BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

Cause No. : ELAT 931/15

In the matter of:

HEIRS CAHOOLESSUR ANEEWOOD

REPRESENTED BY CAHOOLESSUR RAJENDRA KUMAR

Appellant

v.

DISTRICT COUNCIL OF FLACQ

Respondent

DETERMINATION

The appeal is against the decision of the District Council of Flacq for having on 8th July 2015 refused to grant a Building and Land Use Permit (BLUP) to the Appellant for the division of a portion of land of an extent of 2,366.50 square metres into five lots for residential purposes at community centre road, Bon Acceuil. The sole ground of refusal is that the site lies outside settlement boundary at some 100 metres from a cremation ground.

The grounds listed as grounds of appeal in the notice of appeal dated 16th July 2015 are that:

1. The land belonged to his late father and the heirs, namely five daughters, have decided to divide it among themselves to be used for construction later.

2. CEB, CWA and Telecoms supply closed to a building being occupied (we take it that the Appellant means that there is availability of these facilities in a building which is close by and is occupied).

3. There are constructions between the cremation ground and the plot of land.

Mr. Rajendra Cahoolessur deposed before the Tribunal on behalf of the heirs on the basis of the proxy (Document A) authorising him to do so. The evidence of Mr. Cahoolessur is basically that there is a construction in the vicinity of the land that is proposed to be sub-divided. There should as such be no impediment to the Respondent approving the application submitted by the Appellants. He relied on a permit given with conditions to a neighbor despite the proximity of the cremation ground (reference is made here to Document H). It came out that the approval in this case had been given by the Minister of Local Government as shown in Document H1. The representative of the Respondent was clear that this approval does not create a precedent for the Council which applies the planning instruments in assessing each application on its merits.

What do these planning instruments say? Policy SD 4 of the Moka Flacq Outline Planning Scheme gives the guidance that there should be a general presumption against proposals for development outside settlement boundaries. This policy however lists out certain exceptions, one of them being that the proposal has been shown to have followed the sequential approach to the release of sites identified under SD 1, SD 2 and SD 3..... This exception has however to be coupled with other conditions which are of no application here.

Similarly the other condition which could potentially apply could be if the application had been submitted under the 'hardship case' consideration, (ie. if the proposal is from a small owner seeking residential property for themselves and their close kin and can be considered as a hardship case...). The Appellants' representative has been unable to state whether this condition could apply for the simple reason that the property in question is still in an 'indivision', such that there is no indication if each of the co-heirs would qualify for such an exemption. Furthermore, the proposed subdivision exceeds the size of 10 perches (422 square metres) that is the maximum plot that is required under the 'hardship case' criterion (the subdivided plots being of a surface area of 11.21 perches i.e 473.3 square metres).

Whatever be the case, the assessment of the application by the Council calls for the application of the existing policies. Residential development in the proposed area is not compatible with the provisions of Policy SD4 (supra). The Appellants' representative attempted to adduce evidence on the existence of residential developments outside settlement boundary in the same area. The above-mentioned development having obtained the discretionary approval of the Minister does not create a precedent that can be extended to the local authority. No conclusive evidence has been adduced in respect of the other residences referred to by the Appellants, namely, there is no information on record on whether any permit had been issued for the construction thereof.

As regards the issue of the proximity with the cremation ground, Policy SC 6 of the Outline Planning Scheme recommends for a buffer of at least 200 metres from sensitive

uses for new cemeteries and cremation grounds and a minimum of 100 metres is desirable for crematoria. The rationale for this policy is to avoid exposing residential developments to the adverse environmental impact that can emanate from cremation grounds.

The Appellants have been unable to bring before the Tribunal any ground that would justify a departure from the norms set out in the above-mentioned policies. It is open to the Appellants to consider activities that are not sensitive uses and which may meet the land use and planning norms as set out in the Outline Planning Scheme.

The appeal is accordingly set aside.

Delivered by:

Mrs. V. Phoolchund-Bhadain, Chairperson

Mr. Imrit, Assessor

Mr. M. R. Guiton, Assessor

Date: 24th September 2018