

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

Cause No. : ELAT 1168/16

In the matter of:

MR. MUNGUR HASSEN ALLY

Appellant

v.

MUNICIPAL COUNCIL OF VACOAS-PHOENIX

Respondent

DETERMINATION

The Appellant made an application to the Respondent for the issue of a Building and Land Use Permit for the conversion of an existing residential building at the first floor to be used as 'Manufacturer of structural metal products (e.g. doors, frames, shutters, metal frame works) at Nehru Lane, Clairfonds No.1 Phoenix.

The application was rejected on two grounds: 1.The activity is not accepted as a secondary use within a residential area. 2. Site notification procedures have not been complied with.

The Appellant are now appealing against this decision. The grounds of refusal as per his notice of appeal are: (a) The refusal of the Respondent is made in respect of an activity referred to as 'Manufacturer of Structural metal products while the application had been made for an Aluminium Workshop. (b)The Appellant had complied with all procedures as listed in the BLUP guide. (c) There had been no objection raised by his neighbors despite the notice serve on them by a court usher. Furthermore, all his neighbors have given a written authorization for him to operate the activity proposed.

Evidence adduced in the course of the hearing has established that there have been flaws in the notification procedures that the Appellant ought to have followed, namely that the Appellant did not comply with the submission of the certificate of notification to the Respondent on one hand, and secondly, the required notification plate had not been

placed for the whole duration of the application process. The Appellant attempted to explain that he had initially put up a notification plate that had been spoilt by bad weather conditions, which caused him to remove same. This version has failed to be a convincing one, the more so that the site visit effected by the representative of the Respondent on the 2 May 2016 showed no display of any plate and being given the absence of the certificate of notification which could have established a date on which it was displayed, it was deemed not to have been put up. Furthermore, it has come out that proceedings have been instituted against the Appellant before another jurisdiction for carrying on his activity without permit.

As regards the complaint received from the neighbor, one Mrs. Francoise, this witness has been convincing in establishing the nuisance to which she was subjected to by virtue of the activity of the Appellant. She has laid emphasis on the consequences of the operation of such a type of activity on herself and her family's health and their quality of life. The Appellant attempted to show that the said witness was not her immediate neighbor and those living in closer proximity to his workshop had made no such complaint. He also explained that he was equipped with sufficient know how so as to make his workshop totally soundproof by the use of double glazing fittings so as to prevent any noise nuisance.

We cannot but observe that the Appellant is prepared to take such steps for the reason that he is aware of the noise pollution that such an activity will cause. The successive complaints made by the neighbor, who came to testify very convincingly on the effects of the noise created by the workshop on her and her family speaks length.

We are alive to the need for small scale industries and start up activities that are set up with a view to engage into economic activities by small entrepreneurs. Very often such activities are set up within the home itself for obvious economic reasons. This is an aspect that has been taken into consideration by the planning instruments, whereby they have not instituted an absolute prohibition on all activities in residential areas. Parameters have been set for the operation of small industrial workshops and Home workings as follows:

1. Policy ID 2 of the Outline Planning Scheme of the Municipal Town Council Area of Vacoas Phoenix issued by the Ministry responsible for Housing and Lands in the Approved version of 2015 (Annex 5 to the Statement of Defence of the Respondent) provides that *'There should be a general presumption in favour of proposals to operate or extend small scale enterprises from residential properties but only if the use is ancillary to the principal use as residential, and they are not classified as bad neighbor industries. Applications for development should satisfy the following criteria:.....The proposal will not create any bad neighbor impact on*

residential occupiers in the area, or the character of the neighbourhood particularly in regard to noise, smoke, fumes....within a radius of 50 metres...'

The policy also provides that : *'Activities classified as light industry such as panel beating and spray painting, manufacture of furniture and vehicle repairs are not normally suitable in residential areas due to the environmental effects and should seek available sites in designated SME zones and Small scale Business Industrial Workshop Zones'*.

2. The Design Guidance on Industrial Development issued by the Ministry of Housing and Lands (Annex 6 to the SOD of the Respondent) provides as follows:
Paragraph 2.13: Small Industrial Workshops and home working Small scale enterprises that are carried out in the home without modification of the dwelling may in some locations be acceptable, but stringent criteria are necessary to ensure that the surrounding residential amenity is not compromised. Industrial uses such as panel beating and spray painting, manufacture of furniture and vehicle repairs are not normally acceptable uses within residential areas due to dust, noise, fumes, vibration and other adverse environmental effects.

The planning norms lay emphasis on the need to ensure that nuisance in the form of dust, noise, fumes, vibration...etc.. should not occur due to the conduct of any activity in areas depicted as residential zones. The evidence adduced by the representative of the Respondent is to the effect that the Respondent, after having visited the premises, has found the site and the type of activity as comparable to those listed in Policy ID2, namely that the aluminium workshop is a bad neighbor activity which is incompatible with a residential zone. Despite the efforts that the Appellant declares that he will put to prevent noise nuisance to the neighborhood, the planning parameters are not met. In addition we cannot ignore the fact that the Appellant had been operating without a permit and had been served with a notice for having breached notices served on him to stop his operation of an aluminium workshop.

Having taken into account all the above, we find no reason to interfere with the decision of the Respondent to decline the application made by the Appellant. As regards the labeling of the activity as per the letter of refusal, we find that although the drafting differs from that as contained in the application for BLUP, both relate to the same type of activity. The evidence adduced by both parties did not differ in respect of what the proposed activity would be, nor has the representative of the Respondent been cross examined on any potential discrepancy between the two descriptions that were given. As such, we find no reason to hold this as a ground to support the appeal.

The grounds of appeal raised by the Appellant have not been upheld. We accordingly set aside the appeal.

Determination delivered by:

Mrs. V. Phoolchund-Bhadain, Chairperson

Mr. Pravin Manna, Assessor

Mr. Yusuf Imrit, Assessor

Date:

6th September 2019