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ADVOCATES



3<sup>rd</sup> of March 2022

The Secretary  
Environmental and Planning Review Tribunal  
St. Frances Ravelin  
Floriana

Re. PA 4345/21- Site at, Triq Emmanuele Luigi Galizia c/w, Triq il-Qasam Industrijali, Marsa - Outline development permission: Demolition of existing structure and Construction of industrial garage complex ( Class 5A, Class 8, Class 6A)

Applicant; Mark Cassar

I, on behalf of my client wish to submit an appeal from refusal notice issued on 26th January 2022 re. subject in question.

Three out of the four reasons stated as justification for the refusal dwell on the visual impact of the proposed development. It is important to point out that during the process of this application and more specifically on the 9th June 2021 and following a specific meeting held with Mr. Martin Saliba ( Executive Chairman PA) re this proposal a comprehensive conceptual design approach was submitted. This attempted to establish broad design parameters including structural planting to screen side wall and create a 3 m buffer zone, respecting the adjoining Grade 1 building alignment, stepping down and breaking out ( internal shafts) of the mass to reduce visual impact, stepping down of screen wall to focus views onto the Grade 1 listed building and structural planting to mitigate impact of the new development and redesign of the bus stop.

All these design guidelines were intended to create a new development which respects the context of site. Further 3d visulation. were submitted on the 16thDecember 2021 however up to the first online meeting with the EPC on the 15th December 2021 no official reaction was communicated from the Planning Directorate side except for the DPA report which was issued on the 18th of October 2021 which assigned design considerations as reserved matters to be addressed in an eventual full development permit.

Discussions with the EPC on the 15th December 2021 led to a further submission from my side for an alternative block design which however was not accepted even

The site has been zoned for an industrial use since 1988 and this use further consolidated in the South Malta Local Plan of 2006. Subsequent policy guidance in 2015 and more recently with reference to its proximity to a scheduled building, a buffer zone of 6m from the common wall but actually 12m away from the scheduled wall of the Grade 1 listed building. A stepping in the proposed building heights close to the cemetery was proposed to mitigate the visual impact. In its deliberations the EPC requested a 10 meter buffer zone from the Grade 1 building and the further stepping of buildings heights which were acceded to. In my view the only remaining issue was the interpretation of the buffer zone distance which in reality could have been lifted as a reserved matter since application is an outline one.

It is also good to note that the Turkish Cemetery was awarded a Grade 1 level of protection in September 2013, when the relevant notice was published on Government Gazette number 19,134. Policy guidance issued after the said date did not impose any limitations on the site, and definitely not the limitations expected by the Board. The proposal submitted is not only in line with the policies in question, but effectively the proposed building will be smaller in height, mass and footprint than what is allowed in terms of the applicable policy.

The Board, as an adjudicating authority has a limited amount of discretion when deciding an application and therefore is bound by the policies applicable to the site. Consequently, once the application fell within the limitations imposed by the policy, it could not be refused, especially considering that during the last change in policy, the cemetery was already scheduled. The Board therefore does not have the authority to decide what can and can't be built on the site, since this has to be determined by the applicable policies. The Board's role is to decide applications on the basis of whether they fall within the applicable policy or not, and not to create limitations on a site which were ultimately not created by the policy makers.

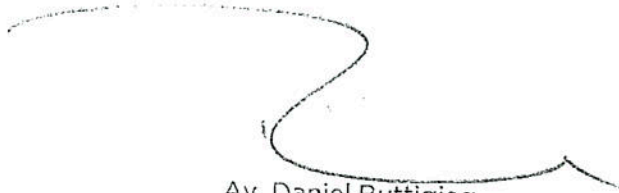
The Board is, for all intents and purposes at law, an adjudicating authority, and is therefore bound by the same legal principles binding a Court of Law. Whilst the planning procedure is less stringent than the legal one, the basic legal principles governing adjudicators and their decisions, including the adjudicator's obligation to decide a matter within the sphere of the law or policy applicable is an imposition which the Board is also subject to.

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The decision of the Board is effectively a breach of the applicant's right to a fair hearing and right to the free enjoyment of his property in terms of Article 6 and Article 1 Protocol 1 of the European Convention on Human Rights, since the Board, arbitrarily went beyond its competence, when using discretion which it does not possess at law, refused an application for reasons which go beyond the applicable policy.

Thus, it is felt that the EPRT can respectfully quash this refusal on the basis of the right interpretation of the buffer zone distance and the mitigated visual impact as proposed in the last option submitted in item 146f of the 16th December.

  
Perit Stephen Farrugia

  
Av. Daniel Buttigieg