BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

Cause No. : ELAT 1053/16

In the matter of:

MR. SOOCHIT GOBEEN

Appellant

v.

DISTRICT COUNCIL OF GRAND PORT

Respondent

DETERMINATION

The Appellant applied to the Respondent for a Building and Land Use Permit for the conversion of a ground floor to be used as a multipurpose hall at Lot No.3 Morcellement New Grove, New Grove. The Respondent has by way of letter dated 28 December 2015 informed the Appellant that his application has been refused on two grounds: (1) that the commercial activity permitted by his title deed on his lot, which belonged to a commercial cluster and, as per policy Cr1 of the Outline Planning Scheme, Commercial activities mean related activities which will serve the local neighborhood needs, and (2) The proposed multi-purpose hall will create inconvenience for the residents in the morcellement by way of noise and increase in vehicular movement.

The appeal against this decision was lodged on the 12th January 2016 on the grounds that firstly, the Appellant already held a permit to operate a restaurant in the said premises but due to financial reasons he wished to operate a multipurpose hall as this involved less financial input, secondly, this activity is his sole scope to earn a living and to incur the school expenses for his children and thirdly, he prayed that his application be reconsidered on a humanitarian basis.

In the course of the hearing it came out that the Appellant intended to hold parties and different types of celebrations in the proposed multipurpose hall. He targeted an attendance of a maximum of fifty persons. He had however made provision for eight parking spaces. The Appellant candidly stated that he would make use of 'on-street' parking as the road was fifteen feet wide and that he could enlist the support of police

officers in directing such on-street parking. The building comprised of a basement and a first floor. The basement would be used for two parking slots as shown on Document A. It also came out that the proposed activities would be carried during week-ends and last up to 10.00 p.m.

It came out from the evidence of the representative of the Respondent that the application had been assessed by the Council and it was seen as being an application under the 'commercial cluster'. The proposed activity did not qualify as one of the activities as described in the Outline Planning Scheme for the district of Grand Port. Policy CR1of this Outline Planning Scheme lays down the guideline as regards *Commercial and Retail Development* as follows: "*Shops including tabagie, small groceries and snack foods premises which serve the local neighborhood needs may be located within settlement boundaries and within predominantly residential areas...*".

The evidence of the representative of the Respondent, Mrs. Bosquet indicates that the main criterion considered by the Respondent in reaching its decision has been that the proposed multi purpose hall would not necessarily qualify as a 'commercial activity that would serve the local community' and as such it would not justify its implanting within a residential morcellement. This is shown in the first ground of refusal in its letter dated 28 December 2015.

We have given careful consideration to the submission made on behalf of the Appellant to the effect that the application ought to have been assessed under the 'sui generis' cluster and not under the 'commercial cluster'. A close reading of the twelfth schedule to the Local Government Act indeed shows that the proposed activity, i.e. a 'Multi – purpose hall, including wedding hall' falls within this schedule which lists out what are the 'sui generis' activities.

What is relevant for our determination is whether if the application was considered under the 'sui generis' cluster, the proposed development would have met the criteria laid down in the law. Section 4 to the eleventh schedule to the Local Government Act 2011 sets out that (a) "Certain economic activities cannot be specifically categorized within one of the three clusters. These activities are classified as 'sui generis'of standing on their own. (b) A fresh permit is required for any change of economic activity from or to a sui generis activity."

True it is that the first ground of refusal of the Respondent is an indication that the application has been considered as one under the 'commercial cluster' and not under the 'sui generis cluster'. Be that as it may, what we have to assess is more the planning merit of the application than the administrative classification of the activity, except if this classification would call for different planning norms. There is no indication that such is the case here.

It is on record that the Appellant held a BLUP to operate a restaurant in the said premises. Dictated by financial considerations, he now wished to operate a multi-purpose hall in the same premises, for which the application, subject matter of the appeal, was made.

In assessing this application, the Respondent was not duty bound to hold a hearing. Mrs. Bosquet explained the rationale for refusing the said application, the decisive planning considerations being the potential noise nuisance and the hazards caused by on-street parking and increase in vehicular movements.

The Appellant himself stated that the events that he proposed to hold in the premises range from birthday parties to weddings and other events which could last up to 10.00 p.m. The Appellant proposed to put soundproof materials to dampen noise nuisance. The on-street parking that he contemplated, being given the obvious lack of required parking spaces, would be catered for by the use of police officers to direct the traffic.

We are of the view that the Respondent is duty bound to take its decisions within the planning parameters laid down by the Outline Planning Scheme and Planning Policy Guidance. It cannot take mitigating measures that are now suggested as a substitute to sound planning norms. The clear lack of parking spaces, the incompatibility of the activities of a multi-purpose hall in the midst of a residential morcellement and the potential noise nuisance, as well as increase in vehicular movement in the morcellement are the planning considerations which have dictated the decision of the Respondent. Evidence adduced by the representative of the Respondent has amply shown that the activity that the Appellant proposes to run is not appropriate due to its location. The Appellant attempted to show that the needs of the local community will be served by this business running in close proximity of residential premises by proposing a place to hold parties etc. The nuisance potential and propensity for accidents in such a planning context, as highlighted above, call for care to be exercised by the Respondent in granting permits. The Respondent cannot, as an authority, grant a permit which is not in compliance with the planning instruments and rely on an 'a posteriori' check on the performance of an activity. Planning calls for a foresight and planning norms serve that purpose.

We also highlight that that the main ground of appeal contained in the notice of appeal, namely that the Appellant cannot invest in the restaurant for which he already holds a permit due to financial constraints, cannot be upheld as a basis to challenge the Council's decision. The other two grounds are not grounds of appeal as such.

For all the above reasons, we find no reason to interfere with the decision of the Respondent. The appeal is accordingly set aside.

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