



The Planning Appeals Board

Application No: PA/05117/21

Proposal: To affect internal and external alterations to apartment internally numbered 2 at first floor level. To carry out internal alterations to same apartment in order to extend common parts to overlying roof and floors. To construct overlying second floor apartment. To carry out external alterations to same facade.

Location: 36, Flat 2, Triq it-Tarag c/w, Triq it-Tonn, San Pawl il-Bahar.

Appeal of Edmond Bartolo, Dr. Raymond Zammit and Josephine Vassallo (objectors) from the decision of the Planning Commission Board delivered on the 24<sup>th</sup> February 2023.

Humbly submit :

The appellants in this appeal are the registered Objectors to this application; reference is made to the contents of the updated Case Officer’s report (minute 139a) relating to the application in caption and to the decision delivered by the Planning Commission Board on the 24<sup>th</sup> February 2023. The appellants feel aggrieved by the decision and are therefore submitting this appeal.

The following are their grievances:

- A) Technical Planning/Heritage Issues:
  - i) The Applicant, through his Architect, intentionally misled the Case Officer and the Board by submitting a revised site plan (minute 119k) indicating the entire airspace above a third party pre-1967 yard to be part of the site (compare with site plan submitted as minute 1i). This is clearly not the case, but it clearly helped the Applicant claim that the proposed development would be adjacent to and thereby hide an adjacent blank wall – when in fact it dose not. On the other hand, the approved drawings clearly indicate that the third party airspace above the said yard will remain and that the approved floor is well distant from the wall it is deemed to hide. So in fact this wall will not be hidden. Furthermore, the Case Office and the Board apparently resolved to ignore the fact that the approved development will significantly increase the area of a much more conspicuous blank wall overlooking a set-backed property on Triq it-Tonn.

- ii) In item 4.1 of the Case Officer's report under the title Summary of Issues, the report prematurely declares the proposal as being acceptable on the apparent (but dubious) merits of its compliance with DC2015 and SPED. It also considers that the addition of another floor helps to mitigate an existing blank wall (presumably that of an adjacent apartment block). However, in this summary the report does not mention that the proposed building will in fact, itself create a blank party wall within the UCA which will constitute a precedent to further development within the same UCA. The report only acknowledges the creation of this precedent at the concluding paragraph of - *Height limitation and roof structure* – wherein incredibly it consciously mitigates the seriousness of this precedent by implying that the height limitation on Triq it-Tarag is already compromised and also takes solace of an SCH's non-objection in minute 84b.
- iii) The case officer in his updated report and the Planning Commission Board repeatedly failed to grasp the fact that the proposed new floor is not at second floor level but, in fact, at third floor level.

The application Architect continuously kept referring to an upper ground floor in his drawing when this should have read first floor (vide minutes 133d & 119i), even if one were to consider the elevation with respect to the highest point near the main entrance to the site at Triq it-Tarag. Indeed, no other building in Triq it-Tarag is of the height recommended for approval in this application. The Case Officer and the Board apparently accepted this on the merit that previous permits (PA2395/02 and PA3218/13) had indicated the development site to be located at a wrong floor level. (see Directorate's Comments). In this way, rather than correcting previous permit errors the Directorate is perpetuating them further by basing its deliberations on blatant falsities.

- iv) In item 4.6, the report mentions point by point the policy context under which the application was assessed. It particularly lists the provisions of Urban Objectives 2, 3, 4 and Thematic Objective 8. Reading through these policies it is evident that they refer to aspects which are either irrelevant to this application, or if relevant were completely ignored in the assessment process. These points were also totally ignored by the Planning Commission Board.
- v) In item 4.9 the report lists issues which the Architect/Applicant had to address in his resubmissions. Whereas the report states that all these requirements were successfully addressed by the Architect, as a matter of fact, reference to the approved drawings indicates otherwise on the following points:
  - 1) Floor levels still misleadingly marked incorrectly.
  - 2) Relevant policies regarding maximum height limitations in UCAs were ignored.
  - 3) Aperture materials in UCAs were ignored.
  - 4) No adjacent commitments.
  - 5) Stair hood room in-lieu of stairwell room at roof level.
  - 6) Side elevation on Triq it-Tonn is overlooking third-party property even contrary to civil laws – and also giving rise to issues of bad neighbourliness.

- 7) Receded apertures overlooking terraces on Triq it-Tonn are still wide and not of traditional proportions as usually unconditionally requested in a UCA.
  - 8) A cantilever is still evident in the side elevation on Triq it-Tonn even if this is not acceptable in UCA.
- vi) The approved floor plans 199b, 199c and 199d in a misleading manner, indicate that the airspace above a third party yard is a "...common shaft according to the Condominium Act". This statement is untrue and is firmly contested by the owners of the underlying premises; it is also clear from the submitted drawings that there exists no situation of a 'condominium' in the building's present layout. This false assertion was made by the Applicant through his Architect since, from a sanitary point of view, setbacks would have been imposed on walls overlooking the large third-party yard located behind the living/dining room and the hall/bathroom. This emanates from the fact that the mentioned walls confine an airspace of a third-party yard which provides light and ventilation to habitable rooms of underlying dwellings on both Triq it-Tarag and Triq it-Tonn. Approval of these drawing is clearly in breach of sanitary provisions for internal yards and thus an injury to amenity to the dwellings below the development. This raises issues both of planning and civil law infringements – which again would impinge on the concept of good neighbourliness.

B) Sanitary issues

- i) The proposed openings overlooking the airspace of the mentioned in item A -vi) above are clearly additional servitudes on the airspace. These would require consent from the owners of the yard and the airspace for which the applicant has no such approval.
- ii) Additional servitudes would also be created if the applicant intends to use the said airspace and the nearby service shaft for the passage of mechanical services and drains. For these too the applicant has no consent from the owners of these airspaces.

C) Buildability issues

- i) The construction characteristics of the existing building beneath the development site severely limit the possibility of construction of additional floors in the absence of structural improvements of the underlying third-party properties. These structural interventions are not contemplated in the development application nor was the applicant given any consent to consider or to implement such interventions. Perit Tano Zammit had opined that ignoring buildability issues and proceeding with construction works without implementing structural improvements on the existing building will constitutes a high risk to life and limb. This important factor was not considered by the Board.

In view of the above the appellants humbly ask this Appeal's Board to revoke and reverse the decision of the Planning Commission Board and thus to refuse this application. Appellants reserve all their other rights at law.

With costs against the applicant.

With respect



Avv. Ian J. Stafrace

**List of witnesses.**

The applicant and his architect in re to the application,

All the appellants in regard to the facts stated in this application;

Perit Tano Zammit in regard to planning and other concerns in regard to this application



Avv. Ian J. Stafrace