

**ENVIRONMENT AND PLANNING REVIEW TRIBUNAL**

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REVIEW TRIBUNAL**

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19 OCT 2022

**ST. FRANCIS DITCH  
FLORIANA**

**Case Number:** PA 2686/22

**Location of Development:** No 57, Triq il-Gzira, Gzira

**Description of Works:** Change of use from Class 4C to Class 4D restaurant.

Application includes placing of tables and chairs and umbrellas outside the establishment, alterations to the facade and internal layout.

**Applicant:** Mr Christopher Grech

**Architect:** Perit Luke Pellicano

**APPLICATION OF APPEAL OF THE GZIRA LOCAL COUNCIL**

By means of the present application of appeal the appellant Gzira Local Council is filing an appeal from the decision of the Planning Commission in the abovementioned case. The decision of the Planning Commission was published in the Government Gazette on the 20th September 2022.

That the appellant Local Council is aggrieved by the abovementioned decision and is filing this appeal on the following grounds:

ENVIRONMENT AND PLANNING  
1. **Ground of appeal**

2. **Ground of Appeal**

**Breach of Policy for Outside Catering Areas Policy**

The Planning Commission has approved an outside catering area on a busy road with heavy traffic despite no traffic counts being made available. The fact that staff and/or customers will have to cross from the food preparation and cooking area to the outside catering area will necessarily mean that there will be even more persons occupying the pavement which is not wide enough for increased pedestrian flow. Moreover the noise and food odours from the site will detract from the residential amenity of the area. All these factors constitute distinct breaches of the following provisions of the OCA Policy.

**P2 Public Access and Amenities**

Outdoor Catering Areas in residential zones **shall not normally be favourably considered such that residential amenity is not reduced due to noise and odours.**

Outdoor Catering Areas and any associated structures and equipment shall not obstruct access:

- to public and private utilities including storm water drainage pits;
- to the use of public transport;
- **to vehicular and pedestrian passageways and cycle lanes;**

**S1 Pedestrian Access – minimum width**

**In all cases a minimum width of 1.5 metres shall be left clear for pedestrian access,** allowing for an easy and safe flow of pedestrians including those with special needs, wheel chair users and those with

prams and buggies. However, in certain areas the permitting Authorities reserve the right to increase the minimum width as necessary

#### **P4 Safety to patrons and the general public**

Outdoor Catering Areas shall not normally be permitted on pedestrian public footpaths, which are either adjacent to arterial roads **or located in close proximity to fast-moving traffic. This shall safeguard the safety and comfort of the patrons against vehicle conflict, noise and air pollution.** Pedestrian and vehicular advisory and regulatory traffic signs or controls shall not be obstructed by Outdoor Catering Areas or any associated structures, furniture or equipment.

#### **(b) Required setbacks from street intersections**

**Clear unobstructed sightlines across footpaths at street intersections shall be imposed as per Figure 6, to cater for visibility requirements at junctions. Existing traffic flows shall be taken into consideration in the determination of the required sightlines**

For these reasons the permit should be revoked.

## **2. Ground of Appeal**

### **Breach of SPED- breach of Article 72 (2) (d) and (e) of Chapter 552 of the Laws of Malta**

Appellant Local Council emphasises the fact that the introduction of what is essentially an outdoor restaurant in a residential area will impinge upon the residential amenity of the area, is a form of bad neighbourliness. Moreover the area is prone to flooding and the inclusion of a platform will create an obstacle for the percolation of flood water with a resultant danger to pedestrians. This constitutes a breach of **SPED Thematic Objective 6**: To safeguard environmental health from air and noise pollution and risks associated with use and management of chemicals by “*Controlling the location, design the operation of development*” . The approval is also in breach of the following SPED Objectives:

#### ***Climate Change***

***Thematic Objective 9***: To control Greenhouse gas emissions and enhance Malta’s capacity to adapt to Climate Change by

***8. Directing development away from areas which are prone to significant risk of flooding with the exception of interventions required to manage these areas***

***Urban Objective 4***: To ensure that all new developments are energy and water efficient and provide a sense of place, respond to the local character, improve amenity and the pleasantness of place and ensure safety by

