



In the Environment and Planning Tribunal

PA Ref. : PA/00822/22

Location:  
55, Hazel Twig, Triq il-Folklor, Birzebuga

Proposal:  
Proposed internal alterations and addition of three additional apartments over the existing first floor level.

### Appeal application of Odette Hicklin (ID 0309472M)

#### Hereby submits;

Whereas by means of a decision dated 8th November 2022 and published on the 21st December 2022, Appellant’s application was refused (hereinafter ‘the Refusal Decision’); Whereas the application was refused for the following reasons:

1. *The proposed vertical extension does not conform to the alignment plan for the area and therefore runs counter to Urban Objective 3 of the Strategic Plan for Environment and Development which aims for the protection and enhancement of the character and amenity of urban areas. The proposal is counter to Condition 1(J) of RG permit which states that "if the development hereby approved is modified (i.e. altered, extended, removed or redeveloped), the eventual development on site must conform to all the plans, policies and regulations applicable at that time."*
  
2. *The proposed development profile runs counter to the provisions of policies P35 and P39 of the Development Control Design Policy, Guidance and Standards 2015 (DC15) which clearly state that the allowable building height is to include the obligatory 1m parapet wall on the exposed facades at uppermost roof level, as indicated in Figure 46, and no structures are allowed within the required setback. The setting back of this wall at the uppermost roof level is not considered as an acceptable alternative allowed by policy P35 of the DC15. The proposal therefore also runs counter to the Urban Objective 3 of the Strategic Plan for Environment and Development which aims to protect and enhance the character and amenity of urban areas.*

Whereas Appellant feels aggrieved by the Refusal Decision and this on the basis of the following reasons/grievances:

1. The Refusal Decision failed to consider material considerations

Whilst the proposed balconies will not conform to the alignment plan for the area; however it is justifiable because of the existing projection over the balconies at the existing floor levels which were regularized in RG/2641/19. Furthermore, the proposed design of the facade’s extension will compliment the existing facade and is similar to the extension approved for the neighbouring property (PA/05667/18). In this case, the Case Officer provided the following reasons:

- *The proposed development does not conform to DC15 due to the following reason/s: The projection of the proposed balcony at third floor level, will exceed the maximum allowable projection of 1.50m (3.0m front garden on site). However, it can be considered in view of the existing commitment: the*

*cantilever over the balcony at second floor level (the apartment at second floor level was regularized by RG/318/16).*

- Policy G46 states that: "A balcony should be located so that its outer face side is at least 0.75m away from the inner face of the party wall nearest to such balcony". The proposed balcony at third floor level will be in contrast with G46, however it is justifiable because of the existing cantilever over the balcony at second floor level; furthermore, the proposed design of the facade's extension will complement the existing facade.*

2. Furthermore, as illustrated in fig. 1 below, there are no setbacks of the parapet wall at the uppermost roof level.

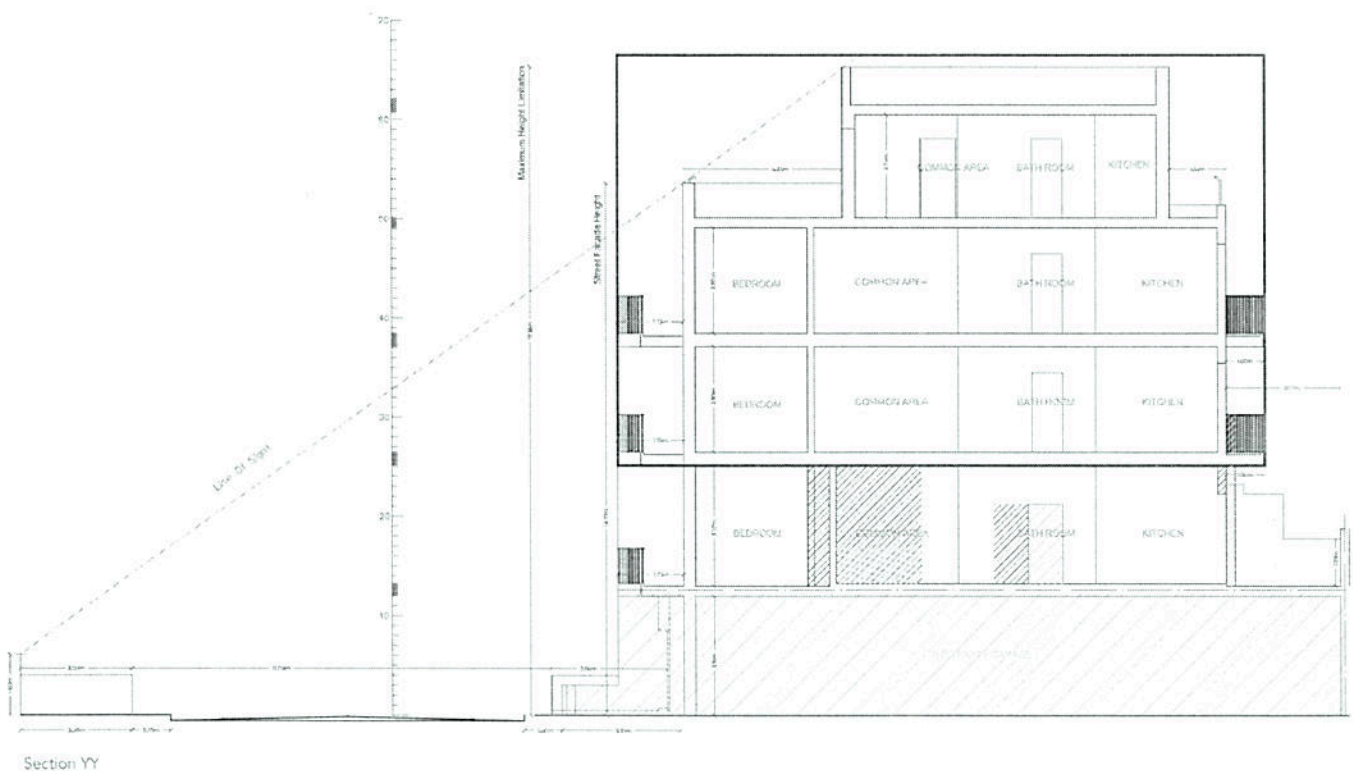


Figure 1

3. Disregard Of The Provisions Of Article 72 (2) Of Chapter 552 Of The Laws Of Malta

Article 72(2)(d) obliges the Commission to determine a planning application by giving regard to:

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

As explained in the afore-mentioned grievance, Appellant amply demonstrated that the site of the development is committed by legally issued permits and therefore such evidence should have led to a

favourable decision. On the contrary, the Commission ignored such evidence of commitment and therefore, it is submitted, that the Commission acted illegally in that the applicable law **oblige**s the Commission to consider such commitment

Conclusion:

In view of the above submissions, and other evidence and submission that may be brought, the Tribunal is requested to overturn the refusal and grant the permit requested by Appellant.

A copy of the relative decision and of the site plan are being herewith attached together with the form attesting payment of the fee.

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Perit Emanuel Vella

(Warrant No. 143)



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Dr. John L. Gauci

List of witnesses:

1. The Applicant
2. The Planning Authority
3. Employees and consultants of the Planning Authority
4. Architects of Appellant

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Perit Emanuel Vella

(Warrant No. 143)



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Dr. John L. Gauci