

THAKE DESIRA

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17 February 2022

Environment and Planning Review Tribunal
 Block B
 St. Francis Ditch
 Floriana.



RE: PA/05333/21
 10 Id-Dwejra Private Road in Triq Frederick Borg Iklin
 Demolition of existing fully detached bungalow (inc. basement rooms, garage and ground floor accommodation) and construction of new bungalow (including pool at basement level)

We write on behalf of Mr Peter Michael Darley (8 Triq Carmelo Pace Iklin) and are directed to lodge his appeal against the development permit in caption which was granted by the Planning Authority (the "Authority") on the 18 January 2022.

The grounds for this appeal are the following:

1. As a preliminary issue, the appellant wishes to raise the nullity of the proceedings leading to the grant of the captioned permit. Appellant had by notice dated 5 January 2022, received a communication from the Authority, advising that *"this application shall be decided by the Development Commission at the meeting to be held on 18 January 2022, which shall take place online only and you will receive an email with a link to join the WebMeeting when the item is due to be discussed"* (Document 'A'). On the date of the meeting, appellant and his legal counsel received notice of the link to join the meeting at approximately 8.10a.m. However, both the appellant and his legal counsel experienced serious difficulties to join the webmeeting and notice of this was immediately addressed to enquiries@pa.org.mt at 9.52a.m. as well as by telephone, with a view to postponing the hearing of this particular item on the meeting's agenda until this difficulty was satisfactorily resolved and appellant and his counsel could properly attend the meeting and make their submissions thereat (Document 'B'). This notwithstanding, the proceedings continued in the absence of appellant's counsel and also of appellant, who was himself also experiencing intermittent interferences and was unable to follow the proceedings, apart from the fact that such proceedings were, at times, being held in the Maltese language (which appellant does not regrettably understand), notwithstanding that during the previous adjournment, the Development Commission had acceded to appellant's counsel's request that proceedings are held in the English language.

In the light of the above, appellant humbly submits that such proceedings breached the appellant's right to a fair hearing of the proceedings leading to the grant of the development in caption.

2. Without prejudice to the aforesaid, appellant firmly contends that applicants made a false declaration when stating that they are the owners of the entire site of their proposed development. For purposes of clarity, it is to be explained that applicants' site lies directly opposite that of appellant, separated by a private lane. The original plan of the development for the relevant sites dated 25 January 1966 (attached by appellant to his submissions to the Authority) reveal that applicants' site area (therein indicated as plot 11) totals 257

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square canes, equivalent to 1128.5 square metres, which measurement includes an area destined for the private lane measuring 140.5 square metres. The same plan carries a superficial area of appellant's site (therein indicated as plot 10) of 270 square canes, equivalent to 1185.6 square metres.

It is also to be emphasised that, due to being surrounded on all sides by other properties and the private lane, the footprint area of the applicants' site could not have changed since 1966 – yet in applicants' plan submitted with their application, they falsely declare to be the sole and absolute owners of a portion of land measuring a total of 1190 square metres – which overstates the applicants' site area by approximately 61.5 square metres (if one had to also consider the width of the private lane as forming an integral part of the applicants' property).

In effect, when examining the applicants' submitted plan closely, it resulted to appellant that the over-stated area includes a planter with mature trees that is part of appellant's property footprint and which applicants were proposing to remove and develop as part of their site. In his submissions to the Authority, the appellant submitted documentary evidence to this effect, which was totally disregarded!!

3. As a consequence of the development permit in contestation, applicants have been granted the right to construct a gate across the private road which forms the entrance to their property but also to appellant's garage. The proposed gate footprint will consequently not only extend into the footprint of appellant's property but also obstruct the entrance to appellant's garage, apart from impeding appellant's right to gain access to his planter, which adjoins the applicants' property. This matter was also sufficiently documented in appellant's submissions to the Authority but, once again, totally disregarded!!
4. Intrinsically linked with the above grievances, it must also be stated that the Authority was made well aware that the above legal disputes existed between applicants and appellants.

In the course of the previous hearing of the relevant development application, appellant's counsel also made reference to the judgement delivered by the Court of Appeal (Inferior Jurisdiction) on the 17 November 2021 in the names *Natalino u Josette konjugi Agius vs L-Awtorita tal-Ippjanar (gia l-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar) u l-kjamat in kawza Carmel Farrugia* wherein the Court observed that:

"Fl-ewwel lok la darba l-appellanti urew li kien hemm kawza pendenti bejn il-partijiet fuq parti mill-proprjeta mertu tal-kontestazzjoni ta' zvilupp, liema kawza ghadha pendenti, kellu jitqies jekk tali kawza setghetx skont l-ezitu taghha tinfluixxi fuq is-sustanza tal-izvilupp? Ir-risposta hi fil-pozittiv billi ezitu favorevoli ghall-appellanti ifisser li l-kejl ta' 43 metru kwadru ghal parti allegatament kodiviza, ma setghetx tittiehed in konsiderazzjoni biex jigi determinat l-izvilupp permissibbli fiz-zona. Jekk it-Tribunal strah fuq dikjarazzjoni tal-applikant biss meta sqarr li kwistjonijiet civili ma jidholx fihom allura saret kontradizzjoni bejn dak li gie mistqarr u dak li sehha fil-fatt. Dan kien iwassal lit-Tribunal biex iqis il-konsegwenza legali li ma jissoprasedix f'kaz bhal dan."

Even Article 72(2) of the Development Planning Act places the onus on the Authority, in its determination upon an application for development permission and notwithstanding that a development permit is always issued saving third party rights, to give due regard to:

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*(d) any other material consideration, including surrounding legal commitments, environmental, aesthetic and sanitary considerations, which the Planning Board may deem relevant; and
(e) representations made in response to the publication of the development proposal.*

It is appellant's view that, in its determination of the application in question, the Authority did not give due regard to the material considerations presented by the appellant in support of his representations.

Appellant consequently submits that, when considering appellant's submission that the applicants were making a false declaration regarding the extent of their property, coupled with the grievance that the proposed development would impede the appellant from gaining access to his garage, and based on the clear guidelines provided in the above court judgement as well as legal provisions hereabove cited, the Authority should never have proceeded to grant the captioned development without carrying out a proper assessment of the applicants' proposals vis-à-vis appellant's proprietary rights.

For all the above reasons, the appellant, whilst reserving the right to submit evidence and further documentation in support of this appeal, respectfully requests that the Environment and Planning Review Tribunal upholds this appeal and revoked the full development permit in caption.



NORVAL DESIRA LL.D.