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ST. FRANCIS DITCH  
FLORIANA

The Environment and Planning Review Tribunal

30<sup>th</sup> November 2021

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**Application Number:** PA/00116/21

**Publication Date of Decision:** 24<sup>th</sup> November 2021

**Location:** 30, Triq il-Karenza c.w Triq il-Ferrovija l-Qadima, Balzan

**Proposal:** Demolition of 2 storey building, excavation of basement and construction of a 4-storey block of 8 flats, an overlying penthouse/receded floor, 10 underlying basement garages, and installation of pv panels and swimming pool on roof

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**Appeal application of the Superintendence of Cultural Heritage against the decision of the Planning Authority to grant permission PA/00116/21**

**The Superintendence of Cultural Heritage Respectfully submits:**

1. This permission was granted by the Planning Authority and the decision was published on the 24<sup>th</sup> November 2021.
2. The decision of the Planning Authority will result in the total demolition of a building which is an excellent example of post-war Regional Modernist architecture. Buildings of architectural and aesthetical interest

form part of the Maltese cultural heritage in line with Article 2 and 3 of the Cultural Heritage Act (2019).<sup>1 2</sup>

#### Preliminary Plea (1)

3. The Superintendence respectfully requests this Honourable Tribunal to suspend the execution of the permit pending a decision of this Honourable Tribunal under any terms it may deem fit in line with Article 33 of the Environment and Planning Review Tribunal Act.

#### Preliminary Plea (2)

4. The Planning Commission stated on the 9<sup>th</sup> November in its reasons to approve the application "*PC noted that there are no objectors present, and **no concern was raised for the total demolition of the existing (Maltese adaptation of the modern style of the epoch) villa from any other third party, NGO or SCH.***"
5. The Superintendence notes that this reason is not correct. The Superintendence had indeed twice not accepted the total demolition of the building as per document 115a and 130a.
6. In doc. 115a, the SCH stated *inter alia* "*The Superintendence therefore recommends that **there should be an effort in integrating the existing***

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<sup>1</sup> "cultural heritage" means movable or **immovable objects** of artistic, **architectural**, historical, archaeological, ethnographic, palaeontological and geological importance and includes information or data relative to cultural heritage pertaining to Malta or to any other country [...]. – Article 2 – Cultural Heritage Act

<sup>2</sup> For the purposes of this Act, an **object** shall not be deemed to form part of the cultural heritage unless it has existed in Malta, including the territorial waters thereof, or in any other country, for **fifty years**, or unless it is an object of cultural, **artistic**, historical, ethnographic, scientific or industrial value, even if **contemporary**, that is worth preserving. - Article 3 – Cultural Heritage Act

*building within the new proposal, while not being averse to consider part demolition within the interior of said building”.*

7. In doc. 130a, the SCH stated *inter alia* that it “*is still of the opinion that the front part of the villa merits retention and incorporation within the development, or at least, dismantling of the façade on Triq il-Ferrovija l-Qadima (or elements of) and reconstruction along the actual building alignment and incorporation within the proposed development.*”
8. The Superintendence’s position was recognised in the Planning Directorate’s DPAR.
9. Therefore, the Superintendence respectfully requests this Honourable Tribunal to decide preliminary on this point and to revert the Planning Authority’ decision to be decided again by the Planning Commission whilst taking cognisance of the Superintendence’s declared recommendation.

#### **Further to the Preliminary Plea and in merits of the appeal**

10. The building has both an intrinsic cultural heritage value on the basis of its specific architectural and aesthetical qualities as well as a group-based cultural heritage value as it forms part of a significant and legible streetscape - still composed of two storey houses in a similar style which is currently being studied by the Superintendence of Cultural Heritage for scheduling.

The confirmation of the decision taken by the Planning Authority will result in the loss of the building’s specific cultural heritage qualities and will compromise and reduce the cultural heritage group-value of the other significant buildings along this streetscape.

11. The Superintendence of Cultural Heritage as the state entity responsible for the regulation of cultural heritage feels aggrieved by this decision which results in the direct and irredeemable loss of national patrimony.

12. The Superintendence respectfully submits the following arguments in defence of its appeal:

- i. The Superintendence of Cultural Heritage is the competent state entity entrusted with the regulation of the national cultural heritage as set up by the Cultural Heritage Act (2019).
- ii. The Planning Commission ignored without any acceptable justification the recommendation of the Superintendence of Cultural Heritage as a statutory External Consultee to preserve at least the external elevation of the building in question.
- iii. The Planning Commission ignored Article 9 (1) of the Constitution of Malta<sup>3</sup> which entrust the State with the protection and conservation of the national cultural patrimony. The Planning Authority is a State entity and thus not above this requirement.
- iv. The Planning Commission ignored Article 59 (1) of the Cultural Heritage Act (2019)<sup>4</sup> which specifically states that no development or other interventions on cultural property can take place without first having obtained the consent from the Superintendence of Cultural Heritage.
- v. The Planning Commission ignored the general thrust of the Strategic Plan for the Environment and Development (SPED) which calls for the protection of cultural heritage wherever it is found in the Maltese Territory. Reference is made to:

- Thematic Objective 7 (9)

*To [...] minimises impacts on cultural heritage [...] by controlling demolition of buildings and structures and excavation of sites.*

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<sup>3</sup> The State shall safeguard the landscape and the historical and artistic patrimony of the Nation – *Constitution of Malta*

<sup>4</sup> No person shall make any development or other interventions on cultural property or on classes of scheduled properties without first having obtained a permit therefor from the Superintendent and as may be prescribed in regulations issued under this Act – *Cultural Heritage Act*

- Thematic Objective 8 (1) (7)

*To safeguard and enhance [...] cultural heritage [...] by*

*(1) Identifying, designating and managing areas, buildings, structures, sites [...] for protection and appreciation;*

*(6) Controlling activities which might have an impact on [...] buildings, structures, sites [...] with a general presumption against the demolition of scheduled and vernacular buildings*

- vi. The Superintendence has highlighted the cultural heritage properties of the building in question to the Planning Authority during the processing of the application.

Reference is made to Article 53 (3) of the Cultural Heritage Act which states that:

Cultural property and underwater cultural heritage included in the national inventory shall be attributed a level of protection to adequately safeguard the cultural property and underwater cultural heritage:

Provided that the omission from the national inventory of any cultural property or underwater cultural heritage shall not be taken to imply that such omitted cultural property shall not be afforded such protection.

13. The Superintendence appreciates the fact that the Planning Authority is guided by its policies and the Development Planning Act in its decisions. However this does not exclude the Planning Authority from considering and applying other pertinent policies and legislation including the Cultural Heritage Act where these have a direct bearing on the subject matter.

**14. In view of the above considerations, the Superintendence of Cultural Heritage respectfully requests this Honourable Tribunal to quash the decision of the Planning Authority and send back the proposal to the**

Planning Directorate to request revised plans that take into consideration the intrinsic cultural heritage value of the building in question.

Best Regards

  
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