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10 th August 2022

The Chairman
Planning & Environmental Review Tribunal
St Francis Ravelin
Floriana

ENVIRONMENT AND PLANNING
REVIEW TRIBUNAL
RECEIVED
16 AUG 2022
ST. FRANCIS DITCH
FLORIANA

Dear Sir,

RE: PA 4190/19

I write on behalf of Louis Cassar with reference to the refusal of the above-captioned application dated 1st July 2022, regarding the site numbered 4, Baycourt, Flat No 5, Triq il-Mintba, Marsascale

Extension of existing apartment at second floor level and construction of two apartments at third and fourth floor level.

The proposed development application was refused by the Environment & Planning Commission solely on the following ground;

The declaration by the applicant in terms of Articles 71(4) and 71(5) of Act VII of 2016, that the owner/s have been notified of his intent to apply for development permission is incorrect since not all the owners have been notified.

My client feels aggrieved by the above decision and is hereby appealing the decision of the Commission on the following grounds:

Appellant adhered to the dispositions of Act VII of 2016

During the course of the processing of this application, applicant complied with the requirement imposed by the Directorate in informing the co-owners of his intention to carry out the development in question,



as will be amply proven during the course of this appeal. Appellant provided ample evidence that he informed all parties in terms of law and therefore, the assertion that he did not do so is untrue, as will be confirmed during the course of this appeal.

The provisions of Article 71 of Chapter 552 were satisfied since evidence was produced of the letters sent out as confirmed by the Authority itself. Indeed, reference is made to the DPA report where the following is stated:

Registered letter scans have been uploaded at docs. 47g, 47h¹

Contrary to what the Authority is implying in its DPA report, nobody was left out and all interested third parties were notified.

Reference is also made to Article 72 of Chapter 552 which states the following:

“Any development permission approved shall be without prejudice to third party rights and shall not in any manner constitute or be construed as a guarantee in favour of the applicant as to the title to the property.”

This is the consistent position taken by the Planning Authority where it has refused to get involved in third-party civil issues but has approved every development permit subject to such rights. This was also stated by the Court of Appeal in the recent judgment in the names “**Falzon vs Awtorita tal-Ippjanar u Viktor Benedek**” (App 31/2019)² where the Court declared the following in respect of the declaration regarding ownership:

“L-Awtorita u t-Tribunal donnhom iqisu li l-kelma ‘ticcertifika’ tfisser biss ‘dikjarazzjoni’, unilaterali tal-applikant li jikkwalifika bhal sid. Dan mhux il-kliem tal-ligi. L-Awtorita u t-Tribunal iridu jqisu, speċjalment fejn hemm oggezzjoni minn terzi, illi hemm prova prima facie korretta ta’ ‘ownership’ kif trid il-ligi. Dan ma jfissirx li jekk hemm kwistjonijiet civili bejn l-applikant u terzi fuq in-natura u estent tat-titolu l-Awtorita hi obbligata tidhol fihom pero trid tkun sodisfatta li l-applikant jikkwalifika bhal sid u ccertifikkazzjoni issir ghal din ir-raguni. Jinkombi lil applikant li jressaq din il-prova u l-Awtorita ghandha tqis jekk din il-prova tikkostitwix l-element necessarju tat-titolu ta’ sid prima facie kif jitlob l-artikolu 2 tal-Kap. 552. Jekk kif intqal aktar il-fuq hemm App. 31/2019MC Falzon vs Awtorita et 5 imbaghad kontestazzjoni civili fuq in-natura jew l-estent jew il-limitazzjoni tat-titolu vantat min terzi, dan imbaghad tkun kwistjoni ta’ natura civili u mhux ta’ ippjanar. Illegislatur kien car fuq din il-kwistjoni. Il-kelma ‘jiccertifika’ titfa’ obbligu strett fuq l-applikant liema obbligu jrid jikkonvinci lil Awtorita li gie sodisfatt almenu fuq bazi prima facie. Dan kien l-aggravju quddiem it-Tribunal li ma giex indirizzat, u ghalhekk it-Tribunal iddecieda hazin meta

¹ Page 4 of DPA report

² Decided on 28/11/2019



erronjament qies li l-appellant iddikjara li l-applikant kien is-sid tal-appartament fit-tieni sular meta l-appellant kien qed jirreferi ghallappartament bhala proprjeta tieghu mhux tal-applikant. In oltre zbalja meta ma qies il-kwistjoni mill-aspett legali taghha.”

Proposal in accordance with planning policies

The proposal respects the height limitation for the area and therefore is permissible according to planning grounds so much so that this application has already been approved by the EPC in terms of a previous decision dated 9th September 2019 and the permit was subsequently issued.

Subsequently, an appeal was filed by third-party objectors and in terms of a decision herewith attached, this Tribunal dated 28th October 2021, this Tribunal decided the following:

Illi tenut kont in-nuqqas ta' nformazzjoni prezentata fil-process tal-applikazzjoni fir-rigward tal-propjetajiet sottostanti, dan it-Tribunal huwa propens li jregga` lura l-applikazzjoni sabiex, ai fini ta' kjarezza, issir evalwazzjoni mill-gdid mill-ufficcju tas-sanita' fi hdan l-Awtorita' tal-Ippjanar abbazi ta' dak li qed jallegaw l-appellanti f'termini ta' dawl u ventilazzjoni ghallkmamar abitabbli ezistenti.

It is submitted that the remit of the Authority and the directions given by the Tribunal were very clear and limited to evaluating the proposal afresh from the point of view of sanitary regulations. Despite this clear direction, the Authority strangely decided to change its tune and its recommendation on a separate issue which it had not raised at all when the first decision was taken to approve the development.

Appellant is being discriminated against when compared to other applicants in similar circumstances

Given the volte face of the Authority, it is submitted that appellant is being treated differently to applicants who apply to develop the airspace on a block of apartments in similar circumstances, as will be proven during the course of this appeal.

This discrimination amounts to illegal administrative practice and on the basis of this ground alone, the decision of the Authority is to be revoked.

Appellant wishes to produce the following as witnesses:

1. A representative of Maltapost
2. Perit Alex Cutajar
3. The owners of the underlying apartments and 2 garages
4. Perit Joseph Bezzina



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In conclusion, it is submitted that there are ample grounds for this Tribunal to overturn the decision of the Commission and to issue the relative permit in respect of the applicant's proposal subject, as always, to third party rights.

Regards

Tanya Sciberras Camilleri LL.D.

Enc.

Copy of decision of EPRT (App 333/19)