



18th November 2022

**The Environment and Planning Review Tribunal**

*Nru. ta' l-Applikazzjoni:* PA/7992/21

*Lokazzjoni:* Kayzen, Area k/a Il- Hammieri, Qormi

*Proposta:* Proposed dismantling of existing structures and construction of a dwelling house as per pre 1978 commitments.

*Ref. Taghna:*

*Ref. Tribunal:*

**Harmsworth Alan**

**vs**

**L-Awtorita' ta' l-Ippjanar**

The appellant respectfully submits:-

- I) The applicant made the submission of this application in 2021.
- II) This application was refused by the Commission and the decision was published on the 26<sup>th</sup> October 2022.
- III) The appellant feels aggrieved by this decision and is hereby submitting this appeal.

Together with this appeal, the appellant is submitting:-

- A copy of the decision notice (Dok JA1).
- Receipt of Payment (Dok JA2).

The appellant respectfully submits the following:

1.1 The Authority wrongly applied the provisions of the law and policy regulating this site.

1.2 The Authority applied the wrong principle of law when demanding that the appellant submits “unequivocal proof” that the pre-1978 building was a legally established dwelling.

1.3 The Court of Appeal, in its decision of the 19<sup>th</sup> February 2014 in the names Vella vs. L-Awtotita ta’ Malta dwar l-Ambjent u l-Ippjanar (Appeal 189/2012) held:

*“Peress li dan hu kamp amministrattiv u sa certu punt b’aspetti civili, it-Tribunal hu mistenni li l-grad tal-prova ghal allegazzjoni biex tigi stabbilita bhala fatt ppruvat ghndu jkun dak fuq bilanc ta’ probabilita. Allegazzjoni mhux opposta u mhux messa f’dubju minn fatturi ohra ghandha tinghata l-importanza misthoqqa. It-Tribunal zbalja meta accertat li xi darba l-fond in kwistjoni kien residenza jippretendi li bhala mizura l-prova ‘inkonfutabbli’ li kellha tigi mressqa li din kienet residenza principali minn lok ta’ djar uzata bhala residenzi. It-Tribunal zbalja fil-ligi ghax il-grad ta’ prova ma tridx tkun bhal kamp kriminali ‘inkonfutabbli’, qisu ‘beyond reasonable doubt’ kif jesigi l-kamp kriminali izda biss li t-Tribunal ried ikun moralment konvint li l-fatti urew li l-allegazzjoni kienet giet ppruvata u ma kienx hemm provi ohra li jitfghu f’dubju serju dik il-prova. Sa hemm kellu u ghandu jasal it-Tribunal fid-determinazzjoni tal-aspett fattwali kollu tal-vertenza li jkollu quddiemu. Dan ma ghamlux u tali grad ta’ prova fil-qies ta’ ‘inkonfutabbli’ poggiet lil applikant fi zvantagg li l-ligi procedurali komuni fis-sostantiv ma tesigix fil-kamp amministrattiv u civili.”*

1.4 It is thus manifestly clear that the assessment made and the decision taken, were on the basis of a wrong application of the principles of law regulating the level of proof required in planning cases.

1.5 Without prejudice to the above, the appellant presented sufficient evidence to demonstrate that the building in question was a residence. The Authority could not simply discard such evidence and base its decision on facts which are completely irrelevant. The appellant also refers to a number of identical cases which were favourably considered by the Authority. Reference to same has been made in the assessment process. The appellant further refers to decisions of this Tribunal namely Seychel vs. Awtorita (Appeal 135/17) and also Cassar vs. Awtorita (Appeal 272/17).

1.6 Reference is also made to:

PA3126/15 – Proof of residence was a contract dated 1939 and a declaration by the notary stating the contract is linked to the site.

PA6867/18 – Proof of residence was a contract dated 1966 in which the property was addressed as razzett and the razzett was interpreted as a farmhouse by the board members.

PA941/19 – Proof of residence was a death certificate, old contract dated 1920 and stasis animarum which were declared by the notary to relate to the site.

PA4573/16 – Approved by EPRT whereby Proof of residence was an affidavit.

PA0099/16 – Approved by notary declaration that the property presented in the application is the same property illustrated in the contracts attached to the application.

PA3507/16 – Proof of residence is based on Affidavit and notary/Lawyer declaration together with an interpretation of the electoral register of how

the people used to reside next to each other according to the positioning in the electoral register.

PA2407/18 – Proof of residence electoral register 1928, 1930 – in the 1957 aerial photo a very small room of 19sqm was visible (without roof) and nothing is visible in the 1978 aerial photos.

*1.7* The proposed intervention in relation to the application should have also been assessed in the light of the fact that the plans could have been adjusted to enable a lesser impact on the site in question.

*1.8* In refusing this application on the basis of a wrong interpretation and application of the policy, the authority failed to apply the provisions of article 72(2) of Chapter 552 of the Laws of Malta and also failed to apply other relevant provisions of Sped which mitigate in favour of restoration and preservation of such buildings.

*1.9* The proposed development satisfies all other applicable criteria and requirements that are necessary for this development to be favourably considered and approved.

In view of the above, and further submissions that the appellant reserves to make, the appellant requests the Tribunal to revoke the decision of the Commission, and consequently order the Authority to issue the relative permit, and this under those terms and conditions that the Tribunal may deem appropriate.

With Respect



**Av. Ian J. Stafrace**

**Witnesses:**

1. Appellants, and consultants and consultees and officers of the Authority to confirm the facts.



**Av. Ian J. Stafrace**  
**9/4 Britannia House**  
**Old Bakery Street**  
**Valletta**