

Environment and Planning Review Tribunal

(Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar)

Sonja Sinclair Stevenson-Lindblad
subsequent to the approval of development permit
PA06489/19 by the Planning Authority

vs

Planning Authority

6th January 2021

Appeal submitted by Sonja Sinclair Stevenson-Lindblad

On behalf of Ms Sonja Sinclair Stevenson-Lindblad of 60 Triq Tat-Trux Għarb Gozo (ID :09952A) we are submitting this appeal relative to the full development permit PA 06489/19 in respect of the demolition of building at 57 Triq tat-Trux corner with Sqaq Numru 8, Ta' Ġajru Għarb Gozo and the construction of five houses with rooftop pools in its stead.

Ms Sonja Sinclair Stevenson-Lindblad is requesting that permit PA 06489/19 be revoked on the basis of:

- a) being incompatible with the provisions of Legal Notice 227 of 2016¹ in force as from 10th June 2016
- b) rights of access to the alley,
- c) applicant not being the owner, and owner not being notified as detailed hereunder.

1) applicant Mr Clayton Pace is not the owner of the site subject of application and it does not result from the documentation made available that the owner has been notified in terms of law.

¹Subsidiary Legislation 552.22 entitled Development Planning (Health and Sanitary) Regulations

The electronic application available on eapps indicates applicant as being Mr Mark Agius² while all documentation is issued in the name of Clayton Pace. This is a case of misrepresentation.

2) Legal Notice 227/16 - Development Planning (Health and Sanitary) Regulations - provides that where the width of a street is less than three meters the overall height of the façade shall not exceed twice³ the width of the said street.

It has been submitted by Ms Sinclair Stevenson-Lindblad in her representation⁴ during the public consultation on application PA 6489/19 that the width of the alley⁵ on the side of the site under consideration is between 2.41 and 2.45 metres. This is confirmed by the various drawings submitted by applicant. This signifies that in terms of the provisions of Legal Notice 227 of 2016 as above-quoted the façade on the alley cannot be higher than 4.90 metres. The approved drawings indicate that the proposed building approved by the Commission will have an external height of 7.13 metres⁶, well above the permissible maximum.

The Commission based its decision on the height of an existing building on the opposite side of the alley. This point is illustrated in the approved drawings by a super-imposition of the different heights and the submission of the elevation of the other existing building in the alley⁷.

The reasoning of the Commission, it is submitted, is incorrect as any exception to the implementation of the above has to be within the parameters established in regulation 4 of the said Legal Notice 227 of 2016 in particular that it shall not be detrimental to neighboring properties⁸.

² Vide public application form document 1j at file PA6489/19

³Sub-regulation (1) of regulation 14 specifically states that: "In streets or open spaces which are three metres wide or less, the overall height of the façade should not exceed twice the width of the street or open space, which width shall be calculated as the clear horizontal distance between the building frontage of the façade and the building frontage of the nearest façade on the opposite side of the street or open space. Height to width ratio does not apply in the case of façades fronting the seafront or land outside the development zone."

⁴ Vide documents 56a and 56b in file PA6489/19

⁵Described as Sqaq Numru 8 Ta' Ġajru in application under consideration

⁶Vide drawings at documents 240b and 240c in file PA 6489/19.

⁷ Vide drawing at document 240c in file PA 6489/19

⁸Sub-regulation (1) of regulation 4 provides that "In particular circumstances the Authority may deviate from the exact definition of these regulations, if there are justified planning and sanitary reasons for this departure. Such an exemption may be granted without detriment to the structure in question and the neighbouring properties, and shall not affect or detract from the liability of the perit or of any other person in respect of the stability or safety of the structure. Any deviations are to be justified."

