

The Environment Planning Review Tribunal  
Floriana



PA 7120/16

**Appeal from the decision of the Planning Board which refused a Request for revocation of permit PA 7120/16 in accordance with Article 80 of Chapter 552 of the Laws of Malta.**

**Porzjuncola Retreat House, Triq Tul il-Kosta, Triq il-Porzjuncola, Triq il-Wirt Naturali and, Triq San Gwann L- Evangelista, Naxxar, Malta**

**Construction of a Franciscan Retirement home (Class 2A) housing 20 bedrooms, living and dining quarters, living and dining quarters, meeting room, kitchenette, laundry, mortuary, & chapel. Works shall also include the demolition and reconstruction of previous extension (changing rooms at 1st floor) to existing neighbouring Franciscan Retirement Home.**

**Decision Date 15th September 2022**

**Application of Appeal of Michael Struck, Andrea Trapani, Manfred Unger**

**Appellants premise as follows:**

That an application for the revocation of PA 7120/16 was submitted in March 2022.

The Planning Board refused this application for revocation on the 15th September 2022. The appellants are aggrieved by this decision and are filing this appeal.

The Grounds of Appeal are the following:

## 1. Ground of Appeal

**The Planning Board was incorrect in ruling that the affixing of the site notice on only one street of the surrounding streets was done in accordance to regulations – and that the information on the site notice and otherwised submitted was correct, comprehensive and reflecting the situation on the ground.**

Appellants submit that Circular 4/16 states that the following must be submitted in an application for planning permission:

### 3.1 Application form and related detail requirements

The application is being retained in its current format and, in line with Regulation 4 of LN 162 of 2016, shall consist of the following documents:

**(i) the location of the proposed development should be specified in detail.** A property should have a number or name to indicate the exact location. If the site is not located in an existing built-up area, the nearest access street names (and/or the name 3 of the area, particularly if no street name is available) should be given. **In cases of development with a frontage on more than one street, all the street names should be listed in the appropriate section (Section 5 – Location of proposed development) of the application form.**

From the above it is clear that if there is development with a frontage on more than one street, all the street names should be listed in the appropriate section of the application form.

Now DC 2015, defines **plot frontage** as “the portion of a plot or site that abuts a schemed road from which primary **access** to the development will usually occur.”

In fact during the relative Board meeting<sup>1</sup> Board member Perit Mario Bonello referred to the definition of “frontage” in the DC 2015 which states that “it is the portion of the plot that abuts a schemed road from which primary access to the development will usually occur” **Therefore, it is clear that the frontage refers to the access to the development**”.

The Case Officer’s Report mentions different entrances to the site along different roads:

#### *“4.3 SITE DESCRIPTION*

*The Porzjuncola Retreat House is located at Bahar ic-Caghaq, l/o Naxxar and is **accessed through Triq tul il-Kosta and Triq il-Wirt Naturali** leading directly to the premises.<sup>2</sup>”*

It follows that since the site had access and frontage on different roads then the site notice should have been affixed on all the said roads. **However**, the site notice was attached on a stone pillar **within** the entrance path to the property and not even on the façade of the property on Triq Tul il-Kosta. There were no site notices placed on Triq il-Porzjuncola, Triq il-Wirt Naturali and, Triq San Gwann l- Evangelista. It cannot be understood why the relative site notice was not affixed on all the roads around the site, especially in view of the fact that the different roads are mentioned in the project description.

The site notice was never seen by neighbours and that the site notice was removed. The placement of the sole site notice is evidenced by the photos on the Planning Authority website. The photos are being reproduced below.

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<sup>1</sup> Minute 464

<sup>2</sup> DPAR Report Page 3.

The extremely limited visibility of the sole site notice – within the site – and not even clearly visible from the pavement on the road, has clearly led to the fact that none of the neighbours objected to this change of use of a retreat house to a commercial retirement home. Several residents produced sworn affidavits stating that although they passed from the entrance of Porziuncola House on a frequent basis they never saw the sole site notice which is shown in the Planning Authority's photos. Neighbours were effectively denied the right to make submissions regarding the change of use, addition of new uses, intensification and visual impact of the development.

