

In the Environment and Review Planning Tribunal

Application No: PA/08717/21

Applicant: Fernando Cremona

Location: 30, Inhawi Xambekk, Il-Bajja ta' San Tumas, Marsascala

Proposal: Sanctioning of internal alterations / replacement of deteriorated roof structure and proposed replacement of deteriorated parapet wall of a pre-1967 beach room

Date of publication  
Od decision: 27<sup>th</sup> July, 2022



Appeal application of applicant Fernando Cremona.

Appellant respectfully submits:

1. That by means of a decision given by the Planning Commission (Outside Development Zone and Urban Conservation Areas) the application bearing number PA/08717/21 was refused for the following reasons:
  - (i) The existing building exceeds the footprint, floorspace and heigh of the original pre-1968 building due to the unauthorized extensions carried out at ground and first floor levels which are not being fully sanctioned or removed. Hence the proposal would compromise the PA's ability to formulate the Action Plan for the area in accordance with Policy SMMS 08 of the South Malta Local Plan, which specifies that in the interim prior to the finalisation and approval of the Action Plan, no extensions to existing beach rooms will be permitted. Moreover the proposal would create a precedent for the sanctioning of similar third party development and give rise to further development pressures in this ODZ area.
  - (ii) The proposal does not comply with the provisions of Legal Notice 227 of 2016 since the study at ground floor lacks adequate natural light and ventilation.
2. That the applicant feels aggrieved by the said decision and is therefore submitting this appeal.
3. That applicant's grievances are clear and manifest as shall be explained in this appeal application.

4. With regards to the first refusal of refusal, it is to be submitted that the present structure practically has the same footprint, floorspace and height of the pre-1968 structure and any deviation from the pre-1968 carried out during the execution of remedial works is of a minimal nature.
5. Furthermore, appellant makes reference to numerous decisions which have already been given by this Honourable Tribunal with regard to applications relative to other beach rooms at San Tumas, Marsascala which completely obviate the reason attributed for refusal that the acceptance of the proposal “*would create a precedent for the sanctioning of similar third party development and give rise to further development pressures in this ODZ area*”.
6. These decisions include the following:
  - Kenneth Mallia vs Awtorita' tal-Ippjanar (Appell 428/19JB; PA 5908/19)
  - Joe Pavia vs Awtorita' tal-Ippjanar (Appell 394/19JB; PA 3287/19)

This is a very important judgment for the present case wherein this Hon. Tribunal enunciated as follows:

*“Illi l-izvilupp soggett għall-applikazzjoni odjerna huwa limitat għal aterazzjonijiet u tibdiliet ta' bini ta' qabel l-1967 sabiex jibqa' jintuza bhala beach room u għaldaqstant ma jirrizultax li ser jinvolvi bini ta' beach room gdida jew bdil fl-uzu. Illi madankollu it-Tribunal jinnota li l-allinjament tal-hajt ta' wara rrizulta f'zieda minuri tal-floor area. Illi fuq din il-kwistjoni t-Tribunal jinnota li din iz-zieda minuri saret biex il-kamra tigi allinjata ma' bini ta' terzi adjacenti, u li din l-alterazzjoni ma affettwat l-ebda access jew bini ta' terzi. Għaldaqstant l-izvilupp propost mhux ser jipprevedika bl-ebda mod it-tfassil tal-Action Plan u jinsab konformi mal-Policy SMMS 08”.*

- Ebejer George vs Awtorita' tal-Ippjanar (Appell 303/18MS; PA 1373/18)
- Josef Camilleri vs Awtorita' tal-Ippjanar (Appell 149/17MS; PA 5632/16)

In this case the same first reason for refusal was invoked and this Board enunciated as follows:

*“Illi fil-fehma ta' dan it-Tribunal tali raguni ta' rifjut mhux wahda valida għac-cirkostanzi tal-izvilupp odjern. Fl-ewwel lok il-kamra ezistenti mhix wahda illegali ... u fit-tieni lok ma giex pruvat illi l-izvilupp propost ... qed jikser il-Policy SMMS 08 fil-Pjan Lokali jew b'xi mod se jipprevedika t-tfassil tal-Action Plan taz-zona kif mahsub fl-istess Policy sucitata. Illi l-policy tahseb għal zvilupp f'interim period billi qed jigi projbit dan li gej: (i) extension to existing beach rooms; (ii) additional beachrooms; u (iii) bdil fl-uzu minn holiday accommodation għal permanent residential or commercial use”.*

7. The principles above reproduced apply perfectly to the present case where appellant is not making any change of use or building a new beach room but has simply effected remedial works to an existing pre-1967 beach room with any variation from the original structure being of a minimal nature (as in the Joe Pavia case) so that such variation certainly does not amount to an 'extension' in breach of the Policy. The principle *de minimis non curat praetor* applies.
8. In the same way as in the cases above-quoted, especially the Joe Pavia case, any minimal difference in the existing structure from the pre-1967 structure will in no way prejudice the Authority's ability to formulate the Action Plan and hence, in the same way, this first refusal for refusal should hold no ground and is to be rejected.
9. With regard to the second reason for refusal this is complete spurious and unfounded since the appellant does not make use of the beach room for any residential purposes but simply to go there to spend some time near the beach with his family and hence the issue of light and ventilation is completely irrelevant for this type of structure, and therefore this second reason for refusal merits to be summarily dismissed.

Consequently, in view of the above, the appellant, whilst reserving the right to produce documentary and oral evidence in support of the grievances submitted in this appeal application, respectfully requests and asks this Honourable Tribunal to revoke the decision given by the the Planning Commission (Outside Development Zone and Urban Conservation Areas) published on the 27th July, 2022 by virtue of which Application No: PA/08717/21 was refused and proceeds to uphold the said application and to issue the requested permit.



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