

FENECH + FENECH  
ADVOCATES



22nd June 2022

The Secretary  
Environmental planning and Review Tribunal  
St. Frances Ravelin  
Floriana

Re. PA/05084/21 - Garden of Eden, Triq il-Barrieri, Zurrieq

To close existing openings facing part of road and propose 2 new openings, 1 of which to serve for vehicle access.

I write on behalf of the objector Natalie Spiteri D'Amato and this in order to lodge an appeal from the Decision taken by the Board in First instance of the 27<sup>th</sup> of May 2022 by means of which the application in question was approved. My client feels aggrieved by the decision for the following reasons

- 1. The Board also failed to take into consideration the numerous illegalities which the proposed opening will lead to. The Board simply assessed the application on the boundary wall, and did not take the site in question in its entirety.

It is obvious that the opening of a door in the boundary wall is done to inevitably lead to the structures present beyond the boundary wall in question. The application therefore does not simply concern the wall but must be assessed in virtue of the site in its entirety.

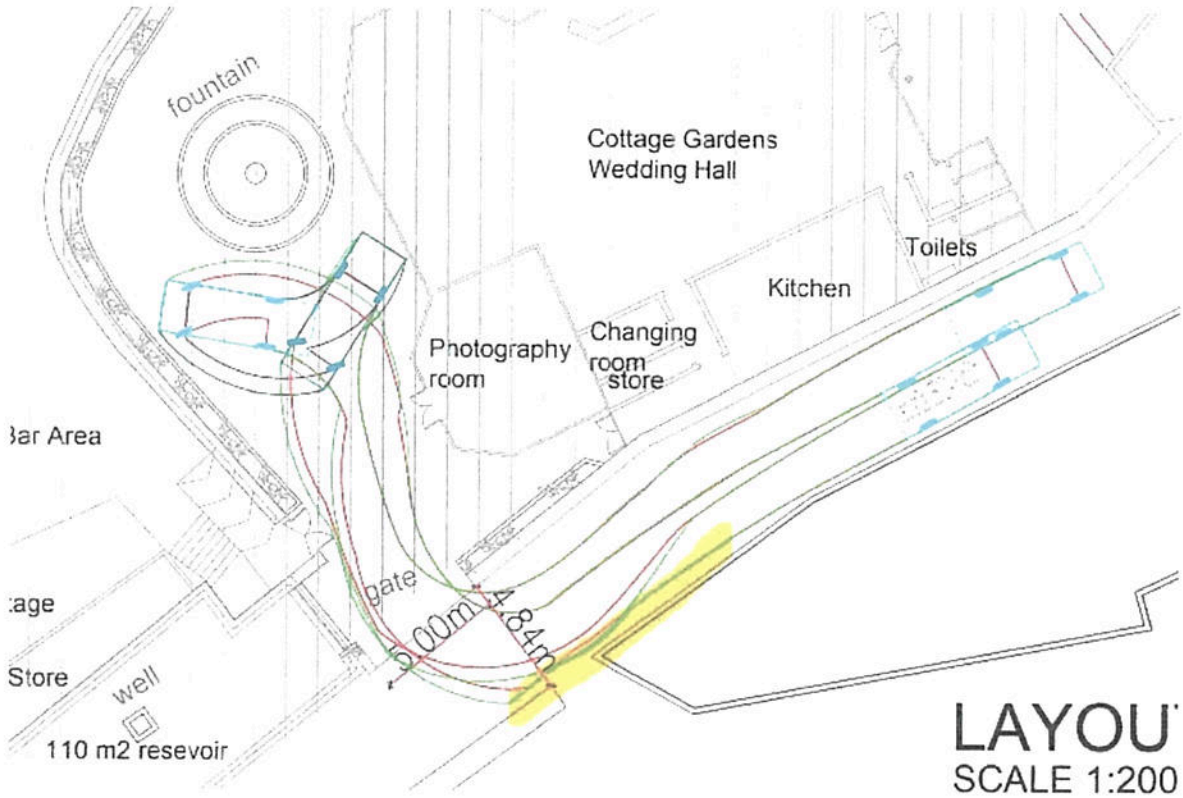
The application cannot be assessed as a stand alone boundary wall. The wall is part of a site and all apertures in it grant the access to the same site. Having a piecemeal application limited to only a wall is abusive and will set a dangerous precedent of avoidance of responsibility on irregularities in applications.

During the first hearing the Board seemed to be in agreement with this stance and ordered a Environmental impact Assessment, but subsequently seemed to change its stance during the 2<sup>nd</sup> sitting.

- 2. The application in question is obviously going to lead to an abuse of the current rural passage way. The site in question is being used as a wedding hall, and I every wedding, the passage, despite being privately owned by my client.
- 3. The Board did not take into consideration that the Court of Appeal has already ordered the applicant to close off all apertures abutting onto the private lane.

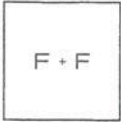
What the applicant intends to do is to re-open an new aperture opening further up and this making a mockery of the Court of Appeal judgement.

- 4. The Board has also failed to take into consideration the fact that the application requires the removal of a conifer tree , which the applicant failed to include in the plans.
- 5. PA/05084/21 - 46a shows the swept paths of vehicles accessing the 5m wide gate. The gate, if as per policy does not allow for the access of these large vehicles. This also shows that the public thoroughfare is not wide enough for such traffic.
- 6. The same drawing submitted by the architect also shows that it is impossible for such vehicles to access the site through the 5m gate since the swept paths show that the vehicle will invariably get stuck in the opposite boundary wall. The swept path has been trimmed to fit the width of the road particularly, the front right wheel path has been truncated.



Further to this, there is no need for a second access to an ODZ site, this planning application will set a precedent for multiple accesses to the same ODZ site. Both the planning directorate and the planning commission and even ERA discard proposals having multiple vehicular accesses to the same site since this will lead to unnecessary and further formalisation of ODZ land.

ERA assessment did not make any clear reference to the proposed development but rather referred to a previous application PA 06673/20 on the same site which made the consultation document rather ambiguous.



What is clear therefore is that the proposed opening will only serve the applicant to continue his abusive use of the passageway in question, and this by encumbering in with trucks and other vehicles during wedding receptions, as has been done by him over the years.

7. The proposed gate runs counter to the Rural Policy and Design guidance and this because the gate, and the wall itself are higher than 1.2 metres whilst the opening is wider than 4.5 metres.

Moreover policy 2.9 of the rural Policy and Design guidance is not applicable in this case and this because the boundary wall shown in the approved drawings is higher than 1.2m as allowed in policy 2.9. There is no proof of a legally established rubble wall higher than 1.2m. Neither was any sanctioning was being proposed for the boundary wall higher than 1.2m.

8. Further to this, the site in question already has vehicular access through the parking area and consequently there is no need for a second access to an ODZ site. This planning application will set a precedent for multiple accesses to the same ODZ site. Both the planning directorate and the planning commission and even ERA discard proposals having multiple vehicular accesses to the same site since this will lead to unnecessary and further formalisation of ODZ land

In view of the above my client kindly requests that the decision of the Board is overturned, and that the application is consequently rejected.



Av. Daniel Buttigieg



AIC Matthew Briffa