

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 1385/17

In the matter of :-

Mohammad Ali Hashmi Ghoorah

Appellant

v/s

Municipal Council of Vacoas/Phoenix

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 for the construction of a residential building at La Marie, Vacoas. The ground for rejection communicated to the Appellant in a letter 21st March 2017 is that

"Site is found within a buffer of 200m from an existing poultry pen."

2. The Appellant, *inops consili*, and duly represented by his father, deponed under solemn affirmation and was cross-examined by the Respondent's Counsel. The representative of the Council, Miss Ramroop, also deponed and was cross examined by the Appellant. We have duly considered the evidence placed before us as well as submissions of Counsel.

I. CONTEXT ANALYSIS

3. From evidence adduced, the development site is of an extent of 592.62 sq.m (14 perches) situated within the settlement boundary at La Marie, Vacoas. It is undisputed that the subject site is found within the settlement boundary of the Outline Planning Scheme of Vacoas/Phoenix [“OPS’] although it was explained by the Representative of the Council that previously the area fell under the jurisdiction of the District Council of Moka/ Flacq. The latter and subsequently the Council of Vacoas/Phoenix had previously approved several residential developments within the settlement boundary eventhough they were located within the buffer zone of the Poultry pen. As a consequence, there are, to this date, numerous dwellings within the vicinity of the subject site although many of them are within the 200 metre buffer of a Poultry Pen which belongs to one Mr. Puruhoo.

II. THE EVIDENCE

4. The case of the Appellant in essence is that he does not dispute that his property is barely a few metres from the Poultry Pen, but he disputes the fact that it is operational. The father of the Appellant stated that although the Poultry Pen is right next to his son’s property, the latter has no qualms about living there and that there is no foul odour emanating from the Pen. He stated that the Appellant is ready to have an affidavit sworn to take full responsibility of his actions and live in those conditions since he does not own any other property and prefers to live in his own house rather than living in more cramp conditions with his parents. The case for the Appellant is also that there are several houses in the vicinity, some tall buildings as well as other storeyed buildings under construction, the area is fully equipped with a tarred road and basic utilities and that the National Development Unit is trying to enlarge the road on both sides. He also expressed reservations about the land use of the property if it is not put to residential use.

5. The Council's case is that the subject site falls within settlement boundary, which is favourable to residential development and that the subject site is found within the 200m buffer of, and is in fact right next to, a Poultry Pen belonging to Mr. Puruhoo, which is fully operational and for which he still has a valid permit. She produced photographs, marked as Docs D and D1, to show that in the course of a spot check she saw the rearing of broilers as the ongoing activity on the premises of Mr. Puruhoo. This was then not contested by the Appellant. According to her, the Council of Moka/Flacq and later the Council of Vacoas/Phoenix issued several Building and Land Use Permits ["BLUPs"] in favour of residential buildings in the vicinity and within the buffer zone of the Poultry Pen due to a misinterpretation of the Planning Policy Guidance ["PPG"] hence resulting in the build-up of houses. It was only following a letter dated 16th March 2012 emanating from the Town and Country Planning Board ["TCPB"] to the Respondent that the Council of Vacoas/Phoenix stopped issuing BLUPS for residential developments within the buffer zone of Poultry Pens.

III. THE LAWS AND PLANNING INSTRUMENTS

6. The Planning Policy Guidance on **Bad Neighbour Buffer for Industry Adjacent to Sensitive Uses** provides guidelines on buffer distances "*to mitigate any negative effects of industrial operations*". Sensitive land uses include housing, education and health facilities. According to these guidelines the buffer distance to be kept between a bad neighbour development such as Poultry/Livestock Farm and a sensitive land use such as housing, is 200 metres. The undisputed evidence shows that the distance between the poultry pen and the Appellant's property is next to the Poultry Pen.
7. Section **117 (3) Local Government Act 2011** emphasizes the fact that an application for a BLUP should be considered by taking into account the guidelines issued under the law. This section also makes reference to the **Environment Protection Act 2002**. Under **Section 7 of the Environment Protection Act**, the Minister has wide powers, to propose

and develop policies on all aspects of environment, to establish such standards as may be necessary to safeguard human health and the environment, amongst others. Some Environmental Guidelines have been issued by the Ministry of Environment for the rearing of poultry and as per these guidelines, the buffers are provided in view of the biosecurity risks. This also implies that Council should normally take on board the risks associated with the contamination of broilers and spreading of aviary diseases and the likely effect it may have on inhabitants within the vicinity in the eventuality of an outbreak. This, we believe, is the underlying logic for having buffer distances, hence the *raison d'être* of these guidelines.

8. True it is that the subject site is found within the settlement boundary which normally favours residential development but the fact of the matter is that albeit within settlement boundary, a “bad neighbour” development has found its way within the settlement boundary and any number of houses that have come up in the vicinity does not negate the risk of aviary diseases should there be an outbreak. The OPS of Vacoas/Phoenix may well have established the settlement boundaries but, according to **Section 13 (3) of the Planning and Development Act 2004** [“PDA”], the **PPG** prevails over **OPS**. Therefore, if the law clearly so establishes and the **Design Sheet** of the **PPG on Industry Adjacent to Sensitive Uses** provides for the buffer distance of 200m from the Poultry Pen to other sensitive land uses, housing being one of them, this must be respected.
9. It may be apt at this point to consider whether the Council was wrong to have allowed a Poultry Pen to find its way within the settlement boundary. Miss Ramroop for the Council explained that the Poultry Pen has acquired its development permit since 1989, at a time when there was no OPS and PPG and development management. She produced a copy of the Building Permit and Development Permit granted to Mr. Puruhoo in 1989. Therefore, there were no settlement boundaries at the time for such zoning and categorization to be done as is the case today.

10. The Council cannot be taxed therefore for allowing a Poultry Pen to operate within the settlement boundary since the Pen was in existence before the coming into force of the OPS, hence before the existence of the settlement boundary. The Ministry of Housing and Lands could have taken on board the fact that there is an existing Poultry Farm while drawing up the settlement boundary but this is beyond the scope of this Determination.

IV. CONCLUSION

11. Irrespective of the residential developments existing within the settlement boundary, the Council was wrong to have issued BLUPs for residential developments that are found within the buffer zone of the Poultry Pen. This was in direct conflict with the bad neighbour development principles set out in the PPG and the Environmental Guidelines, the very essence of which are to seek to protect the health and wellbeing of citizens. The Council, once apprised of this, stopped issuing such BLUPs, that is, for residential developments. Granting a BLUP for residential development, even if with conditions, to allow people to build their homes within the Buffer zone of the Poultry Pen, does not negate the associated risks to their health and sanitation.

12. For all the reasons set out above, more especially on the basis of the application of the Planning Policy Guidelines, which we believe should be adhered to in the circumstances due to the biosecurity risks involved with the subject site being next to the Poultry Pen, this appeal is not allowed and accordingly set aside. No order as to costs.

Determination delivered on 18th November 2019 by

Mrs. J. RAMFUL

Vice Chairperson

Mr. B. RAJEE 

Member

Mr. Y. IMRIT 

Member