In view of the above it is requested that Article 80 is invoked (error on the face of the record).

## **2. Ground of Appeal**

**Permit approved on the basis of incorrect information and declarations which do not reflect the situation on site, is erroneous and mistaken and which has a material bearing on the Planning Commission's decision**

The site indicated in this application lies within Baħar ic-Ċaġħak Area Policy MAP NAM4 which clearly states that the site has to "Retain existing Use"

There is insurmountable evidence that Porziuncola House has always been a Retreat House and **not** a Retirement Home. Consequently the Local Plan should have been adhered to and the sole retreat use maintained.

The Collins English Dictionary defines a "retreat" in the following manner "A **retreat** is a quiet, isolated place that you go to in order to rest or to do things in private."<sup>3</sup> Clearly this refers to a tranquil place which persons visit on a temporary basis for a period of calm reflection and meditation.

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<sup>3</sup> <https://www.collinsdictionary.com/dictionary/english/retreat>

On the other hand the Height Limitation Adjustment Policy for Retirement Homes defines a “retirement home” in the following manner:

## 1.1 Definitions

1.1.1 For the purposes of this policy, a **retirement home** is defined as a “Care Home for Older Persons used as a place for the care, including long-term care, and housing of older persons whether for reward or not. This does not include sheltered housing for older persons with no provision of care services”.

**Long-term care** is defined as “a cross-cutting policy issue that brings together a range of services for persons who are dependent on help for their basic activities of daily living (ADLs) over an extended period of time”.

**Activities of Daily Living** are self-care activities that a person must perform every day such as bathing, dressing, eating, getting in and out of bed or a chair, moving around, using the toilet, and controlling bladder and bowel functions.

1.1.2 Elements of long-term care include comprehensive assessment and rehabilitation, basic medical services, home nursing, social care, housing and other services such as transport, meals, occupational and empowerment activities, thus also including help with **Instrumental activities of daily living (IADLs)**.

**Instrumental activities of daily living** are related to independent living and include preparing meals, managing money, shopping for groceries or personal items, performing light or heavy housework, and using a telephone.”

From the above it is evident that Porziuncola Retreat House (Dar l-Irtir Porzjunktola) does not fall within the definition of a retirement home – a place providing long-term care for persons dependent on assistance to carry out daily activities.

The following is further evidence that Porziuncola Retreat House is not a retirement home:

- The **name** of the retreat house is Porziuncola **Retreat** House (not Retirement Home). The website of the Franciscan Province in Malta clearly describes it as a “retreat house”<sup>4</sup> ([http://ofm.org.mt/ofm/?page\\_id=1264](http://ofm.org.mt/ofm/?page_id=1264)) which is “ideal for meditation”. The website of the Malta Diocese also specifies it is a Retreat House in the Page dedicated to Retreat Houses. ([https://ms.maltadiocese.org/WEBSITE/2019/INFORMATION/RETREAT%20HOUSES\\_AOM.pdf](https://ms.maltadiocese.org/WEBSITE/2019/INFORMATION/RETREAT%20HOUSES_AOM.pdf))
- Porziuncola Retreat House is not and was not licensed by the Social Care Standards Authority as a retirement home. According to the list of licensed agencies (attached) Porziuncola Retreat House in Baħar iċ-Ċaġħak is not listed as being so licensed. A retirement home in Mgarr with the same name has absolutely no affiliation to the retreat house in question.
- Up till 2018 (after the date of the permit) at least Porziuncola House was being used for uses which are inimical to a retirement home. From the extract of the Government Gazette of the 20th December 2019 it is shown that the National Orchestra of Malta gave a direct order to the Franciscan Friars to use Porziuncola House. It is hardly likely that the National Orchestra would give a direct order to use a retirement home.
- The Electoral Registers do not list a significant number of residents at Porziuncola Retreat House Naxxar, showing that it does not fall within the Class 2 A use of a Retirement Home. Well after the 2006 Local Plan for the area was published, in 2013, the pertinent Electoral Register lists one person as living at Poziuncola House confirming that it was not used as a retirement home (Class 2A) but as a Retreat House with one person living there.
- The attached extract entitled “Il-Frangiskani” describing the inception and development of Poziuncola Retreat House clearly shows that the intention

