

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 1298/16

In the matter of :-

Nasreen Bibi Hematally

Appellant

v/s

Municipal Council of Vacoas/Phoenix

Respondent

DETERMINATION

1. The present appeal is against a decision taken by the Council for having rejected the application of the Appellant for a Building and Land Use Permit for the construction of a one storeyed house at St. Helena Lane, Quinze Cantons, Vacoas. The ground for rejection communicated to the Appellant in a letter 10th October 2016 is that

“Site is found within the buffer of 200m from an existing poultry pen thus not complying with the provision of the Planning Policy Guidance.”

2. The Appellant, who was not legally represented, deponed under solemn affirmation and was cross-examined by the Respondent’s Counsel and the representative of the Council, Miss Ramroop, also deponed and was cross examined by the Appellant. We have duly considered the evidence placed before us as well as submissions of Counsel.

I. CONTEXT ANALYSIS

3. From evidence adduced, the development site is of an extent of 894 sq.m (21.1p) situated at Quinze Cantons, Vacoas. The Appellant has been exempted from a Land Conversion Permit and has obtained a conditional clearance on 11th February 2015 from the Ministry of Agro-Industry for the site to be used for residential development provided such development is permissible within the relevant Outline Planning Scheme. It is undisputed that the site is located outside settlement boundary and is approximately 30 metres from the existing Poultry Pen which belongs to one Mr. Hematally, uncle of the Appellant.

II. THE EVIDENCE

4. The case of the Appellant in essence is that she does not dispute that her property is some 30 metres from the Poultry Pen which is operational. She has no qualms about living next to a Poultry Pen and that she is ready to take full responsibility of her actions. She stated that she needed a BLUP so that she could apply for a bank loan for slabs. She has however produced before the Tribunal evidence of the fact that a BLUP for residential development was granted to a neighbour, one Miss Arulandeedum Marie Vanessa Malini in 2015 who lives some 60 metres from the Poultry Pen. Her case is that there are other houses in the vicinity where people are currently residing.
5. The Council's case is that the site falls outside settlement boundary which is not favourable to residential development and that the subject site lies within the buffer, around 30metres, from the Poultry Pen which is fully operational. According to her, the houses which are in the vicinity are houses which had existed from a long time ago. To a question put by the Tribunal, she agreed that the Poultry Pen obtained a BLUP despite the buildup of house but stated that the site did not fall within the Outline Planning Scheme of Vacoas/Phoenix then. She agreed that the Council further granted a BLUP for extension of the Poultry Pen and also entertained BLUP

applications for extension of residential developments to existing houses although the proposed residential developments lied outside settlement boundary, as in the present case.

III. THE LAWS AND PLANNING INSTRUMENTS

6. Now that it is established that although the Poultry Pen is outside settlement boundary, the present state of affairs is that there are several houses in the vicinity of the Pen, some of which also hold valid BLUPs, the real issue at hand is should a buffer distance of 200 metres be observed? It is the contention of the Respondent that the Council should not and have not granted the BLUP to the Appellant on the basis of the provisions of the Planning Policy Guidance.
7. The Planning Policy Guidelines on **Bad Neighbour Buffer for Industry Adjacent to Sensitive Uses** provides guidelines on buffer distances *“to mitigate any negative effects of industrial operations”*. Sensitive land uses include housing, education and health facilities. According to these guidelines the buffer distance to be kept between a bad neighbor development such as Poultry/Livestock Farm and a sensitive land use such as housing, is 200 metres. The undisputed evidence shows that the distance between the poultry pen and the appellant’s property is much less than 200 metres.
8. Section 117 (3) **Local Government Act 2011** emphasizes the fact that an application for a BLUP should be considered by taking into account the guidelines issued under the law. This section also makes reference to the **Environment Protection Act 2002**. Under **Section 7 of the Environment Protection Act**, the Minister has wide powers, to propose and develop policies on all aspects of environment, to establish such standards as may be necessary to safeguard human health and the environment, amongst others. Some Environmental Guidelines have been issued by the Ministry of Environment for the rearing of poultry and as per these guidelines, the buffers are provided in view of the biosecurity risks. This also implies that Council should normally take on board the risks

associated with the contamination of broilers and spreading of aviary diseases and the likely effect it may have on inhabitants within the vicinity in the eventuality of an outbreak. This, we believe, is the underlying logic for having buffer distances, hence the raison d'être of these guidelines.

IV. CONCLUSION

9. The Council was wrong to have issued BLUPs , as recently as 3 years ago, for residential development in the vicinity of the existing bad neighbor development, that is, the Poultry Pen. The Council should have acted with consistency. It should not have entertained BLUP applications for residential development, albeit, extensions to existing houses as well as extension to the Poultry Pen. These are in direct conflict with the bad neighbour development principles set out in the PPG and the Environmental Guidelines , the very essence of which are to seek to protect the health and wellbeing of humans. However, two wrongs do not make one right. By reason of the fact that the Council has granted BLUP for residential development with conditions to some people within the Buffer zone of the Poultry Pen, it does not negate the associated risks to their health and sanitation. On the basis of the application of the Planning Policy Guidelines, which I believe should be adhered to in the circumstances due to the biosecurity risks involved, I am of the view that this appeal should not be allowed.

10. Mr. Rajee and Mr. Cheong dissenting:

We believe that since the Council has delivered several BLUPs for residential development and for extension of residential development whilst being aware of the risks available due to the properties being found within the buffer of 200 metres, it will not meet the ends of justice if the case of the Appellant were to be treated with disparity. It is on record that one Miss Arulandeedum Marie Vanessa Malini has been granted a permit on the 23rd April 2015 by the Council with special conditions attached. Since the Appellant has stated that she is willing to assume her responsibility, we

believe for the sake of consistency and fairness, the Council should grant a BLUP for residential development to the Appellant with special conditions if need be.

11. For all the reasons set out above, since the majority decision lies in favour of the appeal, the appeal is allowed. This case is to be confined to its own set of facts and circumstances and is not to be taken in anyway as a general rule that the residential developments within the buffer of bad neighbour development is to be allowed.

Determination delivered on 16th March 2018 by

Mrs. J. RAMFUL

Vice Chairperson

Mr. B. Rájee

Member

Mr. Cheong

Member