

BRINCAT & FILLETTI ADVOCATES MALTA

Offices : 75 Cross Road Marsa

Telephone: (356) 21 222187

Mobile: (356) 99496347

J.Brincat B.A.(Lond), B.Sc.(Econ)Lond, LL.D.

Email : josbrincat@gmail.com

In The Environment and Planning Review TribunalSt Francis Ravelin
Floriana.**The Case PA/05062/21 Outline Development Permission
Farmhouse Bir id Deheb Zejtun.**Proposed Alterations to existing building Pre 1967 property.
Property in the name of Mrs Catherine Mizzi.

Appeal of the said Catherine Mizzi.

Respectfully states:

That by a decision published on the 15th March 2023 the Planning Commission rejected the application of Catherine Mizzi and this was based on the only factor that "based on the documentation submitted, there is no evidence which proves that the residential use of the existing building continued up until the year 1978".

No other ground was raised by the Planning Commission to refuse the development permission.

The principal policy that was referred to was that on 6.3(criterion 3) and that would also consequently run counter to policy 6.2C criterion 5A of the Rural and Design Guidance 2014.

The Appeal is based on the following legal consideration.

The Planning Commission has interpreted wrongly what is provided in policy 6.3. It actually refers to "Use of the existing building continued up until the year 1978". The wording of policy 6.3(b) refers to a dwelling that is covered by a development permission, or dates back to pre 1978.

ENVIRONMENT AND PLANNING
REVIEW TRIBUNAL

RECEIVED
11 APR 2023
ST. FRANCIS DITCH
FLORIANA

The words used by the Planning Commission that there is **to be continuation up until** the year 1978 is an interpolation of words in the text of the original policy. The policy nowhere states that there is to be continued use of the premises as a dwelling up to the year 1978. It could have said so simply, even by choosing the words invented by the Planning Commission.

The policies of the Planning Authority are legally binding. They are legally binding on the individual applicant and on his architect, but also on the Planning Commission

Where does one find the words continuous residential use of the existing building up until the year 1978?". The prefix "pre" means any time before 1978, and not only the 31st December, 1977. There is no contestation that the property in question appears on the aerial photos of 1946 and 1978. This is enough to satisfy also that judgment referred to and for which an advice was requested.

That same article 6.3 has also a wider clause 6.3 (a)

"The property in question has been used as a residence prior to 1992".

It does not in any way bind that the property continues as a residence up to 1992 but it is sufficient that it had been used as a residence prior to 1992.

Documents have been submitted that the property was in the hands of Rosario Zammit and he was even registered as a voter in the property prior both to 1978 and 1992. Consequently on a legal bases the decision of the Planning Commission is incorrect.

The use has been amply established according to the same position of policy 6.3 and the exact wording used therein.

It is not legitimate to add other conditions such as continued use when the policy simply states what it states. When one removes the word continued up until the year, the wording would revert to the policy as it has been established and published and binding..

Consequently the applicant humbly prays that the Tribunal revokes the decision of the Planning Commission and grant the necessary development permission.


Jbrincat Advocate


Catherine Mizzi Appellant

Joseph Brincat LL.D.
B.A.(Lond)B.Sc.(Econ)(Lond)
ADVOCATE
75.Cross Road, Marsa