

The Planning Board
Planning Authority
St Francis Ravelin, Floriana FRN 1230
Malta



17th February 2021

Dear Sirs,

Application filed by Mr. Daren Farrugia, holder of identity card number 354274(M) from the granting of Full Development Permission re. PA/9471/19.

Location of Development: Site at 76, Arenia, Triq il-Wiehed u Tletin ta Marzu, Gharghur

Applicant: Mr. Christian Fenech

Architect: Perit Nadia Curmi

We write on behalf of Mr. Daren Farrugia, holder of ID Card. No. 354274(M) (hereinafter the "Complainant"), in order to submit a request for the revocation of planning permission granted in respect of the application in caption (the "Application"). The Application was approved by virtue of a decision dated 23rd June, 2020 and subsequently published on the 5th August, 2020 (the "Development Permission"). This request is being tendered in virtue of Article 80 of Chapter 552 of the Laws of Malta.

It is, for all intents and purposes, being pointed out that the Complainant has separately filed an appeal from the Development Permission which bears reference number PAB/00319/20.

1.0 Preliminary

The application in caption, submitted on the 28th of October, 2019, proposes the construction of two additional floors and one recessed floor plus minor internal alterations (including the construction of a lift-shaft and demolition of washroom at roof level). For clarity's sake, it is noted that said construction is being contemplated in the airspace which overlies Complainant's residence, with the latter occupying the total footprint of the first floor.

At the outset, and for the purpose of providing the context of this request, Complainant explains that the site in question presently consists of two stories, with the top-most level (at first floor) belonging to Complainant. This floor overlies the ground floor which houses several garages having a separate entrance and belonging to third-parties.

The airspace overlying Complainant's property was originally also owned by Complainant together with Cynthia Polidano (ID no. 31374M) up until their consensual separation. Consequently, in virtue of a deed which gave effect to the said separation, Mrs. Polidano acquired full ownership of the airspace and was subsequently granted a right of access only to said airspace by Complainant through a part of his property at first floor. On the other hand, Complainant retained full ownership of the entire maisonette at first floor. In fact, in order to ensure Mrs. Polidano had free and direct access to the airspace overlying Complainant's property, the latter constructed a wall in order to reduce the original size of Complainant's living-room and consequently widen what would ultimately serve an area through which both parties could access their respective properties via a flight of stairs. That way, Mrs. Polidano effectively acquired a right of passage through Complainant's property. Even so, no title over Complainant's property at first-floor level was ever transferred to Mrs. Polidano, on behalf of whom the applicant has submitted the planning application in question.

In light of the above, Complainants' main bone of contention, as also referred to in separate appeal proceedings which have been filed before the Environment and Planning Review Tribunal (PAB/00319/20), is rooted in the fact that the plans which were submitted by applicant (and subsequently approved by the Planning Board) refer to structural changes which are being contemplated to an area which is not applicant's property, but rather forms an integral part of Complainant's residence, since the latter holds full ownership of the first-floor maisonette in its entirety. Indeed, Complainant's ownership of the first-floor of the block is reflected unequivocally in the aforementioned contract which was signed between the parties (a copy of which is attached herewith and marked as **Doc. DF1**) and this evidences that the applicant's declaration of ownership is incorrect.

This effectively implies that applicant's ownership declaration is incorrect and that Complainant was, as a result, not duly informed of, nor did he consent to, the submission of the application in question which contemplates structural modifications to Complainant's own property.

Notwithstanding the above, the Planning Board approved applicant's proposal, as described in the relative planning application, on the 23rd June, 2020 - with the relative publication date

being the 5th August, 2020 (a copy of the relative document is attached herewith and marked as Dok. DF2) and, in doing so, failed to appropriately consider Complainant's well-founded arguments.

2.0 Grounds for Complainant's Request for Revocation

Further to the above, Complainant refers to his objection dated the 13th January, 2020 wherein the Planning Board's attention was *inter alia* drawn to the fact that the plans/drawings as submitted by applicant indicate that a wall, as well as the area at first-floor level wherein the stairwell was constructed, which forms part of Complainant's property, will be altered/modified as part of applicant's attempt to effect structural alterations with a view to accommodating a lift/lift-shaft. Said wall/s, as featured in the attached drawing (see Doc. DF3 attached herewith) which was submitted by applicant (ref. Doc. 229a) evidently bounds both Complainant's living room and hallway, as well as the area of the stairwell which is owned by Complainant himself.

As already stated, this implies that applicant's plans refer to works which are to be carried out on Complainant's property. This, coupled with the misleading declaration of ownership submitted by the applicant (Doc. DF4), was intended to give the Authority the misguided impression that the applicant was the owner of property which is, in actual fact, fully owned by the Complainant.

Conclusively, and in light of what has already been stated above, it is humbly argued that (i) the plans as submitted by applicant, and (ii) the applicant's declaration of ownership, are not reflective of the relative factual circumstances relating to the property at first-floor level and that this therefore constitutes a case of 'fraud' as contemplated under Article 80(1)(a) of Chapter 552 of the Laws of Malta, and/or the provision of incorrect information on the applicant's part, as also contemplated under Article 80(1)(b) of said law.

3.0 Request

Accordingly, and whilst reserving the right to make further submissions and present evidence in the course of these proceedings, Complainant is hereby formally requesting that the Authority formally revoke the Development Permission granted in relation to PA/2757/17 on the 23rd June, 2020 (and published on the 5th of August, 2020) on the grounds that the application contains erroneous declarations/information which do not reflect the situation on site and/or that this has been done fraudulently and in an attempt to mislead the Planning

Authority, and this in virtue of Article 80(1)(a) and/or 80(1)(b) of Chapter 552 of the Laws of Malta, as the Planning Authority deems fit.



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Appendix - List of Witnesses

In line with the requirements of Article 17 of Chapter 551 of the Laws of Malta, applicant reserves the right to summon the following witnesses:

1. Complainant to testify regarding the proposed development and the arguments set out in this appeal, as well as any other facts which may be of relevance to these proceedings;
2. Architect/s of the Complainant and any other person, as may be necessary, to testify on the facts mentioned herein, including but not limited to any drawings submitted by the applicant and any related ancillary matters regarding ownership of the property in question;
3. Planning Authority representatives and statutory external consultees, to testify about proceedings before the Planning Commission and to exhibit any files and provide any information which may be necessary;
4. Applicant and applicant's architect/s, as well as any other witnesses as may be called by Applicant to testify in these proceedings
5. Ms. Cynthia Polidano