

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

**Cause No. : ELAT 883/15**

**In the matter of:**

**Mr. BREECHAN SOWDAGUR & OTHERS**

**Appellants**

**v.**

**DISTRICT COUNCIL OF PAMPLEMOUSSES**

**Respondent**

**In the presence of:**

**G.S STEEL LTD.**

**Co-Respondent**

**DETERMINATION**

The Appellants lodged the present appeal against the decision of the Respondent granting a Building and Land Use Permit to the Co-Respondent, decision of which they were verbally informed on the 12<sup>th</sup> May 2015. The appeal was lodged on the 18<sup>th</sup> May 2015. The grounds of appeal submitted by the Appellants, who were inopconsilii, are in respect of the following issues:

1. Clearances, namely that the Appellants were informed that clearances had been obtained from the Environment and Health authorities on a plan submitted for the construction of a warehouse. Yet the construction was one of a 'light and heavy metal workshop'. As such, the basis of the permit granted by the Respondent is questionable.
2. The portions of land around the proposed site have been highlighted by the Appellants as being for residential purposes. The portions of land adjoining the proposed site had been reserved by the small owners for building their houses.

3. The distance between the proposed site for the construction of a light/heavy metal workshop and the village houses is sixty metres. The air and noise pollution caused by the activities of the Co-Respondent will have adverse effect on the health of the inhabitants.
4. The explanation obtained from the Respondent is that the permit had been approved as the proposed site is in an agricultural area. The above considerations have not been accounted for in the decision of the Council.
5. The roads leading to the subject site are inadequate for activities of that size, those roads being common and party roads of ten feet large to be used by the planters.
6. A light and heavy-duty metal workshop should have been considered as an industrial development and located in an industrial area.
7. The proximity of a primary Government School, at a distance of two hundred metres from the proposed site has been overlooked despite objections made by the parents of the students attending the school and the villagers in general.
8. The polluting activities of the heavy metal workshop are injurious to health and the Respondent did not pay any heed to that.
9. The size of the proposed workshop is a matter for concern as it is not a small metal workshop set up in a garage.
10. The bulk of the land along the Old Flacq Road is either agricultural or residential.
11. Employment creation and heavy rentals presently incurred by the developer should be considered in other areas as llot is not an industrial area.
12. Such investments should be directed towards industrial areas and not in proximity with residential areas.
13. Vegetable planters have objected to the granting of the permit to the Co-Respondent as they are concerned about the dust and noise pollution that will emanate from the workshop.
14. BLUP has been issued to residences at a distance of 180metres from the site. The owners will be affected by the noise and air pollution caused by the activities of the workshop.

The above grounds of appeal are far from being precise and concise as required by the provisions of the ELAT Act. We however take into account that the Appellants are inopsconsilii.

#### The context of the site

The site lies outside settlement boundary. It has come out in the course of the hearing that there are residential areas near the site but the bulk of land surrounding the site is agricultural. A site visit conducted by the Tribunal showed that the building in question, which was already constructed, was a large size industrial building dealing with light/heavy metal industry. Access to the site is along an untarred road of approximately

six metres wide from the main road of Old Flacq road. The Appellants expressed serious concern on the fact that the site is in close proximity to residential area, and not far from a primary school. They explained that in some cases there were residences at a distance of sixty metres from the site and several portions had already been reserved for residential purposes. Objections have been filed by parents of children attending the primary school at the Council against the proposed development. They added that the Council had even approved a permit for building a house at about 180 metres in the windward direction from the proposed site.

It is necessary for us to consider the existing planning parameters for such a development. The application submitted by the Co-Respondent was for a Light and Heavy metal workshop using machines, as indicated in the notice published in the press (Document A) and as per the Certificate of Notification (Document B) produced. It came out that the industrial building is found outside development settlement boundary. On this legging, we refer to the Design Guidance on Industrial Development as contained in the Planning Policy Guidance (PPG 1), which provides the following:

*“Where industrial areas are adjacent to non-industrial uses, appropriate buffering techniques such as setbacks, screening and landscaping need to be provided to mitigate any negative effects of industrial operations”. The Design Guidance also makes provision for the plot coverage of the industrial building, the plot ratio being between 35% to 40% of the surface area of the land, in the case of new Industrial developments.*

A visit conducted on the site of the development showed that the above criteria have been observed in so far as setback and plot ratio is concerned. As it is, the fact that the site is located outside settlement boundary, the major issue now is for the Council to monitor whether there is compliance with these provisions. The context of the site itself was not incompatible with the proposed development. The Council cannot be faulted for having considered the status of the land in its decision to grant the permit.

