

ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

Before: Chairperson

ELAT : 1555/18

Sitting of: 4/6/2019

Appellant:

Counsel for Appellant:

Attorney for Appellant:

Respondent:

Counsel for Respondent:

Attorney for Respondent:

Co-Respondent:

Determination

The appeal is against a decision of the Council for having refused the application of the appellants for a Building and Land Use Permit

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[BLUP] for the construction of a
reinforced concrete building at ground
and first floors ^{with a kiosk} at Ile D'Amboe. The
decision of the Council was communicated
to the Appellants via a letter dated
11th January 2018 in which the ground
for refusal was given as "site lies
outside defined settlement boundary with
no infrastructural facilities as per policy
SD4"

We have duly considered the evidence
of the Appellant and the respondent and

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all evidence produced. The development site is approximately 22 perches in size and is situated along avenue Ile D'Ambre which undisputedly is on a public road maintained by the Council. There exists one residential building which is lined in, opposite

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the subject site, for which the owner
has been granted a BCUP since 2014

for residential development. From

documents produced, it would appear

that the BCUP was granted under

the criterion of hardship but in fact

the BCUP at Annex 7A of the Statutes

of case of the BCUP holder shows that

the floor area for the building does

not satisfy the criterion for hardship.

The photographs produced of this building

reinforces in our view that the

criterion applied by the Council was wrong.

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This being said, the appeal before us is based on a decision of the Council that the site has outside settlement boundary and with no infrastructural facilities as per policy SD4. We are of the

view that although there is no

dispute it is outside settlement

boundary, the Appellant has brought

solid proof that not only there

are infrastructural facilities available

but also there are residential

developments in the vicinity. The

Council's representative could not truthfully

not prove otherwise nor did she

dispute it. We are therefore left

with un rebutted evidence as regards

the infrastructural facilities being present,

the more so as the Appellant produced

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photographs to show the site was
accessed by tarmac road, there were
facilities such as water and electricity
on the site and he also testified
that there is regular refuse collection.

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In any event, it is our view that since a few residential buildings which appear to be rather new developments in the area have come up already with valid BLUP for residential development having been granted by the Council outside settlement boundary, it would make more sense to have ~~residential~~ the surrounding plots put to residential land use rather than allow had neighbour develops next in the vicinity of subject of the site where a BLUP has already been granted for residential on the opposite plot of land.

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For all the reasons above, we
allow the appeal and make no
order as to costs.

4/6/19.