

The Environment & Planning Review Tribunal,
St. Francis Ditch, Floriana



Application No.: PA/05193/20

Location of Development: Marisol, Triq Indrija c/w Triq is-Sajjieda, Triq is-Sienja, Xlendi, Munxar

Description of Works: To carry out alterations to dwelling approved in PA/06561/17 and to extend at ground floor level

Applicant: Manuel Tabone

Architect: Perit Alexander Bigeni

Registered Thrid Party: Emanuel Mizzi (67256G)

Subject: Appeal against approved permit PA/05193/20

This is an appeal filed by **Mr. Emanuel Mizzi of 'Sapphire', Dr. Anton Tabone Street, Victoria, Gozo**, being a registered interested third party for this development application.

Facts of the case

1. The appellant is the owner of the tenement partly overlying the applicant's property, which is accessed through an open corridor and served by a bathroom whose services passed from the area proposed for development. The different properties formed part of a unified development built in the 1950's with a common backyard at groundfloor level.
2. Initially the different units in this development were owned by the same owner wherein the such block is composed of three tenements at ground floor level and another three tenements at first floor level.
3. The property was later partitioned and different units pertain to different owners.
4. The overlying tenements had always enjoyed right to overlook and prospect over the underlying backyards as this also served for the legal basic sanitary requirement for light and ventilation.
5. In addition to this the appellant's property has a window overlooking the backyard which has been subjected for proposed development, which window is subject to an ongoing civil courtcase for the preservation of easement rights.

6. The submitted plans indicate that this backyard will be built as per approved permit PA/06561/17, which was however never utilised. This latter development permission proposes among other interventions the erection of a three-storey structure in the backyards.

Points not taken into consideration

Following the representation by the appellant duly submitted during the process of this planning application the Planning Directorate did not make any assessment of the following planning issues which have a direct bearing on the application for the proposed development.

1. The proposed development as being amended through this planning application **directly abuts onto the rear façade of the tenement of the appellant**. This rear façade includes apertures and easements of prospect including light and ventilation as well as the passing of services.

No planning consideration is being made in this regards that the proposed development as amended abuts and obstruct the appellant's property which has been clearly indicated by the applicant as third party property. It is also amply clear that the proposed development is being proposed to be erected within the ambit of a backyard hence it is natural that any development beyond the level of ground floor will abut onto the back elevation of the overlying tenements.

No development can legally take place adjoining other buildings when such building is not adjacent to a party wall, let alone being a rear façade overlooking a backyard. The authority is bound to investigate whether the development as being proposed is actually confined by party-walls thus in conformity with the building definition of a proper building envelope and context as described in the DC2015. The proposed development does not conform to the definition of the building envelope since the site is not entirely confined within party-walls and hence not acceptable from a planning point of view.

The Planning directorate as well as the Commission failed to provide proper assessment of the matter being mentioned above and such lack of assessment is highly prejudicial to the appellant. The final result as approved by the commission would be a complete walling enclosing the rear façade of the appellant's property which is in stark contrast with the planning guidelines and definitely not in line with basic planning considerations.

Thereby, on this ground this Tribunal is humbly required to consider revocation of the planning permit as has been granted.

2. The proposed development as being amended through this planning application proposes the closing off of the backyard of the block, which will render the back room of the appellant's tenement not fit for habitable purposes, therefore rendering it in contravention of sanitary law.

Sanitary regulations and measurements are compulsory and have to be applied in respect of all tenements within a block of tenements. Sanitary regulations cannot be applied to a particular tenement in isolation from the rest of the adjoining tenements since this would invariably prejudice their sanitary position. In fact, in this case it seems that no sanitary consideration was carried out in respect of the appellant's property thus the granted development results in an outright breach of sanitary regulations. Through this granted development the legal distances namely the 3 metres depth of a backyard are being completely done with and given for development of additional rooms.

This is not acceptable since it will render a current habitable room at first floor level into a non-habitable causing grave prejudice to the appellant. The development permission as granted will create a flagrant state of illegality to the appellant's property which state cannot be sanctioned by the planning authority let alone granted through a development permission. For ease of reference a property sketch at first floor level is being reproduced in **Annex A** with this appeal.

Thereby, on this ground this Tribunal is humbly required to consider revocation of the planning permit as has been granted in order to ensure that such illegality does not take place and the appellant's property is safeguarded from being subjected to illegalities and be turned as non-habitable from a previously habitable state.

Other points of contention

The appellant also notes that this proposed development as granted includes the removal of all the internal walls at ground floor level which removal will invariably impact the character and vernacular setting of the building.

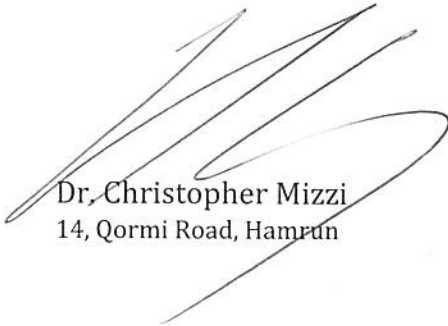
Needless to say, this intervention will prejudice and adversely impact the overlying building which layout is congruent to the existing layout of the ground floor tenement of the applicant. The demolition of the internal walls at ground floor level, and with the inclusion of a stone arch instead of the original internal walls is by far more prejudicial than any other sort of intervention, with the creation of new point loads onto the existing foundations.

In the appellant's humble opinion such interventions is to be precluded and the existing walls and foundations retained.

The appellant reserves the right to provide for further evidence and documentary evidence during the hearing for this appeal.

In view of the above the appellant pleads that the Tribunal cancels the Planning Commission decision to grant permit bearing reference PA/05193/20 as amending PA/06561/17 and orders that a refusal be issued in view of the reasons given above.

This saving any other condition which this Tribunal may enforce in its decision.



Dr. Christopher Mizzi
14, Qormi Road, Hamrun

Annex A

