

ENVIRONMENT AND PLANNING  
REVIEW TRIBUNAL  
**RECEIVED**  
24 MAR 2022  
ST. FRANCIS DITCH  
FLORIANA

**DR. ANGELE FORMOSA B.A. LL.D**  
ADV. TRIB. ECCL. MELIT.  
ADVOCATE

9<sup>th</sup> February 2021

Before the Environmental Planning and Review Tribunal  
Block B, St. Francis Ditch,  
Floriana

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REVIEW TRIBUNAL  
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24 MAR 2022  
ST. FRANCIS DITCH  
FLORIANA

P.O. Box. 172 Marsa

In the acts of  
Application: PA/03893/20  
Applicant: Mr Andre' Grech

**Application to appeal by the registered third party objector Clemia Zammit, bearer of identification card number 22579(G), resident at Gioiosa, Triq Dun Pawl Micallef, Rabat Ghawdex.**  
Humbly submits

The application submitted by applicant Mr Andre' Grech on 9<sup>th</sup> April 2020 to demolish existing wall, to construct semi-detached house with reservoir and swimming pool at basement, ground and first floor level at Alley in, Triq Dun Pawl Micallef, Rabat (Gozo) was granted permission on 15<sup>th</sup> December 2020, with the decision publication date being the 27<sup>th</sup> January 2021.

The appellant is a registered objector and duly submitted her representations. These representations were not given their due weight and were dismissed by the authority.

The appellant is aggrieved by this decision and humbly submits this appeal before this tribunal in accordance to section 15 et sek of Chapter 551 of the Laws of Malta.

The grievances are founded in fact and at law.

**1. The first grievance lies with the issue raised under 4.7 of the updated DPA report wherein it was identified**

“This application was initially submitted under the summary procedure and was referred to full in view of LN 162/16 Regulation 18(5), i.e. the board considered representations at doc.43A as having a planning matter, since these were based on DC15 policies P27 and P33. Further information to justify that the alley is legally established as defined in Part 1

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paragraph 2 of Cap 522 was required. Submissions at doc. 79A/81A/82A address issues and hence assessment was carried out as follows. -- Frontage / outlook on a public road Given that as indicated by Local Council declaration at doc.82A and photos 79A, the alley is maintained by Rabat, Citta' Victoria Local Council and it has recently been resurfaced by the Ministry for Gozo, the alley can be considered as a legally established public road as defined in Part 1 paragraph 2 of Cap 522 and as defined in the glossary of the DC15, which states that a public road is "a road established within the Local Plan or through a PC application, or any road that is maintained by the Local Council or the Transport Authority wherein the public has free, unencumbered access and having a width defined by the transport Authority regulations". In view of the above, policy P33 of the DC15 is not applicable since the proposed residential unit has frontage onto the public alley. Moreover, the depth of built footprint can be measured from the edges of the established public alley. The proposed development does not exceed the allowable 30m plot depth from the alley, as shown in drawings at docs.35A/35B."

This concern was also raised by appellant objector both before and after the local council correspondence. The objector was not permitted to contest the contents of the document presented by the local council and humbly submits that it is not true that the local council maintains this private alley.

In the directorate's comments it was stated that, "The alley which the proposed development has frontage on is considered to be a public alley in line with Part 1 paragraph 2 of Cap 522 and the DC15, given that it is maintained by the Local Council as per declaration submitted at doc.82A."

It is humbly submitted that the correspondence provided by the Local Council at doc. 82A is based on a false premise. The local council never carried out any maintenance works on this alley. It is conceded that from the photos presented (doc 1f), the alley does not seem to be maintained at all. For these reasons, the alley cannot be deemed to be public and in line with Part 1 paragraph 2 of Cap 522.

In fact in the previous application 6039/98, where the application to erect 2 houses comprising basement stores/games room, ground and first floor residential was refused, the case officer report underlined that the alley was in fact private. In its discussion, case officer state, "applicant has no frontage on the existing private alley, and for this private alley no road contribution was paid (see Mins 13 and 20 in V.517/73AL)."



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It follows therefore, considering that the alley is not in fact public in terms of law, that the building depth exceeds the 30m limit as it needs to be measured from the street not from the frontage onto the alley. In addition to this, the proposed building has a frontage onto the alley and not onto a public road. Hence development permit cannot be granted.

### **2. The second grievance is based on the fact that the appellants building will be compromised.**

It is humbly submitted that the authority did not take into consideration that this development is being proposed in an area where the subsoil of the area is clay, therefore construction will create risks of damage to neighbouring properties. The authority dismissed this representation and stated,

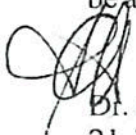
“The remainder of the issues mentioned above do not fall within the remit of the Planning Authority. Any development permission is granted saving third party rights.”

The objector does not agree that this is merely a third party rights issue. The objector's property includes a cistern and pool and any excavation by the applicant will affect these negatively. In view of this the objector had pointed out that the guarantee was too low to secure her interests and that this in fact should reflect and be proportionate to the real risk of damage to her property.

Therefore the appellant humbly requests this tribunal to revoke the decision of the 15<sup>th</sup> December 2020 after hearing all the witnesses which the appellant reserves to name and summon for the proceedings, which witnesses shall include but are not limited to

- a) a representative of the local council of Rabat, Gozo,
  - b) a representative of Transport Malta,
  - c) a representative of the Ministry of Gozo and
  - d) Antonia Vella owner of the private alleyway, in question;
- All of which will be asked to testify about the ownership of the alleyway and the works, if any effected on it.

The appellant reserves the right to make further submissions, present further witnesses and be advised together with being present at all the sittings.



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