

21st March 2023



The Environment and Planning Review Tribunal

Nru. ta' l-Applikazzjoni: PA/2485/22

Lokazzjoni: Sharon, Trejjet ix-Xibka, M' Scala

Proposta: To demolish existing first floor structure and to construct two apartments and one duplex apartment, to install lift and to extend common parts

Ref. Taghna:

Ref. Tribunal:

Tudor International Limited

vs

L-Awtorita' ta' l-Ippjanar

The appellant respectfully submits:-

- I) The applicant made the submission of this application in 2022.
- II) This application was refused by the Commission and the decision was published on the 21st February 2023.
- III) The appellant feels agrieved by the decision and is hereby submitting this appeal.

Together with this appeal, the appellant is submitting:-

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

The appellant respectfully submits the following:

1.1 It is clear that the application should have been considered acceptable to the Authority on the strength of the fact that the building in question is a legitimate building with a legitimate use and on the strength of the permits issued in the immediate vicinity of the Property in question;

1.2 The issue that lead to the reasons for refusal all relate the one single issue, and namely that the site does not front a schemed road.

1.3 The leading jurisprudence on the matter is that determined by the Honorable Court of Appeal in the case PA 2746/10 (appeal 221/11) wherein in its decision of the 9th July 2015 it held:

Il-Qorti ghalhekk eccezzjonalment tqis illi l-interpretazzjoni moghtija mit-Tribunal ghal public road fil-kuntest ta' internal development ma tirrispekkjx il-ligi tal-ippjanar fid-definizzjoni ta' road u anqas f'dak li l-gurisprudenza tqis bhala dak li jikkostitwixxi triq pubblika cioe l-uzu li jsir minnha.

1.4 The same principle was used by the EPRT in Appeal number 470/18 referable to PA 3695/18. The Authority, on the otherhand, used this same interpretation in a number of cases, some of which being PA 6334/19 and PA 2485/21.

1.5 It is also worth nothing that in this same street the following two cases have been determined:

PA7811-16

Application to build extension over an existing building. This building overlooks both Triq l-Iskal and also Trejqet ix-Xibka.

This building already had units overlooking the private road (approved 2005), and now they approved a new unit overlooking the private road. According to case officer report:

*The extension and conversion of one of the existing apartments at second floor level to create a three bedroom unit is in line with floor area requirements as per policy P32 of DC 2015. The proposed units at third floor/receded floor levels are also in line with the minimum dwelling size required by policy P32 of DC 2015 (1-bedroom: 55sqm, 3-bedroom: 115sqm), with the number of 1-bedroom units not exceeding the maximum 20% of the whole development. **The proposed unit at the rear part of the third floor level, which does not have an outlook, is being considered in view of the extent of the commitment already existing on site (policy P1 of DC 2015 applies) which already includes units that were approved without an outlook. In view of this, there is no issue in terms of policy P1 of DC 2015.***

PA5531-19:

Permit to demolish a house in triq l-iskal and build new garages (onto trejjet ix xibka) and apartments overlooking triq l-iskal. However one of the apartments overlook only trejjet ix xibka.

With regards to outlook for this unit, this was accepted like so:

It is pertinent to note that not all the proposed dwellings have a frontage on a schemed road.

However, as noted by the Commission, the requirement for an adequate outlook for all dwellings is being fulfilled since these have a frontage onto a road as per definition of road in Cap. 552, Part 1, Article 2.

1.6 It is therefore evident that this road qualifies as a road according to law and considering the number of commitments in the same road, the applicant's application should be favourably considered.

1.7 The proposal in question will not aggravate the current situation and the proposal is actually an adequate transition considering that the said property abuts third party property that is built to the full length of the site in question.

1.8 The Proposed development is in line with the Local Plan policies and other relevant policies regulating the area in question and hence the proposal should be acceptable.

In view of the above, and further submissions that the appellant reserves to make, the appellant requests the Tribunal to annul the decision of the Commission, and order the approval of the application in question and hence the issue of the relative permit, and this under those terms and conditions that the Tribunal may deem appropriate.

With Respect

A handwritten signature in blue ink, appearing to read 'Av. Ian J. Stafrace', written over a light blue horizontal line.

Av. Ian J. Stafrace

Witnesses:

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

A handwritten signature in black ink, appearing to read 'Av. Ian J. Stafrace', written over a light blue horizontal line.

Av. Ian J. Stafrace
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