



**The Environment and Planning Review Tribunal**

Reference: PA/07591/21

Appellant: Mr. Matthew Aquilina

Applicant: Mr Clayton Luke Mula

Location: Kazin Papa Gwanni Pawlu II, Triq Sant' Elena, Sliema

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**Proposal:** Alterations to existing band club. Works include the change of use of existing bar to Class 4D, internal alterations, installation of lift and construction of school of music and recording studio at second and receded floor level.

**Application of Appeal.**

Where appellants humbly submit the following:

The appellants are filing an appeal from the Planning Commission’s decision on the application for full development permission (Ref: PA/07591/21), and the appellant is a third-party registered objector and interested person for all intents and purposes at law.

With a heavy heart the appellant feel aggrieved by the planning decision referred to above and by means of this application is requesting this Tribunal to revoke or adjust the Planning Commission’s decision on the full development permission.

The proposal is the addition of a Class 4D use as proposed in this PA and will change the band club from a social space to a commercial space, bringing in further burden on the residents without providing any parking going directly against the local plans.

The addition of a music school without adequate education classification to carry out the practice is also worrying, as the planning authority are not adequately screening the proposals and requesting the required class uses that are needed for the permits being given as required by Law. The lack of proper class uses limits the authorities’ requirements and stakeholders it should consult with, so that the proposal is approved according to the required stakeholders needs.

## Grounds of Appeal:

1. The planning authority failed to allow submissions by appellant as per L.N. 162 regulation 12 (6) (b) of 2016 however allowed multiple changes in plans from the applicants and updated case officers reports from the authority, the appellant was unable to submit responses towards the planning application although was an interested party.
  - a. Tribunal to take note of Document A below showing updated case officer reports and multiple changes in the plans. The lack of equality of arms is adequately being shown in this proceeding even though changes to the plans and reports was being done by the applicant and updated reports by the authority. The authority did not allow the appellant to submit the replies to the case officer's reports. Case office report updated on the 24<sup>th</sup> of October 2022 and submission of appellant on the 25<sup>th</sup> of October 2022.
2. The authority is failing to uphold the law in terms of enforcing the requirements for applicants of Class 4D to provide a garbage room, the lack of planning is causing rubbish everywhere. Tribunal to take note of **S.L.409.15 Article 11 (1)**.
3. The local plan specifically marks the area as residential under the policy **NHHO01**, the local plan SJ1. The policy does not allow the introduction of Class 4D, and no commitments exist surrounding the property that are of a Class 4D permit.
4. The lack of proper class use definition **Class 2C** for an education establishment as required by the development planning use classes subsidiary legislation 552.15, legal class order 2014, the addition of a school of music although welcome in the area lacks the necessary consultations and licenses to operate appropriately. The lack of class use allows the use to operate without being monitored effectively by the relevant authorities and potentially to provide the adequate funding if needed. Going directly against **L.N. 162 of 2016** Article 4 (vi) by not providing the appropriate class use.
5. The listed acceptable uses are well documented in the policy **NHHO01** and reflected in the **Legal Class Order 2014**, Class 4D is not one of the acceptable uses.
6. The planning commission also disregarded **Article 72 (2) (a) (b) (d) and (e) of chapter 552 of the Laws of Malta**. As the proposal goes directly against the policies and plans of the area.
7. **SPED as Urban Objective 3.5 and Thematic Objective 6.3** in terms of limiting non-residential uses and noise pollution in the residential area.
8. Proposal goes against DC 2015 – P18 no parking is being provided or paid for in terms of CPPS as per Annex 1 of Vehicle Parking standards. The new application is a

change of use to a Class 4D, the change needs to be interpreted with the new laws and policies.

9. Tribunal to take note of **PAB-00337/19** the refused permit by the tribunal is meters away from the approved **PA/07591/21** permit, although the current permit is of a band club the approved permit by the PA fails to show this difference and the reason why a Class 4D should be approved on site going against the local plans with no planning justification.
10. Proposal goes against **FL-GNRL-1** specifically specifies exceptions when FL-GNRL-1 does not apply as:
  - iii) The proposed development would not create an environment which goes diametrically against the thrust of the local plan policy. Particular attention would need to be paid to the traffic and parking carrying capacity of the surrounding transportation network, neighbour compatibility issues as well as surrounding existing and planned uses; and
  - iv) Proposals will be strongly encouraged to cater for all its parking as well as loading/unloading requirements on site.

The FL-GNRL-1 also specifically:

For instances listed in a) to g) below were development applications consist of proposals which are deemed to be neighbour compatible

As in this case Class 4D is surely not compatible and provides no parking, going directly against the local plans and the planning commission failed to put in a justifiable reason why this policy should be used.

*1.3 The goal of this policy is **not intended to supersede either the general thrust or the direction given by the specific policies in the Local Plan.** It is only intended to give MEPA a degree of flexibility in identified situations where a justified departure may be deemed sensible or desirable from a planning point of view. The provisions of this policy may in no way be construed as a right awarded to the proponent and the application of this policy shall be at the sole discretion of MEPA. **In all cases where MEPA resorts to this policy MEPA shall be obliged to indicate in writing the planning grounds upon which the specific departures from policies are based upon.***

**Conclusion:**

The planning authority failed to give a proper reason why this proposal is justifiable from a planning perspective and did not adequately provide a mechanism to distinguish this approval from others or balance the needs of the residents with the needs of the band club.

The addition of a commercial Class 4D in this establishment moves the band club away from being a social club used by the community registered as an NGO to a commercial driven organization. Class 4D is an unwanted addition bringing in operational uncertainty as the nature and purpose and focus of the band club changes.

The addition of a music school is perfectly inline with the band club and its operation to teach new an upcoming musician, however the lack of classification fails to allow the club to get the required licenses from the relevant authorities and potential support if needed to help the young and upcoming band members of the future.

**List of Witnesses.**

1. The appellant and the applicant and relative architects and engineer of that are part of the proposal.
2. Employees and consultants of the Planning Authority
3. Planning Authority Representatives.
4. Neighbours surrounding the property.
5. Representative from Malta Tourism Authority.
6. Representatives from the Office of the Commissioner for Voluntary Organization.
7. Representatives from the Lands Department.

Yours Faithfully,

Matthew Aquilina