

ENVIRONMENT AND PLANNING  
REVIEW TRIBUNAL

**RECEIVED**  
23 MAR 2022  
ST. FRANCIS DITCH  
FLORIANA

In the Environment and Planning Review Tribunal

Today, the 22nd of March 2022

Appeal application filed by PB Group International Ltd. (C 83038) from the refusal of DN/01525/21.	
<i>Location of Development:</i>	Plot KKW300E Qasam Industrijali Ta' Kordin, Kordin, Paola
<i>Description:</i>	Clearing and excavation of site, construction of one below street level of car parking, five levels of light industry (class 5a) and one level of overlying ancillary office space (class 4a).

We write on behalf of applicant PB Group International Ltd. in order to file an appeal from the above-captioned decision (dated 21st March, 2022) to refuse application DN/01525/21. The appeal is being filed in terms of Chapter 552 of the Laws of Malta and in line with the procedure set out in Chapter 551.

**1.0 Preliminary**

The DN application in question proposes the "clearing and excavation of site at Plot KKW300E Qasam Industrijali ta' Kordin, Kordin, Paola ("the Site"), construction of one below street level of car parking, five levels of light industry (class 5a) and one level of overlying ancillary office space (class 4a)".

It is to be noted that the appellant already had a permit in hand for site in question, namely DN/00444/21. However, following the revision of the height and volume limitations in the area in virtue of subsidiary legislation 552.08, the appellant submitted the DN application in question in line with the latter, to make the best use of such increases.

## **2.0 The Decision**

In terms of a decision published on the 21st of March, 2022 the application was refused on the following grounds:

1. *The site in question is located within the Harbour Fortifications Area of High Landscape Value (G.N. 133 of 2001)*

2. *Following consultation with the SCH it was concluded that application cannot be favourably considered in view that the proposed development, will exceed the approved heights and volumes.*

The appellant is extremely aggrieved by the said decision and is consequently submitting this appeal in terms of Article 11(1)(a)(ii) of Chapter 551 of the Laws of Malta.

## **3.0 Grounds of appeal**

Appellant's ground of appeal is the following:

- (i) DNO application 1525/21 was submitted in line with recently approved and revised height and volume limitations and therefore the objection submitted by the Superintendence of Cultural Heritage ("SCH") is unfounded both factually and at Law.

## **4.0 Submissions**

Given that the Kordin site in question falls within the Harbour Fortifications Area of High Landscape Value (G.N. 133 of 2001) and is also categorized as an Archeologically Sensitive Area (Grand Harbour Local Plan – Map 3B), the SCH needs

to be consulted for all planning applications submitted within the designated area, even for a DNO, as in the case in question.

At the outset, the appellant declares that it is not objecting to the fact that the site falls within GN. 133 of 2001 and the Grand Harbour Local Plan – Map 3B. This is a matter of fact. However, so is the fact that the height and volume limitations for the area in question were recently revised in July 2021.

Following the receipt of the development notification in question on the 1st of December 2021, the PA issued a letter to the appellant dated 26th January 2022 in which it unequivocally stated that:

*“...the application cannot be considered through the DNO unless you obtain SCH clearance. To facilitate this process, the SCH is being copied in this correspondence.”*

The SCH replied to this in virtue of a letter dated 3rd March 2022 (communication 17a), in which it states, in direct contradiction with approved heights and volumes that:

*“With regards to the proposed development, the Superintendence notes that it will exceed the approved heights and volumes.”*

This unequivocal statement made by the SCH is quite simply incorrect.

While it is amply clear that the SCH is not in agreement with the recent height and volume increases established by the PA, it is also evident that the appellant cannot be penalised because of a conflict between the PA and the SCH, when the height and volume limitations established by law clearly allow for the proposed development. (Reference is made in this regard to Legal Notice 281 of 2021.)

Consequently, the SCH's position does not find comfort in the approved legal notice given that this DNO applications falls precisely within the limitations of the said legal notice.

Indeed, it must be noted that this DNO application was not submitted as an afterthought following the attainment by the appellant of the permit it already has in hand. This DNO application was filed precisely because the PA had decided to revise the height limitation in question, and as a consequence of such revision.

Therefore, the appellant humbly submits that it cannot be accused of falling foul of approved height and volume limitations, when as a matter of fact it is not.

Communication 17a in fact resulted in a situation where the appellant could not revise its plans, despite the fact that it was requested to do so by communication 18a by the PA dated 7th March 2022.

The appellant replied to this with communication 21a, stating that given the fact that it did not manage to obtain SCH clearance, it could not revise its plans.

This resulted in an inevitable unjust refusal and hence this appeal.

While the appellant understands the reasoning behind the need for the SCH to be consulted given the higher sensitivity of the area, it certainly does not follow that the SCH can object in clear contradiction of principles already approved by PA, that is, the authority that is ultimately entrusted with the responsibility of issuing a permit or otherwise, especially when such principles are now enshrined in the law.

This unnatural conflict results, as in this case, in a situation where the applicant cannot plan and determine with a degree of reasonableness what it can and what it cannot apply for within a designated area in Malta.

Without prejudice to the above and with respect to the excavation issues raised by the SCH via communication 17a, the appellant submits that as will be shown to the Tribunal during the course of this appeal, none of the known tunnels pass under the Site.

From a financial planning point of view, a negative outcome would translate into the appellant suffering hundreds of thousands of Euros of damages.

As this Honourable Tribunal will appreciate, such a development cannot be planned overnight. Given the fact that the DNO application was filed within determined and approved parameters, the appellant had already made arrangements for the work to start in May 2022. If the appellant does not start within that date, it will have to incur extra costs given the fact that as practically everyone knows, recent international developments have translated into a considerable increase in the cost of materials and their shipping.

This is certainly not a just outcome for an applicant like the appellant that has applied through the simplified DNO procedure within approved policies.

#### 5.0 Request

In the light of the above, and whilst reserving to provide further submissions and evidence during the appeal hearings, appellant respectfully requests that the decision dated 21st March, 2022 with regard to DN 01525/21 be revoked and that the permit to which the application refers should, instead, be granted.



**Frank B. Testa**  
[frank.testa@mamotcv.com](mailto:frank.testa@mamotcv.com)

Mamo TCV Advocates – 103  
Strai: Street, Valletta VLT 1436

## 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. Applicant's representative John Naudi;
2. Other representatives, directors and/or employees of PB Group International and related companies;
3. Planning Authority/Directorate representatives to exhibit any files and provide any information which may be necessary;
4. Applicant's architects, to testify regarding the application as filed and the proposed development;
5. Representatives of SCH;
6. Any witnesses which may be indicated or called by applicant, in examination and in cross-examination.