

Report on Case No CEP-22-3137

Investigation following a complaint alleging irregular acceptance of a development at St Julians.

List of Abbreviations:

PA - Planning Authority

Case history

On 12 August 2022 this Office received a complaint against the acceptance by the PA dated 26 April 2022 of Development Notification Order reference DN/00482/22 for the erection of ATM machine and booth at Neptunes Waterpolo & Swimming Club, Ċensu Tabone Street, St Julians.

On 26 August 2022 this Office opened an investigation and informed the PA with the following:

“This Office opened an investigation regarding the approval of an ATM machine and booth at St Julians reference DN/00482/22.

This investigation concerns two main issues:

- 1. Whether the authority considered that these constructions at road level would require any works below road level, particularly if the site is situated on the shore.*
- 2. Whether the Authority considered that Subsidiary Legislation 552.08 Class 4(iii) states that the booth should not exceed one meter squared in area measured externally.*

The Planning Authority and those in copy may submit comments in this regard by 26 September 2022.”

This letter was copied to the Applicant and Architect of the DNO application in question.

Through a letter dated 7 September 2022 the PA submitted the following reply:

“Reference is being made to the case mentioned in subject. You may wish to note the Authority’s reply in italics.

“1. Whether the authority considered that these constructions at road level would require any works below road level, particularly if the site is situated on the shore.

The Authority did not consider that these structures at road level would require any works below road level, particularly if the site is situated on the shore which, is not the case here. It is the sole responsibility of the Perit to indicate in the proposed plans that such works are premeditated to happen and should be indicated for evaluation by the Authority. The clearance issued is only in relation to the proposed development only as indicated on the approved plans. Nevertheless, if in the view of the Authority the execution of works goes beyond what was approved, then the Authority will take the statutory steps needed so that what was approved be executed. The clearance issued, in this case a DNO does not exempt the developer from obtaining other authorisations or approvals from other statutory entities for the development to be executed, unless the works are deemed as permitted development.

2. Whether the Authority considered that Subsidiary Legislation 552.08 Class 4(iii) states that the booth should not exceed one meter squared in area measured externally.

No, the Authority did not evaluate the proposal against Subsidiary Legislation 552.08 Class 4(iii) since the proposal does not fall into that category of development, but Class 4(ii) The installation or placing of posting boxes, self-service machines or Automated Teller Machines, or vending machines that are in line with approved policies and guidelines not in ODZ.”

Neither the Applicant nor the Architect submitted any comments.

The relative PA file shows that the Architect submitted a commencement notice on 31 August 2022 indicating that works would start on 9 September 2022.

Observations

On 26 April 2022 the PA issued a clearance stating that:

“In accordance with the Development Notification Order, 2016, the development as endorsed on the attached drawings and site plan DN/00482/22/1a/1b is permitted under the following class:

4(ii) Posting boxes, automated teller machines and vending machines

4(iii) Telephone boxes or booths.”

In its reply dated 7 September 2022 the PA states that *“The Authority did not evaluate the proposal against Subsidiary Legislation 552.08 Class 4(iii) since the proposal does not fall into that category of development.”* This reply is a clear endorsement by the same PA that there was an error in its clearance dated 26 April 2022 since the same clearance dictates

that the proposal was evaluated against Class 4(iii), thus leading to revocation procedures in line with Article 80(1c) of the Development Planning Act. One can argue that this clearance is not a permit that can be revoked under the Development Planning Act, however the decision by the Inferior Court of Appeals dated 24 October 2018 under the names “*Maltapost plc vs l-Awtorità tal-Ippjanar et*” confirms otherwise.

Furthermore, the proposed booth is only covered under Subsidiary Legislation 552.08 Class 4(iii) that clearly states that the structure shall not exceed one meter squared in area measured externally whereas in this DNO the PA approved a structure that is more than triple in size. Hence another error in so many observations.

It is also evident that the PA failed to notice what is very clear from the photos submitted with the same application that the approved section DN/00482/22/1b does not reflect the situation on site since the proposed structures must include underlying structures and spaces below street level and above existing floor level that require a permit under the Development Planning Act. Hence, the PA should also immediately take enforcement action once works start with the construction of the foundations that will be exposed, above floor level and that may also be used as ancillary unpermitted spaces.

Conclusions and Recommendations

The allegations against the Planning Authority that it irregularly approved a development at St Julians are found to be justified.

Recommendations:

1. The PA shall invoke Article 80 of the Development Planning Act and revoke the permit in question DN/00482/22 dated 26 April 2022 due to errors on the face of the record and due to the submission of a plan (section) that does not reflect the situation on site.
2. Notwithstanding the first recommendation, the PA shall take enforcement action against any unpermitted constructions below street level and above the existing floor level.
3. This Final Opinion should be uploaded in the relative file DN/00482/22 and be made available for view by the general public.

Alan Saliba
Commissioner for Environment and Planning
Office of the Ombudsman

3 October 2022