

**The Environment Planning Review Tribunal**

**St Francis Ravelin**

**Floriana**

**PA 5255/21**



**Application of Appeal from Planning Board’s decision to refuse the request for revocation of PA 5255/21 which decision was taken on the 15th September 2022.**

**Site:** Porziuncola Retreat House, Tul il-Kosta, Naxxar

**Proposal:** Amendments to PA 7120/16 for the construction of a retirement home facility for the care of the elderly (Class 2A). Increase in the number of rooms from 53 to 200 and revised layout and design at all floors. Redesign of parking area approved in PA5581/10.

**Decision Date:** 15/09/2022

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

**Appellants premise as follows:**

That an application for the revocation of PA 5255/21 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 staes 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**”.

Now in the case at hand there is **access** to the site from more than one road. In fact the Case Officer’s Report mentions different entrances to the site along different roads:

#### “4.2 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>”

#### **4.2 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 to the access to the premises.** A car-park facility

Even the applicant’s Project Description Statement states that, “*1.6 The proposal will have a complementary design and will be accessed through Triq il-Wirt Naturali, **which provides access only to the development.***”<sup>3</sup>”

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<sup>1</sup> Minute 464

<sup>2</sup> DPAR Report Doc 133a.

<sup>3</sup> Doc 37a.

Since there is access – and therefore frontage – on more than one street **all the street names** should have been listed in the appropriate section of the application form. However this information was not included in the relevant section of the application form – as seen from the extract of Doc 1h below. The applicant only listed one street name and not all of them in breach of Circular 4/16.

Location of Proposed Development

Please complete	
Property Name	Porziuncola Retreat House
Door No.	
Street/Place Name(s)	Triq Tul il-Kosta
Locality	Naxxar
Local Council/s	Naxxar

***Extract from Doc 1h submitted by applicant showing location only along one street***

This omission led to further breaches. The site notice was attached on a stone pillar **only** 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 when the building can be accessed from these roads. The site notice was never seen by neighbours who provided affidavits confirmed on oath to this effect.

The limited visibility of the sole site notice on only one access road, has clearly led to the fact that none of the neighbours objected to this further intensification of use and change of use of a retreat house to a commercial retirement home.

Several neighbours have submitted 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 on new uses, intensification and visual impact of the development.

Neighbours – and indeed the general public – were deprived of the right to make representations on the changes of plans and drawings which took place after the representation period had lapsed on the 1st October 2021. After this date new sets of plans were filed on 2 different occasions – these consisted in Docs 99a to 99f, 99h and Docs 109a to 109g. There was no republication of plans following the filing of these plans and – as appellants had not been able to see the irregularly affixed site notice – they were deprived of their right to object to these.

The Board did not consider these aspects sufficiently leading to a flawed decision to refuse to invoke Article 80.

## **2. Ground of Appeal**

**The Planning Board disregarded misleading statements about pre-existing use of site - Permit approved on the basis of incorrect information and declarations which do not reflect the situation on site, is erroneous and mistaken and which had a material bearing on the Planning Commission's decision — Lack of essential documentation - Error on the face of Record**

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”. It is clear that the legislator intended that the use in evidence in 2006 – when the relative Local Plan was published – be retained. That use was of a retreat house and a dwelling for a small number of priests/friars.

However, there were several instances where the applicant made misleading statements about the **pre-existence** of a Retirement Home on the Site.

In this vein we find:

The Public Application Form (Doc 1h) which lists the Main Existing Use of site as a “Retirement Home”

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<u>Other Information</u>	
Total site area (indicated in red on site plan) in m squared	7538.2
Main existing use of site	<b>Retirement Home</b>
Maximum electricity demand of development in KVA	27

The Project Description Statement also makes misleading statements about the alleged pre-existing use as a retirement home:

“**1.3 PA 07120/16, was approved and still valid for the construction of additional floors at the Franciscan Retirement home (Class 2A)**”

housing 20 bedrooms, living and dining quarters, living and dining quarters, meeting room, kitchenette, laundry, mortuary, & chapel

## **2.0 The Proposal**

2.1 The development involves the construction of an elderly home which will accommodate 200 resident rooms (380 beds), chapel, ancillary, doctors' offices, nurses' quarters, gym, dining and preparation areas, therapeutic facilities, mortuary, consultation rooms and ancillary facilities.

