

Environment and Planning Review Tribunal



Application Number: PA 02461/16

Applicant: Charles Polidano

Architect: Mr. Colin Zammit A&CE

Location: 57/58/59/60, Triq il-Kbira c/w Sqaq Nru. 1, Triq il-Kbira, Balzan

Proposal: To carry out additions and alterations to approved development (PA02802/13)

Appeal of Dr. Reuben Farrugia holder of identity card number 248072M;

He humbly submits:

That by virtue of a decision of the Environment and Planning Commission dated 15th February 2017 the above application was approved;

That the relative development permit was published in the local media on the 1st March 2017;

That the appellant was a party to the proceedings as a third party objector

That the appellant feels aggrieved by the decision of the Board and is by this present lodging a humble appeal from the said decision.

The grievances of appellant consist in the following:

Primarily it is to be noted that application PA02461/16 is intended to add and alter the development contemplated in PA02802/13, which latter permit is the subject of an appeal before the Environment and Planning Review Tribunal (Appeal Number PAB00028/15). It is therefore inconceivable how an application as PA02461/16 can be considered when it intends to amend and add unto an previous application which is still under review by the Tribunal. It would be more appropriate to suspend the processing of this application pending the outcome of appeal procedures in relation to PA02802/13 subsequent to which the appropriate way forward would be determined.

Without prejudice to the above and in addition thereto, it is to be noted that the development under review consists of the following main issues, in addition to those already considered in PA02802/13:

- (a) the widening of the garage door at 57, Triq il-Kbira, Balzan;
- (b) a considerable extension at first floor level of the premises 8,9, Sqaq Numru 1, Triq il-Kbira, Balzan;
- (c) considerable construction works at 60, Triq il-Kbira, Balzan both at ground floor and first floor levels;
- (d) further encroachments onto the gardens at forming part of the properties at issue;
- (e) the addition of a pool and reservoirs;

It is to be reiterated that the works under review in PA02461/16 are in addition to the already extensive works contemplated and encroachments unto the gardens considered in PA02802/13.

The applicable Central Malta Local Plan classifies these gardens as being 'open space enclaves' and this as is indicated in Area Policy Map BZM 4 – Balzan Environmental Constraints Map and Area Policy Map BZM1 – Balzan Area Policy Map and it also results from the said Area Policy Maps that the properties mentioned in the said application fall within an Urban Conservation Area and within the village core of Balzan. Also of importance is the fact that the properties under review are Grade 2 Scheduled Properties.

When one considers the application under review in addition to the merits of PA02802/13, it is more than evident that PA02461/16 is in violation of all policies applicable for the area.

In addition to all other submissions which will be made in due course during the processing and hearing scheduled for this application, the following general points may be considered:

- a. the width of a garage door as proposed exceeds the limits imposed by DC 2015 (P15/P19 / P20) and there is no justification for an exception to this limitation in terms of the said policy.
- b. No street scape analysis has been undertaken for Sqaq Numru 1, Triq il-Kbira, Balzan (P4 – DC2015) and therefore even less so can the height limitation for Sqaq Numru 1 be determined. In any event the extension being proposed is in violation of P35 and P39 of DC2015. A superficial analysis of the plans submitted clearly indicates that the proposed extension exceeds the existing heights considerably and thus creates a serious adverse effect on an otherwise picturesque alley. In addition, it seems that this extension will create a set back on the facade at Triq il-Kbira, which is prohibited in terms of DC-2015 (P39);
- c. All the construction works being proposed at 60, Triq il-Kbira, Balzan are in violation of various policies. DC2015 stipulates various requirements which have not been complied with, even less so does it result that there have been submitted the necessary documentation to provide appropriate assessment such as a photomontage. When one considers the extent, the design and the materials proposed these all run counter to the various policies in DC2015 intended for scheduled buildings, urban conservations areas and facades overlooking green open enclaves;
- d. The additional encroachments unto the gardens of the said properties runs blatantly counter to various policies including Policy CG09 of the Central Malta Local Plan and its proviso. What is being proposed, which is over and above what was considered in PA02802/13, also runs counter to the various objectives set out in the applicable policies wherein, out of many others, it was stated that *"Within the various Urban Conservation Areas, internal open space enclaves play a very important role in maintaining a very high quality urban environment. This is especially relevant to the three villages (Attard, Balzan and Lija) which are renowned for their large and beautiful gardens. The plan therefore identifies and protects these open space enclaves. The conservation, protection and enhancement of existing public open spaces, private open space enclaves and urban 'lungs' is an objective of the Local Plan for improving the urban environment"**"The gardens that are located in Balzan need to be conserved in order to protect its serene urban character"*
- e. The inclusion of a pool and reservoirs in the garden is not compliant with the applicable policies and adds further encroachment onto the gardens of these properties;

