

5th March 2021

**Tribunal ta' Revizjoni
tal-Ambjent u l-Ippjanar
Floriana**



Nru. ta' l-Applikazzjoni: PA/6260/20

Lokazzjoni: 58, ix-Xatt, Sliema

Proposta: Sanction signage on facade and propose an increase of signage on either side of entrance door. To sanction existing changes from original permit where the back yard had been roofed over, as well as internal walls were built differently from proposal in original permit. Proposal for the change of use from Cass 4B to Class 4C and proposed alterations to interior to enlarge the bathroom size and install a beverage service counter.

Ref. Taghna:

Ref. Tribunal:

Alex Gollcher et.

vs

L-Awtorita' ta' l-Ippjanar u Anthony Stivala

The Appellant Alex Gollcher jointly with all the representees who have submitted their representation 77a and 80a respectfully submits:-

- 1) The appellants are owners of properties that are either within the block of the property in question or in the immediate vicinity of same.

- II) Applicant submitted this application, and which application was approved by the Commission on the basis of a case officer report submitted to it. The decision was published on the 9th February 2021.

With respect, the appellants feel aggrieved by the decision of the Authority and are hereby submitting this appeal.

Together with the application for appeal, appellants submit:-

- Proof of payment
- Decision notice

The appellants submit;

1. The site in question is in an area that is designated as a residential area, where the proposed use is not acceptable.
2. The area in question does not have any similar uses in its immediate vicinity, and except for the catering establishment which serves as an amenity to the hotel nearby, there are no similar uses in the vicinity.
3. In fact, the stretch of properties up until the corner with Triq Manwel Dimech does not have any such uses. The Case officer report refers to document 79A and concludes that “The area is heavily committed with similar commercial uses, including Class 4C establishments approved by virtue of PA 7959/17, PA 2413/18 and Class 4D establishments approved by virtue of PA 143/17, PA 2249/13, PA 6630/18 and PA 1137/17. Therefore, the flexibility policy proviso (g) can be adopted in this case and the change of use may be considered accordingly”.
4. The said paragraph (g) reads:

(g) Properties in areas which are none of the above but lie within the Development Zone or other areas designated for development in an approved Subsidiary Plan and are already occupied by a considerable level of legitimate commitment whose

nature may not necessarily be in line with local plan policies or on a site which is a legitimately established business outlet.

.....

The following objectives shall also be observed in any development permit consideration for justifiable departures from the approved Subsidiary Plan policies;.....

and iii) The proposed development would not create an environment which goes diametrically against the thrust of the local plan policy.

Particular attention would need to be paid to the traffic and parking carrying capacity of the surrounding transportation network, neighbour compatibility issues as well as surrounding existing and planned uses; and

iv) Proposals will be strongly encouraged to cater for all its parking as well as loading/unloading requirements on site unless heritage conservation considerations drastically curtail this possibility;

v) Measures are taken to satisfactorily address infrastructural service provision shortcomings identified to result from the implementation of the proposal;

5. It is abundantly clear that there was no assessment as to the applicable criteria of paragraph (g) of the said policy.

6. Furthermore, the said report was also factually misleading since the appellants made it clear that there is no overwhelming commitment of similar uses from the Sliema Hotel further to Sliema. The reference to PA 7659/17 was misleading since the said permit was issued but the property was reverted to a Class 4B use. Hence the applicable permit is that of a 4B and not of a 4C. The reference to PA 6140/16 referable to the Sliema Hotel is likewise misleading since this gives the impression that the hotel use was approved in 2016. The Hotel existed prior to 1997 hence prior to the Local Plan and hence the use existed even at a time when the local plan was not yet in force. Furthermore the use of a hotel can hardly justify this proposal when the appellants correctly noted that the adjacent hotel use further mitigates against this proposal due to the congestion already resultant from the said hotel. The

reference to PA 766/19 is likewise incorrect and misleading since the site in question lies in a Town Centre where the Class 4D use approved is an acceptable use.

7. As explained, the proposed development is also incompatible with the hotel use nearby since it will take up a further parking space which will render the loading and unloading operations of the said hotel even more cumbersome and problematic for the neighbours.
8. The same can be said on the use of the garage of the property next door to the proposed development since the said extension of tables and chairs outside of the property will render the said use difficult and dangerous.
9. A similar application with similar circumstances was refused and confirmed by the Court of Appeal in the case Planet Court Association vs. Awtorita (appeal 32/17 decided 28th February 2018) re PA 4046/15.

In the said decision, the Court held:

It-Tribunal qies illi l-Awtorita applikat b'mod superficjali l-objettivi imsemmija numerati (i) sa (vi) fl-istess flexibility policy. Hu tenna li s-sit jinsab f'zona residenzjali kif jghid il-pjan lokali ghalkemm jidentifika z-zona ghal zvilupp ta' lukandi kif regolat bil-policy NHSJ 15 liema policy pero ma tapplikax fil-fehma tat-Tribunal ghax l-izvilupp in kwistjoni jinsab fil-pjan terran ta' appartamenti residenzjali ezistenti (sottolinear tal-Qorti). It-Tribunal imbaggad ghadha biex ippuntwalizza li l-pjan lokali fil-paragrafu 10.2.6 ghalkemm iqis il-lokalita bhala wahda turistika li jikkreja piz fuq ir-residenti pero hemm diversi policies fosthom NHHO 01 (residential areas) u NHHO 02 (residential priority areas) fost ohrajn li jikkontrollaw zvilupp li jqieghed piz ingustifikat fuq ir-residenti.

It-Tribunal meta qies il-bilanc li kellu jinholoq bejn l-izvilupp turistiku u z-zona residenzjali fl-istess lok ghamel access u wasal ghal konkluzjoni fejn ma qabilx mal-Awtorita li l-commitments massicci ta' zvilupp turistiku fiz-zona huma tant

vicin tal-izvilupp in kwistjoni li jiggustifikaw l-uzu tal-Flexibility Policy paragrafu (g) f'dan il-kaz. Qies li l-izvilupp turistiku magguri jinsab bejn 150 u 200 metru boghod ghajr ghal zewg stabbilimenti simili fil-vicinanza u fil-fehma tat-Tribunal ma kienx jikkostitwixxi 'considerable level of legitimate commitment' kif irid il-paragrafu 'g' tal-Flexibility Policy

On the basis of the above, at the appellants request that the Tribunal whilst accpeting the appeal of the appellants, annuls the decision taken by the Authority and issues the relative refusal notice.



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Valletta

Witnesses:

Appellant, its' consultants, and consultees of the Authority to testify on the merits of the case.