4.3 The development will replace a building, which has permits to develop an extension to **the existing elderly home**, and thus it is believed that the development follows the spirit and letter SPED objectives. The site is not a greenfield site, is within the development zone and covered with development permits to allow **a similar** yet larger development to be built.

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

“Amendments to PA 7120/16 for the construction of a retirement home facility for the care of the elderly (Class 2A). Increase in the number of rooms from 53 to 200 and revised layout and design at all floors. Redesign of parking area approved in PA5581/10.”

## **VISUAL IMPACT AND LANDSCAPE**

10.12 The design, landscaping and massing of the building is intended blend within its surroundings while maintaining its need to be functional. All practical measures have been taken, hence currently there are a number of design revisions in the pipeline, to make sure that the proposal does not create visual impact on the landscape and rural characteristics of the area.

**10.14 The proposal will demolish the existing elderly home and replace it with another.**

11.4 The development involves the construction of an elderly home which will accommodate **200 resident rooms (380 beds – Appendix 1)**, chapel, ancillary, doctors' offices, nurses' quarters, gym, dining and preparation areas, therapeutic facilities, mortuary, consultation rooms and ancillary facilities, replacing the **existing 66 bed elderly home** (additional 19 beds approved)."

The entire thrust of the Project Description Statement is to make it appear that the site was already a Retirement Home for the elderly – a Class 2A institution. This is clearly being done to circumvent the Local Plan restriction in NAM4 to retain the existing use.

In reality, there is insurmountable evidence that Porziuncola House has always been a Retreat House and **not** a Retirement Home.

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>4</sup> Clearly this refers to a tranquil place which persons visit on a temporary basis for a period of calm reflection and meditation. A retirement home

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<sup>4</sup> <https://www.collinsdictionary.com/dictionary/english/retreat>



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.

The following is further evidence that Porziuncola Retreat House is a retreat 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>5</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))
- 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

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<sup>5</sup> [http://ofm.org.mt/ofm/?page\\_id=1264](http://ofm.org.mt/ofm/?page_id=1264)

retirement home (Class 2A) but as a Retreat House with one person living there.

- The extract entitled “Il-Frangiskani” by Fr. Ġorġ Aquilina describing the inception and development of Poziuncola Retreat House clearly shows that the intention and use of the Retreat house was always to host retreats and not to be a retirement home (Class 2A).

As shown from the above, Porzjunkola Retreat House was used for the purposes of retreats and a dwelling. Other structures within the site were used as a dwelling. Reference is here being made to Domus Pacis<sup>6</sup>. Exponent’s research shows that the Electoral Register of October 2017 only shows 3 persons living at Domus Pacis, Triq il-Porzjunkola, Baħar ic-Ċaġħak, Naxxar (Joseph Camilleri, Ramiro k/a Cherubin Galea and Joseph k/a Ġwann Micallef).

This means that Domus Pacis – which is a different building to Dar Porzjunkola - falls within the Category A – Residential Uses Class 1– Dwellings according to Subsidiary Legislation 552.15 This states that Dwellings are those which have a:

**“Use as a residence**, whether or not as a sole or main residence, by any of the following:

(a) a single person or by people living together as a family;

**(b) not more than six residents living together, including a household where care is provided for residents”**

From the above it is clear that Domus Pacis is a Class 1 Dwelling and not a Class 2A Retirement Home which is defined differently under Subsidiary

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<sup>6</sup> Reference is here being made to the request for revocation of PA 7120/16.

Legislation 552.15. Therefore any reference to an “existing elderly home” is incorrect and misleading.

