BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

Cause No. : ELAT 938/15

In the matter of:

VIVO ENERGY MAURITIUS LIMITED

c/o MR. KRISHEN VEERAPEN CHETTY

Appellant

v.

DISTRICT COUNCIL OF RIVIERE DU REMPART

Respondent

DETERMINATION

1. The appeal is against the decision of the Respondent for having refused to grant a Building and Land Use Permit to the Appellant (the then applicant) for the construction of a reinforced concrete building to be used as mechanical workshop, including electric motors. The ground of refusal, as set out in a letter sent to the Appellant on the 10th July 2015, is that the 'development is not compatible as per PPG 8 for Filing Station'.

2. The Appellant relied on the following grounds of appeal:

(i) The PPG applies to new service stations and not to existing ones, as is the case in the present matter.

(ii) The development will not conflict with the filing station since customers will come on appointment only and will not exceed three vehicles at a time, doing minor mechanical repairs and oil change.

(iii) The application is deemed to have been approved being given that the decision communicated to the Appellant has been done after the period when it should have been done, as per the provisions of the Business Facilitation Act.

The first and second grounds are taken together. The nature of the development as per the acknowledgement receipt (Document B) is for a 'proposed

construction of a new garage'. Yet, in the application form (Document C), at the 'description of the proposed development' section, the application has been submitted for an 'Existing Filing Station'. This supports the stand taken by the Appellant that the proposed development is in an 'existing filing station'.
The letter of refusal (Document D) makes reference to 'an application for a BLUP for the construction of a reinforced concrete building (Ground floor +one) to be used as a Mechanical Workshop (including electric motors).
The Respondent's decision is based on the Planning Policy Guidance for Petrol Service stations (PPG 8). We reproduce below the provisions in PPG 8 which are applicable to this case:

1. Paragraph 1.1 of PPG 8 reads as follows: "This PPG applies to all new petrol filing and service stations (PFS) providing fuelling facilities such as petrol, diesel, oil and liquefied petroleum gas. In addition to fuelling facilities, servicing, lubricating and cleansing are also undertaken in some PFS. Moreover some PFS also provide small scale retail sale compatible with and related to the operation of the station.

2. Section 2 of PPG 8 sets out the framework for the setting up of a PFS. It refers to the 'Design Guidance', which provides for guidelines for the site location, planning criteria for site location, noise, plot size, road setbacks etc. At paragraph 2.5.2, the PPG stipulates that "Facilities for car washing, petrol filing and lubrication bays should be covered as far as possible. Such covering structure should not affect air circulation of the filing stations.....No servicing and repairs of vehicles shall be undertaken within the premises of the petrol filing station."

3. It is on record, and has not been disputed, that the filing station where the proposed development is to take place is an existing one. Its development permit (Document A) has been issued on 1st February 1991. As such, the ground for refusing the application as contained in Document D, raises questions. In fact, it stands to logic that issues relating to the 'siting' and design guidance compatibility would be relevant and able to be implemented in cases of a new project and not an existing station. Yet, the evidence adduced by the representative of the Respondent, who assessed the application, explained that he is bound to apply the PPG to applications for new developments. The proposal for the construction of the reinforced concrete building to accommodate the proposed activity has been assessed as a new development calling for a planning assessment by the Respondent. On the other hand, the Appellant maintains that the proposed activity is only

an extension of the facilities offered by the existing filing station and it proposes to professionalize the existing services within a better infrastructure.

We agree that the fact that the Filling and Service Station is an existing one should not be a reason to place it beyond the planning scrutiny of the Respondent, who has the jurisdiction for assessing the planning merits of any project. Yet, the basis for rejecting the application, namely the incompatibility with PPG 8 is untenable for the reason mentioned above. This is why we concur with the stand of the Appellant that the sole ground of refusal does not stand. Hence, the first ground of appeal succeeds.

4. There is no need for us to go into the second ground of appeal, which we do not view as a ground of appeal at all, but is a matter of evidence.

5. As regards the third ground of appeal, it is on record that the application was submitted by the Appellant to the Respondent on the 19th June 2015. The decision of the Respondent was taken on the 9th July 2015 but was communicated to the Appellant by a letter dated 10th July 2015. The Appellant relies on this to state that there has been breach of the law as the delay of 14 days had lapsed, and the application is deemed to have been approved.
The legal provision governing the approval of applications for BLUP are contained in section 117(7) of the Local Government Act which reads as follows: "*With the exception of an application under subsection (8)..........the Permits and Business Monitoring Committee shall within 14 days of the effective date of receipt of the application, and after approval of the Executive Committee.....notify the applicant in writing that the application has not been approved and give the reasons thereof*".
This sub-section should be read with section 117 subsection 11 which sets down a further procedure, namely that: "*Subject to paragraph (b), where an applicant has not been issued with a BLUP or has not been notified that his application has not been approved under subsection (7) or (8), as the case may be, within 2 working days of the expiry of the due date, the application shall, on payment of the fee referred to in subsection (10), be deemed to have been approved...*".

The combination of these two sub-sections places the onus on the applicant for a BLUP to trigger the 'deemed approval' by making the required payment within the two working days following the expiry of the due date, as stipulated. The representative of the Appellant has explained that he had been denied the right to make the required payment at the Council within the two working days as stipulated by the Act. What followed on the next day was the receipt of the refusal letter.

The end result is that there has been no response from the Council within 14 days but this was not followed by receipt of the payment within the two subsequent working days. The version of the Appellant regarding the refusal to acknowledge receipt of the payment was not rebutted by the Respondent. This procedure adopted by the Council is a questionable.

We have taken note of Document F produced by the Appellant, showing that the developer had proposed to amend the nature of the development from 'Proposed Construction of a new garage' to proposed construction for a 'Quick Car Service'. Such a development, we take it, would fall within the permissible activities of a service station (At paragraph 1.1 of PPG 8, it is provided that "*In addition to fuelling facilities, servicing, lubricating and cleansing are also undertaken in some PFS*).

The Respondent attempted to adduce evidence of the impact of the use of electric motors and noise that this is likely to cause. These are matters that the Council may wish to consider in conditions that they are empowered to impose. We note that these are not aspects that are reflected in the ground on which the application has been rejected. The sole ground of refusal has not been substantiated.

For all the reasons given above, the appeal is allowed. The application is remitted back to the Respondent to issue the BLUP with the conditions that it deems fit, taking into account the access, parking, and other planning parameters (which it appears from the record, did not receive the consideration of the Council).

Delivered by:

Mrs. Vedalini Phoolchund-Bhadain, Chairperson

Mr. Pravin Manna, Assessor ......

Miss Roovisha Seetohul, Assessor ......

Date: 22 June 2018