

**BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL**

**Cause No. : ELAT 1086/16**

**In the matter of:**

**MRS. GEORGIA L'ETANG**

**Appellant**

**v.**

**DISTRICT COUNCIL OF SAVANNE**

**Respondent**

**DETERMINATION**

The appeal is against the decision of the District Council of Savanne for having refused to grant a BLUP to the Appellant for the conversion of a second floor of an existing building into a gym and fitness centre at Camp Diable.

The grounds of refusal are that, firstly, the subject site is meant for residential purposes only, secondly, the title deed after the sale of the state land had not been submitted and, thirdly, the operation of a gym within a NHDC complex is not compatible with the surrounding residential neighbourhood.

The Appellant, who was inops consilii, listed her grounds of appeal as being 'for health reasons', 'for the women in the surrounding area' and 'legal authority obtained to operate a fitness centre from the NHDC' ( the third ground having been drafted in unclear terms).

At the hearing, the Appellant deposed to explain the basis of her appeal and the expenses already incurred by her in setting up the fitness centre. She elaborated on the need for such a development in the region of Camp Diable as there was no such facility available for the women living there. This development would enhance the leisure for the women as well as the health concerns for those who would be encouraged to make use of this facility in their neighbourhood.

The Appellant produced the title deed of the property as Document A. This was a concern expressed by the Respondent in the second ground of refusal. She explained that at the time of the application submitted at the Council for a BLUP, the title deed had not been obtained from the notary. The Respondent did not object to this document being put in at this stage. She also produced a letter from the National Housing Development Company Limited, Document B, whereby the authority stated that it had no authority in the matter, the transfer of ownership having been done and that the application ought to be directed to the District Council. It came out that the Appellant had already invested in the purchase of equipments for the running of the gym and intended to remove a wall in front of the premises so as to provide for parking facilities. This was suspended pending the permit being obtained.

In cross examination it came out that she intended to install a sound system for the running of the gym and would operate from 8.00 a.m until 8.00 p.m. Her expected rate of attendance would be 30 persons daily, who would be mostly women from the locality. Access to the gym would be separate from her private access and would be separated from the next neighbour by a wall.

The representative of the Respondent produced copy of the application form submitted by the Appellant (Document C) and copy of the state land lease agreement of the Appellant submitted (Document D). He deposed to explain that at the hearing of the 12<sup>th</sup> January 2016, the Permits and Business Monitoring Committee did not recommend the application (Document E), and the Executive Committee rejected the application on the 14 January 2016 (Document F). A letter of refusal was sent to the Appellant on the 15<sup>th</sup> January 2016 (Document G). His explanations were based with reference to copy of a google map (Document H), and following a site visit, that the proposed development is to take place in a residential area, where the only existing commercial development is a small 'corner shop'. He also produced a letter from the Ministry of Housing and Lands (Document J) regarding the policy decision on the control on commercial developments in residential areas within NHDC Complexes.

We have considered the evidence adduced by the parties, in the light of which we make the following observations:

The grounds of appeal submitted by the Appellant are drafted in broad terms. Although the law provides that the grounds of appeal have to be precise and concise, we take into account the fact that the Appellant was inops consilii. Her appeal is basically on the fact that the Council ought to have taken a wider view of the proposed development, in view of the positive impact that this would have on the inhabitants, mainly women, residing in an area where there is an obvious scarcity of such facilities. On this aspect, we agree with the Appellant.

The Respondent has placed strict reliance on the state land lease agreement restriction. The ground of refusal is that there was no title deed. This 'defect' has been cured at the hearing, the Appellant having provided Document A. This was not objected to and the Appellant gave genuine explanation on why this was not available at the time of her application.

Reliance was also placed on Document J, the policy decision of the Ministry. Emphasis has been placed on the need to maintain the integrity of the residential nature of NHDC Housing Estates. This forms the rationale for the first ground of refusal by the Respondent.

The Appellant has been genuine in her replies by stating that she would operate from 8.00 a.m to 8 p.m. and that there would be the use of music that is usually played for activities in a gym. This is indicative of loud music and an increase in the flow of persons attending the gym. Although the development proposed by the Appellant are compatible with her grounds of appeal, these factors do indicate that there will be an intrusion in the residential characteristic of the area, and this justifies the incompatibility referred to in the Respondent's ground of refusal. Despite the laudable objective of the proposed development, the location of such a project is not appropriate. This Tribunal finds no reason to interfere with the decision of the Respondent.

The appeal is accordingly set aside.

Delivered by:

**Mrs. V. Phoolchund-Bhadain, Chairperson** .

**Mr. Guiton, Assessor** ....

**Mr. Basdeo Rajee, Assessor** ..

Date:

9th April 2018  