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 or a dwelling.

The above has a material bearing on the case as:

- The proposal description refers **solely** to the construction of a retirement home facility for the care of the elderly (Class 2A) 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**”.

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 statement regarding the 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>7</sup>. This constitutes an error on the face of record. The Planning Board’s decision on this aspect was incorrect as it did not give any weight to the fact that the applicant referred to the existing use as that of a retirement home which is in a different class from that of a retreat house.

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<sup>7</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).

### 3. Ground of Appeal

**Permit approved on the basis of incorrect information and drawings which do not reflect the situation on site are erroneous and mistaken and which have a material bearing on the Planning Commission's decision – Misleading sections and plans - Lack of essential documentation - Error on the face of Record**

1. The height limitation for the area is clearly indicated in map NAM9 of CMLP. This shows that the 3 floors+semi-basement area is limited to the area of the existing Retreat House building and NOT to the entire site area.
2. The existing site levels for the establishment of the proposed/allowable heights for the building were taken in Triq il-Wirt Naturali and Triq il-Porzjunkula. Triq il-Wirt Naturali is about 50 metres away from the frontage of the existing building and Triq il-Porzjunkula is also located about 20 metres away from the building. There is no indication at which section of the streets the levels were taken – which is a serious omission – especially in view of the following aspects.
3. The approved section shows a level of 82.14m at the lowest point in Triq il-Wirt Naturali and a level of 100.53m on the highest point in Triq il-Porzjunkula which makes for a difference of 18.39m. These levels are more or less consistent with the data taken from the PA map server by exponent's architect at the points indicated in the respective streets (see image "Levels" below). Clearly the levels submitted by the applicant's architects are not located **along the frontage of the building** as per

policies P2, P35, P36 but are well outside the height limitation area indicated in NAM9.

In fact, P35 states:

“P35: A building shall not exceed the permissible height as established in the Local Plans, which shall be interpreted according to Annex 2 of this document. Such height shall be measured from the pavement level **along the frontage of the building.**”

**The level of the street along the actual frontage of the building is about 7m higher ( by 2 storeys) than that taken by the architect in his submission.** Consequently, the information provided does not reflect the situation on site. This information definitely had a material bearing on the Planning Commission’s decision.

4. The levels of the existing building and along the frontage are shown in image “Levels Building” attached. There is only a difference of 4m between the highest and lowest levels as opposed to the 18.39 m as submitted by the applicant’s architect.
5. The Annex 2 of DC 2015 allows for a 17.50m high building with a frontage of 14.10m high frontage. The proposed building now has a frontage of over 20m.
6. The existing building has a frontage of about 10.70m.

It should be noted that applicant cannot be said to have satisfied the requirements of the Height Adjustment Limitation Policy for Retirement Homes which states that the following information is to accompany planning applications:

“Proposals need to be justified by the applicant through a written report and an urban design study, with emphasis on **graphic presentation**. The report should identify and describe those elements that create local character and other important features and constraints. **These are to include streetscape, height to width ratio of streets, scale, height, urban grain, natural topography, landmark buildings and areas and their settings, including backdrops, and important local views, prospects and panoramas of the locality in which the proposal is located.**

A visual assessment should also be prepared **giving accurate and realistic representation of the building in its context. Proposals need to be evaluated by the relevant agencies as stipulated by current legislation and polices concerning retirement homes.”**

None of the above was provided. The only photomontages provided are extreme close ups. There is absolutely no accurate and realistic representation of the building in its context let alone streetscapes, scale, height, local views, prospects and panoramas of the locality in which the proposal is located. These serious omissions, coupled with the erroneous and misleading levels provided by applicant’s architect all point to a situation where the information provided did not reflect the situation on site. The Planning Board was incorrect in deciding that these were issues which were resolved during the course of processing the application. They were not – and the Planning Commission decided on the basis of these errors and omissions which have a material bearing on the case.

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 and error on the face of record.

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.

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## **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