

Perit David V. Farrugia

B. E. & A. (Hons.), M.Sc. (BATH), Eur. Ing., A. & C. E.

Architect & Civil Engineer

Our Ref:

Your Ref:

15th January 2020

The Secretary,
Planning Tribunal
St. Francis Ravelin,
Floriana



Re: PA 08679/19

Change of Use of the Existing Store to Class 4C, including raising of parapet wall and some minor internal alterations.

I write for and on behalf of Dr Joseph M. Sammut of 'The Berries', Triq Ta' Ciantar, Zurrieq and refer to the above indicated application which was brought before the Planning Commission on the 7th January 2020.

The said application was refused on the grounds that:

"The proposal is considered premature, in view of lack of zoning and height limitation. Thus the proposal runs counter to SMLP Policy SMSE 02 – Development in the absence of specific policies and SPED Urban Objective 3.1, which seeks to identify, protect and enhance the character of an urban area by encouraging an appraisal of the 2006 development zone boundary to define details criteria to guide minor adjustments (meaning both additions and exclusions of land from the 2006 Development zone) whilst ensuring that the overall result does not constitute a significant change."

My client felt aggrieved by the said decision and this for the following reasons:

Preliminary

The store in question is one that was built over a previous development that dates prior to 1967 and this as can be established from the aerial photos.

Also, the store itself, though the permits could not be retrieved, was built according to a permit issued by the then PAPB some time in the 1970's and this as was and can be confirmed by way of a plan which forms part of a deed of partition dated 1978.

As results from the same plan, and on site, when viewed next to the 1967 aerial photos, the new development was set back so that a splay could be created which is in line with another splay further up near the Guy Bocci Club and complex.

Without any doubt, proof that the Government Land Surveyor had visited the site and set the alignment of the road etc.

As already stated, the previous building, which goes back to 1967, was used to house cattle and later when it was rebuilt it was used as a store/workshop in connection with masonry. My client's ancestors were involved in the construction industry and those days, when everything was carved by hand, they used to work out "ruzuni" or "kolonni" or "balavostri".

Now the activity has stopped because all the brothers passed away and none of the siblings are interested in continuing with the profession.

Hence, all through the years, the activity within the structure was of a commercial nature.

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Appeal

- i. The proposal is considered premature, in view of lack of zoning and height limitation.

With all due respect, this application should never have been refused on the ground that

- (a) It is considered premature.
- (b) The application is not requesting the development of a site, which although it lies within the rationalization area, is not build up as yet. To the contrary, the site has been developed way back and even though the relative permits could not be traced, it is stated in the DPR report itself that it is covered by the relative permits.

Hence, it can never be considered as premature.

- (c) Furthermore, logically and legally, the application could have never been refused on the basis that it is considered premature in view of lack of zoning and height limitation.

With all due respect, as already stated, the structure is already in place and legally standing. Neither is it the case that applicant is asking to increase the height or somehow is to change the foot print. The structure is not the merit of the application.

Neither is it a question of zoning since the area, once already built up, is a store, it is already committed and any zoning of the area must take it into consideration as it presently stands.

- ii. Thus the proposal runs counter to SMLP Policy SMSE 02 – Development in the absence of specific policies and SPED Urban Objective 3.1, which seeks to identify, protect and enhance the character of an urban area by encouraging an appraisal of the 2006 development zone boundary to define details criteria to guide minor adjustments (meaning both additions and exclusions of land from the 2006 Development zone) whilst ensuring that the overall result does not constitute a significant change.

In line with the above submission, the proposal, since it only concerns a change of use, can never be considered as running counter to SMLP Policy SMSE 02 or SPED Urban Objective 3.1.

In this regard it is submitted that, The Planning Authority, when considering shops in Residential Areas, which individually are less than 75 sqm., as is the case at issue, since they do not exceed the policy parameters, these shall be regarded as compatible with the LP policy. Such an application will only be refused if the request is to connect a number of small shops together in a non-commercial area since these shall not be construed to be generally compatible with the policy.

Neither does Policy SMSE 02 slams out such a request.

In this regard, SMLP Policy SMSE 02, when considering Development in the absence of specific policies lays down the criteria which are to be followed, which are not applicable to this particular case since this is not an application to develop the site but one which addresses solely the use and hence there are no such constraints since as stated, the premises had been used commercially since time immemorial (is constructed on 14 courses which shows that it is a commercial premises) and also is next to a sports complex which houses also a bar and a restaurant thus situated adjacent to an area of recreational activity hence an area frequented by people who go out for walks and hence the request is fully compatible with the area.

Also, as laid down by para 2.4.4, this is an exception where certain planning applications cannot be directly assessed in relation to Local Plan policies but definitely not to be thrown out even more so when it concerns solely the change I use.

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Conclusion:

The proposal subject of this application should not have been seen as one that might prejudice any future commitments that may emanate from policies set through updating of the local plan and/or submission of a planning control application for setting the type of zoning for the area.

Moreover, the current and proposed change of use are those normally found in mixed-use residential areas which without any doubt are deemed to be included in any future zoning proposal for the area.

Also the proposal does not include any demolition or construction nor shall there be any increase in the footprint or building height.

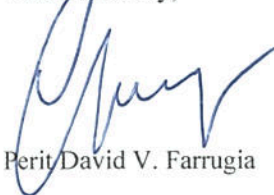
This application only involves a change in use within a legally built structure and should have been regarded favorably since, as experience has shown, other applications were processed and approved even though the site fell with an area where a local plan, or a development brief, or an action plan were being drafted.

Last but not least, it is humbly submitted that by confirming the decision reached on the 22nd day of January 2020, and since it is not possible to set the zoning of the area in question through a PC application and this because of the fragmented nature of the land ownership and also since certain land owners are entangled in tortuous legal battles that have been going on for ages, my client is and would continue to suffer an irreparable prejudice since although he has the property legally built up, is evident that it was and still is commercial in nature yet he will be deprived of his right to use of property solely because SMLP Policy SMSE 02 and Objective 3.1 were stringently interpreted to an extreme.

This, of itself, goes against the spirit of all legal frameworks which at the end of the day are all meant to protect the rights of the individual.

Hence for all the above reasons highlighted I humbly request this Tribunal to quash the decision reached on the 7th January 2020 whereby the request as put forward by PA 8679/19 was refused and to uphold the said request as envisaged by PA 8679/19 subject to those terms and conditions that may be applied.

Yours sincerely,



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