

ENVIRONMENT AND PLANNING REVIEW TRIBUNAL



Case Ref: PA/03893/20

Application type: Full development permission

Applicant: Mr Andre' Grech

Architect: Perit Deborah Busuttil

Proposal: To demolish existing wall, to construct semi-detached house with reservoir and swimming pool at basement, ground and first floor level

Location: Site at, Alley in, Triq Dun Pawl Micallef, Rabat (Gozo)

Appellants: Clemia Zammit

THIRD PARTY APPEAL

Whereas the appellant humbly submits, and premises as follows:

The following document is an appeal from the Planning Commission's decision to approve this application, which decision was published in the Government Gazette on the 27th January 2022.

The appellant is a third-party registered objector and interested party for all intents and purposes at law.

The appellant feels aggrieved by the decision referred to above, and by means of this application is requesting this Tribunal to revoke the Planning Commission's decision on the development permission referred to.

GROUND OF APPEAL:

1. Failure to adhere to several provisions of DC15 through approval of development on private road resulting in internal residential development and creation of permanent blank party walls – In breach of P27, P42, G2, P33
2. Failure to ensure protection of site character and amenity, detrimental impact on characteristic landscape and green open spaces – In breach of SPED UO3.7, In breach of Article 52 of CHP 552

1. Failure to adhere to several provisions of DC15 through approval of development on private road resulting in the creation of permanent blank party walls – In breach of P27, P42, G2

The approved development would be the only development having frontage from the alley in question. Due to this, the approved development would have a far greater depth than the adjacent properties having frontage on Triq id-Dawwara which have already been developed to the full permissible depth.

This means that the 4-storey high east-facing party wall that runs along the full depth of the approved dwelling will never be concealed by any form of development. This will result in the creation of permanent blank party walls scarring the immediate and larger context of the site due to its high visibility being at the edge of the development zone as well as facing the Urban Conservation Area. The approved volume will furthermore severely impinge on the amenity and character of this locality as the permanently protruding mass will extend beyond the development edge of all properties facing the rural area, completely wrecking the existing continuity.

The Planning Commission failed to adequately consider these issues and in doing so proceeded to approve the development in breach of the following DC15 policies.

G2 – Visual Impact of Development

The Planning Commission approved a protruding mass that fails to respect and take any consideration of the existing context. It will unquestionably impinge on long to short range views towards this prominent site. This is in breach of G2.

P27 – Depth of Footprint

As explained above, the development will extend well beyond the adjacent committed depths and as such will result in the creation of blank party walls. The development will also result in the ruin and loss of the characteristic back gardens and open spaces through the construction of this protruding mass. It is being maintained that due to this, the application was approved in breach of P27 under which policy;

Lesser depths may be required where the building, in the opinion of the Authority, will otherwise compromise the integrity of the green enclaves and/or gardens.

P42 – Side & Back Elevations

The Planning Commission's complete failure to consider the impact of the side elevation on the adjacent dwellings, rural/urban setting and the nearby UCA is furthermore in breach of P42.

P33 – Internal Residential Development

The validity of the road being deemed to be a public one is being disputed. The development exceeds the 30m depth from Triq id-Dawwara, and if regarded an internal residential development, fails to adhere to P27, and is therefore in breach of P33.

2. Failure to ensure protection of site character and amenity, detrimental impact on characteristic landscape and green open spaces – In breach of SPED UO3.7, In breach of Article 52 of CHP 552

It is further being maintained that the Authority totally disregarded the clear detrimental impact of that proposed on the character and amenity of this site and surrounding area through the development of this green open space beyond the adjacent properties' development boundary, and as such decided in breach of SPED UO3.7.

UO3.7 To identify, protect and enhance the character and amenity of distinct urban areas by **Protecting and greening open spaces which contribute towards the character and amenity of urban areas, reduction of soil sealing and support biodiversity with a view of developing ecological corridors**

The Planning Commission in its decision had to adhere to the above SPED provision and was mistaken to apply P27 (wrongly) without due consideration for the above.

In cases of a material conflict, the Planning Commission should have given priority to that stated in the SPED which policy document should take precedence over DC15.

This is confirmed in Article 52 of CHP 552:

In the circumstances where multiple plans and policies apply to the same matter or area and there is a material conflict between any of them, precedence should be afforded in the following order: the Spatial Strategy over the subject plan; the subject plan over the local plan, the local plan over the action plan or management plan, the action plan or the management plans over the development brief and the development brief over other policies mentioned in article 50.

In approving the development despite it breaching SPED, the Planning Commission's decision was in breach of CHP 552 Art. 52.

For these reasons and others which may result during the hearing of this case, the appellants are humbly requesting this Honourable Tribunal to annul the decision taken by the Planning Commission and revoke the permit.

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List of witnesses:

1. The appellants and the applicant
2. The Planning Authority
3. Employees of and consultants to the Planning Authority
4. Architects and field experts
5. Employees of and consultants to the Superintendence of Cultural Heritage
6. Objectors