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ENVIRONMENT AND PLANNING
REVIEW TRIBUNAL

RECEIVED
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ST. FRANCIS DITCH
FLORIANA

The Hon. Chairperson

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

Floriana

Application Number: PA/02580/21 A

Location: Kiosk, Il-Bajja Ta' San Tumas, Marsascalea

Proposal: To permanently place a movable kiosk

In terms of Article 13 of the Environment and Planning Review Tribunal Act, 2016 we hereby submit request for to the Hon. Environment and Planning Review Tribunal.

Reason for refusal as submitted by the Planning Commission

1. The proposal runs counter to the objectives of the Strategic Plan For Environment and Development, in particular Coastal Objectives 1.1 and 3 which aim at protecting and enhancing the existing coastal recreational resources by controlling the type of uses in these areas as to protect the coastal environment and not hinder public access and use of the coast.
2. The proposal runs counter to South Malta Local Plan Policy SMSE 04 where within green areas it only allows low key environmental improvements.
3. The kiosk has not been endorsed by the Malta Tourism Authority and Transport Malta, both of which are permitting authorities for kiosks. Thus, the proposal runs counter to Article 72 (2f) of the Development Planning Act (Chapt 552), which requires that the Planning Board shall have

regard to recommendations made by Consultees. The proposal runs counter to paragraph 5.9 of the Supplementary Guidance for Kiosks in terms of external appearance.

Counter Argument 1

The reason for refusal quoted by the Planning Directorate is objectively the reason why this application should have been approved, the kiosk being proposed is actually on wheels and parked onto a parking space in a parking area covered by PA 2977/99 therefore the policy applied namely Objectives 1.1 and 3 of the Strategic Plan For Environment and Development, apart of being completely removable the kiosk is located on a promenade overlooking the actual beach and part of Phase II of the St. Thomas upgrading project. The kiosk does not in anyway conflict with the recreational use of the foreshore and it fulfils the aim of enhancing the existing coastal recreational resources in the area since it is the only available kiosk in the vicinity of the beach area.

Counter Argument 2

The site is located within an approved recreational zone which formed part to Phase II of the St. Thomas upgrading project, the kiosk is located within the area of a regular parking space and does not constitute an invasive structure more than a parked van.

The fact that it is parked in an approved site already allowed to parking *does not hinder public access and use of the coast* as is requested in Coastal Objectives 1.1 and 3. Between the submissions made by third parties and the actuality of the situation there exists a clear case of misrepresentation. The argument of hindering public access or use of the coast is proven fallacious in this regard since the site is already approved for the parking of vehicles.

Further more *controlling the type of uses* does not mean denying them, but ensuring that uses applied for do not impinge footprints or types of use already granted. The parking area in question is high above the coastal area used by bathers and it actually provides additional parking areas; which in the first instance off themselves as occupied regular in no way hinder access or views as they are again offset inwards from the edge and in the second instance create the need for services for the people's proper enjoyment of the area. This kiosk in actuality provides these services and amenities much needed in such a situation.

Conter Argument 3

The proposal does not run counter to South Malta Local Plan Policy SMSE 04 where within green areas it only allows low key environmental improvements. The positioning of a temporary

mobile kiosk is the lowest possible key environmental improvement, one which is intended for use by the general public and one which is not detracting from the intended use for parking and recreational activities. Had the request been for the construction of a permanent structure, then obviously this objection might have had a *raison d'être*, but in this case the limited improvement to the area being a temporary placing of a mobile kiosk which is much needed justifies its approval. One is to note that at law the placing of a mobile kiosk in a regular parking area is the acceptable norm in terms of hawker's licences and there is no legal restriction to hawkers within this area.

Counter Argument 4

The fact that this kiosk (request) has not been endorsed by the Malta Tourism Authority and Transport Malta, both of which are permitting authorities for kiosks is not in itself binding on the issue of the permit, because the laws notes that the board shall have a regard to recommendations, that is to say the board is bound to take note of and consider recommendations/submissions made but the board is not legally bound to follow such lack of endorsement. Moreover when the lack of endorsement or objection is apparently flawed. In this particular aspect the reasoning submitted by Transport Malta holds no factual basis. How can a kiosk, properly seated in a regular parking area said to be hindering access to other parking areas. Are TM stating that they have erred in marking the parking bays ? If so why have they not been amended and been there for years. The truth of the matter is that the objection raised is not based on facts in issue but on views which are not coherent with the site and with what has already been approved.

Counter Argument 5

To say that the proposal runs counter to paragraph 5.9 of the Supplementary Guidance for Kiosks in terms of external appearance is not even an argument as the everincreasing varieties of kiosks in shapes, sizes and appearance, as already approved belies this statement. Even if the present appearance is somehow to be considered not acceptable, this is a remedial situation, as has occurred say at Ghadira Mellieha where a standard for kiosk was set and and kiosk owners were simply given a time limit to get organised. Should this board decide or delve further into the matter, the external appearance can further be enhanced to reflect the wishes or guidance of the authority as has occurred elsewhere, but of itself this does not warrant the refusal.

Regards,
Simon
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