## 2. Complaints of noise pollution and air pollution

Much emphasis was placed by the Appellants on the potential noise pollution that the activities of the industrial plant would generate. No real evidence was brought forward to support this complaint. On the other hand, the Co-Respondent, G. S. Steel, submitted evidence of compliance with the legal norms for such activity. Document H, a noise risk assessment report, was filed by Benchmark Consulting Engineers where recommendations were made on measures to minimize the noise emission to the neighbourhood.

The Environment Protection (Environmental Standards for Noise) Regulations 1997 (GN17/1997) made by the Minister under sections 36 and 74 of the Environment

Protection Act provides in its Schedule that for Industrial noise the permissible level is 60 decibels from 7.00 to 21.00 hours and 55 decibels from 21.00 hours to 7.00 hours.

Document H, the expert report, concluded that "*the noise levels emitted by GS Steel Ltd. have a low impact on the surrounding environment as the noise levels are under the values stated in GN 115/2003. The noise emission produced by GS Steel Ltd is within limit*". This evidence was not rebutted by the Appellants, save for the apprehensions expressed by the Appellants in the course of the hearing and during the site visit.

As regards the complaint of dust pollution, Appellant No.1 expressed his apprehension that the operation of a heavy metal workshop would 'undeniably' cause dust pollution. This being an apprehension, we are not in presence of any real evidence in support thereof. We take note of the conditions in the BLUP issued on the 28<sup>th</sup> April 2015 (Document E), which contains specific conditions, condition 3 (vi) specifically states that "*The activity shall not give rise to any nuisance. In case of persistent nuisance the Council may impose additional conditions which shall be scrupulously observed within the prescribed delay*". The onus is on the Respondent to ensure that there is compliance with the conditions imposed by it.

#### The access to the site

The Appellants expressed concern on the inadequacy of the road leading to the site, stating that the road is a common and party road to be used by the planters. The BLUP issued to the Co-Respondent (Document E) contains a special condition that "Access to the site from Old Flacq Road (B20) to be maintained to a minimum width of 6 metres". We note that the BLUP was issued on the 28 April 2015 following an initial 'Approval of Application subject to modifications' sent to the Co-Respondent on the 8 January 2015 (Document F). This document listed out five issues to be clarified to the Council. The inadequacy of the width of the road was highlighted. The special condition in the BLUP relating to the maintaining of this width is an indication that there has been compliance with the conditions imposed.

We finally note that the BLUP against which the appeal has been made is the one dated 28 April 2015. This permit relates to the construction of a Light/Heavy metal workshop. The specific conditions contained therein relate to the construction phase, whereas the apprehensions expressed by the Appellants, couched as grounds of appeal in the Notice of appeal, are matters which can be assessed once the operation phase starts. This explains to a large extent the inability or lack of any real evidence in support of those concerns from the Appellants.

The planning criteria for the granting of the permit for a construction of the workshop in that particular site have been observed by the Council. The apprehensions of the

Appellants are matters which would eventually call for the intervention of the authorities if they are found to be justified once the operation stage of the workshop is reached. The onus is on the Council to monitor the conditions that have been imposed by it to prevent nuisance and to comply with guidelines imposed by the Fire Services, Sanitary Authority and Ministry of Environment (Document E condition 3 (v)), as well as other conditions that it may be called upon to impose and monitor at the operation stage of the workshop.

Another main concern of the objectors has been that the development would adversely impact on the area as it would prejudice the expansion of residential development around the industrial site in the village, since the industrial site is not too far from the existing settlement boundary. This is a matter for the authorities dealing with the zoning of activities to look into. The site is located outside settlement boundary as per the Outline Planning Scheme. The proximity of residential or future residential concerns is a planning consideration for the planning authorities.

In view of the existing parameters, we find no justification to interfere with the decision of the Respondent in granting the BLUP to the Co-Respondent at this stage. We however highlight the need for vigilance to be exercised by the Respondent in ensuring that the conditions imposed by it in the BLUP are strictly observed and immediate remedial action be taken in case of breach thereof.

The appeal is otherwise set aside.

Delivered by:

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

**Miss Roovisha Seetohul, Assessor**

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

Date: 20<sup>th</sup> June 2018