

OWNERSHIP ISSUES IN PLANNING LAW FROM A LEGAL PERSPECTIVE

The legislator

- *“Ejja naghmluha cara u nkunu skjetti: ma jfissirx li l-Awtorità b’xi mod jew ieħor tista’ tiċċertifika li dak li qed jgħidlek li ġab il-kunsens mingħandu huwa s-sid! Fil-fatt kull permess joħroġ saving third party rights....”.*

[Sitting No. 336 held in December 2015 - House of Representatives, Malta]

Pertinent Legislation

- *Article 71 (4) of the current Development Planning Act was enacted as follows: “An applicant for development permission shall certify to the Authority that: (i) he is the owner of the site or that **he has notified the owner of his intention to apply by registered letter of which a copy has been received by the Authority and that the owner has granted his consent** to such a proposal; or (ii) he is authorised to carry out such proposed development under any other law or through an agreement with the owner.”*
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Pertinent Legislation

- *Article 71 (5) of the current Development Planning Act then provides that: “Where: (i) the applicant is the Government of Malta, or any department, agency, authority or other body corporate wholly owned by the Government; or (ii) the applicant is not the owner of the site, but he holds the site under title of agricultural lease, or holds the premises under a title of lease and he is carrying out the works under a scheme of a Government entity, the applicant must still notify the owner of his intention to apply by registered letter of which a copy has been received by the Authority, **but need not certify that the owner has granted his consent to such a proposal.**”*

Court pronouncements

- When an applicant is not the sole owner, notification to the owners (or coowners) by registered post and subsequent consent are considered to be ad validatem requirements;

Court pronouncements

- Late notifications are not a ground for nullity, provided that the owners are duly informed in due time prior to the Authority's decision;

Court pronouncements

- The Authority (or the Tribunal) cannot simply choose to ignore the lack of consent and issue a permit on the premise of specifically 'saving third party rights';

Court pronouncements

- When a title is under dispute, the Authority (or the Tribunal) cannot hold itself competent to decide the matter thus giving itself jurisdiction which appertains solely to the Civil Courts;

Court pronouncements

- An applicant who is a co-owner is still legally bound to obtain consent from the other co-owners, despite being an 'owner' in terms of the definition found in the Planning Act;

Legal gaps

- **Should consent be in writing to avoid uncertainty?**... In *Davina Anne Borg vs L-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar*, the Court held that consent may either be 'explicit or implicit'.

Legal gaps

- **What about the consequences of consent being withdrawn during the process of an application?...**Article 71 (4) simply requires ' An applicant for development permission shall certify to the Authority that the owner has granted his consent to such a proposal'.

Legal gaps

- **What about the repercussions of a false declaration when its falsehood is discovered after a permit is issued?.....**

One could assume that the owner could eventually request the Authority to revoke the permit on the basis of 'fraud' in terms of Article 80 of the Act. However, as held in *Brian Bajada et. vs L-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar et.*, the Authority cannot simply entertain such an allegation if the applicant continues to persist that he is the sole owner

Legal gaps

- **Should we consider the exemption of co-owners from the obtainment of consent ?.....** As seen in Aurelio Schembri v MEPA, all co-owners should be served with a notification and release their consent. Does this mean that an emphytueta is to send a registered letter and obtain consent from the dominus? Should the PA consider departing from the concept of 'sole ownership' declarations in planning applications?
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