

Environment and Planning Review Tribunal

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Application Number: PA/09890/17

Location of Development: Several streets including and adjoining, Triq l-Imdina, Triq iz-Zaghfran, Triq Tumas Chetcuti, Triq Ferdinandu Inglott, Triq Haz-Zebbug, Triq In-Nutar Zarb, Triq Il-Belt Valletta, Triq Oliver Agius, Vjal Ir-Royal Malta Artillery, Triq L-Intornjatur, Qrib Sant' Anton, Vjal De Paule, Attard, Malta

Description of works: Proposed junction upgrading and road widening to existing roads and construction of new schemed road.

Applicant: Ing. Fredrick Azzopardi obo Infrastructure Malta

Architect: Perit Robert Zerafa

Appellants

Bicycle Advocacy Group VO/0859

Din l-Art Helwa VO/008

Flimkien ghal Ambjent Ahjar VO/101

Friends of the Earth Malta VO/91

Ramblers' Association of Malta VO/0024

Green House VO/0296

Moviment Graffiti VO/0126

Malta Youth in Agriculture Foundation
VO/0823

Ralph Cassar

Malcolm Vella Haber

Edward Mallia

Stephen Pace

Cristino Antonio Scerri

Adrian Mallia

John Camilleri

Application filed by the above mentioned appellants requesting the suspension of the execution of the decision and permit

The appellants are hereby filing an appeal from the decision of the Planning Board in the abovementioned case.

That the appellants are hereby requesting the suspension of the execution of the permit for the following reasons:

- 1) That the approved plans and drawings show that the development will take place over a tract of the Grade 1 Scheduled Building the Wignacourt Aqueduct, which development is not permitted by any law or policy and may result in irreversible and irreparable harm to a priceless monument and heritage icon. That the relative works method statement for works in the vicinity of the Wignacourt Aqueduct are not accessible for public scrutiny and so the precautionary principle should be adopted to safeguard the Aqueduct in its interity and contextual integrity.
- 2) That furthermore, the applicant failed to provide a Works Method Statement clarifying the extent of the impact of the development on the historical chapel of St Paul's Shipwreck as requested by the Superintendent of Cultural Heritage. Absolutely no information pertaining to the state of this chapel such as internal photos, detailed plans or elevations, or any other information illustrating the state of the chapel, were provided up until the case was decided on by the Planning Board. That the structural integrity of the chapel is imperilled by works and excavations which will take place in the immediate vicinity. The contextual integrity of the extensive demolition of vernacular structures in the immediate environs will also be impaired.
- 3) That the approved plans are for the demolition of a number of vernacular buildings and structures with recognised heritage value. There was scant and irregular surveying and assessment of these buildings, with serious omissions such as the lack of internal photographic surveys as required by law, vitiating the whole assessment process and do not provide a realistic picture of their state and heritage value. Moreover the Superintendent did not consent to their outright demolition but recommended the rerouting of the project to ensure their preservation. The SCH stated that it would only consider their relocation in the event that such an exercise proves futile. The conditions imposed by the SCH were misrepresented and effectively nullified in clear violation of Regulation 9 of Legal Notice 162 of 2016.
- 4) That the approval and no-objection of consultees such as the Design Advisory Committee was based on superceded plans which therefore have no bearing on the extensive and immediate visual impact which will result as soon as the applicant demolishes the vernacular structures mentioned above and starts to uproot the hundreds of trees indicated in the project.
- 5) That the approval will result in intense negative impacts on the an area designated in the Local Plan as a Green space and for recreational purposes. That no substitution of the same or a more extensive green space has been approved as required by law and the Local Plan. This would mean the irreversible loss of an open space without the mitigation envisaged in the Local Plan. This will be permanent and irreversible as there is

no other green area in the same locality which the applicant can allocate to compensate for this loss.

- 6) That if works commence they will do so with the excavation of the a massive site of nearly 50,000 square metres of agricultural land a factor which cannot be reversed and which is expressly prohibited by law. Moreover, the development will immediately impinge on the health, safety and environmental rights of residents and the public– the effects of which will be felt at once and for which there are no effective mitigation measures at all envisaged.
- 7) That the applicant agency has a track record of commencing works without the necessary permits, citing urgency or other constraints. That this effectively circumvents all legal parameters and scrutiny and makes it close to impossible for objectors and appellants to obtain any form of remedy. If buildings are already demolished and agricultural land excavated and trees uprooted, appeals can become expensive exercises in futility. That the applicant agency should not be permitted to exercise untrammelled power unbound by the laws which regulate everybody else.
- 8) That the potential prejudice to the appellants cannot be dismissed by asking them to rely on other authorities or other divisions of the planning authority as fragmentation of responsibilities leads to immediate residents and the wider community always losing out in the end. The precautionary principle should be given priority especially when it comes to the wellbeing of the public whose health, safety, prospect and amenity is constantly being sacrificed comm without a thought for principles of sustainability.
- 9) That during the course of the processing of this application, various breaches of planning laws, policies, sanitary requirements and risks to safety and were ignored. That not suspending the execution of the permit will result in an immediate and far greater prejudice to appellants in comparison to that of the applicants if the permit was not immediately suspended.
- 10) That the decision approving the development lacks certain essential requirements necessitated by law and the principles of natural justice, good administrative behaviour – namely the provision of reasons for the approval. The appellants are already suffering prejudice as their legal rights to appeal are seriously hindered. If the development is allowed to take place before this can be clarified, the appellants will suffer even greater injustice – the hindering and restriction of their right to appeal **and** the development becoming a “*fait accompli*” – with the ensuing destruction of an entire set of vernacular heritage buildings huge swathes of agricultural land which is one of the main tenets of the appeal.

11) That the provisions of Chapter 551 of the Laws of Malta require only that “*the prejudice that would be caused would be disproportionate when compared with the prejudice caused by the staying of the actual execution of the permit.*” The legislator has laid down the possibility for appellants to seek a temporary staying of the execution of the permit, without requesting the appellant to show that irremediable harm will be caused if the execution is not granted. In this, the legislator has distinguished this right of action from that pertaining to the right to request a prohibitory injunction in accordance with Civil Law.

12) Although in the latter cases, the Courts have occasionally held that a prohibitory injunction served to offer protection to a person whose rights would be lost or curtailed **irreparably** without such a warrant. This is not the case with the remedy being availed of under Chapter 551 which only requires a comparison of the potential prejudice caused by the granting of the suspension as opposed to it not being granted. In the present case, appellants underline the fact that the prejudice caused is also irreparable, satisfying this legal criterion for suspension as well.

In view of the above the appellants humbly request this Honourable Tribunal to suspend the execution of the permit under the terms and conditions as it deems fit.

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