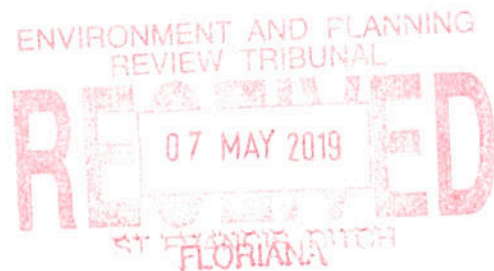


5th May 2019



The Environment and Planning Review Tribunal

Nru. ta' l-Applikazzjoni: PA/9171/18

Lokazzjoni: Airspace at 255, Triq il-Karmnu, Birkirkara

Proposta: construction of 5 residential units and pool at receded floor level. Alterations to existing common area including installation of lift

Ref. Taghna:

Ref. Tribunal:

James Borg McMonagle

vs

L-Awtorita' ta' l-Ippjanar

The appellant respectfully submits:-

- I) The applicant made the submission of this application in 2018.
- II) This application was dismissed by the Commission and the decision was published on the 10th April 2019.
- III) The appellant feels agrieved by this decision and is hereby submitting this appeal.

Together with this appeal, the appellant is submitting:-

- o A copy of the decision notice (Dok JA1).
- o Receipt of Payment (Dok JA2).

The appellant respectfully submits the following:

- 1.1* The Authority wrongly applied the provisions of article 71(4) of the Development Planning Act, and the Authority should not have dismissed the application;
- 1.2* The development application that the applicant is bound to complete, gives the applicant two specific options. These two options are not reflective of the definition of “owner” in article 2 of Chapter 552, and ultimately, it is the definition of “owner” in article 2 of Chapter 552 that should prevail and not the formalities of an application which is not reflective of the provisions of the law;
- 1.3* Article 2 of the said Chapter 552 of the Laws of Malta clearly includes a co-owner within the definition of owner. Hence, the provisions of Article 71(4) of Chapter 552 must be interpreted on the basis of this definition.
- 1.4* The said article 71(4) obliges the applicant to declare whether he is the owner of the site or whether he has notified the owner of the site with his intention to apply and such owner has granted the consent.
- 1.5* The applicant is clearly the owner of the site in question, since he is sole owner of the airspace on which the proposed development is to be erected. He is also the co-owner of some parts of the common parts that are subject of this application. This qualifies the applicant as the “owner” under the provisions of article 71(4) and article 2 of Chapter 552 of the Laws of Malta.
- 1.6* The application that the applicant was asked to compile only enables him to opt for the “owner” declaration, if he declares that he is the “sole owner” of the site, something which is not in line with the provisions of the Law and something which the applicant opted not to declare.
- 1.7* The applicant hence marked the field that he is not the sole owner of the site, and this for correctness sake.
- 1.8* Furthermore, and without prejudice to the afore-said, under the provisions of the Law, a co-owner need not obtain any consent from any other co-owner to do

works in the common areas, and this as the appellant shall prove during the course of this appeal.

1.9 Furthermore, and without prejudice to the afore-said the appellant should be enabled to vary the declaration of ownership in the application to reflect the true position at law.

In view of the above, and further submissions that the appellant reserves to make, the appellant requests the Tribunal to revoke the decision of the Commission, and send the application back to the Authority for it to assess the said application on planning grounds, and this under those terms and conditions that the Tribunal may deem appropriate.

With Respect



Av. Ian J. Stafrace

Witnesses:

1. Appellants, and consultants and consultees and officers of the Authority to confirm the facts.



Av. Ian J. Stafrace

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