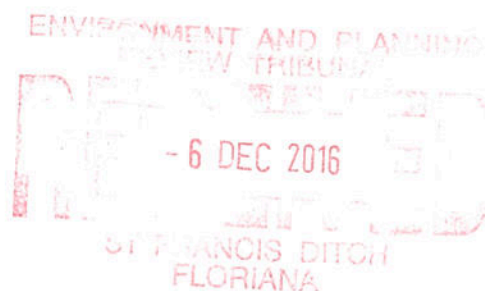


MFF/ic/900/23/32

2nd December 2016

The Secretary,
Environment and Planning Review Tribunal
PO Box 172
Marsa



Dear Sir,

Re: PA 3028/16 – Site at Triq tal-Balal, San Gwann

On behalf of our client, Mr. Michael Stivala we are hereby appealing against the decision to refuse the above development application as notified by letter dated 21st November 2016 – copy enclosed.

The reasons for refusal claims that the sanctioning of the above development is not in accordance with criterion 6 of Policy 2.5A of the Rural Policy and Design Guidance (RPDG) 2014; that the applicant does not till any agricultural land and therefore the proposed agricultural store is not justified; and that the proposal is not in line with the Thematic Objective 1 of the Strategic Plan for Environment and Development limiting the land take up for uses that are not necessary or legitimate in rural areas.

We have to submit as follows:

1. The site is already covered by the necessary development permissions to be used for industrial storage and therefore the claim that it is a take up of fresh land is spurious and irrelevant. The site is already committed with utilized development permissions and has been operating for the approved purposes uninterruptedly.
2. Applicant does not till any agricultural land as well as the reference to an agricultural store is irrelevant since the proposal is not related to any agricultural use as the site is not an agricultural land. Currently, the area is being used for storage purposes by the construction industry and its use is not related to the agriculture sector.
3. The argument that the enclosed space exceeds 10% of the total site area for ancillary administration and support services facilities is spurious considering that the roofing that is being proposed to be sanctioned is not required for ancillary administration and support services facilities but rather to protect the actual construction and building materials being stored from the weather, as in the case of timber used for shuttering, cement and other water sensitive adhesives.

May we point out that Criterion (e) FL-GNRL- 1 of The Partial Review of Subsidiary Plans: General Policy relating to Regeneration / Consolidation Initiatives states that: **Legitimate operating premises which intend to expand and consolidate their premises without relocating and are able to do so without creating unacceptable impacts on surrounding land-uses; may consider justifiable departures from policies which can be adequately justified from a planning perspective.**

Moreover Article 72 (2) of the Development Planning Act states that:

In its determination upon an application for development permission, the Planning Board shall have regard to:

- (a) *plans;*
- (b) *policies: Provided that subsidiary plans and policies shall not be applied retroactively so as to adversely affect vested rights arising from a valid development permission, or a valid police or trading license issued prior to 1994;*
- (c) *regulations made under this Act: Provided that the Planning Board shall only refer to plans, policies or regulations that have been finalised and approved by the Minister or the House of Representatives, as the case may be, and published;*
- (d) ***any other material consideration, including surrounding legal commitments, environmental, aesthetic and sanitary considerations, which the Planning Board may deem relevant;***
- (e) *representations made in response to the publication of the development proposal;*
and
- (f) *representations and recommendations made by boards, committees and consultees in response to notifications of applications.*

As can be seen from the above, the policies bearing on the issuing of the development permission should not be limited to plans, policies and regulations. In this case, the other legal bearing on the Authority's decision i.e. the Planning Authority's obligation to consider '***any other material consideration, including surrounding legal commitments, environmental, aesthetic and sanitary considerations, which the Planning Board may deem relevant;***' should likewise be considered.

The area is rife with similar developments (some of which approved recently) including sites that exceed 10% enclosed space of the total site area as indicated in the submitted block plans submitted during the processing of the application.

The reason for refusal alleging that the masonry wall runs counter to policy 2.9 of the Rural Policy and Design Guidance 2014 is also spurious since the use of the site is not agricultural and therefore it has to be treated as such. In any case, the three extra courses that have been constructed above the height indicated in the approved in PB 1671/90 can be easily removed.

In view of the above, we submit that the decision to refuse the above development application should be overturned and the requested permit should be issued.

On behalf of appellant, we reserve the right to submit further written and/or oral submissions in the course of the hearing of this appeal.

Yours faithfully,



Ian Cutajar A&CE
FALZON AND CUTAJAR
Architects & Civil Engineers