



23rd March 2021

**The Environment and Planning Review Tribunal**

*Nru. ta' l-Aplikazzjoni:* RG 4109/18

*Lokazzjoni:* Regent Park Towers BOV Office Triq Borg Olivier, San Giljan

*Proposta:* To Regularise as built

*Ref. Taghna:*

*Ref. Tribunal:*

**Perit Daniel Grima u Ibrahim Abd El Halim**

**vs**

**L-Awtorita' ta' l-Ippjanar u Raymond Saliba**

The appellant respectfully submits:-

- I) The applicant made the submission of this application in 2018.
- II) This application was approved by the Commission.
- III) The appellant made a request under the provisions of Article 80 of Chapter 552 of the Laws of Malta on the 23<sup>rd</sup> October 2019, requesting the revocation of the said permit.
- IV) The Planning Board discussed the said request and refused the request through a decision taken on the 25<sup>th</sup> February 2021.
- V) The appellants feel aggrieved by the said decision and are hereby submitting this Appel.

Together with this appeal, the appellant is submitting:-

- o Receipt of Payment:

The appellant respectfully submits the following:

1.1 The Authority wrongly applied the provisions of the law when determining the application under the provisions of Article 80 of Chapter 552 of the Laws of Malta.

1.2 It is clear that the applicant, on the basis of the provisions of Regulation 4(5) of SL 552.26:

*(5) The development specified in these regulations can be regularised if:*

*(a) in the opinion of the Authority, the development does not constitute an injury to amenity; **and***

*(b) .....*

*(c) the relative use falls within any of the uses defined in classes 1, 4A or 4B of the Development Planning (UseClasses) Order provided that documentary proof is submitted showing that the uses defined in Classes 4A or 4B have subsisted continuously for three consecutive years immediately prior to the coming into force of these regulations;*

1.3 It is clear that the appellant did not and could not prove that the said Class 4A was in force and in use 3 years prior to the coming into force of the said Regulations.

1.4 The same Board was wrong when claiming that a Class 4A is not an injury to amenity and hence this requirement does not exist. Whereas according to regulation 2, a Class 4A is not an injury to amenity, the same regulations are clear in Regulation 4(5) in requesting proof of such use for 3 years prior to the coming into force of said regulations.

1.5 It is thus clear that either the Authority was lead to the belief that the said use was in place for the said 3 year period, or else, the same Authority was manifestly wrong in its application of the law when approving a regularization of such a sort without such proof.

1.6 The same principle applies to the declaration of ownership. The appellant never claimed that the said plans did not show the common areas. What the appellant claimed was that the applicant claimed ownership title on the whole

application, when the same applicant was neither the owner nor a part owner of any of the common areas.

- 1.7 The applicant had to declare this and such a declaration would then have brought into effect the further requirements attached to it.
- 1.8 It is quite clear, even further to jurisprudence, that the Authority, when faced with such a claim, should at least on a prima facie basis assess the claim, and not simply ignore it.
- 1.9 This declaration of ownership has a further importance in this case since what has been regularized are door openings and entrances onto common areas not owned by the applicant, and hence, such a matter does have a material bearing on the determination of same.

In view of the above, and further submissions that the appellant reserves to make, the appellant requests the Tribunal to revoke the decision of the Planning Board to refuse the invocation of Article 80, and consequently order the Authority to annul the said permit under the authority of Article 80 of Chapter 552 of the Laws of Malta, and this under those terms and conditions that the Tribunal may deem appropriate.

With Respect

A handwritten signature in blue ink, appearing to read 'Av. Ian J. Stafrace', written over a light blue horizontal line.

**Av. Ian J. Stafrace**

**Witnesses:**

1. Appellants, and consultants and consultees and officers of the Authority to confirm the facts.



**Av. Ian J. Stafrace**  
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**Valletta**