



**ENVIRONMENT AND PLANNING REVIEW TRIBUNAL**

Case Ref: PA/01605/20

Application type: Full development permission  
Applicant: Mr Thomas Mifsud  
Architect: Perit Mark Camilleri  
Proposal: To demolish existing townhouse and to excavate and construct underground reservoir, 1 car space plus 5 street level garages, 6 apartments (3 bedrooms {3} and 2 bedrooms {3}) and 2 penthouses (3 bedroom {1} and 1 bedroom {1}).

Location: Viva Cristo Re, 130/131, Triq Brighella, Santa Venera

Appellants: Din I-Art Helwa

**THIRD PARTY APPEAL**

Whereas the appellant humbly submits, and premises as follows:

The following document is an appeal from the Planning Commission's decision to approve this application, which decision was published in the Government Gazette on the 07<sup>th</sup> of April 2021.

The appellant is a third-party registered objector and interested party for all intents and purposes at law.

The appellant feels aggrieved by the decision referred to above, and by means of this application is requesting this Tribunal to revoke the Planning Commission's decision on the development permission referred to.

**GROUND OF APPEAL:**

1. Failure to adhere to Local Plan provisions through flawed application of Annex 2, in breach of CHP 552, Art. 52
2. Exceedance of height limitation, disregard for DC15 P35
3. Further provisions of DC15 not observed, G2, G23
4. Disregard for provisions of SPED, TO8.1, TO8.7, UO2.4, UO3.6
5. Unjustified disregard of planning policy and baseless dismissal of expert consultees recommendation, in breach of CHP 552, Art. 72(2)
6. Decision in breach of CHP 552, Art. 65

## **1. FAILURE TO ADHERE TO LOCAL PLAN PROVISIONS THROUGH FLAWED APPLICATION OF ANNEX 2, IN BREACH OF CHP 552 ART. 52**

The site is designated with a building height limitation of 3 floors in Map SVM3. No semibasement is permitted.

The development was approved with a height of 5 floors.

The 5-storey development will in addition to marring the traditional character of the area through the creation of **permanent** blank party walls furthermore increase the development density and as a result, impinge on the amenity and liveability of the locality.

The increase in development density is the result of an additional floor attained through the flawed application of Annex 2, coupled with the sole consideration of minimum internal height requirements. This increase in development density is not catered for in the Local Plan.

Additional floors approved that are over and above the height designation set in the Local Plan, are in breach of the same Local Plan since it specifically aims to ensure that the existing built density is retained in order to 'safeguard the character and amenity of all residential areas'.

Given the above, the Planning Commission's decision was incorrect and in breach of Art. 52 of CHP 552.

## **2. EXCEEDANCE OF HEIGHT LIMITATION, DISREGARD FOR DC15 P35**

In addition to approving a development in excess of that provided for in the Local Plans, the Planning Commission failed to even adhere to the mandatory maximum threshold set through DC15's Annex 2 as regulated under P35.

The development was approved at a height of 17.3m, despite the maximum permissible height that could possibly be attained through Annex 2 being of only 16.3m.

The need to retain a façade that attributes towards the character of an existing streetscape does not justify applying a relaxation in applicable building height limitations when such height relaxation is not regulated by any policy.

## **3. FURTHER PROVISIONS OF DC15 NOT OBSERVED, G2, G23**

The Planning Commission approved an overbearing massing that would dominate this characteristically low-lying streetscape, as well as permanent blank party wall marring all views around the site. No consideration was given to the impact of the proposal both on the immediate surroundings, and on long-distance views. The visual impact on the roofscape was also ignored.

Given the above, in approving the development the Planning Commission also failed to observe G2, G23.

#### 4. DISREGARD FOR PROVISIONS OF SPED, TO8.1, TO8.7, UO2.4, UO3.6

The development as approved will lead to:

- The unregulated increase in development density over and above that intended and provided for in the Local Plan
- The destruction of the existing traditional skyline that is characteristic of this urban area
- The creation of a permanent blank party wall and overbearing massing ruining both the site's and its surrounding's traditional characteristics that contribute towards its pleasantness and amenity
- The near total demolition of a traditional heritage building

Given the above it is evident that the Planning Commission's approval of this application goes against the above quoted provisions of SPED, and again, is in breach of Art. 52 of CHP 552 and for that reason should be revoked by the tribunal.

