

DR. JOSHUA GRECH

B.A., LL.D., Adv. Trib. Eccl. Melit., MJuris

Planning Reference Number: PA/00235/20

Location: Dar ix-Xemx, Triq Wied Bingemma,

Nadur

Description:

To sanction variations from previous approved permit PA 5870/07, to extend ground floor and first floor and carry out minor internal alterations



Appeal Application of Esther Sacco of Flat 5, Sacco Court, Triq Ghar Qawqla, Marsalforn, Zebbug, Gozo

This appeal is being lodged on behalf of Ms Esther Sacco, who is hereby appealing from the Decision published on the 3rd Feb. 2021 taken by the Planning Commission with regards to the Planning Application number PA/00235/20 (copy attached Doc ES13).

Ms Sacco is a registered objector on this application, and is appealing from the said decision on the following grounds:-

1. The sole access to the applicant's site from Triq Wied Bingemma is over a private open space, property of the appellant (See attached Land Registry Document marked Dok ES1e) . It was pointed out to the Planning Commission (PA) that the applicant's premises are actually being used as a Bed & Breakfast, called "A Prescindere". (Doks 11a, 11b) The said open space is therefore serving as the sole access both to the applicant's commercial premises, and to the adjacent Residential property called DAR PETRA, belonging to third parties. This is grossly in contravention of Policy P12 of DC 2015, which states that:-

"The Authority will not normally grant permission in buildings also occupied by dwellings, where a separate access cannot be provided. This is due to the potential residential amenity issues that would arise with a common access, in terms of disturbance, noise and loss of security."

Please note that the applicant's site Does Not have a frontage on an approved or schemed Road, and apparently no official alignment or level was ever requested or set out on site according to Condition 1h of Permit PA/235/20. Therefore in view of the various illegalities existing on site, which are not being sanctioned by the application PA/00235/20, the permit issued should be revoked.

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2. The plans approved (Items 82b, 178a) on PA/00235/20 do not show exactly what was actually approved on file PA/5870/07 (Docs ES1a, ES1b). The RED line drawn on the approved Plan 102g shows the level of the private access AS BUILT by the applicants, when it should have followed the original site level (BLUE line). This can very easily be ascertained from the attached photos Docs ES1f, ES1g, and from an inspection on site. The plans submitted and approved (Items 82b, 178a) on PA/235/20 do not indicate, in conventional colours, any form of sanctioning of the variations from the plans approved on PA/5870/07 (Items 102b, 102g)
3. According to the contract dated 17/05/2011 (Doc ES9) between the Planning Authority and the applicants on PA/5870/07:-
 - a. Condition 6: The site shall remain scheduled under the same parameters of original scheduling.
".....In fact Owners hereby cede absolutely any attempt to de-schedule the property in the future.
The Owners accept that they have no right to avail themselves of any extension to the height limitation of the property."

The Planning Commission has approved the erection of additional works at Ground and First Floor Level (Items 82b, 178a). This also goes against the Technical Report (Docs ES6a, ES6b, ES6c) presented by Norbert Gatt in the file PA/5870/07.

Please note that the original flight of stone steps in front of the building (Doc ES7a, ES7b) has been taken down and replaced in such a manner that its length and width were increased (Doc ES7c), a decorative stone balustrade was added on each side, and an additional step was inserted. This does not conform to DC2015 Policy P11:- "It would not be appropriate to remove original stone steps to enable better access"

As you can see from the photomontage Doc ES10c, the proposed and approved works in the Car Port area shall practically obliterate from view whatever has been left of the South-West Elevation (Doc ES10b, Doc ES10a). Please note that this building had been erected in the traditional manner, with large open arches facing the Sun, both at Ground Floor and at Semi-basement Level. One can hardly describe the approved additions and alterations as Traditional features. According to DC2015 Policy G31:- "Approval would not be given where original architectural features that are worthy of preservation are to be removed or concealed".

4. According to condition number 1j of Permit PA/235/20, a rain water reservoir should have been constructed on the premises to store rain water (See Doc ES2). As you can see from the attached photos Doc ES3a and ES3b rainwater pipes have been affixed to the building facades, leading the roof water to flow out directly onto the appellant's private access.
5. According to condition 1l of Permit PA/235/20 apertures and gates shall not open outwards onto the road. As you can see from the attached photograph Doc ES4, the Wrought Iron Gate at the Car-Port opens onto the private access.

