

Final Opinion on Case No EV 0020

Investigation regarding the administrative act by Transport Malta following the implementation of an un/loading bay at Sqaq Santu Wistin, Swieqi.

Case History

On 23 March 2021, this Office opened the investigation and asked Transport Malta whether this un/loading bay was authorised and if yes, what were the reasons for the turn in the decision taken by Transport Malta a few months earlier when a similar request was refused on the basis that this was contrary to development permit PA/10598/17 wherein the Planning Authority imposed the condition that un/loading activity shall take place solely within the premises and not from/on the public pavement or street. Transport Malta was also asked to provide information about the action taken if this bay was not duly authorised.

Following no reply to this query, on 1 June 2021 Transport Malta was solicited to provide this Office with a reply by 11 June 2021.

On 11 June 2021 Transport Malta replied that it approved the un/loading bay in Sqaq Santu Wistin, Swieqi on 15 February 2021 following a meeting with the applicant who explained that they were facing a number of problems for both the commercial complex and the hotel with the new layout, including large delivery vans not being able to enter the car parks due to the car parks' low ceilings. Transport Malta added that in its first decision taken on 9 November 2020, Transport Malta insisted that un/loading should be carried out in level -2 and this decision was also taken on the fact that the un/loading bay was painted without the approval of Transport Malta.

Transport Malta added that on 15 February 2021 it acknowledged the need and gave its approval for an un/loading bay, limiting it to eight hours a day for five days a week with

unrestricted parking for the remaining hours, and on 22 February 2021 Transport Malta issued a works order for the implementation of the same un/loading bay. Transport Malta concluded that such an un/loading bay is permitted according to Transport Malta's policy.

On 15 June 2021 the Commissioner asked Transport Malta to confirm by 15 July 2021:

"1. How the mentioned approval of 15 February 2021 - following the refusal of the same proposal by Transport Malta on 9 November 2020 - conforms with condition 5 of development permission PA10598/17 which states that "Where a loading bay is indicated on the approved drawings, loading and unloading shall take place solely within the premises, and not from/on the public pavement or street."

2. How TM reconsidered this application on the basis of large delivery vans not being able to enter the carparks when approved drawing 237c shows that large delivery vans can actually enter the car park and an adjoining hoist has been prepared in line with the applicant's management of servicing and un/loading report reference 243a.

3. How TM approved this bay for eight hours a day when the same un/loading report states that deliveries and services shall be conducted between 7:00am and 11:00am."

The Planning Authority was copied with this correspondence to submit its views regarding action against infringement of the mentioned permit condition. The applicant and architect of this application were also copied to submit their comments in relation to the above by 15 July 2021 whilst Transport Malta was requested to forward this correspondence to the applicant (requesting this un/loading bay) for their comments to be submitted by 15 July 2021.

On 18 June 2021 the Planning Authority replied:

"The Planning Authority during the process of the application consulted Transport Malta for matters related to its remit. In permit PA 10598/17 condition number 5 as you have

highlighted, the Planning Authority had inserted a condition in the mentioned permit that states:

“Where a loading bay is indicated on the approved drawings, loading, and unloading shall take place solely within the premises, and not from/on the public pavement or street.”

This condition was imposed since on approved plan PA 10598/1//237c three areas were identified; two un/loading areas are specified within the premises and another area for unloading located in level-2 floor plan.

Another document -Ref G-0676- generated by Perit Paul Camilleri dated 9/10/2018, the project architect, Doc 243a titled Management of Servicing and Loading/Unloading operations confirmed that such operations are to be carried out from within the building, hence the Condition 5.

Although the Planning Authority through its planning process, fully addressed the parking and un/loading issues, it has no remit on road/sign markings.”

Following a request for an extension to provide a reply, Transport Malta replied on 6 August 2021 with the following:

“The review by Transport Malta was taken after considering various options and after consideration has also been taken on the impact on traffic if the request will not be approved.

Kindly note that according to the policy un/loading bays are allowed up to 8 hours a day, thus leaving the remaining hours for unlimited parking space.

Transport Malta’s decision to reserve the area from 08.00 a.m. rather than 07.00 was taken in the interest of residents who park in the area and do not have to wake up early to remove the vehicle’

Allowing 8 hours for un/Loading in such a busy area helps reduce the risk of congestions and traffic jams.”

Observations

The development permit in question was issued by the competent authority on the condition that *“Where a loading bay is indicated on the approved drawings, loading and unloading shall take place solely within the premises, and not from/on the public pavement or street.”* The Planning Authority included this condition after meticulously considering Transport Malta’s consultation reply, the relative thematic objective in the Strategic Plan for the Environment and Development and even the Traffic Impact Assessment requiring the service area to include a sufficient internal service bay to be sufficient to fulfil its intended purpose. The overturning of the original refusal by Transport Malta that was based on the infringement of the same condition (after being also originally highlighted by this Office) paved the way for the infringement of this condition as its implementation is providing for an activity that cannot be carried out under the Development Planning Act.

Whilst Transport Malta justifies its authorisation on the basis of its policy, it is relevant to note that the main aim of the same policy *“Require that new developments are effectively incorporating parking bays or sustainable modes of transport within their buildings in order not to further impact on On-Street parking availability”* whereas according to the same policy *“In certain instances, and upon request from the Authority, authorisation shall be issued subject that the following has been ascertained as done by the applicant: A discussion has been held and an agreement has been reached with all effected entities (underlined by the author), commercial outlets, residents and any other third parties or stakeholders.”*

Notwithstanding any Transport Malta’s policies, one has to consider that Transport Malta authorisations shall not prejudice development permits issued by the Planning Authority (Article 7(g) of the Authority for Transport in Malta Act - Chapter 499 of the Laws of Malta – that prohibits authorisation for any work on any road that would prejudice the Development Planning Act) and that any conditions imposed under the Development Planning Act are there

to be respected not only by the applicants but also, and particularly, by public entities. Therefore, if the Planning Authority imposes a condition that a certain activity cannot be carried out, Transport Malta is acting incorrectly when it issues an authorisation (in this case an un/loading bay) for the same unpermitted activity.

Whilst the Planning Authority is right in stating that it cannot act against the un/loading bay in question as this does not constitute development under the Development Planning Act, the Planning Authority can still act against the un/loading activity occurring outside these premises as this activity is in conflict with condition 5 of the same permit. Nonetheless, the Planning Authority cannot be expected to act whilst an authorised un/loading bay is still marked on site.

Transport Malta should be praised for considering the interest of residents who park in the area by authorising the use of this bay after 8:00am instead of 7:00am so that residents won't have to wake up early to remove the vehicle, however, Transport Malta should have at least first requested the applicant to obtain the Planning Authority's approval (as required by Transport Malta's own policy) to delete the permit condition in question before issuing an authorisation that is clearly in conflict with the Development Permit Act.

Conclusions and recommendations

The un/loading bay authorised by Transport Malta in Sqaq Santu Wistin, Swieqi and the relative works order infringes both the Authority for Transport in Malta Act and the Development Planning Act.

It is being recommended that:

1. Transport Malta withdraws the authorisation for this un/loading bay and sees to the implementation of its removal to be reverted to the parking bay as it was before.

2. Transport Malta only issues authorisations for similar requests after it ascertains that similar conflicting development permit conditions are first overturned by the competing authority.

Perit Alan Saliba
Commissioner for Environment and Planning
Office of the Ombudsman

23 August 2021