***5. Seeking to reduce risk hazards through design and location***

It should be highlighted that these aspects were all indicated in the representations submitted by appellant local Council and other representees but were disregarded by the Planning Commission. In so doing the Commission breached Article 72(d) and (e) of Chapter 552 of the Laws of Malta which state that the Commission should have regard to the following when reaching its decision:

d) any other material consideration, including surrounding legal commitments, environmental, aesthetic and sanitary considerations, which the Planning Board may deem relevant;

(e) representations made in response to the publication of the development proposal

**For this reason, the permit should be revoked.**

### **3. Ground of Appeal**

**The Planning Commission breached the provisions of S.L. 552.13 Development Planning (Procedure for Applications and their Determination) Regulations.**

Appellant Local Council objected to the way in which the Planning Commission considered and decided this application, in breach of S.L.552.13. These breaches occurred as follows:

**Breach of Regulation 13 (4) – Chairman did not request provisional opinion of other members**

The Planning Directorate's recommendation (at Doc 63a) was that of a **refusal**, based on the objection of Transport Malta.

1 The proposal runs counter to paragraph 2.3 of Policy, Guidance and Standards for Outdoor Catering Areas on Public Open Spaces, 2016 since the Transport Malta did not endorse the location of the development.

The first hearing of the Planning Commission was held on the 27th July 2022 and was deferred for the following reasons:

In line with S.L. 552.13 regulation 13(4), justification related to reasons in the DPA report as follows:

Perit to submit revised drawings to address reasons for refusal.

The required information as directed by the Board is to be submitted by Perit within 21 days from today.

CO please analyse submissions (including SEO assessment), update NTC and submit conditions of permit if addressed (without prejudice).

Def for the: 6/9/22

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**Planning Directorate's Comments**

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No information was submitted.

Conditions listed accordingly.

There was absolutely no reason for the Commission to request Applicant's Architect to refuse the reasons of refusal. The application had been assessed adequately by the Planning Directorate and the Planning Commission had no remit to disturb or vary that assessment – desperately trying to find some reason to overturn the recommended refusal.

Another meeting was held on the 6th September 2022. Consequently, this was the first meeting during which the application was being considered. At this point Transport Malta had objected to the application **twice**. Then in a further representation dated 5th September 2022 and uploaded on the date of the Commission hearing, Transport Malta made a U-Turn and suddenly

declared it was not objecting to the project and chucked in the requirement of bollards as a fig-leave to safety concerns.

Transport Malta's objections were dated as follows:

20th May 2022 – Doc 49aa

14th June 2022 – Doc 60a

In both cases the reasons for the objection were as follows:

**Kindly be informed that from a traffic and safety point of view, Transport Malta is objecting to placing of tables and chairs and umbrellas outside the establishment, on public open space:**

The below refers:

- 1) Lack of parking spaces
- 2) Lack of pedestrian safety while crossing pavement to render the service
- 3) High risk for pedestrians and clients in the event of a traffic accident
- 4) High risk of visibility for drivers / visibility interference for drivers

During the first meeting, the Chairman of the Commission should have followed Regulation 13(4) of SL. 552. 13 and requested each member of the Commission present to express a provisional opinion on the recommendation of the Executive Chairperson. Then – if the majority of members of the Planning Commission present for the first sitting express a provisional opinion that, given no further clarification, their intention is to go against the recommendation of the Executive Chairperson, the Planning Commission should have deferred the determination of the application within a period not exceeding 6 weeks, propose a list of conditions or reasons for refusal, and add comments in the committee notes section of the report.

In this case, the Chairman Stefania Baldacchino did not request Commission members whether they intended to go against the recommendation of the

Executive Chairperson - which in this case was a refusal. This is in breach of Regulation 13(4).

**Regulation 13(4) (a)**

“The Planning Board shall decide and determine any application during the first sitting, saving if a request for suspension or deferral has been upheld. During the first sitting, the Chairman of the Planning Board shall request each member of the Board present for the first sitting to express a provisional opinion on the recommendation of the Executive Chairperson.

