

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

Cause No. : ELAT 887/15

In the matter of:

MR. PARMANANDA MANNICK

Appellant

v.

DISTRICT COUNCIL OF GRAND PORT

Respondent

DETERMINATION

The appeal is against the decision of the Respondent for having refused to grant a Building and Land Use Permit (BLUP) for an extension at the ground floor to be used as an aluminium workshop at Boundary Street, Union Park. The grounds of refusal, contained in a letter dated 14 May 2015, are as follows:

1. Objections have been received
2. The proposed development would be a source of nuisance for the immediate neighborhood by way of noise
3. The legal notice was not signed by a court usher.

The notice of appeal lists out three grounds of appeal as follows:

- (i) The objectors are at approximately 25 metres from the proposed development,
- (ii) The workshop is a small scale workshop whereby the Applicant is self-employed
- (iii) No noise survey has been effected prior to the refusal and alleged nuisances by the Council and objectors.

We have considered the evidence adduced by the Appellant and the representative of the Respondent. It came out that the Appellant intended to use machines, namely a metal saw using 1800 Watts and a drilling machine with a capacity of 680 Watts. The Appellant had undertaken at the hearing conducted at the level of the committee that he

would abide by all conditions and would not exceed the permissible limit of 60 decibels during his work. Yet there had been no service of the notice on the contiguous neighbours regarding the use of such machines by an usher.

The issue of the statutory delay of fourteen days, although not raised as a ground of appeal in the notice filed at the Tribunal, has been included in the statement of case. This has been amply explained by the representative of the Respondent, who stated that the 'effective date' could no longer trigger the delay of 14 working days being given that the applicant (now Appellant) had been convened to a hearing at the council. The convening of a hearing had the effect of suspending the running of the statutory delay. She explained that this has been the cursus followed by the local authorities. We note that this is not provided for in the law but agree that such a practice stands to reason, being given the administrative process, and thus delay, that the holding of a hearing entails. It could be unlikely that a hearing be convened, held and a decision be reached and communicated to any applicant within this delay. Having said this, we turn to the grounds of appeal themselves.

Although the Appellant maintained that the closest residences were at a distance of 25 metres, this does not preclude the fact that future residential developments may take place because the area has been described as a residential one.

We are called upon to assess the proposed development in the light of the planning instruments that govern this type of activities. The applicable policy to this application is Policy ID 2 of the Outline Planning Scheme referring to Small Scale Enterprises and Home Working in which it is provided that 'activities classified as light industry such as panel beating, spray painting, manufacture of furniture etc are not normally suitable in residential areas due to associated environmental nuisances and traffic to be generated'. Therefore, as a general rule, workshops are not allowed within residential areas because of the nuisance attached to these developments e.g. noise, odour, traffic generated, infringement on privacy etc. and these would affect the amenity and character of a residential neighbourhood.

Although the Appellant laid emphasis on the fact that conditions could have been imposed for curtailing the potential nuisance, we take the view that conditions are meant to be imposed on developments that are done within areas that can accommodate them. Here, being given the residential character of the place, the imposition of conditions cannot cure the inherent incompatibility of the activities contemplated under the BLUP and the residential character of the surroundings. This gives credence to the objections that have been considered by the Council.

The ground relating to the absence of a noise survey by the Council does not hold water, the representative having explained that it is not the competent authority that holds noise surveys, this is within the competence of the Ministry of Health.

We find no basis to interfere with the decision of the Respondent in refusing to grant a BLUP for the operating of an aluminium workshop which proposes to use electric engine motors of 1800 Watt and a drilling machine of 680 Watt in a residential area. The appeal is accordingly set aside.

Delivered by:

Mrs. Vedalini Bhadain, Chairperson

Mr. Basdeo Rajee, Assessor

Miss Roovisha Seetohul, Assessor

Date: 18th July 2018