

ENVIRONMENT AND PLANNING REVIEW TRIBUNAL

Case Number: PA/009606/19

Location of Development: Site at, Triq ta' Kassja, N/S off Triq il-Wardija, Triq il-Wardija, Qala

Description of Works: Restoration of existing structures and extensions and construction of a swimming pool.

Applicant: Mr Eric Saliba

Architect: Perit Alexander Bigeni



APPLICATION OF MOVIMENT GRAFFITTI, DIN L-ART HELWA, KUNSILL LOKALI QALA

Application filed by the above mentioned appellants requesting the **suspension of the execution of the decision and permit** The appellants are hereby filing an appeal from the decision of the Planning Board in the abovementioned case.

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

1) That the approved plans and drawings show that the development will take in an ODZ rural area which development is not permitted by any law or policy and may result in irreversible and irreparable harm to natural and ecological heritage. The precautionary principle should be adopted to safeguard this pristine area in its contextual integrity. This take-up of ODZ land will result in extensive soil sealing which will impact biodiversity. Moreover this application was not subject to holistic environmental impact assessment due to the deliberate fragmentation of the development and if the permit is not suspended, such holistic assessment can never effectively take place.

2) That during the course of the processing of this application, various breaches of planning laws, policies, sanitary requirements and risks and 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. That if the permit were left to stand, it will serve as a precedent for other applications which have a cumulative effect on rural areas in "death by a thousand cuts fashion".

3) That the decision approving the development lacks certain essential requirements necessitated by law and the principles of natural justice, good administrative behaviour – namely the provision of reasons for the approval. The appellants are already suffering prejudice as their legal rights to appeal are seriously hindered. If the development is allowed to take place before this can be clarified, the appellants will suffer even greater injustice – the hindering and restriction of their right to appeal and the development becoming a "fait

accomplish” – with the ensuing urbanization of ODZ land which is one of the main tenets of the appeal.

4) 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 irreparable 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.

5) 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 the present case, appellants underline the fact that the prejudice caused is also irreparable, satisfying this legal criterion for suspension as well. That the right to an interim remedy and an effective one is safeguarded by European Union Laws and that the refusal to suspend the permit will severely prejudice the access to an effective remedy.

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.

Av. Claire Bonello

215/4 Old Bakery Street, Valletta

drcbonello@gmail.com

Perit Tara Cassar

97, Triq is-Sur, Isla

tara.cassar@gmail.com