

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

Cause No. : ELAT 1005/15

In the matter of:

MR. BEEKEE VADANUND

Appellant

v.

DISTRICT COUNCIL OF RIVIERE DU REMPART

Respondent

DETERMINATION

The present appeal is against the decision of the District Council of Riviere du Rempart for having refused to grant a Building and Land Use Permit for the excision of a portion of land of 1200 square metres from a plot of 2400 square metres for residential purpose at St Francois, Cap Malheureux. The basis for the refusal, as stated in the letter dated 29 September 2015 from the Council, is that the subject site lies outside settlement boundary by approximately 350 metres. The Appellant raised three grounds of appeal which are to the effect that firstly, several houses have been built in the vicinity, secondly, the owner of an adjacent plot of land has been exempted from application of a land conversion permit and, thirdly, the relevant plot of land is required for the building of a house for the owner.

The daughter of the Appellant duly authorized to depose on his behalf, adduced evidence to the effect that there were constructions in the vicinity of the plot proposed to be excised, the more significant one being a huge house described as a 'castle' situated near the Appellant's plot of land. She has explained at length the circumstances in which she is living in her father's house along with another sister and her child aged five years old, the dire need for her to erect her own house on a portion of land that her father is willing to give her to meet her needs. Her personal circumstances show that she is facing hardship in the place where she is presently living.

What are the planning provisions that apply to such an application?

The Respondent relied on the distance of the proposed development from the settlement boundary to reject the application. No further consideration was given to the state of development in the vicinity of the premises. It came out that the Appellant's site is adjacent to a huge house along SSR Road. The Respondent, which is the sole authority to grant permits for development of land within its administrative jurisdiction, contended itself by making a statement that there was no information as to whether a permit had been issued for that construction. Such information ought to have been to the knowledge of the Respondent itself and not come from the Appellant as suggested by the Respondent. Furthermore, no evidence has been put before this Tribunal to show that any action whatsoever has been taken in the eventuality that that said construction has been erected without any permit. As such, the Appellant could not be faulted for relying on the presence of residential premises close to his property to secure a BLUP for the same purpose.

Furthermore, this being the case, the Respondent would have exercised its powers vested under section 117 of the Local Government Act in a more judicious way by looking at all the planning instruments, namely the legislations as well as the Planning Policy Guidance. Reference is made here to Policy SD4 relating to Development of Land Outside Settlement Boundary: *"There should be a general presumption against proposals for development outside settlement boundaries unless the proposal: has been shown to have followed the sequential approach to the release of sites identified in SD1, SD 2 and SD3 and there are no suitable sites within or on the edge of settlement boundaries.... The exceptions go on to include a proposal that is capable of ready connection to existing utility supplies and transport networks or can be connected without unacceptable public expense."*

It came out from the evidence adduced by the Appellant's daughter that the Appellant would take the responsibility of ensuring connections to utility supplies. It is also abundantly clear from Annex 4 to the statement of claim (which has not been disputed) that transport networks are available within a short distance. It is our view that the Appellant's proposed excision is in line with Policies SD 3 and SD 4 in as much as it can round off the existing settlement that already exists in the immediate surroundings of the said area as shown on the site plan annexed to Document F.

We shall fail in our duty if we do not draw attention to the blatant inconsistent approach in assessing such applications, as it came out from the minutes of proceedings of the Permits and Business Monitoring Committee (PBMC) dated 23 September 2015, produced as Document F. These minutes show that on the same day, in the same geographical area, the Respondent gave its approval for an excision of a plot of land of 759.75 SQM found outside settlement boundary by a distance of 450 metres for residential purposes. This had not been recommended and was close to a poultry pen and yet approved by the PBMC with conditions.

The Respondent attempted to adduce evidence on the proximity of a poultry pen to the Appellant's proposed development. This had however not been a ground of refusal at all.

We highlight the need to ensure consistency in decision making which indicates fairness in the process. We find that the first ground of appeal raised by the Appellant is amply substantiated. The fact that the Appellant has been exempted from a land conversion permit has not been disputed. At any rate we do not find that this is a ground of appeal as such, nor is the third 'ground' as set out in the notice of appeal. The latter two 'elements' styled as 'grounds' are construed as matters put forward in support of the first and only ground of appeal. Based on abovementioned reasons, we allow the appeal and remit the decision back to the Respondent for it to consider whether to impose any conditions it deems necessary.

Delivered by:

Mrs. Vedalini Phoolchund-Bhadain, Chairperson

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Mr. Pravin Manna, Assessor

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Mr. Basdeo Rajee, Assessor

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Date:

10th September 2018