

## Environment and Planning Review Tribunal

**Case Number:** PA/8732/18

**Location of Development:** Sites at Tattingers Club, Rainbow Apartments & Properties 1, 5, 6, 8, Telgha tas-Saqqajja and Property 1, Triq tal-Infetti, Mdina, Malta

**Description of Works:** Demolition of existing commercial and residential buildings and construction of a five star hotel (Class 3B) having 81 guest rooms spread over 4 terraced floors and 1 recessed floor, including ancillary facilities such as restaurants, conference area, two pools at roof level, landscaping works, entrance forecourt and service areas. The proposal also includes an ancillary underground service area under entrance forecourt and small parking area across the road, two pedestrian tunnels underneath the roads and a sunken LPG tank.

**Applicant:** Mr Jeffrey Cutajar

**Architect:** Landmark Architects

### Application of :

**Din l-Art Helwa VO 008**  
Din l-Art Helwa, 113, Melita Street, Valletta

**Moviment Graffiti VO 126**  
67, Strait Street, Valletta

**The Archaeological Society Malta VO 195**  
The Archaeological Society Malta, The Department of Classics and Archaeology, Archaeology Centre, University of Malta, Msida

**Karl Buhagiar**  
ID Card No: 639982M  
La Rocca del Tocco  
Triq l-Infetti, Mdina

**James Buhagiar**  
ID Card No: 302477M  
La Rocca del Tocco  
Triq l-Infetti, Mdina



Application filed by the above mentioned appellants requesting the **suspension of the execution of the decision and permit.**

The appellants are hereby filing an appeal from the decision of the Planning Board in the abovementioned case.

That the appellants are hereby requesting the suspension of the permit for the following reasons:

1) That the approved plans and drawings show that the development will take in place in the extremely sensitive and scheduled site of Mdina partially in an ODZ rural area of high landscape value which development is not permitted by any law or policy and may result in irreversible and irreparable harm to historical, archaeological and ecological heritage and geological stability. The precautionary principle should be adopted to safeguard this iconic area in its contextual integrity.

2) That during the course of the processing of this application, various breaches of planning laws, policies, requirements and risks and were ignored. That not suspending the execution of the permit will result in an immediate and far greater prejudice to appellants in comparison to that of the applicants if the permit was not immediately suspended – especially since essential studies and information was not provided to the Planning Board.

3) That the decision approving the development lacks certain essential requirements necessitated by law and the principles of natural justice, good administrative behaviour – namely the provision of reasons for the approval. The appellants are already suffering prejudice as their legal rights to appeal are seriously hindered. If the development is allowed to take place before this can be clarified, the appellants will suffer even greater injustice – the hindering and restriction of their right to appeal and the development becoming a “fait accompli” – with the ensuing marring of the iconic Mdina skyline and setting which is one of the main tenets of the appeal.

4) That the provisions of Chapter 551 of the Laws of Malta require only that “the prejudice that would be caused would be disproportionate when compared with the prejudice caused by the staying of the actual execution of the permit.” The legislator has laid down the possibility for appellants to seek a temporary staying of the execution of the permit, without requesting the appellant to show that

irremediable harm will be caused if the execution is not granted. In this, the legislator has distinguished this right of action from that pertaining to the right to request a prohibitory injunction in accordance with Civil Law.

5) Although in the latter cases, the Courts have occasionally held that a prohibitory injunction served to offer protection to a person whose rights would be lost or curtailed irreparably without such a warrant. This is not the case with the remedy being availed of under Chapter 551 which only requires a comparison of the potential prejudice caused by the granting of the suspension as opposed to it not being granted. In the present case, appellants underline the fact that the prejudice caused is also irreparable, satisfying this legal criterion for suspension as well.

In view of the above the appellants humbly request this Honourable Tribunal to suspend the execution of the permit under the terms and conditions as it deems fit.

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