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TO THE ENVIRONMENT & PLANNING REVIEW TRIBUNAL

With reference to the refusal for application number PA/01679/20 for the proposal: *'Sanctioning of structure including boundary walls, ramp and gate. Proposed planting of trees.'* at site located at, Triq is-Sagra Familja, Bidnija, Mosta, Malta.

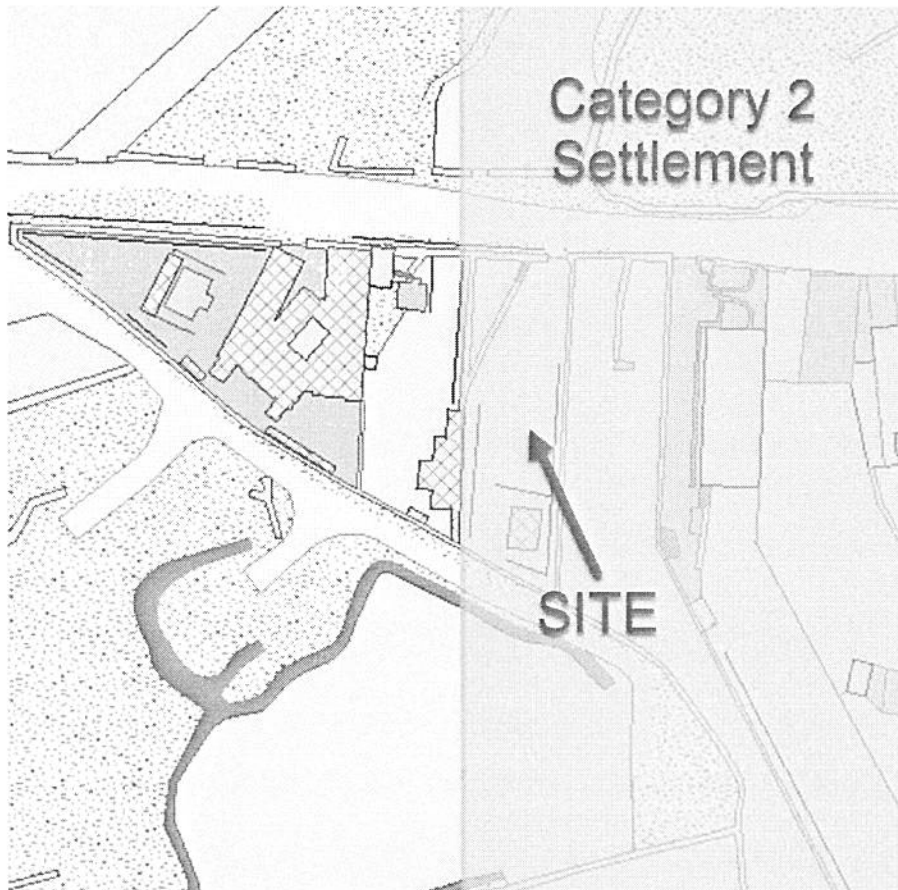
I am writing on behalf of my Client and Applicant, Ms Josephine Dawson (ID No. 349948M) who lives at 'Mirabelle Crt', Flt 6, Triq Emanuel Pinto, St Paul's Bay, Malta.

My Client would like to object to the decision taken by the Planning Authority for reasons below:

Re. The proposed sanctioning of the existing store runs counter to the provisions of policy 2.5A of the Rural Policy & Design Guidance (RPDG) 2014 as applicant and site are not registered with the Agriculture Directorate and has not enough holding registered on her name. The proposal is therefore also counter to the Thematic Objective 1.10 of the Strategic Plan for Environment & Development which only

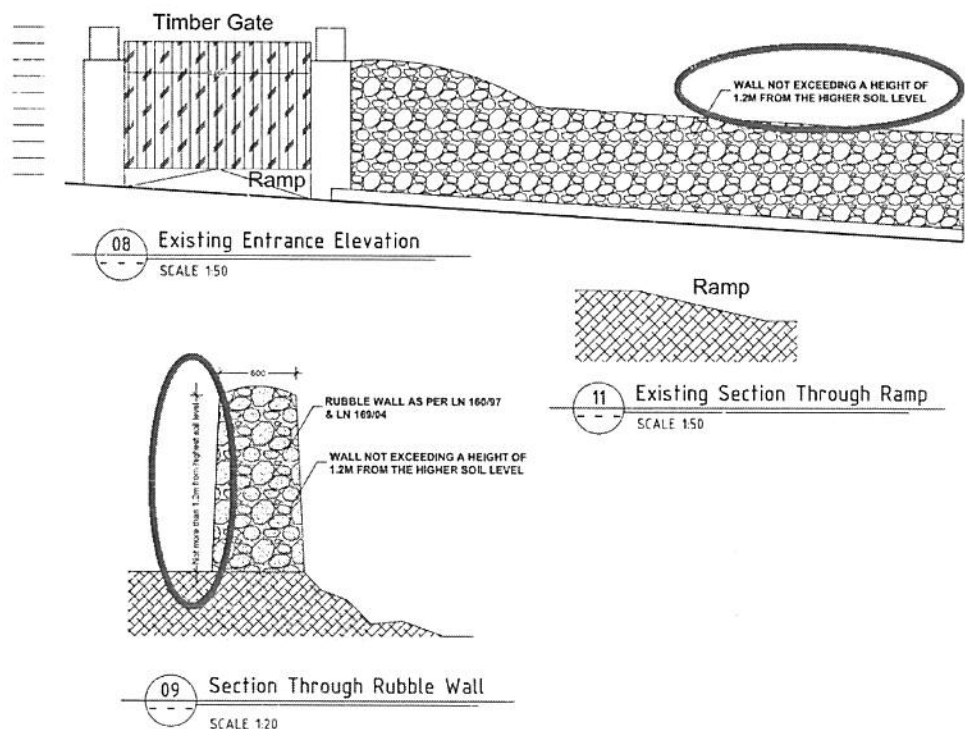
allows for rural development which is legitimate or necessary and counter to Rural Objective 1 of the SPED which seeks to control the cumulative effect on rural development. Furthermore, the proposal, has not been endorsed by both the Agriculture Advisory committee and the Environment & Resources Authority.

