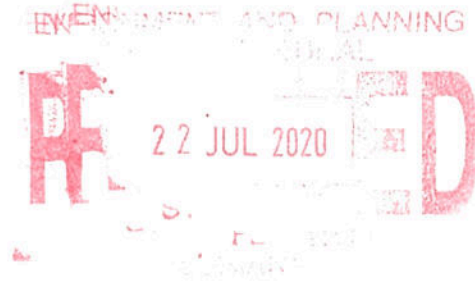


MFF/dem/2443

17<sup>th</sup> July 2020

The Secretary  
Environment and Planning Tribunal  
P O Box 172  
Marsa



Dear Sir,

**Re: PA7637/19 – Site at Triq Tonin Attard, Marsaxlokk**

On behalf of our client, Mr. Michael Angelo Fenech (440647M), we are herewith submitting an appeal against the decision taken by the Planning Authority to refuse the Planning Application PA 7637/19 that proposes the construction of semi-basement garages, two apartments at elevated ground floor plus overlying washroom. This refusal was communicated to our client as per letter dated 10<sup>th</sup> June 2020 (copy of which is enclosed).

The reasons for refusal which were published on 24<sup>th</sup> June 2020 are as follows:

1. *The proposed development does not have a frontage on a public schemed road, and therefore runs counter to the provisions of policy P33 of the Development Control Design Policy, Guidance and Standards 2015 which specifies that internal residential development cannot be considered unless a new public road is established through a Planning Control (PC) application to allow that all new units front such public road.*
2. *The proposed extension of the private road referred to in block plan 126B is much wider than the existing passageway. This implies that the proposed development also comprises the widening of an existing road which can only be considered through the submission of a Planning Control Application as stipulated in legislation Chapter 552 Article 54(2) and SL 552.07(3). In this regard, the proposal does not satisfy the requirements as stipulated in legislation Chapter 552 article 54(2) and SL 552.07(3)*

In this regard, we have to submit as follows:

### 1<sup>st</sup> Reason for Refusal

- It is to be noted that the first reason for refusal for the development under appeal is relatively the same as the reason for refusal in PA 2746/10 . The latter read as follows: *“The proposed development does not have a frontage on a schemed road and fails to comply with the criteria of Policy 3.8 of Development Control Policy and Design Guidance 2007 in terms of design and layout, access; outlook, and provision of open space”* The gist of both reasons are the same – they both revolve around the fact that both respective proposed developments are allegedly not fronting on a public schemed road.

In **Glenn Ace Fenech vs l-Awtorita ta’ l-Ippjanar** App Civ 11/2015, one can find a thorough argumentative discussion on what constitutes a schemed public road and whether proposed developments - which do not have a frontage over such a described road - should be considered as internal development.

It was argued that since there is no definition of what constitutes a public road and since said road is not shown in the Local Plan, then one cannot conclude that the proposed development is automatically viewed upon as an internal development. Therefore refusing the proposed development on the premise that the said development is anything but an internal development is a flawed argument and such reason for refusal holds no ground. In fact it is stated *“Il-fatt illi t-triq ma tkunx tider fil-pjan lokali taghti lok ghal konsiderazzjonijiet ta’ ippjanar ohra fil-kuntest tal-izvilupp propost izda mhux li a priori l-izvilupp jitqies bhala internal development”*. The development under appeal is consequently not an internal development and therefore P33 does not apply to this application.

Furthermore, it was also stated that *“... ikkonkluda ghalhekk li schemed road u public road ghandhom l-istess tifsira fejn ma ghandhomx bzonn ta’ permess ta’ zvilupp ghax gia formanti parti mill-pjan lokali”*. Therefore, it was stated that access has originated from an existing road which is shown in the Local Plan as defined above, as in **Glenn Ace Fenech vs L-Awtorita ta’ L-Ippjanar** App Civ 11/2015, *“jirrizulta illi f’dan l-izvilupp hemm triq minn natura tal-istess access li gia jezisti anki b’effett tal-permess 679/08 u allura l-policy tal-internal development mhix aktar applikabbli”*. Using the same argument one can conclude that the site for the development under appeal is accessible as a consequence of approved development permits PA 679/08 and PA2746/10.

The Court decision clearly states that in PA 2746/10 the development should be considered as having an outlook on a public road and that policies dealing with such a development should be applicable. Such a conclusion was drawn,

since the Court of Appeal made a distinction between a public road and a private road. It is stated that there is no definition of what a schemed road is in either planning policies or the Local Plan. The term ‘schemed road’ can be accurately applied for street/roads indicated in the Temporary Provision Schemes but not for street/roads indicated in the Local Plan as there is no such definition in the Local Plan. Furthermore, it was stated *“Fi kliem iehor, fil-kuntest ta’ ippjanar, triq pubblika hija dik it-triq ippjanata jew progettat, ossia ‘scheme road’ li m’ghandiex bzonn ta permess tal-izvilupp, kuntrarju ghal triq private li ma tohorgx minn ebda pjan regolatur jew pjan lokali u ghaldaqstant tehtieg permess tal-izvilupp.”*

In view of the fact that the development under appeal has identical physical and planning considerations, then the decision for **Glenn Ace Fenech vs L-Awtorita ta’ I-Ippjanar** App Civ 11/2015 holds for the development under appeal. Therefore, in view of the above arguments, the first reason for refusal holds no ground. In approving PA 679/08 and PA2746/10, and not approving the development under appeal, the Planning Authority is discriminating against our client since all three developments are very similar to each other.

#### 2<sup>nd</sup> Reason for Refusal

- Interestingly, the second reason for refusal refers to the ‘public schemed road’ - as mentioned in the first reason for refusal and in the arguments above - as an ‘*existing road*’, and is thus recognizing it as a road and not as a private access and therefore, the two reasons for refusal are in conflict with each other.
- It is to be noted that contrary to what is being said in the second reason for refusal, no road widening is being proposed. Drawing 126B clearly indicates the extent of the public road which had been approved as per PA679/08 and PA2746/10, which outer most delineation is shown by a dotted purple line; the green hatching is showing an existing trail of landscaping which is within the approved public road. Therefore, we reiterate that the development under appeal proposes no road widening.

#### Other considerations

- PC56/09 which is quoted in the DPAR has no bearing on the development under appeal.

Applicant reserves the right to make further written and oral submissions during the course of the hearing of this appeal.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'Ian Cutajar', written in a cursive style.

**Ian Cutajar A&CE**  
FALZON & CUTAJAR  
Architects and Civil Engineers