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ADVOCATES



22nd June 2022

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

Re. PA 7578/21 - Removal of asphalt and reinstatement of rural passage. Construction of random rubble boundary wall, soil deposit and installation of timber gate.

Site at (Agricultural Farm), Off, Triq il-Barrieri, Zurrieq

I write on behalf of the applicant Natalie Spiteri D'Amato and this in order to lodge an appeal from the decision taken by the Board in First Instance of the 1st of June 2022 by means of which the Board refused my client's application stating that

The proposed development has been objected by Transport Malta since this would impede a public thoroughfare. The proposal is thus considered counter to Policy 1.2I of the Rural Policy and Design Guidance 2014 which seeks to safeguard existing country pathways, irrespective of their type of ownership. The proposal also runs counter to Rural Objective 2 of the Strategic Plan for Environment and Development which ensures that the existing rural recreational resources are protected, enhanced and accessible.

The decision of the board is incorrect and should be overturned and this for the following reasons;

First and foremost the Board the Board in its application misinterpreted Policy 1.2I of the Rural Policy and Design Guidance 2014 which states that;

Policy 1.2I protects old traditional pathways and their character, irrespective of their type of ownership. When assessing the impact of proposed developments on country pathways, the Authority must afford the necessary protection to traditional and/or historical country pathways and their character, and shall require the applicant to keep such pathways in good state of repair, including the proper maintenance of abutting rubble walls.

The Board failed to note that this country pathway was originally a foot passage on private land, which was originally blocked by a gate and was only accessible to my client's father as can be seen from the documentation already presented by my client. This passage was only accessible to my client's father who used to work the agricultural land further down the said lane. The Public had no access to it, since public access had been abusively and illegally closed by the owners of the Garden of Eden Complex, since it was passing through their property. the same owners had subsequently removed the gate in question and the footpath widened and asphalted years ago whilst the applicant's father, who was the owner, was recovering from serious medical issues.

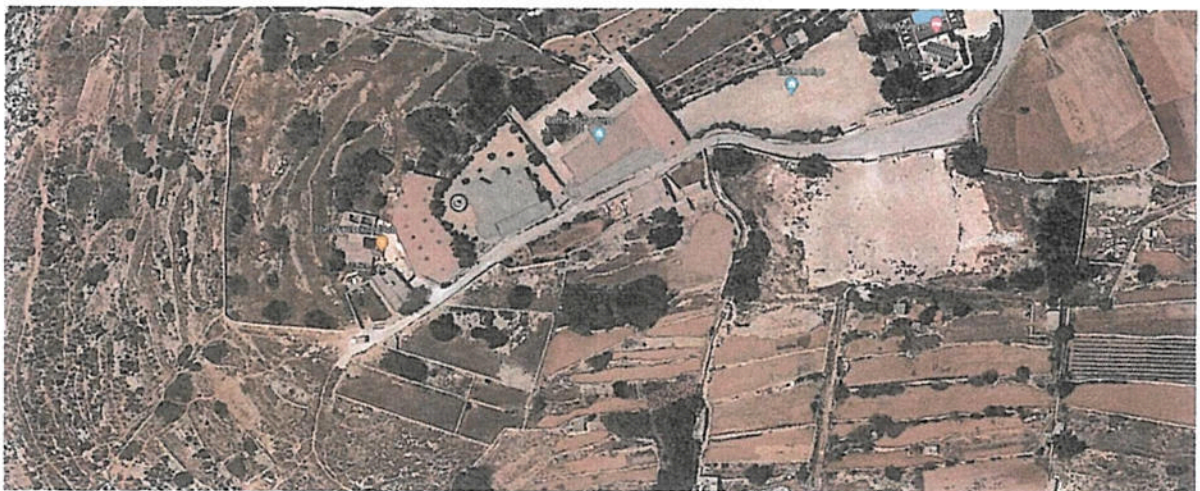
The proposal seeks to restore this passage way, remove the asphalt and in general improve the general aesthetic of the area.



Moreover my client feels aggrieved by the fact that this private property is not a schemed road and has never been expropriated and therefore my client is being limited in the exercise of her propriety rights. Moreover it is surprising how TM sought to define the legal implications of a *servitu ta' tranzitu*, when all PA permits are issued saving third party rights.

It is good to note that my client does not intend to close of the passage to the public but is simply applying to narrow it into a footpath. This is in line with the judgement of the Court of Appeal, once the throughfare will still be accessible to the public. This is a simple restoration of an abusively built road into a country footpath, as it was originally. It is also good to note that there are no properties in the vicinity who have the right to access the passageway in question by car.

Moreover, it is also good to note that at the end of this passageway, as can be seen from the satellite images below, the passage becomes a footpath, which will be similar in size as the one being proposed. The public will therefore in no way be hindered form accessing the cliffs through the narrowing of the passageway, once, a few metres down, the passage way is already as narrow as that being proposed. Public wanting to access the cliffs still cannot access same by car today. This obviously without taking into consideration that the lands on the cliff is all privately owned by third parties and the public effectively has not right to hike on it.



Consequently the proposal does not breach any third party rights, and more importantly, does not beach any applicable policies. In view of the above the applicant kindly requests that the decision of the board is overturned and that the application is accepted.

Av. Daniel Buttigieg



Perit Matthew Briffa.