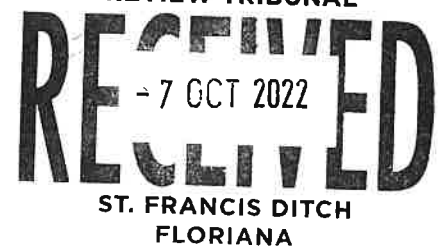


**ENVIRONMENT AND PLANNING
REVIEW TRIBUNAL**



ENVIRONMENT AND PLANNING REVIEW TRIBUNAL

Case Ref: PA/07073/21

Application type: Full development permission

Applicant: Mr Alvin Cutajar

Architect: Perit Alistair Avallone

Proposal: To demolish existing house and garage, excavation and construction of 7 basement garages, 1 maisonette at ground floor level, 4 apartments at first, second and third floor levels plus 1 overlying penthouse with pool

Location: Ave M.Stella, Triq il-Barrieri, Birzebbuga

Appellants: Din I-Art Helwa

THIRD PARTY APPEAL

Whereas the appellant humbly submits, and premises as follows:

The following document is an appeal from the Planning Commission’s decision to approve this application, which decision was published in the Government Gazette on the 7th September 2022.

The appellant is a third-party registered objector and interested party for all intents and purposes at law.

The appellant feels aggrieved by the decision referred to above, and by means of this application is requesting this Tribunal to revoke the Planning Commission’s decision on the development permission referred to.

GROUND OFS OF APPEAL:

1. **Complete failure to adhere to DC15 P27 based on flawed application of policy and unjustified consideration of baseless commitments**
2. **Failure to safeguard green areas and existing gardens that contribute to urban amenity, as well as prevent unnecessary soil sealing of land not designated for development – In breach of SPED UO3.7**
3. **Unjustified disregard of prevailing planning policy– In breach of CHP 552 Art. 72(2)**

1. Complete failure to adhere to DC15 P27 based on flawed application of policy and unjustified consideration of baseless commitments

The Planning Commission approved the development pertaining to PA/07073/21 despite it having a proposed built depth at basement level of **72.6m**.

Policy P27 of DC15 states the following:

*In order to safeguard the integrity of existing gardens and backyards that provide a positive contribution to the urban grain of a street, neighbourhood or locality in terms of important green enclaves, **the depth of the built footprint as measured from the official building alignment will not be allowed to exceed 30 metres, including any basement floors**, unless adjacent existing legal buildings on both sides exceed this limit. In the latter case the depth of built footprint will be allowed until the lesser of the two existing depths (Figure 39a).*

Policy P27 sets a clear and specific threshold of 30m as the maximum permissible built depth which threshold must according to the policy be respected at all levels including ‘any basement floors’.

The Planning Commission blatantly failed to adhere to the clear and specific provisions of this policy and did so on the basis of an unregulated and unfounded mechanism whereby the applicant was permitted to exceed the 30m threshold at basement level on condition that landscaping is provided above the extended area within 1meter depth of soil. **Such a mechanism does not result from any applicable policy but is a completely ad-hoc procedure enabling the Commission to systematically fail to implement that intended and stipulated by the legislator through P27.**

The same irregular concession was applied on the adjacent site through the approval of PA/00858/20. The Directorate in fact made reference to this permit application in its report on PA/07073/21 (initially flagged by the applicant as justification for the proposal) and wrongly considered it to be a form of commitment justifying the clear breach being proposed.

The aim of policy P27 is not to only preserve the openness of such sites but to protect existing gardens from being sealed and formalised. In this case, the approved development will result in the baseless destruction of at least 4 olive trees, all of which exist beyond the 30m threshold and will through approval of the development footprint at over 70m, need to be uprooted to make way for the approved basement garages. There is absolutely no justification for this blatant departure from policy which is resulting in the ruin of the integrity of existing green areas through their near-total soil sealing and formalisation, in direct breach of that stipulated in P27.

Regarding flawed consideration of baseless commitments

The adjacent development should never have been considered as a form of commitment that could justify going against the specific provisions of P27.

It is firstly being noted that at 72.6m, the approved development not only exceeds the 30m threshold set under P27 but in fact also exceeds the basement depth of the development on the adjacent site subject to PA/00858/20 which reaches a maximum built depth of 50m.

Furthermore, policy P27 itself already provides a specific procedure to apply in cases where sites lie adjacent to legal commitments that are in excess of 30m. Under P27, the 30m depth may only be exceeded when both adjacent plots are committed to a

depth in excess of 30m. If one of the adjacent plots is not legally committed to a development exceeding 30m then the 30m threshold must be respected.

If the plot lies between an existing legal building that exceeds the 30m-depth and an adjacent site with no building or with a building of less than 30m, it will only be allowed to extend 30 metres as measured from the official building alignment (Figure 39b).

In this case, the plot to the right is not committed to a development having a built footprint exceeding 30m, as such the 30m threshold had to be respected.

The Planning Commission completely failed to adhere to the specific provisions of P27 and acted beyond its remit when it applied an ad-hoc mechanism that goes directly against the specific provisions of P27.

It is further being held that the consideration of a commitment on a third-party site that is itself the result of an erroneous application of applicable policy, is completely unfounded.

For the above reasons, it is being respectfully requested that the Planning Commission's decision be overturned, and the permit refused.

2. Failure to safeguard green areas and existing gardens that contribute to urban amenity, as well as prevent unnecessary soil sealing of land not designated for development – In breach of SPED UO3.7

The Planning Commission approved the development of the site to a depth of 72.6m. This will lead to the unnecessary loss of at least 4 olive trees, sealing of an additional 325sqm of land beyond the 30m threshold and its subsequent formalisation, despite it lying in the heart of an urban block which according to all applicable policy is intended to remain free from development to ensure the integrity of existing gardens and open spaces that contribute towards the pleasantness and amenity of urban areas.

Given the above, the Commission failed to adequately adhere to the following provision of SPED:

*Urban Objective 3.7: To identify, protect and enhance the character and amenity of distinct urban areas by **Protecting and greening open spaces which contribute towards the character and amenity of urban areas, reduction of soil sealing and support biodiversity with a view of developing ecological corridors***

3. Unjustified disregard of prevailing planning policy – In breach of CHP 552 Art. 72(2)

The Planning Commission chose to disregard the clear and specific provisions of the applicable planning policies and instead applied an unregulated ad-hoc mechanism to justify going directly against that intended by the legislator, thereby rendering the decision in breach of Art. 72(2).

For these reasons and others which may result during the hearing of this case, the appellants are humbly requesting this Honourable Tribunal to annul the decision taken by the Planning Commission and revoke the permit.

Perit Tara Cassar
tara.cassar@gmail.com

List of witnesses:

1. The appellants and the applicant
2. The Planning Authority
3. Employees of and consultants to the Planning Authority
4. Architects and field experts
5. Objectors
6. Other witnesses