



16th February 2022

**The Environment and Planning Review Tribunal**

*Nru. ta' l-Applikazzjoni:* PA/4505/21

*Lokazzjoni:* 31, Triq tat-Teatru l-Antik, Triq il-Merkanti Belt Valletta

*Proposta:* The extension of outdoor dining furniture on Merchants Street with Land's Authority consent. Application also includes the sanctioning of the relocation of the ground floor bathroom

*Ref. Taghna:*

*Ref. Tribunal:*

**Jaime Zammit**

vs

**L-Awtorita' ta' l-Ippjanar u Li Xuereb Zhang**

The appellant respectfully submits:-

- I) The applicant made the submission of this application in 2021.
- II) This application was approved by the Commission and the decision was published on the 15<sup>th</sup> December 2021.
- III) The Appellant feels agrieved by this decision and is hereby submitting this appeal.

Together with this appeal, the appellant is submitting:-

- o A copy of the decision notice (Dok JA1).
- o Receipt of Payment (Dok JA2).

The appellant respectfully submits the following:

1.1 The Authority wrongly applied the provisions of the law and policy regulating this site.

1.2 In approving this application the Authority went contrary to the principles entrenched in the original permit for the tables and chairs allocation on Merchant Street (PA 335/10) and also against the policies and principles of the OCA on Public Open Spaces.

1.3 The proposal is contrary to:

a. policy G1:

Outdoor catering furniture should, where possible, be placed directly outside the premises at the back of the pedestrian public footpath, thus avoiding the disruption of pedestrian flow due to the crossing of catering personnel. Requests for Outdoor Catering Areas, **which are separated from the catering establishment by a footpath**, may also be considered, especially in those cases where pedestrians would be provided with more direct routes. This may especially be relevant for new Outdoor Catering Areas which are adjacent to approved areas, and would preferably be located to provide an uninterrupted flow of pedestrians.

b. P12:

The number of covers allowed within the Outdoor Catering Area shall be determined on the basis of the outdoor space available, as well as the ability of the kitchen to cater for such covers. The number of covers allowed in both the interior and exterior catering areas shall be clearly displayed on site.

c. P16:

Outdoor furniture (excluding enclosures and timber platforms) shall be stored inside the premises outside trading hours. In the case where this is not possible, the outdoor furniture shall be left in the same arrangement within trading hours and shall be adequately secured. No stacking of outdoor furniture shall be allowed

outside the premises. There may be instances where the applicant shall be requested to provide details of storage arrangements for all Outdoor Catering furniture and ancillary equipment. Storage shall occur either inside the catering establishment or off-site as long as it does not occupy public open space.

d. P17:

Space shall only be granted for an Outdoor Catering Area after taking into consideration activities in the vicinity and after ensuring that third party rights shall be safeguarded. The Outdoor Catering Area shall not adversely affect third parties. The maximum extent of the Outdoor Catering Area in relation to the frontage of the catering establishment shall be limited to the distance measured between the property dividing lines, taken perpendicular to the façade, in line with Figure 6.

e. P18:

In the instance that an applicant proposes an Outdoor Catering Area in front of a third party property, the applicant shall first give regard to the provisions established in Standard S5, following which the applicant shall obtain the signatures of the owners and tenants of such property on a hardcopy of the plan so as to indicate their 'no objection' to the extent of the site as shown, which signatures shall be duly witnessed by a Commissioner of Oaths. In the case of any conflict between the provisions of Standard S5 and the consented site extents by third parties, the former shall prevail. Furthermore, no access stairs and/or ramps are to be obstructed in line with Policy P4. In awarding encroachment rights, Authorities shall normally grant preferential rights to the owners/tenants of the establishment having the space in question located immediately outside their premises, unless a Master Plan indicates otherwise.

1.4 The Appellant's consent had to be sought since the Appellant operates the premises immediately in front of the area approved in favour of an outlet who has no relation with Merchants' Street. The premises of the Applicant are on Old Theatre Street, and the said premises are not even corner with Merchants' Street.

1.5 The Applicant already has a permit for tables and chairs on Old Theatre Street, which permit he is flagrantly breaching and on which an ECF was issued. The further allocation on Merchants' Street will render the outdoor dining area significantly larger than the outlet itself, let alone the kitchen serving the shop and the two outdoor areas allocated.

1.6 The application should also have been refused since the illegality on site remained even as on the date when the case was heard for a decision.

1.7 Furthermore the documents submitted by the applicant in the deferral period was not available to the Appellant and hence in breach of the provisions of law.

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 Commission, and consequently order the Authority to issue the relative refusal, and this under those terms and conditions that the Tribunal may deem appropriate.

With Respect



**Av. Ian J. Stafrace**

**Witnesses:**

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



**Av. Ian J. Stafrace**  
**9/4 Britannia House**  
**Old Bakery Street**  
**Valletta**