

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 1491/17

In the matter of :-

Seven Seven Co. Ltd

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 an application made by the Appellant, a registered company, for an Outline Planning Permission ["OPP"] for the construction of a commercial building at ground floor to be used as a supermarket and at first floor to be used as a store at cnr Candos Vacoas Road and Carreau Lalianne Branch Road, Vacoas. The grounds for refusal given by the Executive Committee of the Council were set out in a letter dated 4th September 2017 as follows:

"(i) Strong objections have been received from the inhabitants;

(ii) The area is adequately served by retail facilities to meet the needs of the inhabitants without the need to travel;

(iii) There already exist an outlet of Seven Seven Co. Ltd at LigneBerthaud hardly around 1.5KM away from the proposed site;

(iv) Large scale ribbon development (supermarket) along Vacoas Candos Road will further contribute to slow down the traffic along both the main road and Carreau Lalianne Branch Road, thus worsening the already difficult vehicular traffic flow."

2. The Appellant's representative, Mr Fawzee, deponed under solemn affirmation and was cross-examined. Miss Ramroop, planner of the Council deponed on behalf of the respondent and was cross-examined. Both parties were legally represented. We have duly considered all evidence before us as well as submissions of both Counsel.

I. **OBJECTIONS FROM INHABITANTS AND EXISTANT RETAIL FACILITIES**

3. The Council invoked as the first ground of refusal that strong objections have been received from the inhabitants. The nature of the objections has to be analyzed. This is found mainly in the document of the minutes of proceedings before the PBMC, which is annexed to the Statement of Defence of the respondent. There is on record a list which purports to show objections but this has been disregarded by the respondent and has therefore no evidential value. The objections from neighbours as raised in the course of the meeting at the Council, while many seemed to be grounded on the fact that there will be loss of business by those retailers who have been well established in the area for a number of years, the Council appears to have used this reason as one of the grounds, the second ground, to refuse the application. We do not believe that this to be a sound planning ground for the improvement of the local community simply on the basis that the locals will not have to travel as the area is adequately served with retail facilities. The Council cannot, on the basis of objections, come to the conclusion that the local community is adequately served. Even if the Council was motivated to come to this conclusion on the basis of other factors, this is not reflected in the documents produced before us by the Council. We believe the Council was wrong to have regard to the possibility, however remote, that the setting up of a supermarket would interfere with the working of the long established small retailers of the locality as a material consideration to refuse planning permission.

4. Another reason invoked in the objections is the safety and security aspect. The minutes show that one of the objectors produced photographs of the locus to show traffic congestion along the main road. It was, in essence, contested that the widening of the road as proposed by the promoter would improve the road traffic situation since the width will only be increased for part of the road and that would not resolve the issue of traffic congestion that has always existed and is worsened by the presence of a bus stop. Their main concern appeared to stem from the fact that with an existent daily traffic congestion issue, the presence of a supermarket in the area will only worsen the situation as it will be a source of attraction for vehicles and the traffic density will increase. Examples were given of their daily plight as local residents, that when a bus comes along Carreau Laliane Road, the other vehicles must reverse to allow it through, that the main road has three sets of traffic signal lights which contribute to the traffic congestion, there are no pavements for pedestrians and so the lives of people are at risk. There is also a hospital in the vicinity. They believed it would be dangerous for children and adults because when buses drive into Carreau Laliane Road the pedestrians have to stand close to the side wall to stay clear. They argued that there are supermarkets such as winners, jumbo that have generated a lot of traffic.

5. The Appellant's case was based on the fact that when considering an application for OPP, reserved matters with the meaning of the **Town and Country Planning Act 1954** should not be considered, hence the Council was wrong to have considered the issue of access at the stage of the application for OPP. The guiding principles for an application for OPP, reproduced hereunder, are set out in **s.6 A. of the Town and Country Planning Act 1954 as amended**. These guidelines are issued by the PBMC of the Council under **section 115 (3)(c) of the Local Government Act 2011** as amended which provides that the PBMC shall issue guidelines to assist persons wishing to make an application under this sub-part and enable them to understand the planning system.

“6A. Outline Planning Permission

(1) Subject to subsection (2), any person may, in respect of a project, apply to the local authority for an Outline Planning Permission in such form and manner as may be determined by the local authority.

