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Samuel Formosa

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Our Reference: 2113-2

PA Number: Third Party Appeal re RG 1861 / 19
Location: 10, Villa Nova, Triq il-Prinjol, Iklin,

19th February 2021

The Chairman
Environment & Planning Review Tribunal
PO Box 172
Floriana

Dear Sir,

RE: RG1861/19



I write on behalf of Stephen McCarthy in order to appeal from the above-captioned permit issued in favour of Charles Mompalao and which covers the premises 10, Villa Nova, Triq il-Prinjol, Iklin, The permit was approved in respect of the following development:

"To regularize dwelling as built"

My client feels aggrieved by the decision of the Environment & Planning Commission of 12th January 2021 and published on 27th January 2021, and is hereby appealing from the said decision on the following grounds:

1. Application was ab initio invalid

The application was clearly in breach of the provisions of regulation 4(3) of Legal Notice 285 of 2016 since the documentation listed in the said regulation 4 was not submitted according to law and this renders the application ab initio invalid, as will be proven during the course of this appeal.

Therefore the application should have been automatically rejected by the Authority without further consideration once the attention of the Authority was drawn to the fact that the plans were defective. Instead, applicant was allowed to present set after set of plans of the development.

2. Application affected by fraud

Without prejudice to the right of appellant to invoke Article 80 of Chapter 552 and without prejudice to ground number 1 of this appeal, it is submitted that the initial application to regularise is affected by fraud and represents a flagrant breach of Legal Notice 285 of 2016. It is very obvious that applicant misled the Authority by attempting to regularise development which took place after the coming into force of the Legal Notice and this represents fraud on applicant's part and the application should have been dismissed. Instead, applicant was given the opportunity of removing the offending development and has not yet done so completely.

3. Application both as Submitted and as eventually approved, did not satisfy the provisions of Legal Notice 285 of 2016

Without prejudice to the previous grounds for appeal, it is submitted that the procedure adopted by the applicant and sanctioned by the Commission was not regular and makes a mockery of the process of regularisation since:

- Applicant sought to regularise development which took place after the coming into force of the legal notice
- Applicant did not conform with the orders of the Commission given during the meeting of 3/11/20, and has not removed some of the works carried out post 2016.
- Approved plans do not conform with the building "as built" in 2016
- It is unclear what elements were in fact regularised

As will be amply demonstrated during the course of this appeal, the process adopted by the applicant and sanctioned by the Commission makes a mockery of the legal notice which is intended to regularise those elements which were in existence prior to 2016. Instead, the result has been that applicant was given the opportunity of regularising his application to regularise since it was evidently and grossly incorrect.

Moreover, applicant failed to adhere to what was ordered during the hearing of 3rd November and has not removed the illegal works, as will be amply demonstrated during the course of this appeal.

4. Objectors not given time to review and assess the Regularisation Review Report

The principle of natural justice known as "*audi alteram parte*" was breached since a report was drawn up by the Authority on 11th January 2021, on the eve of the hearing during which the application was approved, and were given 10 days to reply by covering letter. Despite being given the opportunity by the Authority to make written submissions as per this letter and despite their immediate request to be given the opportunity of making submissions, they attended the meeting the following day and the Chairman refused to grant them the period the Authority had conceded but proceeded to go for a decision, thereby denying them the opportunity and the right to make written submissions, . This refusal amount to a breach of their statutory rights and to the principle of natural justice.

5. Injury to Amenity

The development which has been regularised represents an injury to amenity vis a vis appellant's property. The two residences in question – that of applicant and the adjacent residence belonging to the appellant are situated in a villa area that allows for detached bungalows. The applicant, contrary to the spirit of the law, was allowed to cover over and make changes to the villa, even as the regularisation application was being processed, which make a mockery of the entire process. These changes include the painting over of tiles affixed to the façade which are contrary to the original permit and the regularisation of a balcony which is actually two balconies but which were joined by cardboard or similar material, simply to give the impression that this balcony was built according to permit when it clearly was not. These changes represent an injury to amenity because the materials used and the manner in which these works were carried out make it very clear that these works are simply a temporary measure which are not intended to last and that the works will simply be

reversed, enabling further development to take place which is simply not in keeping with a villa area and which negatively affects the visual integrity and the amenity of appellant's adjacent villa.

It needs to be emphasized that permanent access to the roof of the garage was already approved, even though this was clearly in breach of policy 6.9 of DC 2007 which was applicable at the time that the permit PA 1535/13 was approved.

My client intends to produce the following as witnesses in order to confirm the contents of this appeal:

1. Stephen McCarthy, Triq il-Prinjol, Iklin
2. Anthony Borg, Triq il-Prinjol, Iklin
3. Josianne Borg, Triq il-Prinjol, Iklin
4. Joseph Agius, PA Senior Enforcement Officer – Planning Authority, St Francis Ravelin, Floriana
5. Raphael Axiak, Director of Compliance and Enforcement – Planning Authority, St Francis Ravelin, Floriana
6. Malcolm Ferriggi (Planning Authority) – Planning Authority, St Francis Ravelin, Floriana
7. Jacob Camilleri (Planning Authority) – Planning Authority, St Francis Ravelin, Floriana
8. Franco Pisani (Planning Authority) – Planning Authority, St Francis Ravelin, Floriana
9. Perit Joseph Saliba – Sigismondo Dimech Street, Balzan
10. Dr. Charles Grech Planning Commission (Regularization) – Planning Authority, St Francis Ravelin, Floriana
11. Dr. Pierre Hili Planning Commission (Regularization) – Planning Authority, St Francis Ravelin, Floriana

In the light of the above and without prejudice to any civil action pertinent to appellant in terms of law, the Tribunal is requested to revoke the permit issued in favour of the applicant, with costs against applicant.

Regards



Samuel Formosa B.E.&A.(Hons), M.Sc. Arch.(Lond), M.Sc.(Env.Pln.& Mgt.), A.&C.E.

Documents attached:

Copy of RG 1861/19

Copy of site plan