



2nd January 2022

The Chairman
Planning & Environmental Review Tribunal
St Francis Ravelin
Floriana

Dear Sir,

RE: PC 102/19

I write on behalf of Pauline Debono and of Marpierre Estates Limited (C16561) of Triq Luigi Fontana Zebbug with reference to PC 102/19 filed by Anton Camilleri with reference to a portion of land situated in Bubaqra limits of Zurrieq and included within the Rationalisation Area during the rationalization exercise published in the Government Gazette on 27th February 2007.

The application was approved by the Executive Council on 6th December 2021 for the following:

“Extension of existing roads, formation of new road and zoning of resultant site within rationalization area”

My client feels aggrieved by the approval of the above planning control application and is hereby filing an appeal therefrom. Marpierre Estates Limited of which Pauline Debono is director owns land which was included within the Rationalisation zone and which was included within the site which formed the subject of the above-mentioned planning control application

My client’s grounds for appeal are the following:

First Ground – the application is not in conformity with regulation 4 of Legal Notice 71 of 2007

It does not appear that the application is in conformity with regulation 4 of legal Notice 71 of 2007 ("the Legal Notice") which requires the following to be produced together with the application:

Regulation 4(1)(d) of the Legal Notice requires the following to accompany the application:

- (a) legal proof of ownership of the land to which the application relates, including a title deed and the plans which such deed refers. The regulation is very clear in requiring legal evidence to be produced not only of ownership of the land which allegedly belongs to the applicant but of the entire land forming part of the application. This does not seem to have been submitted but the Authority seems to have taken the word of applicant that there are four separate owners of the land forming part of the site covered by PC 102/19

Regulation 4(2) of the Legal Notice also requires the applicant to have satisfy the following requirement:

- (b) given that the applicant is not the owner of the entire site by his own admission, he was required to have notified third party owners of his intention to file the application by means of a registered letter and this was supposed to have been notified to the third-party owners prior to the filing of the application and evidence of such notification was to accompany the application. Instead, no such notification was filed.

This does not appear to have been done by the applicant and therefore, the application should never have been accepted and processed but should have been rejected, since it violated and continues to violate the rights of third parties who own property within the site which is the subject of the planning control application.

The two above-mentioned shortcomings render the application filed by the applicant null and void and place the third-party owners in a prejudicial position. The application for the effective zoning of the site has severe consequences on the site belonging to third parties and this is the reason why the law places the onus on the applicant to give notice to third party owners and to provide legal proof of title of the entire site, and to attach such documentation to the application.

Second Ground – applicant did not comply with regulation 4(3)(a) and (b) of regulation 71 of 2007

According to regulation 4(3)(b) of Regulation 71 of 2007, applicant is bound to comply with the requirements of regulation 4(3)(a). This last regulation is applied by analogy since it refers to cases where comprehensive planning is indicated in a subsidiary plan, whereas this application consisted of a request for the establishment of zoning, building heights etc in respect of a site forming part of a larger site included within the Rationalisation exercise..

The requirement imposed in terms of regulation 4(3)(a) is a written declaration signed by the owners of at least 75% of the current potential floor area on the site of the requested amendment – indicating they have no objection to the proposed change. However, the regulation specifies that:

“The 75% requirement shall be applicable to the whole parcel of land indicated in the subsidiary plan and not to part thereof”

It is submitted that, applying this regulation by analogy and given that the site in question forms part of a much larger site, the 75% requirement is only satisfied if 75% of the owners of the entire site in Bubagra signed their non-objection to the application. Failure to respect this requirement also renders the entire planning control exercise flawed and, on this ground alone, justifies the revocation of the decision regarding the application itself.

Third Ground – the Planning Authority failed to have regard to those matters stated in regulation 5(5) of Legal Notice 71 of 2007

Following the publication of the application, a large number of representations were made both by individuals and by the local council but the Authority, in violation of regulation 5(5) of the Regulation, failed to have regard to the representations and completely discarded them.

This failure to have regard of the many representations made, including those made by appellant, makes a mockery of the planning process.

Fourth Ground – the Planning Authority approved applicant’s proposal at the expense of applicant’s land.

Applicant’s proposal was for his entire holding to be zoned for development, whereas land belonging to third parties, including appellant, were zoned for the creation of roads. As a consequence, the land belonging to appellant which was included with this rationalization zone, except for a few square meters, was zoned as forming part of the road and her various proposals for changes to be made to applicant’s proposals were not considered at all but rejected in toto;

This has severely prejudiced the interests of appellant since there was no reason for ignoring her various representations and options which she produced for the consideration of the Planning Authority so that at least a substantial portion of her land would be included within the zone and not as proposed by applicant.

Fifth Ground – the Authority failed to examine two separate allegations that the site notices were removed after they were put up on site

According to the report, two separate reports¹ were filed alleging that some of the site notices were removed before the consultation period was up. The Authority did not even deign to investigate this matter but ignored it, stating that it was up to the representees to produce evidence of this. This attitude is grossly unfair towards well-meaning representees and individuals who wish to participate in the planning process but their right to know is somehow being curtailed without any consequences.

Appellant wishes to produce the following as witnesses:

Appellant

Owners of the entire site in Bubaqra included within the Rationalisation Exercise

The case officers who prepared the DPA report

Rita Grima – Mayor of Zurrieq

In conclusion, it is submitted that the Planning Authority simply approved applicant's proposal notwithstanding the fact that he did not abide by the Legal Notice in submitting the application and ignored appellants' representations totally. Consequently, applicant has been favoured at the expense of appellant. Given this situation, the Tribunal is hereby being requested ot declare the approval and the application null and void.

Regards

Tanya Sciberras Camilleri LL.D.

¹ 29a and 38a in file PC 102/19