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<sup>4</sup> [http://ofm.org.mt/ofm/?page\\_id=1264](http://ofm.org.mt/ofm/?page_id=1264)

and use of the Retreat house was always to host retreats and not to be a retirement home (Class 2A).

The above is pertinent to the case at hand because the project description submitted by applicant states as follows:

“Construction of a Franciscan **Retirement home** (Class 2A) housing 20 bedrooms, living and dining quarters, living and dining quarters, meeting room, kitchenette, laundry, mortuary, & chapel. Works shall also include the demolition and reconstruction of previous extension (changing rooms at 1st floor) to existing neighbouring Franciscan Retirement Home.”

The applicant makes it seem as if there was already a Retirement Home on site when this is clearly not the case. The applicant uses the words “existing neighbouring Franciscan Retirement Home” to imply that the Retirement Home already exists and what is being proposed is simply an extension and ancillary use to it. In fact a retirement home is inimical to a retreat centre. The latter requires tranquillity for different groups of visitors to embrace spiritual meditation. On the other hand a retirement home envisages traffic of visitors, care service providers and supplies.

It is evident that this is a change of use to a retirement home and not the retention of an existing use. The inclusion of a **mortuary** is also clearly indicative of a change of use and not the addition of a use ancillary to a retreat house.

The above has a material bearing on the case as:

- The proposal description refers **solely** to the construction of a Retirement Home and makes no reference to the retention of the Retreat House aspect. Consequently this constitutes a change of use which is not allowed by NAM4 which specifically states “**Retain Existing Use**”.

- The proposal incorrectly refers to “**existing neighbouring Franciscan Retirement Home**” when it has been most amply shown that there was **no existing** retirement home.

This information has a material bearing on the Planning Commission’s decision because the latter approved a change to the existing use in breach of the Local Plan NAM4.

Moreover by relying on the applicant’s erroneous description of an existing use of a retirement home the Planning Commission did not properly assess the real existing use of the site as a retreat house **and** a Class 1 Dwelling for Franciscan friars – but not a Class 2A retirement home<sup>5</sup>.

In view of the above, it is clear that the permit should have been revoked on the basis of the provision of incorrect and erroneous information which does not reflect the situation on site. The Planning Board was incorrect in not giving sufficient weight to these aspects.

In view of the above, the appellants are requesting this Tribunal to revoke the decision of the Planning Board referred to above and to consider this request with urgency due to the significant implications that the development will have on the neighbouring community and residents’ legitimate expectations that the applicable plans and policies are respected.

Claire Bonello LL.D.

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<sup>5</sup> According to the Height Adjustment Limitation Policy for Retirement Homes such a change of use is allowed within Residential Priority Areas (as this one is) if the existing development is non-residential (apart from other requirements). In this case there is proof of friars living there making it residential (Class 1).



## **Appellants**

**Michael Struck** Il-Hawt, Triq Patri Benjamin Galea, Bahar ic-Caghak, Naxxar

**Andrea Trapani** 23 Rawhide Court Fl 5, Triq il-Qratas Swieqi

**Manfred Unger** Portomaso, 16111 Vjal Portomaso, San Ġiljan

## **Witnesses**

The appellants, their consultants

Planning Authority officials past and present

The applicant and all companies in which he is a shareholder, director and/or company secretary and his consultants

AN Services Marine Ltd.

Paul Attard

Katari Holdings Ltd

Franciscan Friars

Fr Richard Stanley Grech

Perit Paul Cuschieri

Perit Colin Zammit

Neighbours

Persons who have stayed at retreat house