

23rd May 2021

The Environment and Planning Review Tribunal



Nru. ta' l-Applikazzjoni: PA 2819/20

Lokazzjoni: Park Towers Mall ex BOV Office Triq Borg Olivier, San Giljan

Proposta: Minor internal alterations to an existing and approved office. Alterations include relocating of bathrooms, re organisation of internal non loadbearing partitions, widening of existing apertures and changes in aperture material.

Ref. Taghna:

Ref. Tribunal:

Ibrahim Halim and Budget Services Limited

vs

L-Awtorita' ta' l-Ippjanar u In-Sight Investments Limited

The appellant respectfully submits:-

- I) The applicant made the submission of this application in 2020.
- II) This application was approved by the Commission and a decision was published on the 28th April 2021.
- III) The appellants feel aggrieved by the said decision and are hereby submitting this Appeal.

Together with this appeal, the appellant is submitting:-

- o Receipt of Payment:

The appellant respectfully submits the following:

1.1 The Authority wrongly applied the provisions of the law when determining the application.

1.2 It is clear that the applicant, on the basis of the provisions of Regulation 4(5) of SL 552.26:

(5) The development specified in these regulations can be regularised if:

*(a) in the opinion of the Authority, the development does not constitute an injury to amenity; **and***

(b)

(c) the relative use falls within any of the uses defined in classes 1, 4A or 4B of the Development Planning (UseClasses) Order provided that documentary proof is submitted showing that the uses defined in Classes 4A or 4B have subsisted continuously for three consecutive years immediately prior to the coming into force of these regulations;

1.3 It is clear that the appellant did not and could not prove that the said Class 4A was in force and in use 3 years prior to the coming into force of the said Regulations. Hence the appellant instituted proceedings under the provisions of Article 80 of Chapter 552 of the Laws of Malta to challenge the approval of RG 4109/18. An appeal from this decision has been filed and is pending.

1.4 It is abundantly clear that this approval is based on the previously approved RG 4109/18. The said RG has a clear condition in the permit as approved, namely that:

1. j) If the development hereby approved is modified (i.e. altered, extended, removed or redeveloped), the eventual development on site must conform to all the plans, policies and regulations applicable at that time

1.5 The same principle applies to the declaration of ownership. The applicant is PA 2819/20 is declaring full ownership whereas the owner declared in RG 4109/18 is a different person. Furthermore, the applicant is not the owner or co-owner of any of the common parts and this was not declared by the applicant.

- 1.6 The applicant had to declare this and such a declaration would then have brought into effect the further requirements attached to it.
- 1.7 It is quite clear, even further to jurisprudence, that the Authority, when faced with such a claim, should at least on a prima facie basis assess the claim, and not simply ignore it.
- 1.8 This declaration of ownership has a further importance in this case since what has been regularized are door openings and entrances onto common areas not owned by the applicant, and hence, such a matter does have a material bearing on the determination of same.

In view of the above, and further submissions that the appellant reserves to make, the appellant requests the Tribunal to revoke the decision of the Planning Board to approve the permit, and consequently revoke and annul the said permit, and this under those terms and conditions that the Tribunal may deem appropriate.

With Respect



Av. Ian J. Stafrace

Witnesses:

Appellants, and consultants and consultees and officers of the Authority to confirm the facts.



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