

AUDIT REPORT 2010/021

Complaint by Mr Alex Vella on behalf of The Ramblers Association of Malta concerning the approval of development application PA 7651/07: *To sanction works consisting of conservation of existing country lodge by the restoration of existing walls to render stability of existing structure including roofing over of existing rooms (Farmhouse).*

Facts

The history of this application is listed below:

2007 (21 November): The area enforcement officers report that illegal works were proceeding on the site. Workers were found on site, but they were unable to identify the owner.

2007 (4 December): A note from the Senior Enforcement Office to the area enforcement officer instructs him to issue a stop and enforcement order. The minute (minute 12 in ECF 765/07) identifies the architect responsible for the works being carried out without a permit.

2007 (6 December): An enforcement and stop notice is issued against an unknown owner (eventually identified as the applicant) for:

Gjandek wvilupp ming]ajr permess li jikkonsisti minn rikostruzzjoni (twaqqigh u bini mill-[did) ta strutturi e]sistenti kif ukoll depolitar ta' materjal inert u konkrit u dan kollu f'art skedata u protetta skond il-liji.

Photographs were taken which show a new construction using old stone in an advanced state of construction.

2007 (28 December): Michael Zammit Cutajar submitted an application “*to sanction works consisting of conservation of existing country lodge by the restoration of existing walls to render stability of existing structure including roofing over of existing rooms (Farmhouse)*” (PA 7651/07). The site indicated was far outside the development zone in a very prominent position. The submitted photographs show a building in an advanced state of construction (walls practically finished but not roofed over).

2008 (21 May): Consultation letter sent to the Director of Fortifications.

2008 (20 June): 1967 Aerial Photograph attached which seems to indicate an existing structure on the site.

2008 (20 June): Application referred to the Heritage Advisory Committee (Cultural) with the following note: “*File referred for your comments in view that the site*

is located within an AHLV of Victoria Lines and in view of the proposed works to existing structure”.

2008 (27 June): The Director of Fortifications does not object to the proposed development.

2008 (15 October): The Environment Protection Department objected to the proposed development. The comments of the EPD are reproduced in full hereunder:

- *ECF 765/07 indicates that this is a case of demolition and re-construction, as can also be seen from the attached photos 1, 2 and 3. This does not tally with the ‘conservation’ and ‘restoration’ that is actually being proposed in the submission.*
- *The demolition of the original structure and reconstruction of a replica cannot be considered as an existing development which would justify the proposed intervention, and would also undermine the principles on which such proposal can be considered ODZ. The interventions have led to a new development ODZ rather than the restoration or an extension to an existing structure. The existence of ruins of a previously existing old structure on site is being overstretched as a pretext for development ODZ.*
- *Such interventions ODZ and within a Rural Conservation Area should not be encouraged, particularly within a scheduled Area of High Landscape Value (G.N. 85/01) and thus should be left free from development. The site is also characterized by cliffs and a boulder scree habitat.*
- *Furthermore, it must also be pointed out that previous request (PA 5421/84) for conversion for habitation – to reconstruct, alter and add to the existing farmhouse has already been refused on environmental grounds (red 44 in PB 5421/84).*
- *Although the proposal focuses on the building, both construction works and use of the building for residential purposes would affect a wider area. In this regard there is no defined access route to and through the site. The proposal would therefore result in disturbance of the surrounding area and the creation of formal access routes. EPD is also concerned that this proposal would establish a commitment on site, which would then introduce further pressures (ancillary infrastructure, services, parking provisions, removal of vegetation, ancillary hard landscaping etc.). This situation is conducive to net negative environmental impact, which would offset by far the residual benefits (if any) of the proposed reconstruction.*
- *Proposal also runs counter to Structure Plan policies, in particular RCO4.*

2008 (27 October): The CHAC give their comments on the proposed development stating:

This cannot be described as conservation of an ‘existing country lodge’ but demolition and reconstruction of old rural rooms. The development lies within a scheduled Area of High Landscape Value and will also have an impact on the surrounding maquis. Approval therefore cannot be recommended

2008 (9 December): Architect amends the proposal to include sanctioning of the works as existing on site.

2010 (5 March): The Development Planning Application report is concluded with a recommendation for refusal. The reasons for the recommendation are reproduced below:

1. The proposal includes the demolition and re-construction of existing building. Thus the proposal runs counter to the adopted policy Development Control Guidance - Developments Outside Built up Areas, and in particular to paragraph (iii) in Section 8.1 which states that the rebuilding of large sections of walls will not be acceptable. The proposed sanctioning of works would lead to urbanisation outside those areas specifically designated for urban uses in the Structure Plan - i.e. : existing and committed built up areas and primary development areas, and so also runs counter to the Structure Plan strategy to channel development into existing and committed urban areas to constrain further inroads into undeveloped land.

2. The site is located in a Degree of Protection 4 Area of Ecological Value , where further human intervention, particularly in the form proposed, is not desirable. The proposal would therefore adversely affect the area, hinder its protection, and run counter to the rural conservation and ecological objectives of the Structure Plan and Policy 1.H: Protected Areas of the Policy and Design Guidance on Agriculture, Farm Diversification and Stables.

