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21st October 2019

The Secretary
Environment & Planning Review Tribunal
Saint Francis Ravelin
Floriana.

Sir,

RE: PA/02528/19 – Luke Attard – Tal-Mettulu, Alley off Triq Wied Junu, San Lawrenz, Gozo.

On behalf of applicant Luke Attard, I am hereby filing an appeal against the decision taken by the Planning Authority on the 24th September 2019 and published on the 9th October 2019.

The application was refused on the basis that "the proposed development runs counter to the provisions of policies GZ-RLST-02 and GZ-RLST-3 of the Gozo & Comino Local Plan in view that the proposal has resulted in the creation of a new development, replacing an existing building with an external footprint of less than $50m^2$ and thus considered as uncommitted fresh land, which is not considered as permitted development wtihin Category 3 Rural Settlements".

It is submitted that this is absolutely incorrect both at law and in fact.

In the first place, it has to be pointed out that in terms of paragraph 24 of the RURAL POLICY AND DESIGN GUIDANCE, 2014 (hereinafter RPDG 2014). And in the second place the decision that the existing building had a footprint of less than $50m^2$ is absolutely incorrect.

I will deal with the second reason for the appeal first because the conclusion on this point will affect the decision on the second point.

I am herewith attaching a montage prepared by Perit Alexander Bigeni wherein the footprint of the building as shown on the 1957 aerial photographs/ 1968 survey sheet is shown bordered in blue, and the footprint as shown on the 1978 aerial photographs is shown bordered in red. It is true that in 1957 the building had a footprint of 61sq.m. However by 1978, the footprint had been increased to between 60 – 65sq.m. – in any event definitely more than 50sq.m.

Hence the conclusion on which the Authority based its decision is incorrect even on this purely factual basis.

The legal basis of that decision is also incorrect because it was not taken within the framework of RPDG 2014 which states as follows:

> 24. The policies contained herein supersede any conflicting provisions concerning Categories 1, 2 and 3 rural settlements.

Consequently, the Planning Authority was bound to consider and evaluate this application first and foremost under RPDG 2014, and, only in the event that this application does not qualify under RPDG 2014 refer to the 2006 Local Plan.

This is also evidenced by the fact that during the course of the examination of this application both the Planning Commission and the applicant based their respective examination and submission on the policies and rules contained in RPDG 2014 and not on the 2006 Local Plan.

It was precisely for this reason that the Planning Commission sent two letters of applicant, on the 13th Juna nd the 26th June 2019 requesting him to prove how Paolo Zahra and Annunziata Zahra were connected to the building forming the subject matter of this application. This information was submitted by applicant by virtue of my detailed letter of the 26th August 2019 and the documents attached thereto – to which full reference is hereby being made for the purpose of avoiding tedious repetition.

Furthermore, at the hearing of the 27th August 2019, applicant was again requested to prove that the property further to the south and to the east of the property forming the subject matter of this application did not initially form part of the residential building in question – proof which was promptly submitted by Architect Bigeni prior to the hearing of th 24 September.

The documents submitted by applicant prove beyond any reasonable doubt that the property in question was occupied as a residence by Paolo Zahra as far back as 1933; that at time the house actually belonged to his wife Annunziata Zahra; that Annunziata Zahra was not registered as a voter simply because she was a woman and women did not vote at that time; and that the house was eventually transferred by Annunziata's heirs by virtue of the deed in the records of Not. Micahel Refalo of the 12th May 1989.

Consequently, a correct evaluation of these facts and a correct examination of the policies outlined in RPDG 2014, and specifically Policy 6.2A and Policy 6.3A confirm that this application qualifies for approval:

1: the building is a pre-1978 building – and hence point 1 of Policy 6.2A of RPDG 2014 is satisfied;

2: since the 'legally established use' is residential – point 2 of Policy 6.2A of RPDG 2014 is satisfied because the various subparagraphs of that policy are alternative and not cumulative and the use in question therefore falls under paragraph (a);

3: As explained in point 1 above, the original size of the building before 1992 was already over 50sq.m. and hence this leg is also satisfied.

