

Suspension

NE

OS 315

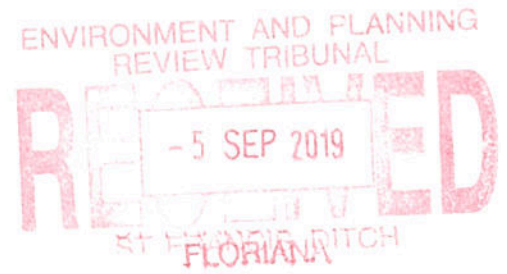
PA

Environment and Planning Review Tribunal

Case Number: PA 1812/18
Location of development: 55, Saint Vincent Street c/w Triq il-Karmnu c/w, Triq San Piju V, Sliema, Malta
Description of works: Restoration of existing corner house and change of use to boutique hotel class 3A with ancillary class 4B shop. Proposed residential use on 4 floor levels above ground and 2 levels of garages below in part of existing garden.
Applicant: Ms. Muriel Thake
Architect: Dr. Pierre Farrugia
Decision Press date : 7th August 2019

Appellants:

Lars Grille - 38, St. Pius V Street Sliema SLM 1421
Rita Grill- 38, St. Pius V Street Sliema SLM 1421
Jevon Vella – 46, St. Pius V Street Sliema SLM 1421
Carmen Bajada - 249859M - 36, St. Pius V Street Sliema
Patricia Borg - 263616M - Carmel Street, Sliema
Anthony Debono - 1040948M - 48, St. Pius V Street, Sliema
Yvette Debono - 722952M - 48, St. Pius V Street, Sliema
Mario Degabriele - 459149M - 40, St Vincent Street, Sliema
Antoinette Fava - 12540M - 57/1, St Vincent Street, Sliema
David Spiteri Staines - 652839M - 55, Carmel Street, Sliema



APPLICATION REQUESTING THE SUSPENSION OF EXECUTION OF PERMIT :

Whereas appellants humbly submit and premise as follows:

That appellants are third party registered objectors and interested persons for all intents and purposes at law.

That contextually with this application they are filing an appeal from the Planning Commission's decision on the application for full development permission published in the Government Gazette on the 7th August 2019

That the appellants are hereby requesting the suspension of the execution of the permit for the following reasons:

- 1) That the approved development includes the excavation and building over of the greater part of the garden, which was deemed to be in breach of LN 227 and sanitary and privacy laws. The SEO objected in this regard– which expert opinion has been arbitrarily ignored.
- 2) That there is a current separate pending appeal regarding the descheduling of the garden – which appeal is being heard by this Honourable Tribunal and the next sitting of which is set for the 5th November 2019. In light of the public interest element in ensuring that the correct procedure was followed, it is humbly submitted that this Tribunal adopt the precautionary principle and suspend the execution of works which would result in the immediate and permanent loss of a rare green enclave in Sliema with evident heritage value.
- 3) That the excavation of the garden and the preliminary changes to the fabric of the scheduled building in question cannot be easily reversed.. That the extensive excavation of the garden) necessarily leads to the creation of more waste, dust and pollution during the same. That it is unjust and unfair to submit neighbours and residents to this severe inconvenience and restriction of the full enjoyment of their property to favour the applicants' preference for a wasteful and unsustainable mode of excavation and construction. That is unfair to make reference to the powers of the Building Regulations Office to maintain some form of order or civility on site. It is a well known fact that the said Offices are under-resourced and cannot provide the necessary protection and safeguarding and compliance with safe onsite regulations. That the potential prejudice to the appellants cannot be dismissed by asking them to rely on other authorities or other divisions of the planning authority as fragmentation of responsibilities leads to the residents always losing out in the end. The precautionary principle should be given priority especially when it comes to the wellbeing of residents whose health, safety, prospect and amenity is constantly being sacrificed on the altar of rampant commercialization without a thought for the community.
- 4) That during the course of the processing of this application, the appellants have pointed out various breaches of planning laws, policies, sanitary requirements and risks to safety and health – all of which were ignored. That not suspending the execution of the permit will result in an immediate and far greater prejudice to appellants in comparison to that of the applicants if the permit was not immediately suspended. In fact the suspension of the permit does not affect the applicant negatively as the time for the decision of this appeal will be abbreviated by means of the suspension – which will result in a greater degree of legal certainty for the applicant and shortened decision time spans.
- 5) That the approved application lacks certain requirements necessitated by policies – such as the provision of a refuse room, a change in the parking and access lay-outs, allowance of part of the garden for privacy and sanitary reasons– which cannot be incorporated

without a wholesale change of plans, which holistic revision and amendment is rendered more unlikely unless the execution of the permit - as is - is suspended without delay.

- 6) That the approved application was based on incomplete information and that the appellants should not be prejudiced further because of this shortcoming.
- 7) That the provisions of Chapter 551 of the Laws of Malta require only that "*the prejudice that would be caused would be disproportionate when compared with the prejudice caused by the staying of the actual execution of the permit.*" The legislator has laid down the possibility for appellants to seek a temporary staying of the execution of the permit, without requesting the appellant to show that irremediable harm will be caused if the execution is not granted. In this, the legislator has distinguished this right of action from that pertaining to the right to request a prohibitory injunction in accordance with Civil Law. Although in the latter cases, the Courts have occasionally held that a prohibitory injunction served to offer protection to a person whose rights would be lost or curtailed **irreparably** without such a warrant. This is not the case with the remedy being availed of under Chapter 551 which only requires a comparison of the potential prejudice caused by the granting of the suspension as opposed to it not being granted.

In view of the above the appellants humbly request this Honourable Tribunal to suspend the execution of the permit under the terms and conditions as it deems fit.



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