

Environment and Planning Review Tribunal

APPEAL FROM PLANNING BOARD REFUSAL TO INVOKE ARTICLE 80

Case Number: (PA 044-19/22) PA 6670/17

Location of development: Ferris Court, Triq L-Imdina, Attard, Malta

Decision date: 14th May 2020



Appellants :

Dr Lawrence Buttigieg ID 347563M - 23, Triq Il-Qarsajja, Attard, ATD1555
Professor Sandra Buttigieg ID 557763M - 23, Triq Il-Qarsajja, Attard, ATD1555

APPLICATION OF APPEAL :

Whereas appellants humbly submit and premise as follows:

That this is an appeal from the Planning Board’s decision of the 14th May 2020 wherein the Planning Board refused the appellants’ request for invocation of Article 80 of the Development Planning Act 2016 in regards of PA 6670/17 (PA 044-19/22)

That the appellants feel aggrieved by the decision referred to above, and by means of this application are requesting this Tribunal to revoke the Planning Board’s decision of refusal.

THE FACTS

Appellants Dr Lawrence Buttigieg and Prof Sandra Buttigieg had submitted a request for revocation of PA 6670/17 by means of an application submitted on the 20th September 2019.

The reasons for this request were as follows:

1. Development approved on false premise of being for one additional unit - configuration of rooms strongly suggests development is for more than one unit, rendering board’s assessment erroneous
2. Gross errors in DPA report assessment of application leading to incorrect conclusion and recommendations
3. Erroneous information and incorrect use of conventional colours in all drawings meant to illustrate extent of proposal further attests to inadequate assessment of this development application

FURTHER SUBMISSIONS

On the 26th November 2019 further submissions were filed by appellants.

ERROR ON THE FACE OF RECORD – POOL HOUSE WAS NEVER A SEPARATE UNIT BUT ATTACHED TO VILLA – MATERIAL BEARING ON DECISION – BREACH OF POLICY P 33 of DC 2015

One of the central issues of this request for revocation is that PA/06670/17 is an application for an additional *internal residential unit* to be built upon an existing building which was also to be extended.

This existing building is found within an internal courtyard forming part of Villa Ferris, having no frontage on Triq L-Imdina. It is referred to as a poolhouse.

The poolhouse is attached to and forms part of the villa as can be verified from the relative site plan pertaining to PA/00553/98, under which application the construction of the poolhouse was originally approved.

It was **never a separate building** but was always attached to and an extension of the villa.

In fact, in the DPAR pertaining to PA/00553/98, under the DISCUSSION the case officer stated that "*Considering that **the proposed works are to be interconnected with the existing adjoining property...an approval is recommended.***"

Furthermore, the final permit document issued (Doc 11 in PA/00553/98.) states that the development which was approved is: *To construct a pool/well and **poolhouse** over an underlying semi-basement garage.*

From the above, it is evident that the pool house was never processed and approved as a separate residential unit but only as an extension of the villa.

Policy P33 of DC 2015 regulates Internal Residential Developments. This Policy states that **only one** additional residential unit may be allowed within a site.

By means of PA 6670/19, the applicant effectively separated the poolhouse from the villa and added a further unit – therefore creating more than one internal residential development in breach of Policy P33.

The Planning Board ignored the fact that in approving PA/06670/17 the Planning Commission considered the poolhouse to be an existing, separate residential dwelling, when it was not. This was definitely an error on the face of record which definitely had a material bearing on the Commission's decision.

The Planning Board ignored the official documents, the facts and the evidence which all confirm that the poolhouse is an extension to the villa and always was. Instead it insisted on relying on an additional handwritten, unsigned and undated note which is the only reference to the poolhouse being a separate dwelling. This is not a sufficient standard of proof. If the Planning Authority had to rely on unsigned, unattributed, undated additions this would effectively mean that third parties would have no way of ascertaining which are the officially approved permits as any permit could be changed or altered thereafter. There would no longer be any form of legal certainty as even an unattributed, unauthorised alteration could change the whole gist of permits.

GROUND OF APPEAL

The appellants cite the following grounds of appeal:

1. The Planning Board did not provide any reasons for its decision and did not consider appellant's evidence or submissions.
2. The Planning Board based its decision on an insufficient standard of proof and also reversed the burden of proof. Appellants relied on an official permit whereas the Planning Board relied on an unsigned annotation regarding which no proof of authorship, date or approval was brought to bear.

In view of the above, the appellants humbly request this Honourable Tribunal to revoke Planning Board's decision of the 14th May 2020.

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