



14th of August 2019

Environment and Planning Review Tribunal
St. Francis Ravelin
Floiana

**Re. PA 1423/19 – 28, Triq Sir Mikeland Refalo Street & Pjazza Indipendenza, Rabat
(Gozo)**

**Proposed extension of outdoor catering area Class 4C or class 4D
on public open space comprising of tables, chairs, timber -like
planters and demountable covering umbrella**

I write on behalf of the applicant Michal Zammit and this in order to lodge an appeal from the decision taken by the Planning Authority on the above cited PA application, which was published on the 24th of July 2019

My client does not agree with the decision taken and is asking for it to be reversed and this for the following reasons;

1. Transport Malta's objection

Transport Malta based its objections on erroneous facts, and this because it did not consider that there is no authorised access to vehicles in the area. The area in question is strictly pedestrianised, and as can be attested from the various signs installed in the vicinity and from the fact that the pavement is not made from tarmac but from lava tiles. Consequently parking in the area is automatically prohibited. Logically, if cars are not allowed to enter the area, then they also not allowed to park.

The fact that Transport Malta's objection is unfounded is clear from the fact that a few years ago, when discussing PA 6946/16, which is a similar application on the same site, Transport



Malta found no objection for tables and chairs to be placed in the same area, and therefore one cannot understand their sudden change of heart. There was absolutely no change from in the area between today and 3 years ago.

It is clear *ictus oculi* that no cars are allowed in the site since Bellusa Café, whose owner is an objector to the application, has started to mount tables, chairs and umbrellas on the actual street in front of his café. Although one questions the legality of such tables and chairs, it goes to show that effectively no vehicles pass or should pass from the said street.

In addition, an objection by Transport Malta should not automatically be tantamount to a refusal, since this would be counter to the applicant's right to a fair hearing as protected by Article 6 of the ECHR and Article 37 of the Constitution.

The right to a fair hearing is based on the concept of having an impartial adjudicator who is free to decide according to law and to his/her moral conviction. Therefore any imposition on the adjudicator, such as the imposition of having a decision based on whether a third party authority gives its consent or not is prejudicial to my client's fundamental right to a fair hearing, which supersedes any policy.

It is not Transport Malta who issues the permit, but the board, or in this case the EPRT, and therefore the Board should have assessed the application in its own merits, and should not have based its decision on whether authorisation was given by a third party authority, especially considering that the objection was based on erroneous and unfounded facts.

Upon noting the objection by Transport Malta, the board was not obliged to reject the application, since this is considered as an unfounded limitation on the Board's discretionary powers, but should have simply assessed whether such objection was founded or not.

2. No Objection From Adjacent Third Parties

The board in first instance was also incorrect when basing its refusal on not having a no objection from the third party since the proposed tables and chairs will not be placed in front of the adjacent shop but will be placed solely in front of my client's property and number 27,



who already gave his consent when obtaining authorisation from the Lands Authority and therefore such authorisation was not needed or applicable in this case.

Moreover, the tables and chairs will not be placed directly in front of third party property, since the site and the third party properties are separated by Triq Sir Mikelang Refalo.

Moreover the only third party authorisation required is from the Lands Authority, and this because Lands is the owner of the street on which the tables and chairs should be placed, and my client, as can be seen from document 17a, obtained the relevant authorisation.

Apart from this, placing outdoor tables and chairs, is synonymous with having a pedestrianised out door area since this encourages social interaction and creates vibrant and attractive surroundings, which will be effectively used by locals and tourists alike and which will bring more life into the area. .

In any case the area in question is already committed with all other catering establishments in the area having tables and chairs placed outside their respective shops, and therefore it would be unjust for my client's application to be refused.

3. No Demountable Timber Platform

When one has a look at the site in question, it consists of a slightly elevated paved floor. Consequently, this light elevation removes the need of having an easily removable demountable /reversible timber platform.

4. CRPD's Consultation Reply

After the CRPD had originally objected to the application, my client has submitted revised drawings which addressed the request for additional information filed by CRPD. Unfortunately, these revised drawings were not forwarded to the CRPD for their review. My client's architect had therefore sent these revised drawings herself, however pending CRPD's approval and clearance, a decision was taken by the Board. Had the Board waited for the CPRD's clearance, then this issue would have easily be solved.

My client therefore also feels aggrieved by the fact that the Board should not have taken a decision when the process leading to the decision was incomplete since CPRD's reply to the amendments made by my client were not yet available and finalised and this rendering the decision taken by the board prejudicial.



In view of the above, I kindly ask you to cancel the decision taken by the Board in First Instance, published on the 24th of July 2019 and instead to approve my client's permit application above cited

Thanking you, I remain

Av. Daniel Buttigieg