Furthermore the following facts are also to be considered:

1. In the year 2004 an enforcement notice was issued by MEPA in relation to the site in question due to the illegal *"Demolition of part of building, part of walls and other structures in back gardens without permit"*. The enforcement notice is EC/00403/04 and the matter to which it relates has not been sanctioned or remedied;
2. In the year 2011 an Emergency Conservation Order was issued on site which order has GN Number 636/11 (published on the 12th July 2011). Although a list of extensive works were to be carried out as ordered by MEPA within a specified time-frame, this did not happen.

3. In the year 2012 the site in question was permanently scheduled as a Grade 2 listed site, which scheduling order has GN Number 22/12 (published on the 10th January 2012). Notwithstanding the scheduling of said site and the Emergency Conservation Order above mentioned, the developer executed further illegal interventions on site;
4. In the year 2012 an enforcement notice was issued in relation to the site as a consequence of the illegal "*Uprooting of trees, shifting of soil and pulling down of part of garden rubble wall*", which enforcement notice has number EC 00047/12 and the matter to which it relates has not been sanctioned nor has it been remedied;
5. In relation to all the above breaches, criminal proceedings have been instituted consequent to MEPA's (PA's) complaint against Charles Polidano and by virtue of a judgement by the Court of Magistrates dated 3rd July 2013 the said Polidano was condemned to pay a fine of one hundred thousand euros (€100,000) and was also ordered to comply with the above indicated emergency conservation order and scheduling within a period of three months subject to a daily penalty of one hundred and thirty euros (€130). This judgement has been appealed by Charles Polidano and is adjourned for judgement.

In relation to the above submissions one is to note the contents of article 17 of S.L. 552.13 and in view of the nature of this application and the illegalities on site the application should be refused outright.

On a general note one is to consider the fact that this proposal, apart from being contrary to all the above policies and objectives as stated by MEPA itself, and when considered together with PA02802/13, is also directly prejudicial to the health of Balzan residents. The area is highly populated and considerable traffic flows on a daily basis. The quality of air in the area has degenerated considerably and the need for the preservation of open spaces has become more essential than ever.

The proposal being considered is such that it will eliminate the 'lung' of the Balzan village core, which will have a drastic effect on the environment of the area and consequently on the health of Balzan residents.

In addition the amenity of the area will be adversely effected by the proposed development.

The area consists of mainly old town houses with traditional Maltese balconies and apertures and includes a small alley typical of Maltese villages (Sqaq Numru 1).

The development proposed will destroy the character of the area apart from devastating the gardens which are protected by the above indicated policies.

The site has already been the subject of numerous illegal interventions and has practically and illegally destroyed the gardens.

The garden has been systematically defaced and mutilated and this is evident from a simple comparison between the relative aerial photograph of the site in 2004 (when the illegal interventions commenced) and the aerial photograph of the site in 2012.

In view of the above, and whilst reserving the right to produce the necessary witnesses and evidence and make further submissions, appellant humbly requests that the decision of the Environment and Planning Commission approving planning application PA02461/16 be revoked and the application merits of this appeal (PA02461/16) be refused.



Dr. Reuben Farrugia