4: the necessary consultations have been duly carried out and no objections result to have been lodged;
5: obviously there is no warehousing or industrial activity involved; and
6: the surrounding vegetation is not being affected in any way.

Additionally, due consideration should be given to Policy 6.3 of RPDG 2014 which allows extensions to existing buildings provided that:

(1) the building is not of architectural, historical, vernacular or other significance, and/or is not scheduled, - as is the case with the present application;
(2) the proposed extension is of a compatible design and must respect the rural context – no objection has been raised in this respect. Furthermore it should be pointed out that no only is the design compatible with that of the other rural buildings in the immediate vicinity of the site in question; but also the whole hamlet is nowadays dwarfed by the massive development comprising the Kempinsky San Lawrenz Hotel. This can be easily confirmed by an examination of the latest aerial photographs; but if necessary, the applicant is more than willing to invite the Board to hold an on site visit;
(3) the applicant can sufficiently proof that:
a) the property in question has been used as a residence prior to 1992 – this leg is satisfied by the production of the 1933 Electoral Register; **or**
b) the dwelling ... dates back to pre-1978 – again this is proven by the documents that have already been submitted;
(4) the dwelling can be extended up to a maximum floor space of $200m^2$ - ; the application satisfies this condition; and
(5) the scale, massing and design of the extension shall:
a) not visually dominate the existing dwelling; and
b) be acceptable in the wider landscape setting of the site. As already explained an on site inspection will confirm that both these legs are satisfied.

At this point reference is also made to the decision given by the Planning Appeals Board No. 197/199, in the case PA7346/1998. That case refers to a building which forms part of the same hamlet in which the site forming the subject matter of the current application is situated. Originally the Development Control Commission had refused the application on the basis the the policies SET11, SET12, BEN 5 and the provisions of PLP 20. However, in its decision of the 20th June 2008, the Board had turned down the Authority's arguments out of hand and granted approval of the application.

It should be pointed out that at that time, the applicable policies were even more stringent than they are today simply because the Rural Policy & Design Guidance 2014 had not yet come into force. Therefore given that the Appeals Board felt, in that particular case, that there was no justification to refuse the permit being sought by PA 7346/1998, *multo magis* should this present appeal be upheld. Also of particular relevance is the fact that the building forming the subject matter of the PA7346/1998 was not shown on the 1968 survey sheet, on

the basis of which the Development Control Commisison had sought to argue that it could not be proven that the building pre-existed those sheets.

Finally, besides this particular permit, various permits have over the years been issued in respect of various units forming part of the same hamlet. Nowadays the hamlet is anything but an isolated group of buildigs which should be retained in their original status and, even if for argument's sake alone, it could be validly argued that the provisions of the Rural Policy and Design Guidance 2014 do not by themselves alone justify the approval of the current application, approval should be granted on the basis of the current state of affairs in the hamlet in question.

Of particular relevance to our argument is also the decision given by the same Appeal Board in Appell Nru. 2/1994 on the 12th May 1994 wherein the Board noted "għalkemm huwa veru li s-sit inkwistjoni tal-appell hija barra miż-żona permess għall-iżvilupp, jirriżulta wkoll mill-fattispecje ta' dan l-appell li l-ischeme kif inhi llum il-oġurnata hija totalment differenti minn dik kif kienet fl-1989 meta ġew approvati t-Temporary Provisions Scheme. Biżżejjed jissemma l-mina li bena l-istess Gvern ta' Malta kif ukoll l-isptar li se jokkupa ammont konsiderevoli ta' art". If in that case the proposed construction of the Mater Dei Hospital was considered as sufficient ground, in this case there is the actual construction of Kempinski San Lawrenz Hotel which is to be taken in consideration: the mass, size and design of that hotel completely dwarfs the entire hamlet, and therefore the building forming the subject matter of this application is negligible in the whole scheme of things. This is without mentioning the fact that the building has been in existence and in use as a residence since at least 1933.

In view of the foregoing it is being respectfully requested that this Board overturns the decision reached by the Planning Commission on the 24th September 2019 and grants the permit being sought by applicant.

Evidence of the payment of the relative fee is attached to this appeal.

Av. Carmelo Galea