#### 5. UNJUSTIFIED DISREGARD OF PLANNING POLICY AND BASELESS DISMISSAL OF EXPERT CONSULTEES RECOMMENDATION, IN BREACH OF CHP 552, Art. 72(2)

The Planning Commission failed to apply article 72 of CHP 552 correctly when it chose to disregard existing planning policy regulating this site and also failed to obtain clearance from the Superintendence of Cultural Heritage for the demolition of this traditional building without providing adequate justification for its decision.

#### 6. DECISION IN BREACH OF CHP 552, ART. 65

During the meeting of the Planning Commission held on the 26<sup>th</sup> March 2021, only two permanent members of the Planning Commission were present. As seen from the minutes of the meeting, only Commission members Stephania Baldacchino and Architect Anthony Camilleri were present during the meeting and participated in the deliberations leading up to their decision. At no point during the public meeting was Planning Commission Chairman Architect Claude Mallia present. In fact, he is marked as NP (Not Present).

The absence of the Chairman, one of the permanent members of the Planning Commission - is in breach of Article 65 of Chapter 552 of the Laws of Malta. This states that:

*(2) The Commission or in case of there being a number of divisions, each division of the Commission, shall be appointed by the Minister **and shall consist of three permanent members including its Chairperson**, and one supplementary member. The Commission shall be chosen from persons of known integrity and who shall have knowledge of, and experience in, matters relating to sustainable development:*

***Provided that the three persons who are appointed to act as permanent members of the Commission or a division of the Commission, as the case may be, shall attend the meetings of the Commission and take part in the deliberations and decisions**, while the supplementary member may attend meetings, but shall only take part in the deliberations and decisions in substitution of any permanent member who cannot for any reasonable cause properly fulfil his duties.*

In light of the fact that the law specifies that the Chairman is a permanent member and that the law further stipulates that it is obligatory (shall/ għandhom) for the permanent members to attend the meetings of the Commission and to take part in the deliberations and decisions, the fact that the Chairman was absent during this meeting and did not participate in the deliberations and decision, means that there is a grave procedural irregularity and breach of the law which renders the decision null and void.

(2) Il-Kummissjoni jew f'każ li jkun hemm għadd ta' ferghat, kull fergha tal-Kummissjoni, għandha tinhatar mill-Ministru u għandha tikkonsisti minn tliet membri permanenti inkluż iċ-*Chairperson* tagħha, u membru wieħed supplimentari. Il-Kummissjoni għandha tkun magħzula minn persuni ta' integrità magħrufa u li jkollhom taġrif u esperjenza fi hwejjeġ relatati mal-iżvilupp sostenibbli:

Iżda dawk it-tliet persuni li jkunu mahtura biex jaġixxu bħala membri permanenti tal-Kummissjoni jew ta' fergha tal-Kummissjoni, skont il-każ, għandhom jattendu l-laqgħat tal-Kummissjoni u jieħdu sehem fid-deliberazzjonijiet u deċiżjonijiet, waqt li l-membru supplimentari jista' jattendi għal-laqgħat, iżda jista' jieħu biss sehem fid-deliberazzjonijiet u deċiżjonijiet f'sostituzzjoni ta' kull membru permanenti li għal xi raġuni valida ma jkunx jista' jwettaq id-dmirijiet tiegħu kif inhu xieraq.

Planning Commission - Within Development Scheme - Meeting held on 2021-03-26

Planning Commission (Within Development Scheme)

Approved 2/0

Chairperson: Perit Claude Mallia: NP  
Members: Ms Stephania Baldacchino: P  
Perit Anthony Camilleri: P

Applicant: np  
Perit: p  
Objectors and/or legal rep p  
Time: 14.09 hrs

Drwgs to be updated and include 178b-f

A fine is applicable if sanctioning is included. NTCs, if not deleted, are to be included as conditions.

*Extract of Board Minutes*

For these reasons and others which may result during the hearing of this case, the appellants are humbly requesting this Honourable Tribunal to annul the decision taken by the Planning Commission and revoke the permit.

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Perit Tara Cassar  
*tara.cassar@gmail.com*

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Dr Claire Bonello  
*drcbonello@gmail.com*

**List of witnesses:**

1. The appellants and the applicant
2. The Planning Authority
3. Employees of and consultants to the Planning Authority
4. Architects and field experts
5. The Superintendence of Cultural Heritage
6. Objectors
7. Other witnesses