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5. According to Condition 1*m* planters, boxes for services the stone balustrade and steps, and any other projection exceeding the alignment have to be removed(Doc ES5)
6. According to Policy P38 of DC2015 no High Level Windows can be formed.
7. According to Condition 4*b* Since the development concerns a change of use to a place of work (9 guest Bedrooms B & B), the applicant shall obtain a Perit 's declaration that the building conforms to the requirements of LN 44 of 2002. The applicant should have obtained a Perit's declaration that the necessary requirements arising out of LN44, of 2002 have been included in the plans and drawings. Kindly consider the fact that there is only one entrance/Exit at Ground Floor level which has to provide emergency access at all times to nine Guest Bedrooms scattered about 4 floors.
8. Condition D of the permit:

Since the applicant did not specify that the premises are to be used for commercial purposes the plans submitted for approval were not vetted by the relevant authorities such as the Fire Department, the CRPD, and all other authorities concerned.

9. Since there is legal action by the appellant is requesting that the applicant shall break up and reform the private access as originally approved on PA/5870/07, the applicant shall eventually have to form service trenches, poles, cables and piping in order to reconnect his services to the main sewer, electricity cables, and water mains existing in Triq Wied Bingemma. These works are not covered by the permit PA/235/20.
10. In the declaration of ownership, the applicant stated that he is NOT THE OWNER of the entire site (or part thereof). Although he was obliged to notify the owner/s he has only notified a certain Gregory Borg of his intention as apply. Mr Gregory Borg and any other owner had to grant his/their consent to such a proposal by means of a Registered letter. This letter should have been presented by the applicant. The applicant did not inform the appellant of his intention to apply using her private property as access, and for the right and servitude of the formation of additional apertures. The applicant has not presented any legal documents to support his claim to ownership of any kind.
11. The applicant is using the premises for a non-residential/commercial use (9 Bedroomed Guest House) without any permission from the Environment and Resources Authority. Therefore he does not possess the necessary operational permit or registration.
12. On the plans approved in PA/5870/07 (Item 102b) a Car-port for the parking of one private car had been provided and approved. The Plans approved on PA/235/20 show no on-site parking provision at all for the customers using the 9 Guest Bedrooms, and no parking/access to service vehicles. This is in contravention of Policy Annex 1, of DC 2015 (Dok ES12).
13. The appellant has filed a Complaint number CM/193/21 (Doc ES8) and the process is still ongoing.

In view of the foregoing you are kindly requested to withdraw the Permit issued Number PA/00235/20.

The Appellant reserves the right to make further written and verbal representations as and when the need arises, and to be present at every Hearing/ Site Inspection in connection with this appeal.

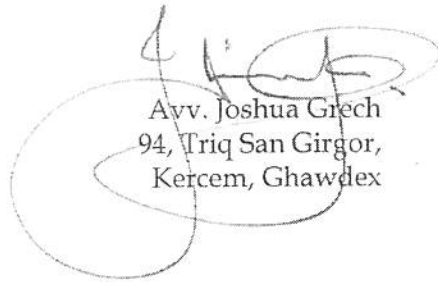
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Attached please find a copy of receipt of payment of appeal.



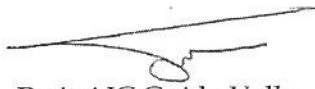
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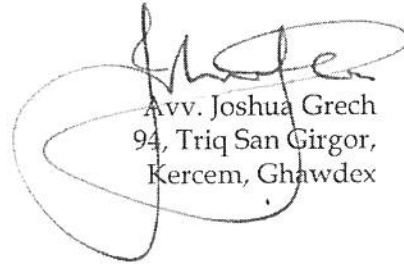
Avv. Joshua Grech
94, Triq San Girgor,
Kercem, Ghawdex

List of witnesses

1. Representative of the Superintendence for Cultural Heritage;
2. Norbert Gatt;
3. Mark Cini;
4. Enforcement Officers Louise Cremona and Jonathan Attard;
5. Representative of the Environment and Resources Authority;
6. Representative of Water Services Corporation
7. Other witnesses are being reserved.



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