

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 1364/17

In the matter of :-

Marie Medgee Narain

Appellant

v/s

The City Council of Port-Louis

Respondent

DETERMINATION

1. The present appeal is against a decision taken by the Council for having rejected the application of the Appellant for a Building and Land Use Permit ["BLUP"] for the construction of a one storeyed residential building at Vallee des Pretres, Port Louis. The grounds for rejection communicated to the Appellant in a letter dated 22nd February 2017 are:

"(i) The site is found in a landslide zone where no new development shall be allowed.

(ii) No clearance from the Ministry of Public Infrastructure has been submitted.

(iii) Engineer's name signature not inserted in form.

(iv) Reserve not shown on site plan.

(v) Ground floor level to be at least 300mm above ground level.

(vi) L-column/strip footing provided."

2. The Appellant deponed under oath and was cross-examined by the Respondent's Counsel. A Sworn land Surveyor, Mr. Bhurtun, was called as a witness for the Appellant. The representative of the Council, Mr. Goburdhun, also deponed and was cross examined by the Appellant's counsel. We have duly considered the evidence placed before us as well as submissions of Counsel.

I. **CONTEXT ANALYSIS**

3. The Appellant is the owner of a plot of land of the extent of 835sq.m situated at Vallee des Pretres as per the title deed, Doc A, transcribed in TV 9117/53 and registered on 19.12.2013. Following her application for a BLUP for residential development, the Council assessed the site as falling within a landslide zone where no new developments are allowed, as per Doc D. The subject site, as per Doc F, extract of the Outline Planning Scheme of Port Louis ["OPS"], which is under deposit since 2013, is found within the Landslide Boundary of Chitrakoot.

II. **APPLICABLE LAW AND PLANNING INSTRUMENTS**

4. The subject site being located in the district of Port Louis, the applicable Planning Scheme is the OPS of Port Louis which has been on deposit since 2013. The applicable Planning Policies are the **Planning Policy Guidance No.9 ["PPG 9"] on Development on Sloping Sites and Landslide Hazard Areas**, which has been effective since 28th March 2016. This PPG is a continuation of **PPG 1 on Development on sloping sites with design and mapping input** under the expert guidance of the **Japanese International Cooperative Agency ["JICA"]**. The subject site is located within the area of Chitrakoot, which is one of the three areas identified by the JICA as being prone to landslides due to it being ongoing landslides being experienced in the area.

5. According to the PPG 9, at paragraph 8.0, the landslide areas are divided into two zones: **The Landslide Hazard Zone (LHZ)** and the **Special Hazard Zone (SHZ)**. The former is an area where landslides have occurred in the past and though not recently, may be prone to future landslide activity. The latter is an area where inhabitants and buildings are expected to sustain heavy damage should a landslide occur. It forms part of an active landslide block and the area below the block may be impacted by landslide activity. AT paragraph 8.1, the designation of these two categories is provided and it is clearly stipulated ***“No new development is permitted in the Landslide Hazard Zone and Landslide Special Hazard Zone”***. From the evidence of the representative of the Council, the subject site as marked by him is found within the area of Chitrakoot, as per the map of the OPS produced and this area is found within the Landslide Hazard Zone.

6. The PPG is issued under **Section 13 of the Planning and Development Act 2004** by the responsible Minister. Therefore, the PPG shall prevail over a development plan under the OPS and local authorities have to comply with the PPG if ever there is a discrepancy. In the present case, the applicable policy under the OPS (which is under public deposit since April 2013) is **Policy EC2**, since the site was acquired in 2013 when the zone was already designated as a Landslide Zone as per the OPS. As per doc F, this zone is found near a valley and near Pieter Both Mountain and the subject site is found in an area classified as “predominantly Moderate Slope (10-20%) but close to an area which has a “Predominantly Steep Slope (>20%)”. Under this policy, there is a general presumption against development on steep slopes which includes slopes of between 10-20%.

7. More specifically, at paragraph (iv) of the Justification section of **Policy EC2**, it is stipulated a landslide zone *“is considered a high risk area in terms of urban development and any construction of buildings within such an area will be a potential hazard to the residents/occupants/users. Therefore, any activities that may further impair the already unstable condition of the land should not normally be permitted.”*

III. THE EVIDENCE

8. The assessment of the planning merits of this case rests mainly on the expert evidence. The site being located in an area prone to landslides, this matter cannot be decided on the basis that other people are building houses around the subject site as per the testimony of the Appellant. Two wrongs cannot make one right. The SLS, Mr. Bhurtun, produced a report wherein it is stipulated that at the time of acquisition of the property there was no mention made in her title deed that the land was found in a Landslide Zone or that the City Council would refuse her a BLUP, that there was no form of notification provided by the Council showing the limits of Landslide Zone or that development would not be allowed and that the Ministry of Housing also did not advise the Appellant with regard to landslide. These reasons in essence relate to the three grounds of appeal raised by the Appellant.

9. We do not believe that it would be the responsibility of any notary or local authority or Ministry to inform a purchaser of the zoning of their site. Infact the onus is on a buyer to have his land surveyed and the services of a land surveyor are retained to research the legal boundaries of the property, restrictions, land measurements, determining boundaries, locate roads and buildings and utilities, amongst others. The witness testified that there were many roads in the vicinity of the subject site, one which adjoins the site. He also stated that the roads have existed since long. He also stated that there were drains everywhere but that there was no notification plate to suggest that it was a landslide zone.

10. We note that he did not contest that the site was within a landslide zone, and infact stated in his report that the site was 300 m inside the **Landslide Zone** limit, but his main argument in favour of the Appellant's case was that there was no notification of the subject site being in a landslide zone and that there exist in the vicinity drains and roads. In cross-examination he could not answer the purport of **Planning Policy Guidance** and he stated he was not well versed with the **Outline Planning Scheme**.

11. On the basis of the evidence adduced, we do not believe that the Appellant has established a strong case before us by providing compelling reasons as regards her case to fall within the category of exceptions that would favour the granting of a BLUP. The policies are clear as regards landslide zones which have been put into place as a precautionary measure for the safety and protection of inhabitants and their property. We are therefore not convinced by the arguments put forward by the Appellant or her witness to depart from the provisions of the planning instruments. It stands to reason that the existence of policies have for aim the mitigation of landslides and risk reduction management. It would therefore be against the essence of sustainable development of this country to grant a BLUP to people to reside in areas prone to landslides. We therefore believe that the Council was not wrong to have rejected the application for BLUP of the Appellant on the basis that the site is found within a landslide zone.

12. Having reached this conclusion, we do not deem it necessary to consider the other reasons invoked by the Council for the refusal of the BLUP. For all the reasons set out above, we find that the Council's decision was correct. The appeal is therefore set aside. No order as to costs.

Determination delivered on the 19th November 2019 by

Mrs. J. RAMFUL
Vice Chairperson

Mr. H. MEETOO
Member

Mrs. P. RAWOTEEA
Member