the prescribed norms, standards and guidelines for a Morcellement.

(ii) THE PLANNING INSTRUMENTS AND THE LAW

The site being situated in Tyack, the applicable outline scheme is **Planning Scheme of Grand Port/ Savanne** and the applicable Planning Policy Guidance is **PPG1** issued under the **Planning and Development Act 2004**.

The planning permission sought is for the purposes of construction to carry out a commercial activity. "Commercial activities" has been defined under **section 1 of the Eleventh schedule of the Local Government Act 2011** as relating to the provision of goods and services within building premises such as shops, showrooms, post offices, hairdresser's salons, undertakers' parlours, ticket and travel agencies and cafes.

The two relevant policies to be consulted for commercial development within a residential area are **Policies CR1 and ID2 of the Grand-Port Savanne Outline Scheme**, which provide for the various types of development including commercial development that can be allowed within a residential area having regard to the inherent nature of the activity being proposed and the PPG 1.

Policy CR1 essentially states that small retail commercial developments which serve the local neighbourhood can be allowed within residential areas provided that the gross floor space does not exceed 60 sq metres and that the development does not negatively impact on the area in terms of traffic and pedestrian movement and on the overall amenity of the residential neighbourhood.

Policy ID2: Small Scale Enterprises and Home Working. In essence, Small Scale Enterprises, home working, small commercial and retail developments are allowed within residential areas so long as it doesn't disrupt the amenities of the residential areas and that the use of the proposed development remains ancillary to the principal use as residential. Much emphasis is laid on the fact that the development should NOT be disruptive to amenity of the surrounding neighborhood. Examples cited under Policy ID2 of developments allowed are small scale enterprises such as cooking of sweets and food preparation, sewing amongst others. It is further stated "For both use of home as office and for small scale enterprises the key decision is whether the overall character of the dwelling and surrounding amenity will change as a result of the business or enterprise."

PPG1: Design Guidance for Commercial Developments. Paragraph 3.2.2 deals with *Edge-of-Centre and Out-of-Town Locations*. Certain considerations are set out to determine under what circumstances such commercial developments are allowed. One of the considerations is "*Sites surrounded by housing are unlikely to gain planning acceptance.*"

(iii) THE ISSUES

(a) The proposed activity will cause disturbance to the residential aspect of the neighbourhood.

The question that has to be determined is whether the development proposed is in line with the abovementioned planning instruments. The Appellant essentially submitted on the socio-economic benefits of her proposed activity from a personal perspective and also in the interest of the public, that is, those living in the neighbourhood. The development does not strictly flout the provisions of the PPG1 for commercial development since the site cannot be said to be currently "surrounded by houses". It is, however, important to make an assessment of the development in its context, the impact of the development in its surrounding environment and compatibility of land uses. Besides, it is known that the key objectives of the planning instruments whilst acknowledging the socio-economic development of the citizens, is also to respect, preserve and enhance the quality of life especially in residential areas and to ensure compatibility of land uses that would allow the residents to enjoy a peaceful and pleasant environment and not infringe on the privacy of the residents. We have it in evidence from the representative of the Council that objections have been made by some land owners in the vicinity.

The evidence of the Appellant revolves around the fact that the proposed development is small scale and it will cater for the everyday needs of the inhabitants since the grocery shops are otherwise located some distance from the Morcellement. She also stated that there will be no disturbance due to vehicles as there are a couple of parking lots in the vicinity, which was confirmed by the representative of the Council who stated that those parking lots are not for private use but to be used by the inhabitants of the Morcellement or visitors temporarily.

The Housing Policy H3 of the Outline Scheme talks of sites for Morcellement and that general design principles of the *Residential Design Guidance* and **SD5** should be broadly followed. It sets out how VRS Morcellements end up being in remotely located sites which often means that provision of services and utilities become expensive. One of the considerations in the present case is whether the amenity of the locality will be adversely affected by the proposed development. The existing character of the morcellement, is residential although there is undisputed evidence that there are not many residential buildings surrounding the property of the Appellant at the moment. It is foreseeable that there will be more residential buildings in the surrounding area in the near future. In this context the proposed development may be beneficial to the neighbourhood. However, it cannot be said that the first reason given by the Council was wrongly motivated as it was based on the 4 objections received, as per Doc C, out of which 3 adjoining landowners were identified by the Council's representative in the course of a site visit. Infact, the Council was right to have considered the rights of those who are likely to be affected by the impact of the proposed development.

(b) The site is found at a junction which may cause traffic hazard.

From the evidence produced by the Appellant, photographs marked Doc A3 and A4 and the location plan showing lot 154 marked Doc B1, it is clear that the subject site lies on a curb and is barely metres away from a junction. Any development which involves traffic, be it vehicular or human, cannot gain planning acceptance if it is considered hazardous and poses a risk to the safety and security of people. The Council's reasoning on this issue is therefore self-evident.

(c) The new construction will be carried out on an area reserved for leaching field.

Following the application made by the appellant, the representative testified that a site visit was done and it was noted that the existing residential building that currently stands on the property was not built in compliance with the plans approved by the Council and which were ^{submitted} at the time that the application ^{was made} The Council placed before the Tribunal the previous plan approved and the appellant having also placed before us the plan for the proposed

development. It was clear that the location of the leaching field seemed to have shifted. We also have it from the testimony of Miss Sheikh Joomun, witness for the Council, which was not contested, that in fact there is no leaching field on the property of the Appellant.

A common definition of a leaching field is a network of perforated pipes that are laid in the underground gravel-filled trenches to dissipate the effluent from contaminated liquid. In layman's terms, a leaching field is a system connected to a septic tank so that the sewage water from a building is treated to a certain extent before it is released to be absorbed by the soil. This is done to ensure that sewage is treated to minimize any risk of damage to the environment. The Planning Policy Guidance (PPG) gives some guidance on Plot Sewage Disposal including septic tank designs, leaching fields and setbacks. From the technical sheet of the PPG an indication has been given as to the factors that affect the size of an absorption pit / leaching field. These are the permeability of the soil, the location of the site and the level of the groundwater table.

Two of the conditions attached to the BLUP were with regard to the provision of septic tank and leaching field onsite for the disposal of domestic wastewater. There was meant to be a leaching field of 20 sq.m on the property in lite which was clearly absent. The appellant could not, on the other hand, satisfactorily explain to the Tribunal the reason why the building was not in compliance with the plans as previously approved by the Council. Although the Tribunal is of the view that the issue of the leaching field is not directly connected to the application for the construction of the commercial building we fail to see in what way this application could have been favourably assessed by the respondent. The Council is duty bound to assess and approve the applications for BLUPs as per the planning instruments and the norm set for this particular Morcellement. The appellant is not exempt in anyway from compliance. It would also thus be incumbent on any landowner of the Morcellement to comply with the relevant conditions of the title deed.

The appellant has raised a few points from a socio-economic perspective which we have considered but having come to the above conclusions, we are of the firm view that from a planning perspective, this application cannot gain planning acceptance. Therefore for all the reasons set out above, the appeal is dismissed.

Determination delivered on 4th November 2016 by

Mrs. J. RAMFUL

Vice Chairperson

Mrs. A. Jeewa

Assessor

Mr. S. Karupudayyan

Assessor