(2) The application under subsection (1) shall –

- (a) be made in accordance with the guidelines issued by the local authority; and*
- (b) be subject to the condition that the applicant shall, in his application for a building and land use permit, include precise particulars of the reserved matters.*

(3) The reserved matters referred to in subsection (2) (b) shall include—

- (a) aspects of a building or place which affect the way it looks, including the exterior of the development;*
- (b) accessibility to all routes leading to and within the site, as well as the way they link up to other roads and pathways outside the site;*
- (c) the improvement or protection of the amenities of the site and the area and the surrounding area, including, if any, planting trees or hedges as a screen;*
- (d) buildings, routes and open spaces within the development and the way they are laid out in relation to buildings and spaces outside the development;*
- (e) information on the size of the development including the height, width and length of each proposed building.*

(4) An Outline Planning Permission issued by a local authority shall –

- (a) be valid for a period of 12 months; and*
- (b) not authorize the holder to start work on the land to which the application relates.*

(5) In this section, “Outline Planning Permission” means a permission for the development of land sought from a local authority at an early stage and irrespective of whether a Building and Land Use Permit is to be granted or not and before any substantial costs are incurred in relation to the development of the land.

[S. 64 amended by Act 1 of 2009]"

6. We believe that on this score the Council was correct in their approach to take on board the views of the objectors on the impact that the siting of the development and the proposed development in itself would have as regards the issue of safety and security of the people when it is likely to affect traffic and amenity. The assessment here is based on the planning merits of the application in the light of the objections. The narrowness of the road throughout which are currently prone to accidents, does not seem to form part of the appellants project of width enlargement of the road. Infact the Appellant did not produce any evidence to rebut these issues as raisedby the Respondent especially pertaining to, non-accessibility but traffic consideration, neither by photographs of the locus nor by expert evidence. We believe that the safety and security of road users are very important factors that weigh heavily on a balance and the Council was right to have considered such objections favorably.

II. EXISTING OUTLET AND SLOWING DOWN OF TRAFFIC FLOW

7. The Council on the other hand considered the intensity of the development which is basically the construction of a commercial building which at ground floor would be a supermarket and at the first floor it would be used as a store. The record also reveals from the Annex to the Statement of case that the proposed development was over a gross floor area of 982sq m on the ground floor and the same on the first floor. The Council also considered the siting of the proposed development which would be at the corner of a main road called Candos Vacoas Road and another highly busy road called Carreau Laliane Branch Road. After consideration of the objections, the Council concluded that the large scale ribbon development will further slow down the traffic on these two roads thus being a further impediment to the flow of traffic. We believe that here the Council made a correct assessment based on proper planning considerations to assess the use and development of the land and weighed it up against a factual reality of the area which can be easily verified.

8. The Council was fully entitled, in our view, to consider these objections since the notification procedure as provided by the law even on the case of an application for an OPP is for the purposes of inviting any objections. The representative of the Respondent testified and confirmed that the location of the proposed development is a matter of concern especially for the inhabitants. She testified that the Carreau Lalianne road is a narrow road of only 4 metres wide but very busy and that the Candos, Vacoas road was the main road that linked Quatre Bornes to La Marie, a classified "A road" and that it is highly busy. She confirmed that the road is accessed by buses which service the area of Phoenix, other vehicles and lots of pedestrians, that traffic problem have been taken into account, the narrow access and the fact that they have their own businesses.

9. We have already dealt with the points made by the respondent. However we wish to address the third ground of refusal here. It was raised as a ground for refusal that there is an existing outlet owned by the appellant some 1.5 km away from the site. Moss Ramroop for the Council stated that a novel point was invoked regarding the closing down of the existing supermarket by the Appellant. In our view this is not a planning ground and cannot be a factor to be taken into account by the planning department. Similarly, neither is the third ground for refusal nor the fact that the appellant has now brought up the point of closing the existing supermarket be a planning consideration on the merits of the application. At best, they relate to private financial or economic matters, not planning considerations. The third ground does not, in our view, reflect any decision by the decision-maker based on the planning merits of the application at hand. The primary purpose for which the Council is vested with powers to determine an application for planning approval is to control development to achieve the relevant planning outcomes and objectives on the application of planning tools. This ground for refusal did not in any manner demonstrate the Council took a considered view with respect to the use or development of the subject-matter of the application. The Council appears to have taken into consideration grounds which are totally irrelevant to the application at hand.

10. However we believe that on the safety and security aspect, the Council was right in its approach to have given due consideration to the objections. For these reasons, the appeal is set aside. No order as to costs.

Determination delivered on 20th March 2019 by

Mrs. J. RAMFUL

Vice Chairperson

Mr. P. MANNA

Member

Mr. G. LEPOIGNEUR

Member