

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

**Cause No. : ELAT 1136/16**

**In the matter of:**

**MRS. MEENAKSHEE RAMDEWAR**

**Appellant**

**v.**

**DISTRICT COUNCIL OF RIVIERE DU REMPART**

**Respondent**

**DETERMINATION**

The appeal is against the decision of the Respondent for having refused to grant a BLUP to the Appellant for the 'Conversion of an existing reinforced concrete (ground floor) building to be used as a Guest House at Off by Pass Road, Goodlands'. The reasons for refusal are contained in a letter dated 30 March 2016 as being (1) The site is too close to a poultry pen and is not appropriate for public use, (2) The site is close to a residential morcellement, and (3) A guest house is likely to change the residential character of the area by means of intensive use of the building by visitors, the peaceful and residential character of the surrounding will be impaired in terms of traffic implication at odd hours.

In her notice of appeal dated 15<sup>th</sup> April 2016, the Appellant lodged three grounds of appeal which are as follows: (1) A building permit has been issued for residential purpose despite the site being close to a poultry pen, (2) All guest House permits issued are found within a residential zone/ approved morcellement, (3) Parking spaces for 20 cars are available on site for only four rooms and the road is 6 metres wide, no buses will have access to the guest house.

From evidence adduced, it came out that the site is situated within the buffer zone of 200 metres of an existing poultry pen. The Appellants had submitted a first application for a proposed guesthouse on the site which had been turned down because of the proximity with the existing poultry pen. Subsequently the Appellants had submitted another application for the construction of a residential development on the site and the

Respondent had approved same on hardship grounds, with a special condition that the Respondent would not be liable for any nuisance that may be caused by the existing poultry pen.

After hearing the evidence adduced by both parties, the grounds on which the refusal has been made call for concern. We fail to see how the on one hand there is a buffer zone which needs to be observed and, on the other hand, the site is said to be too close to a residential morcellement. The Planning Policy Guidelines on Bad Neighbour Buffer for Industry adjacent to Sensitive Uses (PPG 1) provides that the buffer distance that should be kept between a bad neighbor development such as Poultry/ Livestock Farm and a sensitive land use such as housing, education and health facilities should be 200 metres. There is no information placed before the Tribunal as to the justification for the presence of a residential morcellement within the buffer zone of the poultry pen.

Whatever be the case, we cannot overlook the fact that the present proposed development is in close proximity with a bad development, which is the poultry pen. We have taken note that a permit for residential development had initially been granted in respect of the same premises. It has come out in evidence that this had been considered as an application on hardship grounds. The criteria for considering an application under hardship grounds are laid down in policy SD4 which gives the guidance that there should be a general presumption against proposals for development outside settlement boundaries, except for cases from a small owner seeking residential property for themselves and their close kin. Furthermore, the BLUP referred to above had been granted with a special condition that the Council would not be liable for any nuisance that may be caused by the existing poultry pen (Document A refers).

The prescribed requirement in PPG 1 to observe a buffer of 200 metres with sensitive land uses for poultry pens has been established primarily for biosecurity and safety reasons in order to mitigate the propagation of infectious disease which may emanate from birds. The presence of a Guest House in the vicinity would result in the exposure of more people to the potential impact of the poultry pen on those persons residing in the guest house, thus the exposure to health hazards.

Although we do not condone the lack of consistency in the decisions of the Respondent, based on the above observations, we find no reason to interfere with the Respondent's decision based on the first ground of refusal. We find no need to address the second and third grounds of appeal given the above finding that the site is not appropriate for public use.

The appeal is accordingly set aside.

Delivered by:

Mrs. V. Bhadain, Chairperson

Mr. M. Reynolds Guiton, Assessor

Mr. Luis Miguel Cheong Wai Yin, Assessor

Date:

17<sup>th</sup> May 2018

