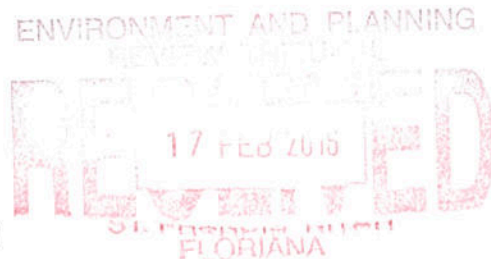


The Secretary

Environment and Planning Review Tribunal
Saint Francis Ravelin
Floriana



16th February 2016

Dear Sir/Madam

RE: Enforcement Notice EC/00216/15 on The Londoner, Dragonara Road, St. Julian's

Palace Gate Limited (C-26056) (the 'Appellant'), is appealing from Enforcement Notice EC/00216/15 on property The Londoner, Dragonara Road, St. Julian's (the 'Property') (Doc. A).

This Appeal is being filed in terms of Article 86(12) of the Environment and Development Planning Act (Chapter 504 of the Laws of Malta).

The Appellant is submitting the Appeal on the following grounds:

- That the Appellant must always be given the right to be heard according the principle of *audi alterem partem*.
- That the Appellant, although is the owner of the Property, is not its operator/occupier and therefore should not be condemned to alleged illegal acts of third parties; consequently the Enforcement Notice should be **enforced** against the proper operators.
- That the penalties that may be applied by the Authority by virtue of the Enforcement Notice are essentially criminal sanctions and thus require both an act (*actus reus*) and an the intent to commit the illegal acts (*mens rea*) in question which act and intent is missing on the part of the Appellant.

The following facts and considerations are being submitted:

- i) That the Appellant entered into various agreements with **Shapes Company Limited (C-12210)** as represented by its director **Joseph Camilleri** (ID 533455M) for the operation of Property;
- ii) That on 3rd February 2016 the Appellant received the Enforcement Notice in question dated 26th January 2016 in which various illegal acts were alleged to have been committed on the Property;
- iii) That the Appellant is not involved in any operation or activity of the Property and has not committed any alleged illegal acts as described in the Enforcement Notice in question;
- iv) That although this Appeal is based on Article 86(12) of Chapter 504 of the Laws of Malta, Legal Notice 276 of 2012 requires that the reason on which this Tribunal can uphold an Appeal must be an impelling reason (two examples are provided by the Legal Notice since the list is not exhaustive as the law uses the words "such as"). The Appellant submits that the reasons on which this Appeal is based are all impelling and urgent. Furthermore, it is a well-established principle that every decision-making body, must adhere to the rule of the *audi alterem partem*; the fundamental right to be heard. The rule is of universal application and the duty is given to "*every one who decides anything*" (*Ridge v. Baldwin* 1964, AC 40, quoted in "Administrative Law of Wade and Forsyth, 10th Edition, pg. 418);
- v) That, as already explained previously, the Property is being operated and is possessed by third parties and the Enforcement Notice has to be enforced against the persons who may have committed the illegal acts involved;
- vi) That, since the Appellant is not the operator of the Property there is no possible way that the Appellant can rectify the illegal acts in question;
- vii) That the Appellant sent a written intimation to the third parties in operation of the Property to inform them about the Enforcement Notice in question

and to safeguard its position with regards to any liability and responsibility ('Doc B');

- viii) That Article 86 (1) of Chapter 504 of the Laws of Malta stipulates that "*the Authority shall serve a stop notice on the owner of the land or on the occupier of the land or on both*". This means that the Article does not provide for the enforcement of the notice on the owner of the land but it specifically uses the word 'serve'. Although, therefore, the Enforcement Notice may be served on the owner of the Property, whereby in this case, the Appellant, the Enforcement Notice had to be enforced on the actual person who may be committing the illegal acts in question and therefore the operators of the Property in question. It is the operator who can rectify the situation, if any;
- ix) That in consequence of the above considerations and the fact that the penalties are tantamount to criminal sanctions there must be the intent required to commit the illegal acts in question which intent (*mens rea*) lacks with regards to the Appellant. By virtue of the Enforcement Notice in question, the Authority can impose penalties by virtue of Legal Notice 276 of 2012 and further penalties by virtue of Act X of 2010 (page 2 of the Enforcement Notice). Such penalties are considerable in nature and may amount to fifty thousand Euros (€50,000) or more. By reference to the Engel criteria (ECHR case: Engel and Others v. The Netherlands, 8th June 1976), the penalties imposed by the Authority are considered criminal in nature since they are considerably serious and severe and the nature of the offence may amount to being a criminal offence (a case in point is Article 94 of Chapter 504 of the Laws of Malta). As already explained previously, the Appellant does not operate the Property in question and could not possibly have committed the alleged illegal acts described in the Enforcement Notice in question. Thus, the Appellant lacked the required intent (the required *mens rea*) and no Enforcement Notice can be enforced against the Appellant since no intent to commit the illegal acts is present;

- x) That, as a final remark, the Appellant is submitting that the Enforcement Notice should not be revoked *in toto* but should be enforced against the entity/person responsible for the illegal acts described in the Enforcement Notice in question. Indeed, in accordance with sub-articles (15) and (16) of Article 86 of Chapter 504 of the Laws of Malta this Tribunal has the power to correct any defect or error in the Enforcement Notice in question and may also require that, if this Appeal is dismissed, give a period of time (not less than fifteen days) after the determination of the Appeal for the Enforcement notice to come into force. Without prejudice to the Appellant's arguments, this grace period may give time to the Appellant to judicially call upon the operators of the Property to adhere to the Enforcement Notice in question if such illegalities exist.

That, for these above reasons, the Appellant is respectfully submitting that the Appeal should be upheld and humbly requesting the Tribunal to declare that the Enforcement Notice number EC/00216/15 should not be enforced against Appellant and if the illegalities exists then it should be enforced only against the operators of The Londoner, Dragonara Road, St. Julian's and therefore against Shapes Company Limited (C-12210) as represented by its director Joseph Camilleri.



Avv. Franco Vassallo

cc. client

enc.