If the majority of members of the Planning Board present for the first sitting express a provisional opinion that, given no further clarification, their intention is to go against the recommendation of the Executive Chairperson, the Planning Board shall, in addition to the requirements of the Act, defer the determination of the application within a period not exceeding six weeks, propose a list of conditions or reasons for refusal, and add comments in the committee notes section of the report. The applicant, registered interested parties, the external consultees and, or other consultees shall be informed of the Planning Board’s proposal prior to the date of the deferred sitting”

**Breach of Regulation 13(4) (b) – Planning Commission deferred hearing without giving reasons for same**

During the meeting of the 27<sup>th</sup> July 2022, the Planning Commission requested the applicant’s architect to address the reasons of refusal and deferred the hearing



without giving reasons for requiring this information in breach of Regulation 13 (4) (b) (ii) which states the following:

(b) The Planning Board may:

(ii) request the applicant to furnish further information, **in which case the Planning Board shall give reasons for requiring such further information;**”

### **Breach of Regulation 12(1) of S.L. 552.13 – more than 2 further consultations held with Transport Malta**

As stated above, Transport Malta **objected twice** to the proposed development, giving 4 reasons for the refusal every time. There was no change of plan or circumstances – but for some odd reason, Transport Malta subsequently issued a third consultation reply. This time it dropped its previous objections to the application.

This U-turn of Transport Malta is documented in Doc 114a.

This repeated consultation with Transport Malta is completely irregular. In the first place there was no change in circumstances which would warrant re-consultation with the external consultees, including Transport Malta. Secondly, the relevant regulations state that **there can be no further consultation following the second consultation**. This is clearly stated in Regulation 12(2) of SL 552.13

“2) If, following the consultation period established in regulation 8(2), revised drawings and, or a revised development profile form and, or other documents are submitted by the applicant as stated in sub-

regulation (1), the Executive Chairperson shall notify any of the external consultees indicated in Schedule 3, and, or any other consultee and, or the Agricultural Advisory Committee and the Design Advisory Committee, where applicable, within five days from receipt of such revised drawings or documents:

**Provided that no further consultation may be carried out following a second consultation.”**

It is quite clear that the legislator’s intention was to provide for the re-consultation of consultees if there is a change of circumstances which warrant such reconsultation. The legislator did not intend there to be interminable reconsultations - in fact a limit on the number of reconsultation was imposed and it is stated that **there can only be 2 consultations.**

**For this reason, the permit should be revoked.**

For these reasons and others which may result during the hearing of the case, the appellants are humbly requesting this Honourable Tribunal to:

1. Annul the decision taken by the Planning Commission in this case and to revoke the permit without further delay and;
2. To add further reasons of refusal based on but not limited to the fact that the application goes against SPED Urban Objective 4: *To ensure that all new developments are energy and water efficient and provide a sense of place, respond to the local character, improve amenity and the pleasantness of place and ensure safety by 5. Seeking to reduce risk hazards through design and location, Thematic Objective 6“Controlling the location, design the operation of development”, Thematic Objective 9 Climate Change 8. Directing development away from areas which are prone to significant risk of flooding with the exception of interventions required to manage these areas,*

provisions of the Outside Catering Areas Policy as stated in this appeal especially P4 regarding safety to patrons and general public and breach of Article 72 in that the objections of the Local Council as a material consideration were disregarded.

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### **List of Witnesses**

The applicant and companies and partnerships in which he is involved, his employees to give evidence about the facts of the case, the operation of his takeaway establishment and contacts and correspondence with consultees and the establishment of pertinent facts.

Transport Malta employees past and present – to give evidence about the pertinent facts, including but not limited to, correspondence regarding this

application, internal and other policies followed. Kevin Farrugia, Amanda Delmar

Road Safety Council employees, representatives and consultants past and present – to give evidence about pertinent facts, road safety issues and related matters

Malta Tourism Authority representatives - to give evidence about pertinent facts, takeaway and catering licensing issues and related matters

Malta Business Registry representatives – to give evidence about the pertinent facts

Planning Authority employees and representatives, present and former – to give evidence about pertinent facts

The appellant Local Council, employees and consultants- to give evidence about pertinent facts

Environmental Health Directorate representatives - to give evidence about pertinent facts

Engineer/s experts who compiled reports - to give evidence about pertinent facts

Residents and objectors who live in the vicinity and road users - to give evidence about pertinent facts and all other witness, the evidence of whom may be required during the proceedings of the case.