

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 300/12

In the matter of :-

Heirs Sookdeo Jhumun

Appellant

v/s

District Council of Flacq

Respondent

DETERMINATION

1. The present appeal is against a decision taken by the District Council (hereinafter referred to as "the Council"), for having rejected an application made by the Appellants for a Building and Land Use Permit (BLUP) for the subdivision of a plot of land at Camp Ithier. The Council rejected the application on the ground that the site lies outside settlement boundary by 100 m. In essence, the ground of appeal is that the Appellants want to have the land they have inherited from their late father Sookdeo Jhumun to be subdivided and shared out amongst the heirs so that they can be put to residential use.
2. The Appellants were represented by one of the heirs, Mr. Premduth Jhumun who testified and stated that close to his property some 10 metres away, there was a huge house, like a mansion and that there were other houses approximately 50 metres away from his property. Infact the property *in lite* is agricultural land for which he has been exempted from land conversion subject to the development being in accordance with

the Outline Scheme, as per document dated 18th May 2015 emanating from Ministry of Agro-Industry and Food Security produced. He also produced to the Tribunal a letter dated 3rd April 2014 from the Sugar Insurance Fund Board stating that the plot *in lite* has been lying under wasteland since 2004.

3. The representative of the Respondent, Mr. Bundhoo, testified that the site was outside the settlement boundary by 100m. Under examination in chief at some point he stated that the site is found on the edge of the settlement boundary and he also admitted that there are residential buildings very close to the subject site although he also stated that the Council was not issuing any BLUP for residential developments as such. He was unclear on whether some of those buildings had the required BLUP but stated that some of the residential buildings have existed since long although he had not verified the information. He also stated that the buildings were scattered when he was questioned by the Tribunal as to whether they were close to the boundary line. He admitted to the presence of other houses between the settlement boundary and the appellants' property but also stated that 2 houses were illegal constructions for which legal action was being taken by the Council.

4. Mr. Bundhoo was clear that there was a track leading to the subject site but that there were tarred roads which served the area such as Kalimaye Road and Vyas road which stretched over a distance of 250m before leading onto the track. Utilities were available upto a few metres from the appellants' property. He stated that **Policies SD3 and SD4** of the **Outline Planning Scheme of Moka** are applicable but although under **Policy SD4** the application may have been allowed on the ground of hardship, being given the fact that the appellants had not submitted any affidavit to show that they qualify to be exempted under this ground, this cannot be considered.

5. We have duly considered all the evidence on record. from Doc A and Doc B produced, it appears that the subject site is roughly 20 metres away from the other buildings, which Mr Bundhoo admitted are residential buildings. It is also not disputed that the land in the vicinity of the subject site is mostly bare land including the subject site itself. The appellant's evidence is that there is a large house some 10 metres from the subject site. This evidence was not disputed. Infact the representative of the Council also confirmed the presence of other buildings, which were residential in nature, outside the settlement boundary. The Council denied having granted BLUPs to two residential developments and suggested that they are constructed illegally. Albeit illegal, the existence of other houses in the vicinity was not denied by the representative of the Council.

6. We believe that the presence of the "scattered houses", as described by the Council's representative, between the boundary line and the appellants' property has already caused a development line to be pushed back such that it seems clear that the natural progression of development, especially of a residential nature, can only be along these developable plots which are close to the utilities and the tarred roads. The area cannot at this point be said to contain exclusively built-up area near the boundary line with a clear demarcation of where the residential development is. Infact it was the stand of the Council that it could have released the land of the appellants if it was satisfied that their case was exempted under the ground of "hardship" had they provided an affidavit.

7. **Policy SD4** is the policy applicable for development outside the settlement boundary which is mostly favorable for "bad neighbor" development, that is, development not particularly compatible with residential use. The appellants not having put in an affidavit averring hardship, do not, in our view, disqualify their development proposal from being considered under that ground, as stated by the Respondent's representative. However, in view of the positioning of the subject site from the settlement boundary we believe that Policy SD 3 is more apt in the present circumstances. **Policy SD 3** sets out the

policies for **Development on the edge of the settlement boundaries** and has been reproduced hereunder:

"SD 3

Development on the Edge of Settlement Boundaries

There should be a general presumption in favour of development on the edge of but outside defined settlement boundaries providing such development proposals are aimed at:

- *Consolidating gaps in an otherwise built up area; or*
- *Rounding off an existing settlement being contiguous with its existing built-up area and are not creating or progressing ribbon development; or*
- *Infilling (of development) where no strategic gap between settlements is proposed; or*
- *Providing industrial uses which may not be appropriate within settlement boundaries*

Or where:

- *The proposal is from a small owner seeking residential property for themselves or their close kin and can be considered as a hardship case, provided that in the opinion of the relevant authorities such release would not encourage large scale removal of land from agriculture; or*
- *Land suitable for agriculture which has been determined to be surplus to future long term agricultural requirements by the owner of such land and which could otherwise be developed more efficiently than a similar-sized development outside settlement boundaries and which includes uses such as community or social facilities or affordable housing or NHDC scheme; or*
- *There has been a formal commitment given by the Ministry responsible for Public Utilities, the Local Authority, the Town and Country Planning Board, the Ministry responsible for Housing and Lands or other Government-approved scheme prior to the approval of this Outline Scheme, provided such a commitment is duly supported by bona fide evidence i.e original and authentic documents;*

And the proposals:

- ***Are capable of connection to existing utility supplies and transport networks or can be connected without unacceptable public expense; and***
- ***Do not inhibit the comprehensive development of an area or restrict access to adjoining areas of land appropriate for development or the sequential release of land nor prevent expansion or disrupt existing business/employment generating activities; and***
- ***Are not located in an environmentally sensitive area nor in an area of landscape significance as notified by the Ministry responsible for Environment and Sustainable Development; or***
- ***Are not occupying a site of long term suitability for agriculture, forestry or an irrigation zone as notified by the Ministry responsible for Agro-Industry and Food Security”***

8. We do not believe that the granting of a BLUP in the present circumstances would have offended Policy SD3 since the evidence of the Council did not reveal that there were large amounts of land within the settlement boundary or on the edge of it that were lying undeveloped. The evidence of the Appellants was not disputed in that they come from lower income groups and that the land that they had inherited from their late father was left idle when it could have been developed and was in close proximity of residential development.

9. In the light of our observation that the residential development seems to be a natural progression on the side where the subject site lies and being given that it would also provide housing opportunities for such lower income groups bearing in mind that the land is no longer being used for agricultural purposes, we believe the land of the Appellants can be released for residential development provided that the Appellants do the needful to have the basic infrastructure and utilities on site.

10. For all the reasons set out above, we find allow the appeal. No order as to costs.

Determination delivered on 9th March 2018 by

Vice Chairperson

Assessor

Assessor