3. Structure Plan policy RCO 4 provides that, particularly outside development zone, areas of scenic value will be protected and enhanced. The area in which the site is located is of considerable scenic value. The proposal would detract from this, and so it would conflict with Structure Plan policy RCO 4. The proposal is also running counter to North West Local Plan policy NWLA 2 – Areas of High Landscape Value.

2010 (6 April): The architect replies to the DPA report stating that it was incorrect and misinterpreted facts. Relevant parts are reproduced below:

The building has been there for ages, steadily deteriorating until someone did find the time, energy and finances to restore it.

The argument that the project would affect a wider area is not valid; the present access path up to and beyond the property is not new. In fact such an access has to be maintained to property beyond this site

The issuance of the original permit is not acknowledged.

The only reconstruction consists of a room in the old building that has collapsed beyond repair. The walls of the main rooms are still standing.

On the ecological impact, I contest the comment that the surrounding land is maquis. I would call it abandoned agricultural land.

2010 (15 April): Architect's comments included in DPA report. In reply the Planning Directorate stated:

Permit PB 5421/84 has granted permission to carry out extensions to building as per approved drawing PB 4894/86/5421/84/18A. This permit was issued on 22/12/1986. Another application proposing additions and alterations to building was submitted on 27/11/1987 but was refused on environmental grounds – refer to document Red 44 in PB 4894/86/5421/84/18A. Notwithstanding this it was noted that the existing building indicated in the submitted drawings (No. 003) does not tally with what has been approved in PB 4894/86/5421/84/18A, thus indicating that additions and alterations were carried out without permit. The architect was notified of this and was requested to amend proposal description accordingly to sanction carrying out of these works.

The Planning Directorate reiterated its previous recommendation to refuse.

2010 (12 May): DCC considers the application and asks the Sanitary Engineering Officer to vet the drawings.

2010 (2 June): The DCC approves the application with the following justification:

1. *The permitted structure in PB5421/84/18A shows a greater footprint than the proposed;*
2. *Committed by PB5421/84;*
4. *Same as 2.*

Comments

Once again the MEPA approves the creation of a new country residence outside development zone without any adequate justification.

The site was covered by a development permit issued on 22 December 1986. At the time the validity of a permit issued by the Planning Areas Permit Board was normally for a period of one year. It could be subsequently renewed. Hence the permit expired, presumably, on 22 December 1987. The works had not been carried out. Another application for amendments was refused on environmental grounds.

Hence the situation when the applicant submitted the application under consideration (28 December 2007) was as follows:

1. There was an existing old building not fit for habitation and which had been in this state for a long period of time as attested by the submitted documents.

2. A building permit had been issued but the works were not carried out and the permit expired about twenty years before.

Consequently when PA 7651/09 was submitted, it had to be assessed in accordance with the present policies. The permit issued in 1986 created no commitment on the site and could not be used as a justification for the issue of the new permit. Any works carried out by the applicant were carried out after the original permit had expired and hence were illegal. In addition the works did not conform to the approved plans.

It was therefore incorrect for the DCC to justify their action by stating that the site was committed. The site was not committed except partly by an illegal structure and partly by an old derelict structure. The assessment should have followed the procedures for the rehabilitation and reconstruction of existing abandoned derelict sites outside development zone. In fact the Planning Directorate used the correct criteria in the assessment of the application.

Of particular concern is the access to the site. As the applicant himself admitted there is only a right of way to the site which presumably means that vehicular access is (or was) not possible. However the report of the enforcement officer and the photographs taken clearly indicate access and a small truck is parked on site. The case needs to be investigated: has a new access route been created or was it already existing. There is no indication of this in the file.

In conclusion this application was approved contrary to policy as (1) the DCC failed in their statutory obligation to give a justifiable planning reason why the recommendations of the Planning Directorate could not be accepted, and (2) the application was approved contrary to policies concerning the creation of new dwellings outside development zone in protected areas.

I am also concerned about the role of the architect consultant to the applicant. It is clear that the intention of the applicant was to carry out a development illegally without any permit. In fact he only applied to sanction the development after the enforcement order was issued. Yet it was possible for the enforcement officer to identify the architect responsible for the works. I have to reiterate my advice that architects should be held in breach of professional ethics if they carry out works on behalf of clients without the required permits.

Conclusions and recommendations

1. The complaint that development application PA 7651/07 was approved contrary to approved policies is sustained. The DCC Division A is solely responsible for this and should shoulder its responsibilities in this case. No redress can be given as there are no grounds for the withdrawal of the permit in terms of the provisions of the Development Planning Act.

2. The MEPA is advised to monitor the site continuously to ensure that no additional works include access roads, paved areas, etc are created doing further damage to the environment.

MEPA's reaction to preliminary report

A preliminary version of this report was sent to the Chairman MEPA on 22 June 2010 for his comments. As no reply has been received to date, it is being presumed that the MEPA agrees with the contents of the report.

Joseph Falzon
Audit Officer

15 July 2010