3) Furthermore, it would appear that an obstacle for the granting of the permission was the fact that the proposed development had apertures and doors opening on a passage abutting the property on the east side. According to the case officer's report "the issue of the public alley has been resolved through doc 141A submitted by the local Council and with reference to the definition of the public road as explained in DC 15"⁹. The DC 15 definition runs like this: Public Road is a road established within the Local Plans or through a Planning Control (PC) application, or any road that is maintained by by the Local Council or the Transport Authority wherein the public has free, unencumbered and unrestrictive access and having a width defined by the Transport Authority regulations."¹⁰

The case officer and the Planning Control Commission seem to have come to the conclusion that the matter of the alleyway was resolved on the strength of a letter/declaration dated the 27th June 2020 signed by Mr David Apap Mayor of Għarb Local Council¹¹. The conclusion both of the case officer and the Commission on the basis of the said letter together with the documents accompanying it are completely wrong both at law as well as with reference to the definition of a public road as per the DC 15 document, as above-quoted, and this for the following reasons:

- a. A declaration by the Mayor of the Għarb Local Council does not grant rights over private property nor deprive private individuals of their exclusive proprietary rights. The declaration¹² states that the Għarb Local Council "irrikonoxxa sqaqien fi Triq it-Trux bħala sqaqien publiċi". Where does the Għarb Local Council, or indeed any Local Council in this country get the right to render a private passageway a public alley? It does not result from the law nor do the Local Councils have any such right. It would require nothing less than a fully fledged Expropriation Order under Act XVII of 2017 formerly Chapter 88 of the Laws of Malta, to render a private passageway a public alleyway. Nothing of the sort has actually happened in this case.
- b. The declaration by the Għarb Mayor refers to Government Notice 511 of the 10th June 2008. That Government Notice only refers to the naming or renaming of streets. The renaming of a street or alleyway does not render that street or alleyway public. Naming a private alleyway can well prove to be an abuse of power. Government Notice 511 is made under the provisions of Section 22 of the Code of Police Laws (Chapter 10 of the Laws of Malta) which verbatim states that:

⁹ Vide final version of the DPAR, document 247a page 3

¹⁰ Development Control Design Policy, Guidance and Standards, 2015 : definition of public road on page 18

¹¹ Document 141a in file PA6489/19

¹² Ibid

(1) No person shall paint, mark, write or affix in any street open to the public any name as that by which such street is to be called, or any name of any town, suburb or village, or any notice or mark similar to that painted or made in accordance with the provisions of the last preceding article without the approval of the Malta Transport Authority, or of the Local Council responsible for the locality in which such street is situated, as the case may be, although such street does not belong to the Government.

(2) The name of any street shall be preserved until the Minister responsible for the Police directs the alteration thereof.

(3) Any order of the Minister responsible for the Police for the alteration of the name of any street or for giving or approving a name to a new street shall be published in the Gazette.¹³

It is clear that the fact that the Minister for Justice and Home Affairs has directed that this specific passageway be named does not change the nature of a private alleyway into a public one. As already stated nothing less than an expropriation order would suffice to render a private passageway into a public one and then against fair compensation.

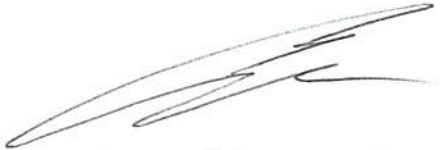
- c. If the declaration of the Mayor of the Għarb Local Council had to make any sense for the purposes of the definition given in DC 15, it should at least have stated that the Local Council is maintaining the said alleyway and that the public had free, unencumbered and unrestrictive access. But it doesn't! And this is simply because the Għarb Local Council does not maintain the said alleyway and the public does not have free, unencumbered and unrestrictive access. Only the appellant and persons owning property at the back of her property has a right of access and no one else.
- d. The appellant can also prove on a balance of probabilities at least (and this is the standard of proof required in this case) that the alleyway in question is a private alley and not a public one.

Appellant reserves the right to bring forward the following persons in witness to the above:

- a) herself,
- b) Mark Agius and Clayton Pace, at different stages indicated as the applicant,
- c) the owner of the site
- d) other persons owning property in the alleyway who have a right of access, whose identity is so far unknown.

¹³ Code of Police Laws, Chapter 10 of the Laws of Malta section 22

In view of the above it is submitted that the decision to approve the application for a development permit as per application PA6489/19 should be revoked.



Carmel Cacopardo

PERIT obo himself and Dr Alfred Grech

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