The site on which the existing structure was built is located within the boundary of the *category 2 rural settlement zone* of Bidnija and not considered as an *agricultural area* on the respective local plan. Numerous permits have been granted in adjacent and neighboring areas within this zone for dwellings, contrary to the structure being sanctioned by way of this application. Hence the requisites listed in the above reason for refusal should not be required in this case as was the case with similar applications within the category 2 rural settlement.



Re. The sanctioning of the gate and gate pillars is in conflict with policy 2.9 of the Rural Policy & Design Guidance (RPDG) 2014 since these exceed the height of the traditional rubble walls.

According to submitted drawing (doc 18a), the above is a false statement. The site is accessed via a ramp (vide detail below) and hence the highest soil level is from the inside of the site, not visible from the site photos submitted but visible from the photo survey and also as confirmed by the Enforcement Officer of the area who visited the site and took photos himself. Hence, in this case, according to the same policy referred to in the reason for refusal above, the 1.2m height of wall should be measured from the inside and not outside the site. Such reason of refusal could only be included if one had to omit the current situation on site as depicted on the drawings submitted together with this application, as was with this case, and issue false statements.



Re. The proposal cannot be considered further unless the following illegal development is first sanctioned or removed and this in terms of regulation 17 of Legal Notice 162 of 2016. The illegal development consists of demarcation walls.

According to regulation 17 of Legal Notice 162 of 2016:

17.(1) When an application is submitted on a site which is subject to an enforcement notice, the Planning Board may dismiss the application unless the illegal development is included for sanctioning and, or any payments due as a result of any enforcement notice on site are settled prior to the issue of the permission.

Being that the site is not subject to any enforcement notice, the above clause does not hold.

17.(2) The illegal development may either be regularised through a specific development application made solely for that purpose or through a development application which includes the sanctioning of illegal development as well as the proposed new development.

Please note the proposal to read:

Sanctioning of structure including boundary walls, ramp and gate. Proposed planting of trees

Hence, being that this application is for the sanctioning of all the illegalities found on site including the demarcation walls referred to in this proposal as the *boundary walls*, following a site visit by the Enforcement Officer who guided us accordingly with this application, it follows that this reason of refusal is also incorrect. Policy 17 (2) is being observed by way of this proposal and hence application submitted accordingly.

17.(3) Where sanctioning of illegal development is being requested in a development application, the proposal description and the drawings shall clearly indicate the development which is to be sanctioned so as to ensure that the illegal development forms part of the development application.

Please note that apart from the fact that the proposal clearly states that the structures referred to in both the proposal and depicted on the submitted drawing are being sanctioned, this same drawing lists these structures as existing and not proposed (yet to be built). Hence policy 17 (3) is also being observed.

17.(4) The proposal description of a development application and the drawings submitted may not propose the removal of illegal development from the site. The development application shall include only illegal development which is proposed to be sanctioned. Any illegal development which is not indicated for sanctioning in a development application shall be removed prior to the issue of a development permission, provided that where the application is determined by the Planning Board, or the Tribunal subject to the removal of the illegal development prior to the issue of the development permission, the period by which the applicant is required to comply with this requirement shall not exceed six months or within a period specified by the Planning Board or the Tribunal, failing which, the application may be dismissed by the Planning Board or the Tribunal, as the case may be.

No other structure or use or element is being proposed but only the sanctioning of the infringements currently existing on site, as pointed out by the Enforcement Officer, are being applied for and sanctioned in this application.

17.(5) Where parts of a site or building are illegal, permission for new development elsewhere on the site or on the building shall not be refused solely because there are illegalities on the site or on the building, subject, however, to all of the following conditions:

- (a) the illegal parts do not form part of the application; and*
- (b) granting permission for the new development will not physically prevent, hinder or make difficult enforcement action, either for the removal or for the rectification, of the illegal parts; and*

(c) the applicant has no control, whether directly or indirectly, over the illegal parts and the applicant was not involved directly or indirectly in the illegal development, even if the development formed part of a larger development which includes the illegal parts.

The above clause does not hold in this case.

It can thus be concluded that this reason for refusal is incorrect considering the sanctioning proposed in accordance with this same policy.

As a result of the above facts and considerations, my client sincerely hopes that the respective Tribunal shall favorably consider this application and overturn the decision taken by the Planning Authority.

Yours truly,

A handwritten signature in black ink, appearing to be 'Perit Daniel Grima', written in a cursive style.

Perit Daniel Grima
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